



May 2006

Report No. 06-46

Division of Alcoholic Beverages and Tobacco Has Made Improvements, But Additional Steps Are Needed to Increase Efficiency, Customer Service

at a glance

In accordance with OPPAGA's proposed policy options to either modify or eliminate the alcoholic beverage surcharge, the 2006 Legislature repealed the tax. In addition, the division has implemented several of our recommendations by conducting its underage alcoholic beverage surveys more efficiently, increasing emphasis on the collection of unpaid tobacco taxes, and improving smoking ban complaint investigations. However, several additional improvements are necessary, including

- decreasing the sample size for underage tobacco surveys;
- implementing online license application processing; and
- improving the division's performance accountability system.

Scope

In accordance with state law, this progress report informs the Legislature of actions taken by the Department of Business and Professional Regulation in response to a 2004 OPPAGA report.^{1,2} This report presents our assessment

of the extent to which the department has addressed the findings and recommendations included in our report.

Background

The Division of Alcoholic Beverages and Tobacco's mission is to supervise the distribution of alcoholic beverages and tobacco products to consumers; collect and deposit taxes and fees for these products; and help ensure a safe and responsible hospitality industry for Florida residents and tourists.

The division carries out its responsibilities through three bureaus with offices throughout the state—licensing, auditing, and law enforcement. The Bureau of Licensing issues and collects fees for alcoholic beverage licenses, cigarette permits, and other tobacco product permits. The Bureau of Auditing accounts for state excise taxes levied on alcohol and tobacco products at the distributor/wholesale level, accounts for payment of surcharges on alcoholic beverages served for consumption on premises at the retail level, and conducts audits to ensure that licensees correctly properly pay taxes and surcharges. The Bureau of Law Enforcement manages the division's law enforcement and investigation functions and, as needed, assists Bureau of Auditing staff in collecting delinquent taxes and fees.

¹ Section 11.51(6), *F.S.*

² *Division of Alcoholic Beverages and Tobacco Should Improve Primary Functions and Accountability System*, OPPAGA Report No. 04-56, August 2004.

In Fiscal Year 2004-05, the division collected approximately \$1.1 billion in revenue, which includes cigarette and alcoholic beverage taxes, alcoholic beverage surcharges, license and permit fees, and fines paid by licensees and permit holders (see Exhibit 1). The division transfers most of these collections to the General Revenue Fund. A portion of these funds are used for division operations and are distributed to other government agencies to support various programs, including substance abuse education, treatment, and prevention.

Exhibit 1
The Division Collected \$1.1 Billion in Revenue in Fiscal Year 2004-05

Revenue Type	Amount
Alcoholic Beverage Excise Tax	\$ 575,900,857
Alcoholic Beverage Surcharge	46,939,532
Cigarette Excise Tax	439,411,803
Other Tobacco Products Tax	29,047,236
Finger Printing Fee	399,771
License/Permit Fees	35,128,430
Hughes Act Fee ¹	1,290,000
Fines, Forfeitures, Seizures, Restitution	711,498
Other	5,333,567
Total	\$1,134,162,694

¹ The Hughes Act refers to a fee of \$10,750, which the division collects from each entity to which it issues a new quota liquor license; revenues are used for alcohol and drug abuse education, treatment, and prevention programs (s. 561.19, *F.S.*).

Source: Department of Business and Professional Regulation.

Our 2004 review concluded that the division's operations provide needed safeguards to protect the public, help ensure that the state receives its tax revenues, and help prevent criminal activity. Stakeholders reported high levels of satisfaction with the division's performance. However, improvements were needed for several of the division's key processes, including

- modifying or eliminating the alcoholic beverage surcharge;
- reducing the number of underage alcoholic beverage and tobacco surveys;
- improving tax collection for Internet and mail order tobacco sales;
- more timely investigating smoking ban complaints;

- moving to electronic submission of license applications; and
- improving its performance accountability system.

Current Status

The 2006 Legislature repealed the alcoholic beverage surcharge, which will improve division efficiency.³ As we recommended, the division has taken steps to more efficiently conduct underage alcoholic beverage surveys, increase emphasis on the collection of unpaid tobacco taxes, and improve smoking ban complaint investigations. However, several additional improvements are needed, including decreasing the sample size for underage tobacco surveys; implementing online license application processing; and improving the division's performance accountability system.

The Legislature repealed the alcoholic beverage surcharge. Effective July 1, 2008, the 2006 Legislature repealed the alcoholic beverage surcharge. This legislation will reduce record-keeping requirements for retailers and will decrease the tax burden on Florida's citizens and visitors by approximately \$47 million annually. As this change will reduce the division's workload, it should enable it to reduce its auditing staff by approximately 37 positions, at an annual savings of \$2.5 million. After the elimination of the tax, these staff reductions should occur over a three-year period, as the division will need to complete surcharge-related audits for some time after the surcharge repeal date to confirm proper payment of the tax while it was in effect.

Underage survey samples have been decreased, but additional reductions would improve efficiency. The division has taken steps to more efficiently conduct its surveys of license holders to ensure compliance with underage alcoholic beverage and tobacco laws. Our 2004 report noted that the program was conducting nearly 15,000 surveys to test compliance with these laws, which far exceeded federal standards and the number needed to obtain statistically valid

³ House Bill 7105 was engrossed and enrolled on May 5, 2006.

compliance data.⁴ As we recommended, the division reduced the number of alcoholic beverage establishments surveyed to 344 in Fiscal Year 2005-06, a significant workload reduction. However, the division has not yet received federal approval to decrease the number of tobacco surveys it conducts. The division reports that decreasing its alcoholic beverage surveys has enabled it to shift staff to targeted enforcement, training, and emergency preparation. Once it receives federal approval to reduce tobacco surveys the division should either reduce its staffing levels or focus enforcement on retailers suspected or known to be out of compliance with underage alcohol and tobacco laws.

Increased emphasis on collection of tobacco taxes has resulted in the recovery of over \$1 million. As we recommended in our 2004 report, the division has placed more emphasis on collecting taxes from Internet and mail order sales to retailers. The division reports it has assessed \$1.5 million in taxes in the approximately two years since our original report and has collected \$1 million (see Exhibit 2).⁵

The division credits this improved performance in part to 2005 legislation that clarified and limited legal sources of sales of cigarettes and tobacco products in Florida. This legislation established a three-tier system of distribution and licensing for cigarettes similar to alcoholic beverages, thereby limiting distribution channels and simplifying the division's tracking of cigarette sales.⁶ In addition, the division devoted more effort to this area and

⁴ Approximately 300 random surveys would be needed to meet federal and valid sampling requirements for each type (businesses selling alcohol and tobacco). Under federal Synar requirements, the U.S. Department of Health and Human Services must approve any change to the division's tobacco survey sample size or methodology prior to implementation. Synar is a federal law that requires states to enact and enforce laws prohibiting the sale and distribution of tobacco products to persons under 18; states must achieve a retailer compliance rate of not less than 80% in order to continue receiving related federal funds. In federal Fiscal Year 2005-06, Florida received \$94.4 million in Substance Abuse Prevention and Treatment Block Grant funds and achieved a compliance rate of 93%. These funds are distributed to the Department of Children and Families, which uses them for substance abuse prevention and treatment services.

⁵ The period of assessment and collection prior to our report was approximately three years (from 2001 through May 2004) and the period since our report was approximately two years (from May 2004 through February 2006).

⁶ Chapter 2005-228, *Laws of Florida*.

increased efforts to share information with other states on out-of-state sources of sales.

Exhibit 2

The Division Has Made Significant Progress in Identifying Previously Uncollected Taxes

	Prior to OPPAGA Report	Since OPPAGA Report
Direct Cigarette Sales		
Assessed	\$ 7,500	\$ 392,000
Collected	3,600	226,000
Direct Tobacco Product Sales		
Assessed	\$730,300	\$1,100,000
Collected	301,300	778,000
Total		
Assessed	\$737,800	\$1,492,000
Collected	304,900	1,004,000

Source: Department of Business and Professional Regulation.

The timeliness of smoking ban complaint investigations has improved. As we recommended, the division has taken steps to improve compliance with the state's Clean Indoor Air Act. Our 2004 report noted that 40% of the complaints filed with the division against businesses that violated the act remained open for more than four months before being investigated.⁷

Since our prior report, the division has established an internal goal of 14 days for agents to make the initial site visit to establishments accused of violating the ban and reports meeting this goal 73% of the time. The number of monthly smoking ban complaints received by the division has substantially fallen, from 248 in July 2003 to 18 in March 2006. Division management attributes this drop to the public's increased understanding of the law and improved compliance by license holders.

⁷ Since our 2004 report, the division has experienced difficulties enforcing some aspects of the act. Specifically, a Division of Administrative Hearings decision has raised concerns regarding whether DBPR has sufficient authority to sanction the proprietor or other person in charge of an enclosed indoor workplace for a violation of the act, if a person other than the proprietor or other person in charge of the location is smoking. Senate Bill 1536 and House Bill 11 addressed this issue and were considered during the 2006 legislative session; neither bill passed.

Licensees still cannot submit applications online. While the department's LicenseEase system has allowed online licensing for many of the professions and businesses it regulates, the system does not allow individuals and businesses selling tobacco and alcohol products to apply for licenses via the Internet.⁸ As we recommended in our 2004 report, the department studied expanding LicenseEase but determined that supplemental documents required for licensure could not be automated for on-line submission.⁹

The division has continued to review its application forms and has identified five forms that it believes could be automated and submitted electronically. However, it has not yet requested that these forms be incorporated into LicenseEase and plans to continue with LicenseEase integration before pursuing additional system modifications. We believe that the department should continue to pursue automating these five forms and allow alcoholic beverage and tobacco license applicants to submit an initial license form online.

Performance measures still need improvement. Our 2004 report recommended that the department improve the accuracy and usefulness of its legislative performance indicators by enhancing data reliability, revising two performance measures, and using LicenseEase to track consumer complaints and reporting results to the Legislature.

While the division has taken steps to improve its data documentation and reliability, it has not fully implemented our other recommendations.

Specifically, the division has not implemented our recommendation to redefine two of its audit-related legislative performance measures ('number of audits conducted' and 'collections per dollar of auditing expenditure') to more accurately describe its performance in this area. As a result, these measures continue to be of limited use in assessing the division's allocation of auditing resources and return-on-investment for this activity. According to division officials, these recommendations have not been implemented because the division has been unable to isolate expenses and collections directly associated with field audit assessments. However, we continue to recommend that the division pursue a method of capturing data on its auditing functions. Once the information is available, the division should revise its performance measures as described below.

- Number of audits conducted - only include surcharge, wholesale beverages, cigarettes, and other tobacco product audits and/or report total licensees audited during the year.
- Collections per dollar of auditing expenditure - only include collections directly resulting from audit assessments per dollar of direct auditing expenditure.

Moreover, although the department reports using LicenseEase to collect data on complaints filed with the division, it has not submitted this information to the Legislature. We continue to recommend that the division begin reporting 'percentage of consumer complaints resolved within 90 days' to the Legislature as a performance measure.

⁸ See OPPAGA report, *DBPR Re-Engineering Has Achieved Cost Savings, But More Can Be Done to Centralize Functions and Improve Services*, [Report No. 05-60](#), December 2005.

⁹ For example, statutes require such items as notarized signatures, fingerprints cards, and certificates of health inspection for proposed establishment sites be submitted for licensure.

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

Florida Monitor: www.oppaga.state.fl.us

Project supervised by Kara Collins-Gomez (850/487-4257)

Project conducted by Don Wolf (850/487-9237)

Gary R. VanLandingham, OPPAGA Director