

- SUBJECT:** Repealing a partial tax exemption for certain small breweries
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 10 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Martinez Fischer, Murphy, Ritter, Villarreal
- 0 nays
- 1 absent — Woolley
- WITNESSES:** For — Rick Donley, Beer Alliance of Texas; (*Registered but did not testify*: Wade Long, Licensed Beverage Distributors; Don McFarlin, Beer Alliance of Texas)
- Against — None
- On — (*Registered, but did not testify*: Alan Steen, Texas Alcoholic Beverage Commission)
- BACKGROUND:** Alcoholic Beverage Code, sec. 203.08 grants Texas brewers who produce 75,000 barrels of beer or less a 25-percent exemption on the “first-sale” beer tax. The first-sale tax is \$6 per barrel on either the importation of beer into Texas or the first actual sale of beer by a distributor or a manufacturer to:
- a permittee or licensee who sells directly to consumers;
  - a local distributor; or
  - a private club.
- One barrel of beer equals 31 gallons, or two kegs, or 21.5 cases of beer.
- DIGEST:** HB 2582 would repeal the 25-percent exemption on the first-sale beer tax granted to small brewers who produced less than 75,000 barrels of beer a year.
- The bill would take effect September 1, 2011. The bill would not affect first-sale beer taxes due before that date.

SUPPORTERS  
SAY:

HB 2582 would repeal a small tax exemption that violates the Interstate Commerce Clause of the U.S. Constitution, thus sparing Texas costly litigation expenses. Generally, the Commerce Clause prevents states from discriminating against out-of-state businesses in favor of in-state ones. Alcoholic Beverage Code, sec. 203.08 grants a 25-percent exemption on the first-sale beer tax only to in-state small breweries. As the national economy becomes more integrated every year, businesses are suing states that still have these unconstitutional laws on the books. Courts are becoming more responsive to these claims. California, Hawaii, Michigan, New Jersey, New York, Puerto Rico, Texas, and Virginia have either faced or are currently defending legal challenges against similar protectionist laws. In 2008, Virginia lost a challenge to its exemption, and a federal judge overturned an entire chapter of alcoholic beverage law. The Virginia legislature has to scramble to redraft new legislation.

HB 2582 would make the Tax Code fairer by removing the partial exemption. Tax rates should be equal within an industry. If they are not, tax policy starts to skew market choices inappropriately and give artificial advantages to some market participants. All small manufacturers of beer should pay the same rate, and HB 2582 would further that goal.

The benefits of repealing an unconstitutional law and avoiding costly and drawn-out litigation outweigh the minimal increase in taxes due. HB 2582 is narrowly drawn to repeal the exemption for beer only. It would not affect producers of ale or malt liquor. The exemption was enacted in 1977 to protect Shiner Brewery of Shiner, Texas. Due to Shiner's success, the company outgrew the exemption in 1993. HB 2582 would affect only a few small breweries and would minimally impact their bottom lines. In fiscal 2010, these six breweries produced 660,814 barrels of beer with a first-sale beer tax of \$127,900. Due to the exemption, they paid only \$95,925.

OPPONENTS  
SAY:

HB 2582 would raise taxes on small Texas breweries. HB 2582 would repeal the partial exemption from the first-sale beer tax on:

- Franconia Brewing Co. of McKinney;
- Independence Brewing Co. of Austin;
- Live Oak Brewing Co. of Austin;
- Rahr & Sons Brewing Co. of Fort Worth;
- Real Ale Brewing Co. of Blanco; and
- Saint Arnold Brewing Co. of Houston.

These are small Texas businesses that provide well-paying jobs. Their sales are almost entirely in-state, and they reinvest profits into their Texas-based enterprises. The Legislature should do what it can to foster their growth and success, and raising their taxes is counter to that goal.

Texas should wait until the law is challenged in court. The outcome of a court challenge is not a foregone conclusion. Texas should not be afraid of legal challenges when it is fighting to protect local values or the Texas economy. This partial tax exemption helps smaller Texas businesses, and the law should stand if and until a court strikes it down.

**NOTES:**

According to the fiscal note, HB 2582 would not have a significant fiscal implication for the state.