

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

May 3, 2017

3:17 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Gary Knopp
Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

PRESENTATION: BEER & MALT BEVERAGES TAX BY BRITTENY CIONI-HAYWOOD~ DIRECTOR~ DIV. OF ECONOMIC DEVELOPMENT~ DCCED & KEN ALPER~ DIRECTOR~ DIV. OF TAX~ DOR

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

BRITTENY CIONI-HAYWOOD, Director
Division of Economic Development
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Gave a PowerPoint presentation of Alaska's brewing industry.

KEN ALPER, Director
Tax Division
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Offered a PowerPoint presentation related to small brewery exemption.

BRANDON SPANOS, Deputy Director
Tax Division
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the presentation on Alaska's beer and malt brewing tax.

ACTION NARRATIVE

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CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:17 p.m. Representatives Birch, Sullivan-Leonard, Stutes, Josephson, Wool, and Kito were present at the call to order.

PRESENTATION: BEER & MALT BEVERAGES TAX BY BRITTENY CIONI-HAYWOOD, DIRECTOR, DIV. OF ECONOMIC DEVELOPMENT, DCCED & KEN ALPER, DIRECTOR, DIV. OF TAX, DOR

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CHAIR KITO announced that the only order of business would be a Presentation on Beer & Malt Beverages Tax by Britteny Cioni-Haywood, Director, Division of Economic Development, DCCED and Ken Alper, Director, Tax Division, Department of Revenue (DOR).

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BRITTENY CIONI-HAYWOOD, Director, Division of Economic Development, Department of Commerce, Community & Economic Development (DCCED), offered a PowerPoint presentation [hardcopy included in the committee packet], regarding "Alaska's Brewing Industry." She specified that she would be talking about breweries, not distilleries, during the presentation. Referring to information on slide 2, she stated that the brewing industry in Alaska brews, packages, and sells beer across the state, the nation, and the world. She said the industry is considered a basic economic sector. The industry is also considered a secondary sector, which means it transforms raw materials into a finished product.

MS. CIONI-HAYWOOD turned to slide 3, which displays statistics provided by the national Brewers Association. She said the slide shows that the overall market for beer is "flat"; however, the market for craft, import, and export beers has seen an

increase in sales. In response to Representative Sullivan-Leonard, she explained that "bbls" means barrels, and one barrel comprises 31 gallons. In response to Representative Birch, she offered her understanding that hard cider is not included in the information within the presentation.

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REPRESENTATIVE WOOL offered his understanding that cider does fall under "the same barrel taxing."

MS. CIONI-HAYWOOD expressed the need to do further research to confirm that information.

MS. CIONI-HAYWOOD directed attention to slide 4, which shows production volume.

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CHAIR KITO, in response to Representative Birch, clarified that the [circular chart] on slide 4 shows [2016 craft brewing production volumes] for contract brewing companies, microbreweries, brew pubs, and regional craft breweries.

MS. CIONI-HAYWOOD noted that at the bottom of slide 4 is a graph, in which regional craft breweries are depicted in a blue-green color; microbreweries are shown in a darker blue, [brew pubs are in gold-brown, contract brewing companies are depicted in red-brown, and the production information spans 2004-2016]. In response to Representative Birch, she said Alaskan Brewing Company in Juneau, Alaska, would fall under the category of a regional craft brewery, based on the volume it produces. She said microbreweries produce under 15,000 bbls.

MS. CIONI-HAYWOOD drew attention to slide 5, which shows the numbers the Brewers Association has for Alaska up to 2014. She stated, "Some of the economic modeling that I've been told the Brewers Association does on the national level can get a little wonky when it comes to Alaska, because we don't have a lot of economic data that they typically use." As shown on slide 5, she said Alaska ranked forty-third in terms of economic impact, at \$239 million; however, when considering the impact per capita, Alaska ranks fifth.

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REPRESENTATIVE WOOL said 27 craft breweries [in Alaska] seems low, and he surmised that Ms. Cioni-Haywood must have more updated information.

MS. CIONI-HAYWOOD confirmed she does - through 2015. She said she spoke to "the guild" and found that Alaska currently has 39 breweries; however, perhaps only 30 are in production, while 9 are in the planning stage.

MS. CIONI-HAYWOOD turned to information on slide 6, which read as follows [original punctuation provided]:

Sales of craft beer have more than tripled in Alaska during the past 10 years from one million gallons to 3.6 million, and sales of locally-produced craft beer increased more than fourfold during the same time period.

MS. CIONI-HAYWOOD stated that of the 39 breweries currently in Alaska: all but one are microbreweries that produce fewer than 15,000 bbls/year; 9 of the breweries are brew pubs that are combined restaurant/breweries selling 25 percent of their beer on site; and one is a regional brewery with production at approximately 160,000 bbls/year.

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MS. CIONI-HAYWOOD directed attention to slide 7, which shows beverage manufacturing employment; the source is Alaska's Department of Labor & Workforce Development (DLWD). She said she thinks most of the numbers indicate craft breweries; however, she cautioned that they could also include information from distilleries and soda manufacturing. She said there was no way to get any finer detail. Ms. Cioni-Haywood stated, "The employment in this sector has grown every year since 2006. Average monthly employment in the sector was 419 jobs, and then average wages are around \$2,700 per person, per month."

MS. CIONI-HAYWOOD turned to slide 8 - information sourced from the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau - which shows that as of the first quarter of 2017 there were 40 breweries [in Alaska], which she admitted is a slight discrepancy compared to the aforementioned total. She speculated that perhaps one has not "come to fruition." She cautioned that the federal government usually pulls the information from tax data, and Alaska does "not have that necessarily." As shown on slide 8, she said from 2011 to 2015,

there has been a: 52 percent growth in breweries; 66 percent growth in employment; 72 percent growth in wages; 33 percent growth in production; and 27 percent growth in taxes collected on beer qualifying for the reduced tax rate.

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MS. CIONI-HAYWOOD turned to slide 9 - sourced from the Brewers Guild of Alaska - which shows economic impact information for 2015, published in February 2016. It shows direct and indirect impacts. She explained that direct spending is that which is spent by a brewery on payroll, taxes, rent, and owner's income; indirect spending includes money from "instate brewing activities," for example, going to Costco or purchasing "a raw input from a farmer." She said induced impacts mean when employees spend their paychecks within the community. The slide shows the following total impacts: full-time equivalent jobs, [2,281.4]; business income, [\$492,118,669]; payroll and owners' income, [\$96,313,690]; fees and taxes paid, [\$35,568,630]; and rents and dividends paid, [\$37,204,577]. She reported that the total economic impact by the brewery sector is approximately \$169 million. The percent retained in Alaska is approximately 34 percent.

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CHAIR KITO asked Ms. Cioni-Haywood if she has any idea "what the fees paid would be."

MS. CIONI-HAYWOOD said she could check the study to find out if that information is referenced there.

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MS. CIONI-HAYWOOD continued with the PowerPoint, to slide 10, which shows two on-line articles related to the brewing industry. She mentioned the Bourbon Trail in Kentucky and the idea of tourist attractions [related to brewing]. She said, "The Alaska brand is strong through other marketing outlets, such as [the Alaska Seafood Marketing Institute] (ASMI) and Alaska tourism, and this is just another option where we can play off onto that strong branding and appeal to audiences outside of the U.S." She indicated this is good for the economy.

MS. CIONI-HAYWOOD turned to slide 11, regarding export potential. She said the industry manufactures value-added

products that offer an opportunity for export to national and international markets. She indicated that the Department of Commerce, Community & Economic Development (DCCED) and the University of Alaska Center for Economic Development produced a study last year related to export opportunities for Alaska distilleries and breweries. The study detailed four foreign markets: Canada, China, Germany, and South Korea. The study showed that Canada, China, and South Korea scored highest as export markets for Alaska beer; the study was based on consumer trends within those countries and took into account trading pacts, such as the North American Free Trade Agreement (NAFTA) and what tariffs might be on the products; millennials are among the most important consumption groups in each country; and millennials have driven the market growth of craft beer and liquor in the US, as well.

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MS. CIONI-HAYWOOD explained that the purpose of [the study] was to provide small, fast-growing producers with useful information about the aforementioned countries. She said U.S. Commercial Services reopened its office in Alaska about a year ago; it is focused on exporting Alaska products. She said it is a federal agency located in Anchorage. She indicated that the Division of Economic Development has conversed with U.S. Commercial Services to get these products [exported]. She said there are several distilleries reaching the point where they are considering the export of their products, nationally and internationally. Ms. Cioni-Haywood concluded by stating that the emerging brewing industry comprises small, start-up firms, and she emphasized its export potential.

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REPRESENTATIVE WOOL asked if there are other [breweries] in Alaska, beside the Alaskan Brewing Company, that export.

MS. CIONI-HAYWOOD said she would ask the Alaska Guild and return with an answer.

REPRESENTATIVE WOOL offered his understanding that "that's the only one." He said he does not know if "they go outside of the U.S. and into the world."

MS. CIONI-HAYWOOD responded, "My guess might be Canada."

REPRESENTATIVE WOOL asked Ms. Cioni-Haywood if she knows much about "the tasting room law."

MS. CIONI-HAYWOOD answered, "A little bit."

REPRESENTATIVE WOOL explained that in 2006, a law went into place, which allowed breweries to be manufacturer, distributor, and retailer on premises, which he surmised is the reason for the growth in the brewing industry.

MS. CIONI-HAYWOOD agreed that has been an important factor in growing this sector. She said she moved from Colorado, which has fostered its reputation for brewing. She said she thinks the law has had the same affect in terms of a growth in distilleries.

REPRESENTATIVE WOOL asked if the entire market is growing, or if there has been a shift in that which is being sold and consumed.

MS. CIONI-HAYWOOD reiterated that there has been a shift to the craft brew market.

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The committee took an at-ease from 3:41 p.m. to 3:43 p.m.

[3:43:12 PM](#)

KEN ALPER, Director, Tax Division, Department of Revenue (DOR), offered a PowerPoint presentation [hardcopy included in the committee packet] related to small brewery exemption. He explained that the division was asked to look at the reduced tax rate for small craft brewers, how it is applied, and what some of the underlying numbers are. He indicated that this information surfaced in the process of creating an indirect expenditure report. As shown on slide 3, Mr. Alper explained that [House Bill 306], sponsored by Representative Thompson, was passed in 2014 and requires an indirect expenditure detail report every two years from DOR to the legislature. Then the Legislative Finance Division comes up with a more detailed report, by department, on a rotating schedule. He said two reports have been submitted thus far to the legislature: the first in 2014 and the second in 2016.

MR. ALPER turned to information on slide 4, which states that "indirect expenditure" is defined under [AS 43.05.095(d)], which read as follows:

(d) In this section, "indirect expenditure" means an express provision of state law that results in foregone revenue for the state by providing

- (1) a tax credit or other credit;
- (2) an exemption, but does not include federal tax exemptions adopted by reference in AS 43.20.021;
- (3) a discount;
- (4) a deduction, but does not include costs incurred in the ordinary course of business that are deducted in the calculation of a tax under this title or in the calculation of a royalty or net profit share payment for a lease issued under AS 38;
- (5) a differential allowance.

MR. ALPER, in regard to slide 5, stated that the division's report showed details on 231 different line items across 11 departments and agencies, including 78 provisions administered by DOR. He said many agencies worked in cooperation with DOR in this effort. He highlighted the information on slide 6, which expresses that each department was required to report the following information for each item: name and description of the indirect expenditure; statutory authority; repeal date; legislative intent; public purpose; estimated revenue impact; estimated cost to administer; and the number of beneficiaries and who benefits.

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MR. ALPER directed attention to slide 8 and spoke about the background on alcoholic beverage tax. As shown on the slide, he stated that the related statute is AS 43.60. He said that directly following prohibition there was a 5 cent/gallon tax on beer and wine enacted in 1933. Shortly thereafter, that tax was added onto distilled spirits. He said the basic statute has not changed dramatically in the last 80-plus years; however, the rate has increased over time. He explained that the tax is collected at the wholesale transaction. He advised there was a major rate increase in 2002, and the idea of "dime a drink" was instigated wherein part of the money collected in taxes was used for treatment of "people with problems." He highlighted that the "dime a drink" equated as follows: distilled spirits at \$12.80 per gallon, with 128 ounces per gallon, means 10 cents per ounce of liquor; wine at \$2.50 a gallon or 10 cents per 5-ounce glass; and beer and cider at \$1.07 per gallon or 10 cents per 12-ounce bottle. Mr. Alper, in answer to a previous query,

related that "hard cider is calculated within the beer tax framework."

MR. ALPER stated that the tax on beer, prior to 2002, was 35 cents per gallon, so the tax was essentially tripled in 2002. He stated that as shown on slide 9, as part of the 2002 tax bill, the legislature created a separate rate for breweries meeting the qualifications of 26 USC 5051(a)(2). The definition is less than 2 million barrels of beer produced in the U.S.; only a handful of domestic breweries are larger than that size, although they represent a large percentage of the beer sold; imported beer, by definition, does not meet the definition. Showing slide 10, Mr. Alper related that the exception to the \$1.07 per gallon tax is in AS 43.60.010(c), which states that the first 60,000 barrels of beer per year sold in Alaska are taxed at the pre-2002, 35-cent tax rate. He said that with 31 gallons per barrel, a single brewery can potentially benefit up to 1.86 million gallons or \$1.34 million. He explained that 72 cents per gallon is the difference in the offset. He said 38 of the 39 breweries in Alaska are much smaller than that; microbreweries produce less than 15,000 barrels per year. He stated that 25-30 percent of the beer sold in Alaska qualifies for the reduced tax rate.

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MR. ALPER turned to slide 11, entitled "Who Pays Taxes?" He stated that only beer sold in Alaska is taxed: beer brewed in Alaska but sold Outside is not taxed; beer brewed in other states and brought into Alaska is taxed. He said Alaska's taxpayers are typically beverage distributors, who handle multiple brands, which makes it difficult to precisely determine volumes of in-state versus Outside-brewed beer. Some Alaska breweries distribute their own product, and therefore pay taxes directly.

MR. ALPER presented information from a chart on slide 12, which shows the impact of small brewery reduced rate on a table showing growth trend for small breweries. He stated, "In general, we're finding [that] 35 to 40 percent of the reduced-price beer is brewed in Alaska; the other 60 percent or so is brewed in other states."

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REPRESENTATIVE WOOL regarding the cut-off of 60,000 bbls for the beer discount, asked if the beer must be produced in Alaska.

MR. ALPER offered his understanding that initially there had been discussion regarding limiting the benefit to beer brewed in Alaska; however, there were constitutional issues with doing so. He said, "We can favor American beer, but we can't favor Alaskan beer." He clarified that the cut-off pertains to beer brewed anywhere in the U.S. at less than 2 million barrels per year. In that case, the first 60,000 bbls sold in Alaska are eligible for the reduced rate. Any amount sold above 60,000 would revert to the higher tax rate.

REPRESENTATIVE WOOL indicated that there may be a discrepancy in terms of what he has heard from speaking with a distributor. He asked for clarification that Mr. Alper is saying that a brewery qualifies for an exemption for the first 60,000 barrels sold in Alaska; at 60,001, the rate reverts to the \$1.07 per barrel tax rate.

MR. ALPER confirmed Representative Wool is correct; however, he emphasized that to qualify in the first place, the overall company "has to be below 2 million barrels brewed in the United States."

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CHAIR KITO asked, "How do we audit for the 2 million barrels per year?"

MR. ALPER answered that "it's a federal definition"; therefore, there is some sort of certification. He deferred to Deputy Director Brandon Spanos for further information. He offered his understanding that the brewery shows [the Tax Division] its federal license for a small brewery.

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REPRESENTATIVE JOSEPHSON commented on the benefit that is given to relatively small producers for the first 60,000 bbls consumed in Alaska, and he asked if there is a reciprocal benefit that [Alaska brewers] get by selling out of state.

MR. ALPER responded that Alaskan brewers selling in Washington, for example, are subject to whatever the State of Washington's excise tax on beer is. He said he does not know if other states have a similar differential tax rate for small breweries, "but if they do, we would most certainly qualify."

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REPRESENTATIVE WOOL surmised that it is up to the distributor to track the number of barrels sold, in terms of qualifying for the benefit applied to less than 60,000 bbls.

MR. APLER answered that is correct. He noted that each beer sold in Alaska has a single distributor, so there is no problem tracking various amounts sold by more than one company and having to determine "whose 10,000 ends up paying the higher tax."

REPRESENTATIVE WOOL indicated that the 60,000-barrel cap is "not a particular advantage for Alaskan beer," since all but the Alaska Brewery in Juneau are nowhere close to producing over that cap.

MR. ALPER responded that 60,000 bbls is nearly 2 million gallons, and there are more than 10 beers in a gallon, and [reaching 60,000 bbls] would mean 18 million beers from a single brewery. He said with only 700,000 people in Alaska and a substantial number of those who do not drink beer, "it would be hard to reach that number for a single brewery." He speculated that the Alaskan Brewery brews more than 60,000 barrels per year but exports a substantial amount of that to other states. He added, "So, I'm pretty certain what they sell in Alaska is well below the 60,000 threshold. That's never been a limiting factor, to my knowledge - the 60,000 number."

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BRANDON SPANOS, Deputy Director, Tax Division, Department of Revenue (DOR), in response to Chair Kito's previous question about ensuring breweries meet the 2-million barrel [cap], explained that the division requires breweries to apply to qualify for the reduced rate. When the application is made to the division, breweries must also supply a federal form to the federal government that certifies that "they meet that requirement."

MR. SPANOS, in response to Representative Wool's question regarding whose responsibility it is to track whether amounts are above or below 60,000, stated that the division keeps track of that on the tax form and would assess the brewery at the higher rate "if they don't keep track of that themselves."

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MR ALPER continued with the slide presentation and, referring again to slide 10, said that 25-30 percent of the beer sold in Alaska qualifying for the reduced tax rate speaks to the "blossoming and explosion of small breweries both locally and nationally." Notwithstanding that, he noted that the bulk of beer consumed still is sourced from major brewers, which are well above the 2-million threshold. He reviewed the information on slide 11, emphasizing that some breweries deliver their own truckloads, which makes them a direct tax payer. He added, "If other volumes of theirs are run through a distributor, [then] the distributor is paying the taxes on that portion of it."

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MR. ALPER returned to slide 12, which shows: a steadily growing number of breweries receiving the reduced tax rate benefit, from 19 in 2012 to 31 in 2016; an increase in the number of reduced rate gallons, with the current number at just over 4 million; about 150,000 barrels, statewide, falling under the reduced tax rate; a tax impact of the reduce rate at just over \$3 million; the in-state brewery benefit, at about 35-40 percent of the total, was just over \$1.3 million in 2016; and the out-of-state brewery benefit in 2016 was just under \$1.7 million.

MR. ALPER stated, "The increase in the number of breweries is more than 50 percent; the total volume is up by only maybe 15 or 20 percent, so you're seeing more, smaller breweries, and therefore a smaller average production per brewery as this industry is reaching its next step." He said there are a couple small breweries opening in Juneau in 2017.

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REPRESENTATIVE JOSEPHSON asked, "Is there an expiration on ... the discounted rate or is it just fixed?"

MR. ALPER answered that there is not a discounted rate. He added, "It is simply ... [an] alternative tax calculation in statute."

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REPRESENTATIVE WOOL reasoned that the benefit favors out-of-state breweries because of the 60,000-barrel threshold.

MR. ALPER answered, "There's simply more of them." He explained that a lot of beer brewed by small breweries gets brought into the state of Alaska; it more than equals the amount that is brewed and sold in Alaska. He said hopefully, over time, Alaska would take a larger percentage of its own market share, but currently, there are large-size companies [Outside] that sell a lot of beer in Alaska, and the amount adds up to more than what is both produced and sold in Alaska.

REPRESENTATIVE WOOL observed that many smaller breweries are being bought by major companies, thus they will be above the 2-million threshold, because they are owned by Anheuser-Busch InBev.

MR. ALPER said he thinks Representative Wool is correct. He said, "That would be something in our statute that favors those who choose to remain independent." He deferred to Mr. Spanos for a more definitive answer.

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CHAIR KITO clarified that the question is whether a smaller brewery being absorbed by a larger brewery would absorb the threshold of the parent company or if it would remain a small brewery for federal purposes.

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MR. SPANOS said he does not know the answer. Notwithstanding that, he surmised that [the smaller brewery] would "lose that designation."

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REPRESENTATIVE WOOL asked what the impetus was for the discount that began under statute in 2002.

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MR. ALPER answered that at that point, the legislature was tripling the tax on beer, and he said he is sure the small breweries must have "raised a complaint" that the higher taxes would drive them out of business; therefore, the benefit was created to maintain competitiveness for small businesses. He reiterated that the original intent was to carve this protection out for beer brewed in Alaska; however, he reiterated that there was an issue of constitutionality.

REPRESENTATIVE WOOL suggested that the "tasting room law," which allowed establishments to brew in a back room and sell the brew at retail prices in the front room, was the biggest impetus for the blossoming of Alaskan breweries.

MR. ALPER responded that it is not unusual for start-up breweries to concentrate on on-site consumption and then start delivering some kegs to local restaurants; however, the bottling line sometimes does not get added until several years later.

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REPRESENTATIVE JOSEPHSON recollected that about 14 months prior there had been consideration given to doubling the alcohol excise tax and increasing trade tax across the board. At that time, he said, his greatest reluctance had been related to the tax on alcohol, because "we already had the highest rate." He asked, "Is part of the reason it doubled because we were going to do away with this in-state brewery benefit?"

MR. ALPER answered that the governor's alcohol tax bill from 2016 was a doubling of all the rates. He showed slide 8 again and noted that [the doubling] would mean rates of \$25.60 per gallon for distilled spirits, \$5.00 per gallon for wine, and \$2.14 per gallon for beer and cider. He said that would have been 20 cents per portion [compared to the aforementioned "dime a drink"]. He said, "That bill contained an increase in the small brewery exempted tax from 35 cents to 70 cents, so it was actually doubling it; but, it actually increased the delta, as you were, between the full tax and the small brewery tax."

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REPRESENTATIVE BIRCH inquired, "Is there an ask associated with this?"

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MR. ALPER answered that currently the administration does not have "any statutory asks" regarding the alcoholic beverage tax. He said he was present for today's presentation at the request of the committee, to show "the impact of this specific exemption," possibly to consider whether to modify it.

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CHAIR KITO confirmed that [the committee] was asked to look deeper into the issue by the chair of the House Commerce, Community & Economic Development Finance Subcommittee. He said it is up to the House Labor and Commerce Standing Committee to determine whether there are opportunities to maintain the economy or possibly increase revenue, and the information from Mr. Alper can be part of the discussion. He reviewed that Mr. Alper's presentation showed that there are \$3 million of impact based on the reduced rate. Options range from eliminating the reduction to saving \$3 million in revenue to "somewhere in between or not touching it at all."

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MR. ALPER proffered that Alaska's alcoholic beverage taxes are among the highest in country. He added, "The \$1.07 is very much in the high end of beer taxes; the 35-cent reduced rate [is] kind of middle of the pack, as far as beer taxes in other states."

CHAIR KITO thanked Mr. Alper for the informative and clarifying information.

[4:12:15 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:12 p.m.