No Retail Advantage in Utah

State Trades Paper Bags and Stickers for Winery Retail Markup

by Mick Winter

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"Utah's existing businesses are the foundation of our state's vibrant economy, and our goal is to help them prosper." So reads the official **Utah Business Development** program website**.**

Most wineries love to sell directly to visitors because they can charge full retail prices rather than the wholesale price given to distributors. But not in Utah.

Utah state law requires that wineries selling wine from their tasting rooms turn over the *entire retail markup* to the state, plus almost 20 percent in sales taxes. The wineries are allowed to keep only the wholesale portion of the total price, which amounts to about 64 percent of the retail price.

In return for the 36 percent of retail received, the state gives the wineries a supply of brown paper bags and yellow stickers. The stickers say "UDABC," for "Utah Department of Alcoholic Beverage Control." The stickers go on the bottles and the bottles go in the bags.

Wineries Work for the State

The state of Utah, in effect, considers that the wineries work for it, selling "state-owned" wine at a "Type 5 package agency" just as do workers at the state-owned liquor stores. The difference is that liquor store employees get a salary. The wineries get a check for $25 every month. Total. No matter how much wine the tasting room sells, and no matter how much the state brings in from its 55-percent profit on every bottle sold.

Utah is a state, where, according to the Utah Administrative Code, in order to conduct an "educational wine-judging seminar," an application must be filed 90 days prior to the event, and "techniques used in judging the wines must meet internationally accepted techniques of sensory or laboratory evaluation, and the wines used may not be consumed. "Wines used for the seminar must be purchased by the seminar host at full retail price from a state store."

Legislation Attempted

Wineries themselves *are* legal, and there are currently five of them in the state. They include the state's oldest winery, **Arches Winery**, as well as **Spanish Valley Vineyards & Winery**, both in Moab, Utah. They--and the other three Utah wineries--supported recent legislation (Senate Bill 0194: "Winery Amendments") that would allow wineries to keep the retail markup on wine sold on-site at the wineries, with the state continuing to collect full profits from wines sold through its own liquor stores.

The bill was introduced on January 31, 2000 and sent to the **Senate Revenue and Taxation Committee** where it appeared on the February 8 agenda. Although a number of witnesses, including winery owners and government personnel, spoke on behalf of the bill, the committee "moved on to the next item on the agenda." It was last seen on February 24 being "returned without action" to the Secretary of State. Since Utah has a "citizen-legislature" which is in session only 45 days a year, it will be another year before the legislation can again be attempted.

"We were told that the bill had the votes to get through the Senate Revenue and Taxation Committee," says **Stacy Dezelsky** of Spanish Valley Vineyards. "It was supported by a number of government agencies including the **Department of Community and Economic Development**, and the **Department of Agriculture and Food**, but the vote never took place. We don't know for sure what happened."

This is the second year the wineries have attempted to get relief from a restriction that appears to be unique in the United States. All are small wineries producing less than 3,000 cases. They are legally allowed to have one tasting room at the winery. Although they can advertise their existence, they cannot advertise their *products* in the state of Utah. That is illegal--for them. *Out-of-state* wineries *are* allowed to advertise, due to federal interstate commerce laws.

The burden of losing the retail markup on wine sold by them at their own facilities is a serious one, since wineries in many other states consider on-site sales an essential part of their revenue. Utah wineries consider the state requirements an "illegal take of profits," but no one has yet taken the state to court.

It's The Law

Wine Business Monthly contacted **Ken Wynn**, director of the **Utah State Department of Alcoholic Beverage Control** and asked him a number of questions, including the rationale for the law, why wineries were treated differently than other "package agencies" in terms of payment, whether or not other products were also subjected to the retail markup collection by the state and the amount of money involved from the five wineries. Mr. Wynn responded: "To answer your questions in a very short and direct answer, I will simply say, Utah is a control state, it's the law."

From the Utah state website, we were able to determine that the **Office of the Legislative Fiscal Analyst** reported that wineries would be able to retain approximately $30,000 in revenue annually if the legislation had been enacted. Not a large amount of money, but a significant amount for small, start-up wineries.