

HOUSE REVENUE COMMITTEE

JUNE 15, 1999 ñ 8:15 A.M. - HEARING ROOM A - STATE CAPITOL BUILDING

Members Present: Rep. Ken Strobeck, Chair

Rep. Anitra Rasmussen, Vice Chair

Rep. Deborah Kafoury

Rep. Diane Rosenbaum

Rep. Lane Shetterly

Rep. Max Williams

Rep. Bill Witt

Members excused: Rep. Jeff Merkley

Rep. Jim Welsh

Staff: Paul Warner, Legislative Revenue Officer

Richard Yates, Economist, Legislative Revenue Office

Barbara Guardino, Committee Assistant

Witnesses: Gary Conkling, Oregon Winegrowers Association

Gil Riddell, Association of Oregon Industries

Rob Johnstone, Yamhill County Commissioner

Art Schlack, Association of Oregon Industries

Tom Linhares, Columbia County Assessor

Jim Manary, Oregon Dept. of Revenue

Don Schellenberg, Oregon Farm Bureau

Jesse Lyon, Oregon Winegrowers Association

Carl Downhower, Oregon Winegrowers Association

Hasina Squires, Special Districts Association

TAPE 212, SIDE A

005 Chair Strobeck Called meeting to order at 8:25 a.m. Opened work session on SB 595.

WORK SESSION ñ SB 595

019 Lizbeth Martin-Mahar SB 595 allows a personal property tax exemption for wineries. For most small wineries, their movable wine making equipment and machinery is considered personal property. See Revenue Impacts for SB 595 and SB 595-1 (**EXHIBITS 1 and 2**). Discussed SB 595-1 amendments, see (**EXHIBIT 3**). Allows only the wineries located in an exclusive farm use zone to have this exemption. That is a 20% reduction in wineries that would qualify. Exemption would have largest effect in high-growth counties, particularly in Yamhill County.

041 Gary Conkling Spoke in support of the measure. See written testimony, verbatim (**EXHIBIT 4**). Purpose of SB 595 is to clarify that personal property at a winery with a wine grape vineyard is exempt from taxation. Oregon case law clearly establishes wineries as farm use. In Craven v. Jackson County, the Oregon Supreme Court determined that making wine is an accepted farm practice.

094 Conkling Encouraged committee to adopt ñ1 amendments and to pass SB 595.

108 Rob Johnstone Spoke in opposition to the measure. Wine growing, processing and retail sales of wine is one of highest agricultural uses in Yamhill County. SB 595 reduces local revenues, and threatens stability and ability to provide services.

Initial fiscal impact would be fairly small, but SB 595 opens the door for a new type of tax exemption to other processing equipment. Currently, Oregon statute states that wineries are not a farm use. Exemption amounts to an unnecessary public subsidy to an industry that is highly successful.

169 Art Schlack Spoke in opposition to the measure. ORS 215.203 defines Oregon farm use. It does not define wineries as farm use. ORS 215.452 allows certain wineries permitted in a farm zone, provided they meet certain criteria.

Referred to Kings Estates winery case that is currently before Oregon Supreme Court. Legislation from 1989 indicates that wineries are not defined as a farm use. King Estates brief was filed on behalf of Dept. of Revenue.

213	Gil Riddell	Spoke in opposition to the measure. Association of Oregon Counties is concerned with precedent that this bill would establish. See written testimony (EXHIBIT 5).
220	Tom Linhares	Spoke in opposition to the measure. For the first time, exemption for farm equipment would be allowed when activity is not a farm use. This is not good policy. Understands argument that grapes are intended to make wine. The same could be said for apples that are intended to make applesauce. This pushes the line. Also, processing facilities under 10,000 square feet are already considered farm use and therefore personal property would already be eligible for this exemption.
254	Riddell	Referred to HB 2625 that allows the tax exemption for processing facilities up to 40,000 square feet. Does not believe there will be a hearing.
271	Rep. Shetterly	Noted disagreement in testimony as to whether wineries are considered a farm use. Craven and King Estates cases conflict. Is it or is it not? Follow-up questions.
291	Schlack	In 1989 the legislature made a policy decision not to amend the definition of farm use. This results in the conclusion that wineries are not farm use, or that they must first meet certain criteria. The 1989 amendments were intended to be consistent with the Craven case. That is in a brief from the Dept. of Revenue, submitted by the attorney general. It is in the King Estates winery case that is currently before the Court of Appeals.
338	Rep. Williams	What was the outcome of this brief from Court of Appeals?
351	Linhares	King Estates winery case concluded that wineries are not a farm use. This decision was appealed to the Supreme Court.
359	Rep. Williams	Craven case says wineries can be considered farm use. Kings Estate case says differently. Would like to read these cases to understand them.
373	Chair Strobeck	SB 595 comes down to a policy decision by committee whether growing of wine grapes qualifies for this exemption.
383	Rep. Williams	Why is a winepress different from a regular piece of farm equipment?
396	Linhares	A combine cuts the wheat; it doesn't convert the wheat into bread. Farm equipment that harvests the grapes are already exempted. Winemaking is not a farming activity, it is a processing activity. Therefore, personal property is not exempt. The statutes currently make this distinction.
429	Chair Strobeck	Referred to similar discussion during 1993 legislative session concerning eggs. Eggs can

be sized and packaged on-site and sent directly to market with no further processing.

440 Linhares There is a thin line between farming and processing. There are several court cases dealing with this issue.

TAPE 213, SIDE A

032 Rep. Rosenbaum Referred to Gov. Kitzhaber's letter (**EXHIBIT 6**). Would county opposition lessen if a local option were included? Also, what happened to HB 2039 that requires the state to reimburse 50% of the cost of exemption.

046 Riddell HB 2039 received a positive hearing in Ways and Means subcommittee, but hasn't gone to full committee yet. Counties would prefer a local option for SB 595.

055 Jim Manary Part of confusion over time has been how statutes are laid out. They deal with farm use issues and tie taxation policy into it. Court cases have tried to tie together the intent of the legislature in dealing with the related statutes. Discussion of where to draw the line leads to the question of what is processing and when does processing begin. Egg debate dealt with the necessity of getting the product shipped.

Supreme Court in Craven case in 1989 concluded that wineries are a farm use. Legislature changed statutes in 1989 to allow wineries in farm use zone. Tax court in 1994 made wineries a farm use. In 1997, the tax court reversed its decision.

105 Rep. Shetterly Asked Manary to discuss interplay between SB 595 and HB 2625, which increases square footage for a winery from 10,000 square feet to 40,000.

Follow-up questions.

114 Manary HB 2625 is in Oregon statutes under farm use and land use. Under statutes, a small winery under 10,000 square feet would qualify for the land and personal equipment exemption.

156 Martin-Mahar When compiling information for HB 2625, did not find one property that gave exemption for personal property for small wineries. Almost all wineries are smaller than 40,000 square feet.

176 All Questions on whether there are any similar cases and how are they taxed (e.g. fruit juices, mint, dill).

201 Rep. Williams What about dairy cattle?

- 205 Manary Most equipment in a dairy is fixed, so it is real property. This exemption applies to personal property that is mobile.
- 216 Don Schellenberg Milk is not processed on the farm. It is put into a cooler and then is taken to a processing plant. Equipment is mostly fixed, and is not tax exempt. Things that are not readily movable are taxed as real estate. Problems occur in making a distinction between industrial and farm.
- 251 Rep. Shetterly Asked if counties agree that personal property in a winery less than 10,000 square feet would be subject to exemption under current law.
- 258 Riddell Association of Oregon Counties' understanding of HB 2625 was that it did not affect personal property. Issue was the land under the structure. There are cases in tax court that include personal property in the exemption. This concept was adopted in 1997 in land use committees with no analysis on revenue effect.
- 284 Schellenberg Agreed with Riddell's testimony. ORS 215.203 defines farm use. Processing plants less than 10,000 square feet are defined as farm use and would receive relief.
- Farm Bureau offered conceptual change to bill amendments. Line 3 after "growing", add "a significant portion of the"; and at the end of the sentence add "being processed". Oregon Farm Bureau would support SB 595 with these conceptual amendments.
- 329 Manary Asked committee not to include "a significant portion" but rather to add a fixed percentage.
- 358 Jesse Lyon Previous discussion indicates need for legislature to clarify this issue. The Craven case was decided by Supreme Court. It concluded that wineries are an accepted farming practice. King Estate case was decided by tax court. Tax court cannot overrule the Supreme Court. King Estate decision was based on incorrect interpretation of legislative history. There is a distinction between land use policy and tax policy, and sometimes the definitions get confused. When wineries were added to list of uses in farm zones, they may have fallen under a different line of items that local governments would not consider farming practices. But wineries were listed as a permitted use. Asked committee to clarify that wineries are qualified for this exemption.
- 436 Rep. Shetterly Record shows that wineries under 10,000 square feet are entitled to this exemption, whether they have been receiving it or not.

TAPE 212, SIDE B

- 016 Lyon Asked clarification that wineries in particular qualify for exemption. It is unclear whether the law's position has to do with the size of the facility or the nature of the operation.

030	Rep. Shetterly	Follow-up questions.
048	Lyon	Oregon statutes include provisions for equipment used in storage of farm crops. Wine grapes cannot be stored indefinitely in their fresh form.
056	Carl Downhower	Spoke in support of the measure. Owns a family vineyard with a winery in Yamhill County. In 1995, his farm lost 100 tons of grapes because wineries were unable to process them. There is no product until the grapes are pressed. Asked committee to approve SB 595 ñl amendments.
119	Hasina Squires	Spoke in opposition to the measure on behalf of Special Districts Association. There are 13 special districts in Yamhill County including seven rural fire protection districts that are operating on small budgets.
135	Vice Chair Rasmussen	Committee will not move SB 595 today. Asked for sense of committee on bill and on SB 595 -1 amendments and conceptual amendments.
148	Rep. Witt	Is comfortable with the bill and with ñl amendments. Likes the idea of requiring a minimum percentage of grapes grown on the property to be processed into wine. Would like to hear testimony on this to determine a percentage.
160	Conkling	This idea has been suggested before. Percentages can differ, given types of wine produced and crop failures.
187	Rep. Witt	Follow-up comments concerning percentage.
206	Rep. Williams	Recognizes countiesí concerns that someone could have a processing facility and grow very few grapes. Agreed with Rep. Witt that this is not the intent of the statutes. Suggested insertion without setting a percentage, but requiring a vineyard to be in the business of growing wine grapes.
222	Rep. Rosenbaum	The last thing the state needs is more litigation on the intent of the statutes. Would prefer to be explicit. Asked for a way to distinguish this request from wineries from others that might occur in the future.
238	Conkling	Wine growing industry has tried to narrow language to relate to wine grapes only. Possibly other crops are eligible for this exemption. Winegrowers believe they should qualify and have not received it. Industry has attempted to avoid creating a precedent.
272	Linhares	Suggested alternative to using a percentage. Require land to be zoned under farm use.

Submitted by, Reviewed by,

Barbara J. Guardino Kim T. James

Committee Assistant Revenue Office Manager

Exhibit Summary:

1. SB 595, Martin-Mahar, Revenue Impact of Proposed Legislation for SB 595, 1 p.
2. SB 595, Martin-Mahar, Revenue Impact of Proposed Legislation for SB 595-1, 1 p.
3. SB 595, Martin-Mahar, Proposed Amendments to Senate Bill 595 (SB 595-1), 1 p.
4. SB 595, Conkling, Oregon Winegrowers Association, testimony of Gary Conkling, 1 p.
5. SB 595, Riddell, Association of Oregon Counties, Major Points in Opposition, 1 p.
6. SB 595, Kitzhaber, letter from Governor John A. Kitzhaber, M.D., to the Revenue Committee in support of a local option, 1 p.
7. SB 595, Lotspeich, letter from Laura Lotspeich in support of SB 595, 1 p.
8. SB 595, Martin-Mahar, Staff Measure Summary, 1 p.
9. SB 595, Martin-Mahar, Legislative Fiscal Office, No Expenditure Impact, 1 p.