

AT-A-GLANCE

OAR 845-010-0XXX Small Winery Privilege Tax – Monthly Reporting and Tax Liability

Petition for Rulemaking/possible Initial Action

(To adopt a new rule)

April 2009

The Oregon Winegrowers Association (OWA) submitted a petition requesting the adoption of a new rule in Division 10 relating to the reporting and payment of privilege tax by small wineries.

The petitioner is proposing a new rule whereby the monthly tax reporting and tax payment requirements for wine that has been withdrawn from federal bond but not yet sold would be waived.

Staff has serious concerns regarding the petition for rulemaking as submitted, as we are uncertain whether the Commission has the authority to accomplish the petitioner's objectives by rule. Staff believes, based on the advice of counsel, that the rule proposed in the petition conflicts with the current statutes governing privilege tax reporting and payment.

Staff has sent additional questions to obtain clarification from the Attorney General's office as to whether or not it is possible to accomplish any of the petitioner's objectives by rule, absent a change in the statutes, and if so what rule options are available. The petitioner has also sent a question to the AG's office. Until this clarification is obtained, we do not know what form a rule on this issue might take. Staff believes it would be premature to initiate rulemaking until these issues are clarified.

Because the Commission may initiate rulemaking on this matter at any time in the future once the scope of our rulemaking authority is established, staff recommends denying the current OWA petition.

POSSIBLE MOTIONS:

I move to deny the petition to adopt a new rule in Division 10, and direct staff to bring back this rule matter if and when our rulemaking authority on this issue is established.

....or....

I move to accept the petition for rulemaking to adopt a new rule in Division 10, to initiate rulemaking on this matter, and to hold a rulemaking hearing at staff's discretion.