

oppaga

Progress Report



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BPR Should Increase Education and Standardization Efforts for On-Premises Alcoholic Surcharge

at a glance

Our previous report found that misplayment of the surcharge, which is a widespread problem among Florida retailers, stems from retailer confusion over how to calculate the surcharge due. However, the Department of Business and Professional Regulation has only partially implemented report recommendations to increase taxpayer education programs.

The department has begun to standardize conflicting policies and procedures regarding the calculation of the surcharge and record keeping requirements, which we also found contribute to retailer confusion.

In addition, the department has taken steps to refine the audit selection process, which should improve its ability to identify retailers who need assistance calculating the surcharge owed.

The 1999 Legislature considered but did not pass legislation to repeal the surcharge.

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 (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302). This review was conducted by David Summers under the supervision of Jane Fletcher. *The Florida Monitor*: <http://www.oppaga.state.fl.us>

Purpose _____

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 our 1997 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 _____

Chapters 561 through 565, 567, and 568, F.S., are commonly referred to as Florida's "Beverage Law," and provide for the regulation of the state's alcoholic beverage industry. Section 561.501, F.S., establishes a surcharge on beer, liquor, ciders, and wine sold by licensed alcoholic beverage retailers for on-premises consumption. The surcharge is based on the type of alcoholic beverage and volume sold for on-premises consumption.

A fee of \$0.04 is imposed on each 12 ounces of beer, \$0.06 is imposed on each 12 ounces of cider and \$0.10 is imposed on each ounce of liquor and each 4 ounces of wine. Retailers have the option of calculating the surcharge based on actual drinks sold or volume of alcohol purchased from wholesale distributors. For keeping prescribed records, proper accounting, and

¹ Section 11.45(7)(f), F.S.

² *Review of the Surcharge on Alcoholic Beverages for On-Premises Consumption*, [Report No. 96-62](#), March 3, 1997

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remitting the surcharge in a timely manner, Florida law authorizes retailers to deduct a collection allowance of 1% of the monthly surcharge owed. As of December 1998, there were 19,580 licensed retail establishments subject to the surcharge. They range in size from small, locally owned establishments to large national chains and include bars, restaurants, hotels, and package liquor stores that sell alcoholic beverages both for on- and off-premises consumption.

In Fiscal Year 1997-98, the surcharge generated \$108 million in state revenue. Pursuant to s. 61.121, F.S., surcharge revenue is primarily credited to the General Revenue Fund, with 9.8% transferred to the Children and Adolescents Substance Abuse Trust Fund for substance abuse programs.

The department's Division of Alcoholic Beverages and Tobacco enforces the beverage law and applicable rules and regulations, including those pertaining to the surcharge program. To encourage compliance with the beverage law, the department has the power to revoke licenses and make arrests.

The Department of Revenue (DOR) assists the division in collecting the surcharge. Retailers are required to remit the surcharge to DOR by the fifteenth of the month after the surcharge is imposed. The division also audits retailers required to pay the surcharge via eight district offices located throughout the state.

The Department of Business and Professional Regulation may assess penalties against a retailer for late payment, underpayment, or nonpayment of the surcharge. However, it may settle or reduce penalties if it finds that noncompliance is due to reasonable cause. It may also reduce a retailer's surcharge liability based on doubt of liability or collectability of the surcharge. If retailers fail to pay the assessed penalties, interest, and/or surcharge due, district offices may refer cases to one of the department's 20 enforcement offices for collection.

Prior Findings _____

Retailers need additional education.

Approximately 97% of department audited retailers OPPAGA reviewed either underpaid or

overpaid the surcharge. We concluded that retailer confusion over how to calculate the surcharge significantly contributes to misplayment and points to the need for additional taxpayer education programs. We recommended that the department pursue two options for increasing taxpayer education.

- Require each retailer to attend an individualized orientation session prior to license issuance. Retailers would be required to attend as a condition of obtaining a license. However, it would require additional staff resources or staff reassignment and would not involve educating the approximately 20,000 existing licensees.
- Provide an "open" orientation every few months. This would involve district auditors providing regular orientation sessions to larger audiences. Providing orientation sessions at several different times would increase convenience to the retailers and may increase attendance. Again, it would be effective to tie the orientations to license issuance. Programs such as these have been attempted in a few districts with good results and could be expanded statewide.

The department should standardize procedures.

Our review also found that inconsistent implementation of policies and procedures contributes to retailer confusion regarding the calculation of the surcharge and the record-keeping requirements. To further reduce retailer confusion, we recommended that the department increase the consistency of staff implementation of policies and procedures. During the course of OPPAGA's review, the department provided audit staff additional guidelines through a written summary of agreements reached to address the implementation of its audit policies and procedures. We recommended that the department monitor the implementation of these agreements to minimize differences that could unfairly tax retailers or result in retailer confusion over how much tax is owed.

The department should refine the audit selection process.

Furthermore, we found that surcharge underpayment could be reduced by improving the department's audit selection process. We recommended that the department expand its use of automation for audit selection. Department management indicated that the audit selection process was to be fully automated by late 1997. Once fully automated, department management believes staff would be able to complete 5,000 to 6,000 surcharge audits annually. Increased automation should improve the department's ability to identify and select retailers who have the largest potential underpayments. In addition, automation may help the department identify retailers who need assistance calculating the surcharge owed.

The Legislature may consider policy options to address problems identified.

Our review also found that Florida's surcharge places a burden both on state administering agencies and Florida businesses. Collecting the surcharge places a high workload on state administering agencies. Compared to other tax programs, such as the excise tax, the surcharge involves a much larger number of businesses remitting the tax and requires more resources to ensure that businesses remit surcharge payments. Ensuring accurate payment of the surcharge also is labor intensive and costly. Furthermore, the surcharge places a burden on retailers by requiring them to keep precise records and file detailed monthly reports.

To address the problems identified, we recommended that the Legislature consider the following options:

- impose the surcharge at the wholesale level or
- repeal the surcharge and increase excise taxes.

OPPAGA found that implementing either of these options would greatly reduce the workload of state agencies administering the program, save state resources, and lessen the burden placed on Florida businesses currently subject to the surcharge.

Current Status _____

The department has not fully implemented our recommendations to increase taxpayer education.

The Department of Business and Professional Regulation has not implemented our recommendations to require that each new retailer attend an orientation session and to hold "open" orientation sessions throughout the state. The department has piloted mandatory licensee training sessions in the Orlando and Miami districts. As a prerequisite to obtaining a new license, licensees in these two districts must meet with an auditing representative and be trained thoroughly in the surcharge record keeping and reporting process. In addition, the Fort Lauderdale district office has implemented a pilot program that provides training information to retailers in an electronic format, which can reviewed at their convenience. The department has not evaluated the success of these programs, and has not expanded the program statewide as recommended in our report. However, the department staff indicate that the pilot program may be expanded after the 1999 legislative session.

The department also has created an Internal Control Section and a Training Section, which is responsible for developing specialized training for new licensees and periodic regional training sessions. During 1998, in addition giving several speeches to industry representatives on compliance with Florida beverage and tobacco laws, the department conducted three regional licensee training sessions in Miami and one in Key West. Such training can help clear up retailer confusion over how to calculate the surcharge, which significantly contributes to misplayment of the alcoholic beverage surcharge.

However, the department has not provided similar training to retailers throughout the state as recommended in OPPAGA's prior report. In addition, because the department does not keep records on who attends training sessions, it could not provide information on the number of retailers participating in these activities. This kind of information would help the department assess the effect of the training and determine whether certain days of the week or times

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during the day may be more convenient for retailers to attend.

The department has drafted brochures designed primarily to inform newly licensed retailers about compliance with the Florida beverage and tobacco laws.

The department should collect data necessary to assess the cost-effectiveness of current training and educational programs. This assessment should be designed to identify ways to improve and, if appropriate, expand current programs statewide. If, based on the results of this assessment, the department decides not to expand current programs, it should identify additional or alternative approaches to educate taxpayers on calculating the surcharge due.

The department has begun to standardize procedures.

Since OPPAGA's review, the Department of Business and Professional Regulation has developed a Process Review Committee consisting of a cross-functional team within the Bureau of Auditing and Tax Collection to support improvement initiatives. In addition, the department has standardized procedures in four areas:

- pre-audit questionnaire,
- training bulletin on free drinks,
- surcharge audit review checklist, and
- training bulletin on proper surcharge status report.

The department anticipates that draft surcharge audit procedures, which it distributed to all district audit offices August 1998, will be finalized by June 1999. Once completed, these actions should generally address our recommendations to standardize audit procedures.

The department has taken steps to refine the audit selection process.

The department implemented an automated audit selection program that incorporates several factors including:

- late reporting,
- under-reporting,

- non-reporting,
- average monthly tax payment,
- deviation from average tax payment for license type, and
- previous audit results.

In addition, in seven of eight districts the department implemented a second automated audit program that compares the sales data from wholesalers to the purchases reported by retailers and identifies any reporting discrepancies. This program will be operational in the remaining district by December 1999. Once completed, these actions should generally address our recommendations to refine the audit selection process.

The Florida Legislature considered policy options to address problems identified.

OPPAGA's prior report estimated that imposing the surcharge at the wholesale level or repealing it and increasing excise taxes would save the state \$2.3 million annually in trust funds and reduce record keeping requirements for Florida businesses. The 1997 Legislature amended state law to provide that "[n]o later than March 1, 1999, the Department of Business and Professional Regulation shall certify to the President of the Senate and the Speaker of the House of Representatives the amount of taxes due and paid during calendar year 1998 under sections 563.05, 564.06, and 565.12, Florida Statutes, and payments made to the state pursuant to section 561.54, Florida Statutes. If this amount is greater than \$535 million, then, effective July 1, 1999, section 561.501, Florida Statutes, is repealed." Pursuant to Florida law, on February 19, 1999, the Department of Business and Professional Regulation certified the total collection of alcoholic beverage excise tax for calendar year 1998 was approximately \$464 million, which is less than the amount required for repeal of the surcharge.

The 1999 Legislature considered but did not pass legislation that would have reduced by one-half the surcharge on alcoholic beverages consumed on-premises of licensed establishments until September 1, 2000, and at that time would have abolished the surcharge.