DIRECT SHIPMENT OF ALCOHOLIC BEVERAGES

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EXECUTIVE SUMMARY

Introduction

1998 Session Laws, Chapter 364, required the Legislature's non-partisan research offices to conduct a study of direct shipment of alcohol. This report completes that study.

Direct shipment became an issue due to concerns over an existing legal exemption to state law, that allows consumers to directly purchase two cases of wine per vineyard, and have that wine shipped to Minnesota. This legal direct shipment occurs outside of the state's basic three tier system for alcohol disbursement. There are also reports of illegal direct shipment, which consists of a number of possible ways that alcohol of all types can be directly shipped outside of the three tier system and outside of Minnesota's laws.

This report is a basic overview of the many issues surrounding direct shipment. Although a list of policy options is included, in keeping with the nonpartisan nature of our offices, no recommendations are offered. The report concludes with a discussion of data limitations, which in this instance severely constrain the scope of this report.

Direct shipment in Minnesota – consumer advantages and disadvantages

The main argument made on behalf of Minnesota's wine reciprocity law (the law that allows state residents to have shipped directly to them up to two cases of wine each year from a winery in a state that allows Minnesota wineries reciprocal privileges) was that it would allow Minnesotans the opportunity to buy wines that might otherwise not be available in the state. However, another possible reason exists for direct shipment: that of allowing Minnesota consumers the opportunity to buy alcoholic beverages for less than what they would pay in Minnesota.

It is possible to find wine for sale through the Internet for less than what the same product might cost in Minnesota, but these instances appear to be the exception rather than the rule, and would most likely exist outside legal channels. Direct shipment involves paying shipping charges but also makes it possible to avoid the state's high sales tax on alcoholic beverages. When these are compared it appears that direct shipment offers a price advantage only for high-cost products. From the consumer's point of view, whatever price advantages direct shipment might offer must be weighed against the legal restrictions on such shipments.

Direct shipment and the three-tier system

The three-tier system – the legal separation of the manufacturing, wholesaling, and retailing tiers – is a major factor in the alcoholic beverage industry, although Minnesota has a strict three-tier system only with respect to beer. Direct shipment can complement the three-tier system by making products available in a state that would otherwise not have access to it, but it can also be a challenge to it by making it possible for consumers to buy wine and other beverages (legally and illegally) while bypassing a state's licensed outlets. If the public interest is served by defending the three-tier system to the maximum extent possible, then the public interest is adversely affected by direct shipment.

The public interest in the three-tier system compared to any other system lies in how well a system advances societal interests, chiefly tax collection and the prevention of underage access. Direct shipment under Minnesota's wine reciprocity law probably has only a minor effect on the three-tier system. Expanded use of direct shipment outside this law probably would not advance societal interests as well as the three-tier system does, but with modifications it could advance them better than it does now. From the interests of the consumer (which are not always synonymous with the public interest) direct shipment does off er the benefit of expanded product choice.

Direct shipment and underage access

By allowing consumers to obtain alcohol without going through licensed outlets direct shipment raises the possibility that it would result in increased access to alcohol by underage persons. The wine reciprocity law requires all shipments to be labeled as being only for persons of legal drinking age, but shipments outside this law may or may not have this protection. Much of the responsibility for preventing underage access through direct shipment falls on motor carriers who make deliveries of the product.

The organizations we contacted for their views on direct shipment agreed that at the present time it is not a significant element of the overall problem of underage access. They are much more concerned about illegal sales through licensed outlets and adults who provide alcohol illegally. A complete ban on all direct shipment (assuming it could be enforced) would eliminate it as an avenue to underage access, but such a policy would have to be weighed against the seriousness of the problem and the other consequences from such a prohibition.

Tax issues in direct shipment

Shipments of wine under Minnesota's wine reciprocity law are exempt from state taxes. Direct shipments outside this law are an evasion of taxes unless consignees takes the unlikely step of paying the taxes themselves.

There are no certain estimates of how much tax is lost to Minnesota as a result of direct shipment. One estimate from a national source would if applied to Minnesota indicate a loss of about $1.3 million, but this estimate is of unknown accuracy and is probably overstated. The Department of Revenue regards tax losses from direct shipment at the present time as representing a "minor tax gap."

Direct shipment in other states

A number of states have addressed the direct shipment issue, producing three basic policy reactions. Eleven states have enacted reciprocal wine shipment laws similar to Minnesota. A large number of states prohibit direct shipment entirely. Two states have come forward with specific compromise proposals. The body of this report describes these state policies and a variety of legal enforcement actions.

Policy Options

There are three broad policy options with regards to direct shipment.

> First, Minnesota can preserve the status quo, with a two case wine exemption. Within this option, a number of small changes to the law are discussed within the report.
>
> Second, Minnesota can consider a repeal of the direct shipment law, and prohibition of direct shipment. A number of enforcement and penalty provisions are discussed as methods of making prohibition workable.
>
> Finally, the two case wine exemption could be expanded, to allow broader and more systematic direct shipment.

This report lists these general options but does not make any recommendations.

Research Limitations

It is important to note that Internet purchasing of goods and services is, in general, very difficult to measure. Direct shipment of alcohol, both legal and illegal, is conducted by numerous outlets. Measuring the scope of these activities would require both a budget and a significant level of research interest. For this report, a number of surveys were conducted, with very limited responses. These data limitations are important to consider when attempting to understand this issue: it is not clear to what extent direct shipment is growing, expanding to significant levels, or creating industry problems.

I. INTRODUCTION

The Study

In 1998 the Minnesota Legislature passed and the Governor signed Chapter 364, the omnibus liquor bill. Section 15 required that the House Research Department and the Office of Senate Counsel and Research to study issues relating to direct shipment of alcohol. The study language reads:

> The house research department, office of senate counsel and research, and applicable committee staff, in consultation with the departments of revenue and public safety, shall study issues relating to direct shipment of liquor into Minnesota. The study shall consider the legal, tax, public policy, and regulatory aspects of direct shipment. The study shall be submitted to the chairs of the commerce committees of the legislature by February 1, 1999.

Background

Liquor comes to Minnesota through the three-tier system, shipped from the manufacturer (first tier) to the wholesaler (second tier) and finally sold to consumers by the retailer (third tier). Minnesota has a general prohibition on direct shipment of alcoholic beverages outside of the three-tier system. The exception to this law that is most relevant to this report is Minnesota Statutes, section 340A.417, which allows wineries to ship not more than two cases per year to any Minnesota resident over the age of 21.

This statute creates a legal avenue for direct shipment -- the two case wine exemption. Illegal direct shipment may still occur, involving amounts over two cases, or other kinds of proscribed alcoholic beverages. It may be possible to order beer or distilled liquors via direct shipments, or to order more than the permitted two cases of wine. It is therefore necessary to keep in mind in each instance whether legal or illegal shipment is being discussed.

In either case, direct shipment of alcohol involves shipment outside the three-tier system. Consumers may contact a direct shipper in a number of ways. National magazines contain advertisements for wine, as do numerous catalogs. Web sites are easily found on the Internet. It is possible to visit a winery in another state and either order wine directly shipped to your home, or to sign up for a mailing list to receive the opportunity to direct ship wine in the future. There have also been advertisements and web sites for beer and distilled liquors.

Study procedures

In completing this study, representatives of interested industries were contacted for comments. The Departments of Public Safety and Revenue were interviewed. Background materials and articles were collected. Several surveys were attempted, with limited responses.

This report provides a short discussion of the legal and regulatory issues pertaining to direct shipment. A range of options regarding this matter is outlined. This report fulfills the statutory

Minnesota's Direct Shipping Law

340A.417 SHIPMENTS INTO MINNESOTA.

(a) Notwithstanding section 297G.07, subdivision 2, or any provision of this chapter, a winery licensed in a state which affords Minnesota wineries an equal reciprocal shipping privilege, or a winery located in Minnesota, may ship, for personal use and not for resale, not more than two cases of wine, containing a maximum of nine liters per case, in any calendar year to any resident of Minnesota age 21 or over. Delivery of a shipment under this section may not be deemed a sale in this state.

(b) The shipping container of any wine sent under this section must be clearly labeled to indicate that the package cannot be delivered to a person under the age of 21 years.

(c) No person may (1) advertise shipments authorized under this section, (2) by advertisement or otherwise, solicit shipments authorized by this section, or (3) accept orders for shipments authorized by this section by use of the Internet. No shipper located outside Minnesota may advertise interstate reciprocal wine shipments in Minnesota.

(d) It is not the intent of this section to impair the distribution of wine through distributors or importing distributors, but only to permit shipments of wine for personal use.

(e) No criminal penalty may be imposed on a person for a violation of this section other than a violation described in paragraph (f) or (g). Whenever it appears to the commissioner that any person has engaged in any act or practice constituting a violation of this section, and the violation is not within two years of any previous violation of this section, the commissioner shall issue and cause to be served upon the person an order requiring the person to cease and desist from violating this section. The order must give reasonable notice of the rights of the person to request a hearing and must state the reason for the entry of the order. Unless otherwise agreed between the parties, a hearing shall be held not later than seven days after the request for the hearing is received by the commissioner after which and within 20 days after the receipt of the administrative law judge's report and subsequent exceptions and argument, the commissioner shall issue an order vacating the cease and desist order, modifying it, or making it permanent as the facts require. If no hearing is requested within 30 days of the service of the order, the order becomes final and remains in effect until modified or vacated by the commissioner. All hearings shall be conducted in accordance with the provisions of chapter 14. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against the person upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

(f) Any person who violates this section within two years of a violation for which a cease and desist order was requirements for a study of these issues. In keeping with the nonpartisan character of our offices, the report does not contain policy recommendations or favor any particular policy option.

An Appendix to this report, containing research materials and statements from interested parties, is available upon request, under a separate cover.

II. DIRECT SHIPMENT IN MINNESOTA: CONSUMER ADVANTAGES AND DISADVANTAGES

Potential of direct shipment

The main argument originally made on behalf of Minnesota's wine reciprocity law was that it would allow a person who had visited a small winery in another state and admired its wines to obtain them in Minnesota even though the winery was too small to have its products distributed here. In this view, direct shipment would mainly serve to provide a relatively small number of Minnesotans who were willing and able to pay shipping costs on top of the cost of the product with wines that were otherwise unavailable to them. According to this argument, direct shipment as authorized by this law would offer little competition to Minnesota off-sale retailers because of direct shipment's inherently limited market.

If that were the case few elements within the existing three-tier system would be seeing direct shipment as much of a threat. But direct shipment also offers another possible advantage -- the potential for giving Minnesota consumers the chance to buy wine at a savings compared to Minnesota retail prices.

This is not likely to occur when wine is bought within the relatively narrow limitations of the wine reciprocity law. Wineries making direct sales, whether at the winery or over the Internet, do not generally offer discounts significantly below established retail prices. But wine and other alcoholic beverages are also available via direct shipment from other sources which have a variety of pricing practices, although this kind of direct shipment is not authorized by law.

Direct shipment offers a price advantage only where the price savings from a direct shipper exceeds the cost of shipping the product. Direct shippers can offer a price savings in two ways -- by offering a lower cost per bottle or per case, and by allowing the buyer to avoid paying state taxes. While Minnesota's volume-based excise tax on wine is relatively low, its nine percent sales tax on alcoholic beverages is among the highest in the country. A convenient means of avoiding it would be advantageous to consumers. The possibility therefore needs to be explored that a direct shipper could offer a net price for wine that is lower than what the same product would cost at a Minnesota off-sale store.

Price

It is extremely difficult to make generalizations about the per-bottle or per-case price that direct shippers offer on a product compared to the Minnesota retail price. As noted above, direct shipments can be made not only by wineries but by Internet wine and liquor retailers whose prices may vary considerably, just as Minnesota off-sale retailers' prices do. In addition, much of the wine offered over the Internet, particularly from wineries themselves, are through "wine clubs" that send pre-selected packages of wine to members at periodic intervals at set per-package prices, making pricing of individual bottles difficult. Some wines available via direct shipment may not be available in Minnesota through any other source, making price comparison impossible.

Other factors also affect these comparisons. The volume-based Minnesota tax on alcoholic beverages is included in the price shown on the retailer's shelf. The comparable tax in the state of origin for a direct shipment usually does not apply to products that are exported from the state. Further, the price a winery can offer for a bottle or case does not include the profit margins that are built into a price as the product moves through the various tiers.

Thus no universal comparisons can be made between direct-shipped prices and Minnesota retail prices. It is nonetheless possible to explore situations where the two prices can be compared directly in specific instances. To do this we took a 1998 sale catalog published by a major Twin Cities liquor retailer that showed "regular" and "sale" prices for wine, and obtained the per-case sale price for the identical products sold over the Internet for direct shipment, both from wineries and wine-retailing sites.

We found that in the majority of instances the Minnesota regular price was lower than the direct-shipped price, and the Minnesota sale price lower still. Nonetheless there are instances where the direct-shipment price over the Internet (excluding shipping costs) was lower than the "regular" Minnesota retail price (excluding sales tax), although usually not lower than the Minnesota "sale" price.

Thus it is possible for direct shipment to offer a price advantage, but this advantage is more nearly the exception than the rule. Further, this price advantage is most likely to occur for direct shipments that are outside Minnesota's wine reciprocity law, raising legal concerns for Minnesota residents and carriers. These factors tend to significantly limit the attractiveness to Minnesotans of those price advantages that may exist.

Shipping costs and taxes

Minnesota retail price vs. direct-shipped price is only one of the variables in making price comparisons between direct shipping and traditional outlets. The other major variable is the difference between the Minnesota sales tax (incurred in buying from a Minnesota retailer but avoided in buying from a direct shipper) and shipping costs (built into the Minnesota retail price but usually added on to the direct-shipped price).

Shipping costs vary from one direct-shipping source to another because each may use different shippers and different shipment methods (all are precluded by postal service regulations from putting alcoholic beverages into the U. S. mail) and ship from different locations. In addition, direct shippers can and sometimes do add their own handling costs onto the per-bottle or per-case price.

For purposes of comparing shipping costs with the Minnesota sales tax we used the rate of $36 per case cited by the Wine Institute as an average rate for wine shipped from California to Minnesota. When applied to a situation where the Minnesota price and direct-shipped price are the same, such a rate would produce the following comparative costs:

Cost/bottle	$20.00	$25.00	$33.00	$40.00
Minnesota price per case	$240.00	$300.00	$396.00	$480.00
Sales tax @ 9%	$21.60	$27.00	$35.64	$43.20
Total MN price per case	$261.60	$327.00	$431.64	$523.20
Direct-shipped price per case	$240.00	$300.00	$396.00	$480.00
Shipping cost	$36.00	$36.00	$36.00	$36.00
Direct-shipped price	$276.00	$336.00	$432.00	$516.00

In most instances the Minnesota price, even including sales tax, is lower than the direct-shipped price, but the price advantage goes over to direct shipping for a high-end $40 bottle. This direct-shipping advantage becomes greater if a lower per-case shipping cost can be found.

Whatever differences may exist between shipping costs and sales-tax savings would have to be balanced against differences between the Minnesota retail price and the direct-shipped price. As noted above, our own look at the two showed that Minnesota retail prices generally compare favorably with direct-shipped prices.

Conclusion

It is clearly possible, although probably not common, for the combined direct-shipment price plus shipping charges to be less than the price for which the same product is available to most Minnesota consumers at a licensed off-sale establishment. This makes direct shipping in at least a few instances a rational economic choice for consumers, all other things being equal.

However, all other things are not equal. When made over the Internet the direct-shipment choice by potential consumers is still limited by the extent of their access to Internet retailing and their faith in the security of ordering on-line. When the transaction is outside the scope of the wine reciprocity law the factors also include legal concerns and the willingness of carriers to handle the transaction. All these factors have to be balanced against price advantages where they might exist when consumers make their decisions about where and how to buy.

III. DIRECT SHIPMENT AND THE THREE-TIER SYSTEM

Origins of the three-tier system

The three-tier system was established after Prohibition to insure that the three levels of the alcoholic beverage industry -- manufacturer, wholesaler, and retailer -- were strictly separated, with little or no cross-ownership or control among the three tiers. Its original reason for existence was the assumption that vertical integration of the industry would lead to aggressive promotion of alcohol, and thus to excessive consumption. This assumption was based on the pre-Prohibition experience of "tied houses," or taverns owned directly by breweries selling their own products to the exclusion of others, and the efforts these breweries made to maximize sales at the expense of all other considerations.

The system in Minnesota

Minnesota does not have a strict three-tier system with respect to distilled spirits. For decades the state has allowed manufacturers to wholesale the spirits that they bottle (rectify) and sell under their own labels, and state law tolerates family cross-ownership of a major wholesaler and manufacturer. As we noted in our 1996 report on primary-source laws, "Connections between the manufacturing and wholesaling levels of the industry have been common in [Minnesota]."[1] Minnesota law does, however, prohibit manufacturers and wholesalers from having a direct financial interest in a retail business.

With respect to wine the opportunity for such cross ownership and private-label wholesaling exists but is not widely practiced, primarily because wine-making in Minnesota remains a very small industry.[2] Three-tier separation, however, is very much the case with beer, with cross-ownership among the tiers prohibited and brewers and wholesalers being strictly regulated in terms of inducements and benefits they may provide to retailers. A good deal of the alcohol-related work of the Department of Public Safety's division of alcohol and gambling enforcement consists of attempting to enforce these restrictions.

Minnesota has made some exceptions to three-tier separation in order to promote Minnesota businesses or improve consumer choice or convenience. Minnesota wineries licensed by the state as "farm wineries" are allowed to sell their products directly to consumers without obtaining a retail license.[3] Licensed "brew-pubs" that hold on-sale licenses are allowed to brew beer on the restaurant premises and sell it directly to customers as long as the beer is not sold off the licensed premises.[4]

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[1] "Primary Source." Office of Senate Counsel and Research and House Research Department, 1996.

[2] In recent years Minnesota has attempted to boost its fledgling wine industry, and a further effort is being made in 1999 through introduction of a bill (H. F. 496) to allow farm wineries to sell at locations away from the winery. However, in comparison to major wine-producing states Minnesota remains at best a minor producer.

[3] Minnesota Statutes 1998, section 340A.315.

[4] Minnesota Statutes 1998, section 340A.301, subdivision 7, paragraph (b).

Both of these exemptions essentially allow the manufacturing and retailing tier to be combined into a single level while dispensing with the wholesale tier entirely.

Effects of the three-tier system

Laws that establish and maintain a three-tier system obviously have a major effect within the industry itself, specifically having an impact on the industry's balance of power. Large manufacturers who would like to use their market power to increase market share are significantly limited in their ability to accomplish this by inducing or coercing retailers to give favorable treatment to their products. Small manufacturers, particularly of wine, also feel the limitations imposed by three-tier laws since they are shut out of a market if they are unable to find a wholesaler in it who is willing to carry their products. For the latter the existence of a wholesaling tier can work in two ways, making market access technically possible while at the same time limiting it.

For the purpose of this report it is necessary to address the question of whether the public interest is also affected by the three-tier system and threats to it. Direct shipment can sometimes be a complement to the three-tier system, particularly when it makes available a product that the three-tier system cannot economically provide. But direct shipment can in some other circumstances be a challenge to the three-tier system because it allows manufacturers to sell directly to the public without going through the wholesaling and retailing tiers, and allows out-of-state retailers to sell to Minnesota consumers without having to obtain a license and establish a licensed premises in the state.

If the public interest is served by defending the three-tier system to the maximum extent possible, then the public interest is adversely affected by direct shipment.

The public and the consumer

Defining the "public interest" with respect to the alcoholic beverage industry poses some unique problems. To an extent not found in most consumer industries, the interests of consumers of alcohol do not necessarily coincide with the public interest broadly defined as the interests of society as a whole. What might benefit alcohol consumers, such as broadly lower prices for the product, might adversely affect society by encouraging more drinking by underage persons. Assessing the public-interest effects of direct shipment and three-tier protection requires that the two interests be examined separately.

Consumer interests. Minnesota consumers of alcoholic beverages could potentially benefit from direct shipment in two ways. First, direct shipment can increase the range of products available to Minnesotans. As an article in one wine-industry publication put it, "To consumers, direct-shipping merchants and wineries are miracle-workers, able to find and deliver otherwise locally unobtainable products, often at very competitive prices and all accomplished with a refreshing level of convenience and service that is hard to match."[5] Second, consumers can potentially save money through direct

[5] David L. Ross, "Risky Business: the Direct Shipment Controversy." *Market Watch*, November/December 1997, p. 34.

shipment by avoiding Minnesota liquor taxes, which on expensive products are among the highest in the country. As section II points out, in some cases direct-shipped products are less expensive than the same products bought at retail in Minnesota even when shipping costs are included, although this advantage is apparent only in a minority of instances at best.

The first advantage is available through shipping which is allowed under Minnesota's wine reciprocity law but the latter advantage is most likely to be available from direct shipping that is not authorized by Minnesota law.

These benefits are limited to those persons who have access to direct shipment, either by possessing a computer with an Internet connection or by having a catalog or other advertising from a direct-shipping retailer or manufacturer. For the majority of alcohol consumers today direct shipment offers no benefits, and these consumers will continue to be dependent on the existing three-tier system for their supply of product. To the extent that they exist, some of the adverse effects of direct shipment on the three-tier system might trickle down to these consumers. If wineries making limited-production wines choose to withdraw their products from the Minnesota market in order to sell them through direct shipment, Minnesota consumers as well as Minnesota liquor retailers would be harmed. A Minnesota liquor store being put out of business by competition from direct shipment would harm consumers who don't have access to a direct-shipping alternative, although it is highly unlikely that direct shipment will have such drastic effects anytime soon if at all. It is difficult to gauge accurately the impact of direct shipment on the broader industry, especially because it is impossible to predict how fast direct shipment will grow.

Societal interest. The public at large, as distinct from consumers, has an interest in the three-tier system. The three-tier system offers the most efficient method of collecting taxes on alcohol, thus protecting public revenues. It provides a centralized selling system that facilitates enforcement of laws against illegal sales compared to direct shipment's more decentralized system.

The three tiers include a large number of Minnesota businesses that pay taxes and create jobs, societal benefits that are not found with direct shipment. However, direct shipment offers the potential of encouraging economic activity not reflected in the three-tier system today. If Minnesota winemaking were to reach the point where demand for its products were to be created in other states, the wine reciprocity law would allow those products to be shipped into reciprocity states, thus enhancing Minnesota business.

Even while crediting its service to a niche market of Minnesota consumers, it is difficult to see any broader societal benefits from direct shipment. Even if the tax-avoidance issue can be addressed under a direct-shipping system, the tax collection system is likely to be less efficient than collection at the wholesale level as is the case under three-tier. Similarly, direct shipment can have added safeguards against illegal deliveries but its inherently decentralized distribution and delivery system is not likely to offer the same protection as the present system of licensed retailers.

Conclusion

Preserving and protecting the three-tier system is of highest priority to the three tiers themselves. For society as a whole its interest in the system lies in how well the system advances societal interests, chiefly tax collection and prevention of illegal deliveries of alcohol. If some other system advances these interests as well as three-tier, that system might be socially acceptable.

As it now operates in Minnesota direct shipment within the wine reciprocity law probably has only a minor effect on the three-tier system. Expanded use of direct shipment outside this law would probably have the effect of not advancing societal interests as well as does the three-tier system. Direct shipment lacks the accountability that licensing provides, and it does not now have the legal structure to collect taxes and prevent illegal sales that is an essential part of the three-tier system. Nevertheless, with modifications a direct shipping system could advance societal interests more effectively than it does now.[6] Further, direct shipment does offer the possibility of expanding consumer choice, which is generally regarded as economically beneficial.

Policy makers must make a judgment as to whether direct shipment's benefits to consumers (relatively small now but potentially much greater) equal or outweigh its ability to achieve other social objectives.

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[6]Some of these modifications are discussed in section VIII..

IV. DIRECT SHIPMENT AND UNDERAGE ACCESS

Restrictions on underage access

The need to prevent underage persons from having access to alcohol affects virtually every issue in the area of liquor control, including the three-tier system. The retail system concentrates sale of alcohol into a relatively small number of outlets (compared, for instance, to the number of establishments that sell food) in part because this is among the most efficient methods of controlling underage access. The retail level is kept separate from the wholesale and manufacturing level in part to insulate it from pressures to increase consumption by relaxing restrictions against underage sales. By bypassing the three-tier system direct shipment raises questions as to whether it represents a new and potentially dangerous method by which underage persons can obtain alcohol.

Direct shippers state in their publications and Internet pages that they sell only to persons who are of legal drinking age. However, enforcement of such restrictions is inherently limited. In some cases the verification is nothing more than a statement to the effect that by placing an order the buyer certifies that he or she is of legal drinking age. The only verifiable information that direct shippers receive from a customer is usually a credit card number, and the use of credit cards by persons under age 21 is increasingly common. Thus the responsibility for preventing alcohol ending up in the hands of underage persons through direct shipment is most likely to fall on the carrier who makes the actual delivery.

Minnesota's wine reciprocity law requires all shipments authorized under it to carry a label to the effect that the package may not be delivered to anyone under the age of 21. Direct shipments that occur outside the scope of the law may or may not have similar labeling, but it is likely that not all of them do. One retailer who accepts orders for wine via the Internet makes it a policy to ship all of its products in unmarked containers "for security reasons." It would be up to individual carriers to impose and enforce a requirement that all shipments of alcohol be labeled as such.[7]

Law and rules

Minnesota law makes it a gross misdemeanor to "sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age . . . "[8] The prohibition against "furnishing" probably applies to a carrier who delivers alcohol to an underage person to the same extent that it applies to a person who sells or gives it. Thus a carrier who delivers alcohol to an underage person, and the delivery person who makes the actual delivery, run the risk of criminal prosecution. Like other persons, they are permitted to offer as a defense proving " by a preponderance of the evidence that the defendant

[7]All direct shipments of alcoholic beverages are made by motor carriers since postal regulations prohibit placing these products in the U. S. mails.

[8]Minn. Stat. 1998, section 340A.503, subdivision 2, clause (1).

reasonably and in good faith relied upon representations of proof of age authorized in paragraph (a) [a valid driver's license from Minnesota or another state, military ID card, or passport] in selling, bartering, furnishing, or giving the alcoholic beverage."[9]

The rules of the Department of Public Safety regulate home deliveries of alcoholic beverages by licensed retailers.[10] These rules require a delivery ticket for each order and allow delivery only to persons age 19 or over (since superseded by the law setting 21 as the lawful drinking age). However, these rules do not apply to motor carriers since they are not under the department's jurisdiction. Any rules restricting delivery or requiring proof of age before delivery would have to be imposed by the carrier itself, or by the shipper as part of the shipping agreement.

The Wine Institute, which represents many of California's largest wineries, wrote to us:

> The Wine Institute, working with our affiliated shipping company Federal Express, has made compliance with [Minnesota's labeling requirement in its reciprocity law] contingent upon wineries being able to continue to receive the discount pricing on shipments which our membership programs affords them. We are aware of no instances where a package that was correctly marked for adult signature was delivered to any Minnesota resident other than an adult of legal age.[11]

Actual and potential problems in direct shipping

Supporters of direct shipment say that its main reason for existence – to allow wine connoisseurs to obtain premium wines that are otherwise unavailable through the three-tier system – inherently excludes buyers who are interested only in getting around laws restricting underage access. They argue that minors who have the far-easier options of obtaining alcohol through false identification or via adult purchasers are unlikely to obtain it by the cumbersome and relatively expensive process of home delivery. On the other hand, critics of direct shipment argue that it is possible (although not legal in Minnesota) to obtain many kinds of alcoholic beverages in addition to premium wine by direct shipment, and that college students and other teenagers living away from home might find direct shipment the most convenient of all access points for alcohol.

There seems little doubt that it is possible for a person under the age of 21 to order and receive alcoholic beverages through direct shipment, even if the receipt, delivery, and possession are all illegal under state law. At the present time, however, there appears to be little evidence to show that underage purchases of alcohol by means of direct shipment is actually occurring to any significant extent. The only evidence of such activity in Minnesota has been anecdotal and fragmentary. The most widely-cited example of underage purchases via direct shipping has been a "sting" operation conducted by New York attorney general Dennis Vacco, but Vacco himself conceded that he knew

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[9]Minn. Stat. 1998, section 340A.503, subdivision 6.

[10]Minnesota Rules, part 7515.0580.

[11]Letter from Steve J. Gross for the Wine Institute, October 5, 1998.

of no instances other than stings where underage access actually occurred.[12] A 1998 newspaper article observed, "Few examples exist of teen-agers ordering beer or wine with computers, except in government sting operations."[13]

It is this scarcity of actual occurrences that has led most Minnesota organizations that deal with the overall problem of underage access to regard direct shipment as a relatively small part of the problem. Letters written to us by these organizations have made the following points:[14]

> It is possible that Internet sales of alcohol may become a problem in Minnesota. However, there are more critical needs in Minnesota than the Internet issue.

Community Prevention Coalition of Hennepin County

> Based on extensive research and outreach to other community groups through our coalition we remain convinced that the two main sources of alcohol procured by underage youth are illegal commercial sales and adults over 21 who provide them with alcohol. While it seems that youth under 21 can successfully purchase alcohol over the Internet, this is not a major access point at this time. In order to reduce underage drinking, it would be much more effective to put energies into reducing the number of adults who illegally sell (commercial) or give (social) alcohol to youth than into efforts to restrict Internet sales in general.

Minnesota Join Together (a coalition to reduce underage drinking)

> The sale of alcohol via the Internet is an issue which members of AAT have recently discussed. No doubt it is very possible for anyone, including youth, to purchase products over the Internet, but Internet access is not a priority issue for AAT at this time. We are currently more concerned about underage access to alcohol through commercial and social sources within the state of Minnesota because these are the sources of alcohol for the majority of underage drinkers. If access through the Internet increases significantly in the future, AAT may consider focusing on this point of access, but for now we feel it is most efficient to focus on the **major** sources of alcohol for underage drinkers.

Action on Alcohol and Teens

> As public health professionals we base much of our work on science-based knowledge and best practices in the field. Current research both national an in Minnesota indicates that the problem of youth access to alcohol is mostly attributable to adults over 21

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[12]"Cyberbooze for Minors Major Issue." Los Angeles *Daily News*, December 13, 1997.

[13]"Internet Liquor Sale Prompts Erlich Bill to Let States Take Manufacturers to Court." Baltimore *Evening Sun*, February 19, 1998.

[14]The full text of these letters are contained in the appendix to this report.

> providing alcohol to underage persons and illegal commercial sales (on- and off-sale). However we believe that this issue is best addressed at the federal level . . . MPHA would state that any efforts to address the problem of youth access to alcohol begin with the more critical and immediate problem of adults willing to give or sell alcohol to underage persons.

Minnesota Public Health Association

Clearly, the control of underage access through crackdowns on retail sales within the traditional three-tier system is seen by these groups as being of considerably higher priority than any effort aimed at direct shipping. However, these groups do tend to see the possibility that rapid growth in technology might possibly make direct shipping an increasingly significant part of the access problem sometime in the future.

Conclusion

The use of the direct shipment option by minors does not now appear to be a major problem either nationally or in Minnesota. The organizations professionally involved in underage access appear to believe that efforts to control underage access should be directed to more immediate pursuits. Yet with underage access, as with other aspects of direct shipment, there is a concern that today's relatively minor impacts could become a major force at some time in the future.

With those other aspects there is debate over whether this is a desirable development. The industries that are part of the three-tier system see direct shipping as a threat to their continued existence and to the entire structure of liquor control, while consumers and manufacturers who participate in direct shipping see it as an opportunity for more customer service and customer choice. About underage access there is no such debate. Hardly anyone believes that society will benefit from making alcohol more readily available to persons under the legal drinking age.

Thus efforts to eliminate direct shipping entirely would have at least one unalloyed benefit, the closing of one avenue of alcohol access for underage persons. Yet the available evidence suggests that this is an avenue that is rarely used. Further, there are steps that could be taken to restrict youth access to direct shipment short of outright prohibition.

The legislature will have to determine if prohibition is the only way to insure that direct shipment does not lead to greater youth access to alcohol, and how this issue compares to other aspects of the direct shipment debate.

V. TAX ISSUES IN DIRECT SHIPMENT

Minnesota taxes on alcoholic beverages

Minnesota imposes an excise tax on alcoholic beverages based on volume and included in the retail shelf price.[15] It also imposes a sales tax on alcoholic beverages of 9 percent of the retail price, including excise taxes.

State law[16] allows individuals to import up to one liter of distilled spirits or wine and up to 9 quarts of beer when coming into Minnesota from another state. For persons coming into Minnesota from a foreign country the limits are four liters and 10 quarts respectively.

Taxes on direct shipments

Minnesota's wine reciprocity law exempts from state excise taxes the wine shipments it authorizes.[17] The law specifically provides that direct shipments made under it do not constitute a sale within Minnesota,[18] so the state sales tax does not apply.

Direct shipments made outside the wine reciprocity law are subject to a state use tax equal to the excise tax[19] (assuming that the excise tax is not paid on them) but the state has no easy means of collecting it. Unauthorized direct shipments are also subject to a use tax equal to the sales tax, but the

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[15]Minnesota Statutes 1998, section 297G.03. The rates are:

Distilled spirits, $5.03/gallon ($1.33/ liter)
Table wine, $.30/gallon (($.08/liter)
Dessert wine, $.95/gallon ($.25/liter)
Wine 21-24% alcohol, $1.82/gallon ($.48/liter)
Wine over 24%, $3.52/gallon ($.93/liter)
Sparkling wine, $1.82/gallon ($.48/liter)
Cider, $.15/gallon ($.04/liter) Strong beer, $4.60/barrel (31 gallons)
3.2 beer, $2.40/barrel

There is also a bottle tax of one cent on most bottles of distilled spirits and wine, excluding bottles under 200 milliliters.

[16]Minnesota Statutes 1998, section 297G.07, subdivision 3.

[17]Minnesota Statutes 1998, section 297G.07, subdivision 1, clause (5).

[18]Minnesota Statues 1998, section 340A.417, paragraph (a).

[19]Minnesota Statutes 1998, section 297G.05.

"de minimus" provision in the use tax law exempts up to $770 in personal-use purchases per year.[20]

Tax revenue lost

No one knows precisely how much tax revenue is being lost to Minnesota because of this inability to collect taxes on direct shipments. As a 1998 memo from George Hoyum, director of the Revenue department's special taxes division, states, "Direct-to-consumer alcoholic beverage sales and the attendant tax consequences are very difficult to measure."

There is no single reliable estimate of the total value of direct shipping in Minnesota or nationally. One estimate that has been widely quoted appeared in *Forbes* magazine in 1996:

> Most observers say that direct selling of wine amounts to $350 million to $750 million a year, but Rich Cartiere, editor of *Wine Business Publications* in Sonoma, who covers the subject like nobody else, insists $1 billion [per year] is conservative.[21]

If the $1 billion estimate is accurate Minnesota's share, based on the state's 1.5 percent share of total wine consumption for 1996 as estimated by the Distilled Spirits Council of the United States, would be $15 million.[22] However, we have no way of knowing whether the $1 billion estimate is even generally accurate.

Assuming that this figure represents 1 million 750ml bottles of wine at $15 per bottle the total volume would be 750,000 liters. The excise tax on this volume at 8¢ per liter would be a relatively inconsequential $60,000 per year. To this would be added $10,000 in "bottle tax" (the one-cent tax on each bottle of distilled spirits and wine). Far more important is the 9 percent state sales tax on alcoholic beverages. The potential lost sales tax on a $15 million volume is a more significant $1.35 million, but this would have to be reduced by the $770 "de minimus" exemption in the use tax law.

Three things must be kept in mind about this figure. First, it accounts for only wine and does not include beer and distilled spirits. Second, as noted above some of the assumptions on which it is based are of unknown accuracy. We cannot verify the $1 billion estimate for the total national volume of direct shipping, and we cannot determine if Minnesota's share is more or less than its share of wine consumption nationally. Finally, it should be remembered that the "lost" tax revenue would not necessarily be recovered if Minnesota were to effectively prohibit direct shipment. It might not be spent at all, or might be spent on wine in another state.

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[20] Minnesota Statutes 1998, section 297A.14.

[21] "Felonious Shopping." *Forbes*, April 22, 1996, p. 154. The article merely identifies this number as "one estimate."

[22] Distilled Spirits Council of the United States, "1996 Statistical Information for the U. S. Distilled Spirits Industry." Table 5: apparent consumption of distilled spirits, beer, and wine, by state, 1996. The table uses data not only from DISCUS but from Steve L. Barsby, Inc., the Beer Institute, and the Census Bureau.

Policy questions

There can be little policy justification for exempting direct shipments from the state excise and sales taxes that apply to purchases of alcohol at Minnesota retail establishments. We can think of no reason why customers should be rewarded with a tax exemption for buying from out-of-state sources in preference to Minnesota businesses.

In general even direct shippers agree with this approach. The president of one direct shipping company wrote us:

> Let's face it, Minnesota really wants sales tax revenues from their alcoholic beverage sales and we would be happy to pay it. Just give us a low cost way to ship legally to consumers in your state.[23]

A major winery wrote:

> The wine industry is highly regulated and is not only willing but also ready to pay the various taxes on their product. For us taxes are simply a cost of doing business . . . The industry would comply with any request by a state to supply that state with annual, semi-annual, or quarterly reports of shipment quantities as assurance that the appropriate taxes have been remitted.[24]

The Coalition for Free Trade in Licensed Beverages, composed largely of California wineries, proposes a plan whereby wineries would obtain a license in each state into which they direct-ship and would be responsible for collecting and remitting all applicable state sales and excise taxes.[25]

With such apparent unanimity within the industry it would appear that there would be little opposition to an effort to collect state taxes on direct shipments, assuming such an effort did not impose a discriminatory tax or have onerous collection mechanisms. But it is also clear that no one knows for sure how much tax revenue such an effort would bring in, or whether the revenue would make the effort worthwhile. In the view of the Department of Revenue, "The possible remedies to direct shipment would have us make a concerted effort to close what is, at least for now, a minor tax gap."[26]

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[23]Letter from Gray Horn, president, American Wine Exchange, September 4, 1998.

[24]Letter from Edgar B. Downs, vice-president, Kendall-Jackson Winery, August 31, 1998.

[25]William B. MacIver (co-owner of Matanzas Creek Winery), "The Top 10 Reasons States Will Make Direct Shipping Legal." *Wine Business Monthly*, February, 1998.

[26]George Hoyum, director of special taxes, Minnesota Department of Revenue, letter of January 11, 1999.

VI. DIRECT SHIPMENT IN OTHER STATES

Types of state laws

Minnesota is by no means the only state that has addressed the direct shipment issue. The other states generally fall into one of three categories – those that have adopted reciprocity laws comparable to Minnesota's, those that have attempted outright prohibition of direct shipment, and those that have sought a compromise between the two approaches.

Reciprocity states. Eleven other states have enacted reciprocal wine direct shipment legislation similar to that in Minnesota. They include California, Colorado, Idaho, Illinois, Iowa, Missouri, New Mexico, Oregon, Washington, West Virginia, and Wisconsin. Additionally, Maine passed reciprocal wine shipment legislation in 1993 and repealed it in 1997.

Common provisions of these laws are that shipments may be made only from states which grant each other reciprocity, that sales may be made only to persons over 21 with shipments clearly marked to indicate that no delivery may be made to a minor or an intoxicated person, that shipments are for personal consumption only and not for resale, and that a case may not contain more than nine liters of wine. The states differ on quantity restrictions and the extent to which direct mail solicitation is authorized. For example, Minnesota allows only two cases per winery per year (most states allow two cases per month) and expressly prohibits direct solicitation of sales. Colorado's reciprocity statute is very narrow in that orders must be made in person at the premises of the winery or licensee.

In addition to the pure reciprocity states, a number of states allow limited direct shipments of alcohol to consumers for personal consumption. However, these shipments are generally subject to significant compliance requirements which tends to make the shipments unattractive for consumers and shippers. Common requirements are that a consumer obtain an importation certificate or permit from the state alcohol regulatory authority and pay all fees and taxes due in connection with the shipment.

Prohibition states. At the other end of the spectrum, a large number of states prohibit direct shipment entirely. In recent years a number of these states have adopted felony penalties for violation, including Florida, Georgia, Indiana, Kentucky, North Carolina, Oklahoma, and Tennessee. These states generally require that offenders be given a cease and desist order for a first violation but are subject to felony penalties for subsequent violations. Indiana and North Carolina only apply the felony penalties to offenders who do not hold a federal basic permit from the Bureau of Alcohol Tobacco and Firearms, and Oklahoma only when the shipments are made to a minor.

Compromise states. In the last two years Louisiana and New Hampshire have passed legislation attempting to reconcile consumer demand for more product choice with the state interest in regulation and taxation of alcohol brought into the state. An out-of-state licensee who obtains a $228 permit from New Hampshire is now able to ship up to 60 liters of wine or spirits or 27 gallons of beer directly to consumers in that state. The shippers are responsible for payment of an eight percent retail sales tax on product shipped into the state and are required to file monthly sales reports with the liquor commission. In the event a direct shipper wishes to ship more than 1,200 containers of a particular liquor or wine in the state, the shipper is required to offer a matching amount to the liquor commission at wholesale prices. Violators who hold a federal basic permit are referred to the federal Bureau of Alcohol Tobacco and Firearms for action under BATF regulations.

The Louisiana law is similar. An out-of-state manufacturer is required to pay a franchise tax of $150 and an out-of-state retailer a tax of $1,500 for the privilege to direct ship to consumers in Louisiana. Those wineries currently enjoying distribution in the state's three-tier system are not eligible to direct ship unless the consumer actually placed the order at the winery. Beer and liquor are not eligible for direct shipment in Louisiana.

Enforcement activity

Those states that have recently attempted to enforce their laws prohibiting direct shipment against out-of-state shippers have not met with much success. In both Florida and Utah, state courts have dismissed enforcement actions against direct shippers on jurisdictional grounds. The courts determined that the defendant out-of-state shippers' contacts with the state satisfied neither the applicable long-arm jurisdictional statute nor the requirements of the Fourteenth Amendment due process clause of the U.S. Constitution. The courts found that title to the alcoholic beverage products passed to the consumer in the home state of the shipper and that the shipper acted as agent for the consumer in arranging for transportation of the products to the consumer's home. The production of advertising that reached the state, and the receipt of phone, mail, and Internet orders did not provide the sufficient minimum contacts to support jurisdiction. These cases are currently on appeal.

Further, the states have been denied access to federal courts to enforce their state liquor laws. Although the federal Webb-Kenyon Act prohibits the shipment or transportation of liquor into a state in violation of the law of the receiving state, it has been held that the statute does not provide states with a federal cause of action. *Florida Dep't of Business Regulation v. Zachy's Wine and Liquor, Inc.*, 125 F.3d 1399 (11th Cir. 1997). Legislation was introduced in the last session of Congress to amend the Webb-Kenyon Act to allow a state access to federal courts to enforce its liquor laws.

Recent litigation

Recently, a civil tort action brought by Massachusetts wholesalers against an out-of-state direct shipper and Federal Express was dismissed in federal district court. As to the direct shipper, the court essentially held that Massachusetts law prohibiting direct shipment of alcoholic beverages did not give the plaintiffs a private right of action or the right to restrain the shipper's activities and had to be enforced by the state Alcoholic Beverages Control Commission. As to Federal Express, the court found that court enforcement of plaintiff's tort claim under the state liquor code would be preempted by the federal Airline Deregulation Act.

A case is pending in federal district court in Indiana where a group of consumers of alcoholic beverages have filed an action against the governor, attorney general, and director of the Indiana

Alcoholic Beverage Commission. The plaintiffs seek a declaratory judgment that Indiana's statute prohibiting direct shipment is unconstitutional in violation of the Commerce Clause and an injunction against defendants prohibiting them from enforcing the law.

VII. POLICY OPTIONS

Introduction

The Minnesota Legislature has in the past been asked by interested parties to consider changing the existing two case exemption for direct shipment. Consumers of wine would like the two case exemption retained, and perhaps expanded. Wholesalers and retailers would like this direct shipment exemption entirely eliminated, or at least regulated in a much more extensive fashion.

This section outlines the fullest range of potential policy changes that might be considered. This report does not make recommendations or suggest which alternative is preferable. The policy options are presented in a brief format.

Broad Policy Changes

There are three separate policy options with broad impact on the future of the direct shipment industry in Minnesota. Many of these basic options could be logically combined with smaller regulatory reforms listed later in this section.

> *Status Quo.* Retaining Minnesota's existing direct shipping law and its two-case exemption is one option, requiring no changes in state law. It would also be possible to adopt a number of smaller regulatory "fixes" to the law, many of which are listed later in this section.
>
> *Repeal.* The Legislature could repeal the direct shipping law. This would require wine sellers to market their product through a wholesaler, and make it a crime for Minnesota consumers to purchase wine that is directly shipped.
>
> *Expand the exemption.* The exemption in Minnesota's direct shipping law could be expanded to either increase the amount of wine that might be purchased, or allow beer and distilled spirits to be shipped directly.

In the following portions of this section, the range of policy options is laid out for each part of the direct shipment system – the interstate carriers, who transport the wine; the vintners and out of state wholesalers, who sell the wine; and the consumers, who buy the wine.

It is important to remember that some of the groups that might be subject to the following policy changes are from other states. Some forms of regulation are available for Minnesota to impose on these groups from other states. However, some forms of regulation are legally problematic, or difficult to enforce across state lines.

This general overview presents these issues in simple form, for the purpose of providing a general explanation of these options. Each option could be more formally assessed, and legally researched, to provide further detail on how the law would have to be written, and how the regulation would have to be imposed, to be both legal and effective.

Carriers. Motor carriers are the delivery companies who actually transport wine into Minnesota. The federal law that generally preempts state regulation of motor carrier rates, routes, and service can sometimes make it difficult for Minnesota to impose requirements on these companies. However, this preemption probably does not extend to regulating the actual delivery of alcoholic beverages where a clear public policy has been articulated and the requirements on carriers are no more onerous than on anyone else who furnishes alcoholic beverages in a commercial transaction. Further, the wording of the 21st (Repeal) amendment, prohibiting the transportation of intoxicating liquors into a state in violation of its laws, gives the state a power over the delivery of alcoholic beverages that it may not possess over other commodities.

The following policy options exist, and could be combined with the general policies described above.

- Penalties could be imposed for shipments that violate Minnesota laws. Felony penalties could be imposed for shipping non-exempt alcohol, such as beer and distilled spirits. A felony for any shipment could be created, if the two case exemption is repealed.

- Carriers could be required to keep records of all alcohol shipped into Minnesota, and the names of the purchaser. These records could be made available to the Department of Public Safety.

- Carriers could be required to label all packages delivered by the carrier that contain alcohol. Statutes now require that all packages be labeled as being for sale to persons over 21 only. However, this requirement is not assigned directly to the carriers, and a penalty for non-compliance is not clearly attached in the statute.

- Minnesota law arguably requires mandatory carding for all alcohol deliveries. This could be clarified to specifically place this requirement on carriers.

- A license could be required for all carriers that wish to ship alcohol into Minnesota. This license could be used to enforce compliance.

Liquor Manufacturers/Wineries. Wineries are not alone in directly shipping wine into Minnesota. Retailers and wholesalers in other states have also shipped wine into Minnesota. Regulations could be established in order to attempt to regulate the behavior of these organizations.

- Penalties could be established or increased for sellers of liquor who violate the law -- either the existing law or one of the changes suggested above.

- Vineyards and other sellers could be required to obtain a permit prior to selling wine to a Minnesota purchaser.

- Sellers could be required to keep records of Minnesota purchasers, and to make those records available to the Minnesota Department of Public Safety.

- Sellers could be required to label all alcoholic beverages shipped into Minnesota prior to consigning them to a carrier.

Purchasers. Consumers who purchase wine within the limits of the two case exemption are exercising a legal option under Minnesota laws. Consumers who directly purchase beer or distilled spirits, or large volumes of wine, are in violation of the law. A number of potential policy options could be designed to change the behavior of consumers.

- Consumers could be required to file a list of purchases with the Department of Public Safety, and penalties can be assigned for failing to make this disclosure.

- The current penalties for failure to pay taxes on direct shipments of alcohol could be increased, and enforcement could be enhanced through increased agency budgets.[27]

Miscellaneous. Finally, there are miscellaneous options:

- With the resources available, these offices are unable to answer some of the basic questions about the scope of the direct shipment industry. An econometric study could be funded to answer these questions, and carried out by an independent contractor.

- Enforcement of the liquor statutes is a task conducted by the Department of Public Safety and the Department of Revenue. Funding for such enforcement is at a modest level, and enforcement of the direct shipment laws, as written or as they might be changed, would probably be ineffective without further budgetary support for these agencies.

[27]Minnesota Statutes 297A.14 creates a de minimis exemption to the use tax, allowing consumers to directly purchase all goods, up to $770 per year, without paying the use tax. This was designed to allow consumers to avoid becoming criminals for a few small mail order purchases. Attempting to change this exemption for wine purchases would have ramifications for more general tax policy issues.

VIII. RESEARCH LIMITATIONS

Research procedures for this study

In conducting this study, a number of surveys were attempted:

- A set of questions was sent to a list of direct mail shippers. The list was compiled by a national organization of state liquor regulators. Although many letters were sent out, only a few responses were received;

- A letter soliciting the opinions of carriers was sent, with limited responses;

- Surveys were included in the materials for a major conference of Minnesota liquor retailers – with very few responses; and

- A web site survey was established and advertised in direct mailings and in advertisements sent by wine organizations to wine consumers. A modest number of responses were received.

In addition to these surveys, a number of other data sources were sought. The Department of Revenue has no firm estimate of the amount of taxes foregone due to direct shipment. Liquor wholesalers are unable to quantify the amount of direct shipment in Minnesota.

Further research

The lack of useful data in this area is mirrored by a similar lack of data for direct mail and Internet sales for all consumer goods and services. The result is an inability to answer major questions about direct sales. For example, there is no data to clearly indicate whether the growth in wine sales under the Minnesota two-case exemption is major, or a tiny fraction of the market. A definitive answer to this question might have regulatory ramifications, but the data is not readily collectable.

It is possible to gain a sense of the growth of direct shipment. The number of catalog and Internet advertisements for liquor has grown. The number of vineyards in California who have entered the direct mail business is high. But these are rough guides that do not document the size and importance of growth in this business.

To collect the appropriate economic impact data necessary to determine the size of direct liquor shipments, the potential for future growth, and the impact on the existing wholesalers, would require an econometric study and a budget for that study.

Conclusion

At present we cannot say that the present volume of direct shipment of alcoholic beverages constitutes such a challenge to state liquor control policy as to justify a major investment of time and money. However, every indication that we have seen of the potential of retail transactions over the Internet suggests that the growth potential for direct shipment of alcoholic beverages in the near future may be significant. It is for the legislature to determine how best to balance present reality and future potential in this area.