

Targeted Relief for the Hospitality and Food & Beverage Industries

The March 13, 2020 declaration of the COVID-19 national emergency set into motion an unprecedented interruption in the hospitality industry and the food and beverage supply chain, with federal, state, and local jurisdictions ordering the immediate closure of all non-essential businesses. As a result of the shutdowns, businesses in the food and beverage industry have experienced significant losses in inventory due to the lack of merchantability of products that spoiled, expired, or were no longer suitable for human consumption.

To remedy this problem, legislation has been introduced that offers a limited, one-time tax credit to businesses that suffered these pandemic-related shock losses in 2020. The legislation, **H.R. 1346/S. 477, the Hospitality and Commerce Job Recovery Act of 2021**, includes several tax relief proposals, including the proposal for perishable inventory, that aim to provide businesses in the impacted hospitality, travel, and food and beverage industries targeted tax relief.

NBWA Key Priorities:

- **Addressing Inventory Shock Losses:** The Hospitality and Commerce Job Recovery Act of 2021 is bipartisan legislation in the House and Senate to help jumpstart hospitality industry businesses as American consumers prepare to return to regular business and leisure travel. The bipartisan legislation offers short-term, limited tax relief for businesses that experienced pandemic-related shock losses in 2020 due to perishable food and beverage inventory that spoiled and became unmerchantable.
- **Targeted Tax Relief:** The legislation allows for a tax credit for the entity in possession of the product on the date that it became no longer merchantable and requires an offset of the tax credit for any compensation received by the taxpayer from insurance coverage or any cost-sharing arrangements. Allowing a limited, one-time tax credit will assist businesses with keeping their doors open and employees on the payroll.
- **Protection of Donations to Food Banks:** The legislation does not disrupt or disincentivize future food and beverage donations to the hunger community, food banks, or other charities. Specifically, inventory eligible to receive a tax credit is limited to product that became unmerchantable in the window of March 13, 2020 to September 30, 2020. Additionally, product that spoiled during this window was ineligible for donation at that time, as it was no longer consumable.

NBWA Encourages Congress to:

- ✓ Cosponsor H.R. 1346/S. 477, the Hospitality and Commerce Job Recovery Act of 2021, by contacting:

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Federal Preemption: Alcohol Shipping through the U.S. Postal Service (USPS)

The 21st Amendment to the U.S. Constitution grants states clear authority to regulate the manufacture, sale, and distribution of alcohol within their respective borders. This allows states to establish an alcohol regulatory framework that appropriately balances the demands of the marketplace with consumer protection, revenue collection, and public safety concerns, including the improper sale, mishandling, misuse, and abuse of alcohol.

Legislation to allow the USPS to ship beverage alcohol undermines nearly 90 years of well-established state alcohol regulatory authority while threatening the public health and safety benefits fundamental to the current alcohol regulatory structure. Past legislation failed to recognize each state's constitutional authority to enforce its alcohol laws against the industry and a state's ability to differentiate between beer, wine, and distilled spirits. Such proposals could compromise the ability of states to effectively oversee the alcohol industry and marketplace by preempting state alcohol laws.

NBWA Key Priorities:

- **Marketplace and Consumer Protections:** The current system of alcohol regulation exists to safeguard the American public and marketplace. Allowing the shipping of alcohol through unregulated channels could have severe consequences, including opening the market to potentially counterfeit or tainted foreign-sourced alcohol and creating easier access to alcohol for underage consumers.
- **Current Law Creates Accountability:** There is a chain-of-custody for all alcohol sold in the United States; a supplier (brewer, distiller, vintner, or importer) sells to a licensed distributor who can only sell to a licensed retailer.
- **Successful State-Based System of Alcohol Regulation:** As a result of the passage of the 21st Amendment, there are 50 different state regulatory regimes for alcohol sales that are determined by state legislatures and are reflective of the attitudes of their citizens. In some states, common carriers can deliver alcohol but are required to follow established protocols that comply with state law. Additionally, state regulators lack the jurisdictional authority over the federal USPS to properly enforce these established protocols that protect public health and safety. These include age verification, appropriate revenue collection, license revocation, and product safety.
- **Alcohol Excise Tax Collection:** The alcohol industry collectively contributes over \$20 billion in annual tax revenue to state and local governments for sales and excise taxes on beverage alcohol. Past legislation failed to recognize this and risks forfeiting the collection and remittance of necessary state and local taxes.

NBWA Encourages Congress to:

- ✓ Oppose legislative proposals that undermine the crucial role of the state and federal system of alcohol regulation in safeguarding the public and disregard the work by state and local regulatory agencies to create a system of industry accountability.
- ✓ Oppose efforts to allow the USPS to ship alcohol and support the current system of alcohol regulation that protects the American public.

The regulatory structure of the alcohol industry serves as a proven framework that allows states to effectively regulate under a federal structure that ensures a safe and orderly marketplace. Policymakers focused on the legalization of marijuana can draw on the expertise and experience of the alcohol industry and public health leaders when contemplating and addressing needed **regulation, revenue, and research** principles in the marijuana industry. Additionally, since the enactment of the 2018 farm bill, there has been considerable confusion in the marketplace about the legality of products containing cannabidiol (CBD) and further federal guidance on this issue is needed.

CBD: Stakeholders continue to wait for clear guidance from the Food and Drug Administration (FDA) as it pertains to allowable uses of CBD. All the while, CBD products have continued to proliferate in the marketplace. The FDA must be urged to provide more robust guidance and establish regulatory principles so that market participants can produce, distribute, sell, and consume CBD products with legal certainty.

Regulation: Effective regulation has ensured states are able to decide if they want to legalize a product and how to best regulate that product to maintain a legal, safe, and orderly marketplace that eliminates illegal operations. The tenets of the 21st Amendment continue to provide a solid framework for states and the federal government to regulate the alcohol industry and could be considered when debating similar policies for the marijuana industry. Federal and state restrictions work in tandem to manage access and outlets to balance recognized objectives, including revenue collection and public health and safety.

Revenue: State marijuana legalization efforts have typically been accompanied by excise tax policies at both the state and local levels. Recent legalization efforts, including those in New York and New Jersey, have earmarked revenue raised from these excise taxes to address social injustices and provide aid to disproportionately impacted communities. Regulation in the alcohol industry has proven critical to the efficient collection of alcohol excise taxes. Principles established in the alcohol industry provide checks and balances for tax administrators charged with collecting excise taxes and ensuring an accurate accounting of these revenues.

Research: Just as with the alcohol industry, research that seeks to investigate the impact that marijuana can have on human behavior, development, and general health must be a priority. Further research must also be conducted to obtain better methods and techniques to accurately measure marijuana impairment, like an alcohol breathalyzer. For employers, the inability to reliably determine on-the-job impairment levels adversely affects the workplace and creates transportation safety concerns. Employers are currently faced with the challenge of maintaining their workforce, ensuring a safe workplace, and protecting the public on the roadways. Investment and advancement in research must coincide with marijuana legalization efforts.

NBWA Key Priorities:

- CBD: The public is still anticipating further guidance from the federal government about the legality of CBD-infused consumable products. This ambiguity has led to uncertainty in the marketplace and unanswered questions about product distribution.
- While there are significant differences between alcohol and marijuana, the principles that work to regulate alcohol could be considered for marijuana.
- Policy debates should focus on regulatory oversight and effective regulation, revenue collection through excise taxes, and additional research to understand the overall impact of marijuana use.

NBWA Encourages Congress to:

- ✓ Urge the FDA to provide stakeholders further guidance on the regulatory pathway forward for CBD.
- ✓ Consider the established and effective regulatory policies of the alcohol industry as a guide when determining regulatory policies for the marijuana industry.
- ✓ Support efforts, including research, to address workplace and workforce priorities.

NBWA supports permanent tax relief for Main Street businesses. Reducing the overall tax burden for Main Street businesses remains a priority for NBWA and its membership. Focusing on S corporations and other pass-throughs, estate tax relief, increased business expensing, and preservation of LIFO accounting all allow the 3,000 independently owned beer distributors to plan for the future. As the nation recovers from the COVID-19 pandemic, beer distributors continue to support tax incentives that create jobs and stimulate the economy.

NBWA Key Priorities:

- **Tax Structure:** America's beer distributors are primarily structured as S corporations and their business income flows through to the owner's individual income tax return, while others are organized as C corporations.
- **Pass-through Deduction:** The 2017 tax law provided temporary relief for S corporations. The pass-through deduction, known as Section 199A, allows for a 20 percent deduction of qualifying business income for pass-through businesses. This deduction is scheduled to expire at the end of 2025, which will result in a significant tax increase on S corporations, partnerships, and sole proprietorships and will lead to lower growth. **H.R. 1381/S. 480, The Main Street Tax Certainty Act**, would make the Section 199A deduction permanent and provide certainty to businesses and their employees who have been impacted by the COVID-19 pandemic.
- **Stepped-up Basis:** Current tax law allows for the "stepped-up" tax basis of an inherited asset to reflect the fair market value at time of death, removing from taxable gain the appreciation in the asset's value over time. Removal of stepped-up basis on beer distributors with investments in illiquid land, structures, and equipment would put family-owned businesses at risk of liquidating critical job-producing assets to pay for the new increased tax burden. The impact of a one-time capital gains tax can be much larger than the annual income of the business, threatening the business' viability.
- **Estate Tax:** As a result of the 2017 tax law, the 2021 temporary estate tax exemption is currently \$11.7 million for individuals and slightly more than \$23 million for married couples. Legislative proposals that reduce the estate tax exemption or raise current estate tax rates on Main Street businesses will adversely affect family-owned businesses.
- **Expensing & LIFO:** The allowance for full and immediate expensing of qualifying asset purchases and the ability to use LIFO accounting both encourage investment in small businesses.

NBWA Encourages Congress to:

- ✓ Cosponsor H.R. 1381/S. 480, the Main Street Tax Certainty Act, by contacting:

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- ✓ Oppose the elimination of family businesses' ability to use stepped-up basis.
- ✓ Support efforts to provide permanent estate tax relief to help family businesses.
- ✓ Make the expensing provision permanent and maintain LIFO accounting.

Transportation and Infrastructure: Commercial Driver's License Workforce Development

NBWA represents over 3,000 independent beer distribution facilities across the U.S. that employ more than 140,000 hardworking Americans, many of whom hold a Commercial Driver's License (CDL). Drivers safely deliver thousands of labels of beer to licensed retailers throughout local communities, returning to the warehouse at the conclusion of the day. The nation's infrastructure system supports and strengthens industries across the U.S. and a well-maintained, efficient network of highways is crucial for the flow of commerce.

NBWA Key Priorities:

- **CDL Legislation:** The nation is experiencing a widespread CDL driver shortage. **H.R. 1745/S. 659**, the DRIVE-Safe Act, bipartisan legislation in the House and Senate, would create an apprentice program to allow CDL holders between the ages of 18 and 21 to drive interstate and would also help grow the CDL driver workforce.
- **Infrastructure Investment:** Modernizing and investing in the nation's infrastructure is critical to the growth of our economy. Investments in our nation's roads and bridges will strengthen the supply chain and improve the safety of the traveling public.
- **Safety:** It is important to understand the effects of all forms of impaired driving, including marijuana impairment. More research is needed to develop reliable roadside detection mechanisms to measure all types of driving under the influence.
- **Sustainability:** Many NBWA members have transportation fleets that include alternative-fueled vehicles; incentives for the use of alternative fuels allow NBWA members to continue to develop fleets that are environmentally friendly.

NBWA Encourages Congress to:

- ✓ Support strengthening America's workforce by cosponsoring H.R. 1745/S. 659, the DRIVE-Safe Act, by contacting:

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- ✓ Support meaningful efforts to increase the pool of eligible CDL drivers.
- ✓ Invest in infrastructure to generate economic growth and employment.
- ✓ Conduct further research on all forms of impaired driving.
- ✓ Support incentives for natural gas and alternative-fueled vehicles.

Alcohol Regulation in the U.S.

America's unique history with alcohol has helped shape the U.S. system of alcohol regulation we know today. This history includes Prohibition, which started with the adoption of the 18th Amendment to the U.S. Constitution in 1920 and was nullified by the ratification of the 21st Amendment in 1933. The U.S. system of alcohol regulation has continued to evolve and adapt throughout the nearly 90 years since the passage of the 21st Amendment, which delegated primary regulatory authority of alcohol to the states.

American consumers benefit from this system that works to protect public health and safety and has helped facilitate unprecedented consumer choice. **A key component of this regulatory structure is a robust system of open and independent distribution.**

Unlike many foreign alcohol markets, which can be riddled with tainted and unsafe products, America's system of distribution and regulation ensures consumers can be confident in the products they consume. This system requires a clear chain-of-custody for alcohol products and a separation between licensed and regulated suppliers, distributors, and retailers (the three-tier system) – thereby creating several checks and balances to ensure that unlicensed or illegally sourced products do not reach American consumers.

This open and independent distribution system has also helped foster tremendous growth within the craft beer segment and is essential to competition within the beer marketplace. In the 1980s, there were fewer than 50 breweries in the U.S. Today, there are over 12,000. The U.S. system of independent distribution has allowed countless new breweries and products – from imports to crafts to seltzers – to grow in response to consumer demand by ensuring all brewers have access to the marketplace.

NBWA Key Priorities:

- NBWA supports the 21st Amendment to the U.S. Constitution that ended Prohibition and delegated primary authority of alcohol regulation to the states.
- NBWA opposes legislative and regulatory challenges to federal and state alcohol laws that weaken regulatory authorities and threaten to undermine the public health and safety benefits and other legitimate interests afforded by the current system.
- NBWA works with the industry's federal regulator, the U.S. Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB), to ensure proper federal oversight.
- The benefits of the U.S. three-tier system of regulation are demonstrated by contrasting it with foreign systems where consumers face uncertainty about the integrity and safety of alcohol products.

NBWA Encourages Congress to:

- ✓ Support the 21st Amendment to the U.S. Constitution.
- ✓ Support legislative policies that uphold the effective regulation of alcohol at the state and federal levels and maintain the current system of independent alcohol distribution.
- ✓ Ensure the proper oversight and appropriate funding of the TTB.
- ✓ Oppose legislation that preempts state alcohol laws and threatens state regulatory authority.
- ✓ Support antitrust oversight and enforcement to prevent vertical integration and promote access to the marketplace via independent distribution.
- ✓ Utilize NBWA as a resource on all alcohol-related legislation and policy by emailing info@nbwa.org.

Multiemployer Pension Plans

Many beer distributors participate in multiemployer defined benefit or pension plans and have met their contribution responsibilities dutifully. However, a number of these plans remain underfunded. These outstanding liabilities threaten the solvency of participating businesses and the retirement security of millions of plan beneficiaries. The recently passed American Rescue Plan Act included a Special Financial Assistance Program for Financially Troubled Multiemployer Plans. Although the Program addresses the financial needs for some of the most troubled plans, it does not address needed systematic reforms.

NBWA Encourages Congress to:

- ✓ Address withdrawal and partial withdrawal liability.
- ✓ Enact funding rules to allow trustees to address problems before they happen.
- ✓ Update notice and disclosure rules to ensure that both employers and employees understand the financial health of these plans.

State and Local Tax (SALT)

The 2017 tax law capped deductions for state and local taxes at \$10,000 per year. This cap applied to the business income of many smaller Main Street businesses but not the income earned by C corporations. For pass-through entities, such as S corporations and partnerships, only those businesses operating in states that impose taxes at the *entity level* can take the same deduction as a C corporation. S corporations and partnerships operating in states that impose the taxes at the *individual shareholder level* are subject to the \$10,000 cap and can no longer deduct the total amount of the state and local taxes paid on their business income.

NBWA Encourages Congress to:

- ✓ Restore the ability of Main Street employers to fully deduct state and local income taxes, like C corporations are permitted to do.
- ✓ Address this disparity and restore the full SALT deduction for Main Street employers by allowing pass-through owners the option of paying income tax at the entity level instead of the individual shareholder level.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

The TTB is the primary federal regulator of the alcohol industry. Alcohol wholesalers must have a TTB permit, and these businesses rely on the TTB to provide clarity on regulations to operate legally. The TTB is also responsible for:

- Collecting alcohol excise taxes.
- Enforcing the Federal Alcohol Administration Act (FAAA) and other federal laws that promote fair competition, support state alcohol regulation, and prevent tainted alcohol products from reaching consumers.
- Maintaining a level playing field and facilitating a robust and diverse marketplace.

The TTB regulates nearly 100,000 operations in the U.S., including almost 30,000 permitted alcohol distributors and works to enforce fair competition laws. Additionally, the agency protects consumers through enforcement of FAAA laws related to production, permitting, labeling, and marketing. The TTB collects \$176 in tax payments for every \$1 spent, making it the third-largest revenue-generating agency.

NBWA Encourages Congress to:

- ✓ Support and fully fund TTB so the agency can be responsive to the needs of its regulated businesses.