States Take Different Approaches to Taxing Alternative Alcoholic Beverages

David M. Kall | Saturday, May 9, 2015

Washington exempts hard cider from tax assessment

Hard cider is making a huge comeback, declared Jonah Keri in January. Keri is a contributor to Nate Silver's website fivethirtyeight.com. Nate Silver is the genius who predicted the last two presidential elections "with astounding accuracy" using forecasting models that "started out pretty simple…then gradually became more intricate."

In the past three years, hard cider's market share has grown more than fivefold, even though it has been around for more than 2,000 years. As Keri explains:

> "***For a while, Vermont-based Woodchuck dominated the American cider scene, launching in 1991 and going mostly unchallenged for two decades. Then, the floodgates opened. In a span of just two years, scads of new players emerged, with major beverage companies Boston Beer Co. (makers of Sam Adams), Anheuser-Busch InBev (Budweiser), MillerCoors (Miller, Coors, many others) and Heineken staking their claims***
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> ***All of those moves have made hard cider the fastest-growing segment of the beer and flavored malt beverages landscape, by a mile.***
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Citing research by IRI, Keri notes that cider sales "zoomed 75.4 percent to $366 million" during the 12-month period ending November 2014. Although cider still accounts for just one percent of the market, industry insiders "speak breathlessly" about its growth potential.

Qz.com clarifies that technically, fermented apple juice––cider––is neither beer, wine, nor spirit, even though it is currently included in market share data for beer. Because all of these beverages are subject to taxation, the United States Association of Cider Makers (Association) is lobbying to have laws passed that keep taxes low. One example is the Cider Act. The Association reasons that "[u]nder current federal tax law, the definition of hard cider only allows for up to seven percent alcohol by volume before it is taxed at the more expensive rate for wine, and only a certain level of carbonation before it is subject to the extremely expensive champagne tax ($3.30 or $3.40/gallon)." The Cider Act would "allow cider makers to produce cider using the natural products available without the possibility of facing increased tax liability."

States are doing their part to protect the emerging hard cider market. For example, Washington lawmakers recently passed a law that exempts the fruity spiked beverage from the eight cent per gallon tax assessment imposed on the sale of packaged Washington wines. The exemption will take effect on July 1, 2015.

Washington law defines cider as "table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. 'Cider' includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear mush."

The legislature justified the exemption because "[t]he rapid growth and strong market potential of the Washington cider industry require[s] marketing efforts that are focused on cider products as a unique beverage category. The legislature intends to allow cider makers to support their own marketing efforts..."

The Northwest Cider Association cheered the move as "a step forward for cidermakers and the Northwest Cider Association's mission to move cider into its own category…building upon the strength and tradition of Washington state apples, cidermakers see a unique opportunity to clearly distinguish cider as a premium beverage, to celebrate many cider styles and approaches, and to promote the Northwest as a world class cider region."

Few states approve the regulation and taxation of powdered alcohol

In contrast to the excitement that hard cider is generating, several states are already taking steps to ban a new alcoholic beverage, powdered alcohol, before it even reaches the market, according to Foodsafetynews.com. The publication describes powdered alcohol as a product that mixes with water to produce a cosmopolitan, mojito, margarita, or lemon drop cocktail. Palcohol is the brand name of one such product that is anticipated to launch this spring.

Foodsafetynews.com notes that the Alcohol and Tobacco Tax and Trade Bureau (Bureau) approved Palcohol a year ago, but rescinded its approval over labeling issues. In mid-March, the Bureau approved four varieties. Pursuant to this approval, the powdered alcoholic beverage is subject to all the same laws that govern the sale and possession of liquid alcoholic beverages.

Despite the federal authorization, states are banning Palcohol because of concerns that it will increase underage drinking, and the possibility that it could be either smuggled into venues that ban alcohol or snorted. Palcohol's inventor dismisses the snorting concern because "[i]t hurts and burns to snort it, and [i]t's a slow method of inebriation as it would take an hour or more to snort one packet."

The National Conference of State Legislatures (NCSL) reveals that as of April 2015, Alaska, Louisiana, North Dakota, South Carolina, Utah, Vermont, and Virginia statutorily prohibit the sale of powdered alcohol. On the other hand, Colorado, Delaware, Michigan, and New Mexico have included powdered alcohol in their statutory definitions of alcohol, so that the product is regulated under their existing alcohol statutes. The NCSL website provides a state-by-state status summary of 2015 legislation.

Wisconsin is one of the jurisdictions considering a ban. Foodsafetynews.com quoted State Sen. Tim Carpenter (D-Milwaukee), who has introduced a legislative prohibition, because “[t]he potential for abuse outweighs quite heavily the need for that type of product…[i]t would just make life a lot less complicated if we just didn’t go there.”

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