ADVANCE ARKANSAS

ANALYSIS

Empowering Consumers:

How a Small Change to Wine Regulations Will Create a Favorable Economic Impact for Arkansans

by Greg Kaza and Dan Greenberg

State law should allow consumers the freedom of choice; consumers deserve more wine selection in wet-county grocery stores. This advancement of economic freedom won't just benefit consumers – it will also create jobs and grow the state's tax revenue. Such a reform would be a win-win-win situation, especially when compared to the cramped choices in wine that grocery-store patrons in wet counties currently have. The peculiarly restrictive nature of Arkansas law in wet counties, as best we can tell, creates no benefit to the public at all – and, from the perspective of foregone tax revenue, it leaves approximately three million dollars of money on the table that could just as easily flow into Arkansas's state treasury.

EXECUTIVE SUMMARY

If you are in an Arkansas county that allows alcohol sales, don't go looking for a bottle of Mondavi or Sutter Home wine in your local supermarket. Thanks to state law, even though you may be able to buy a bottle of wine at a grocery in a 'wet' county, you are unlikely to find an extensive selection of choices. Wine consumers who want more choices will have to go to a second store. Retailers who want to satisfy consumer demand for one-stop shopping are hobbled by state law that blocks the sale of products from most wineries.

Arkansas law that limits wine choices at groceries therefore makes little sense from a consumer's perspective. But it also makes little sense for anyone who wants to increase economic growth or state tax revenue. Limiting wine sales at grocery stores in 'wet' counties hurts job creation and reduces tax revenue. It also puts the state in the position of denying consumers an amenity that many consider relevant to their quality of life. Finally, it is legitimate to consider the potential costs to taxpayers of a constitutional challenge to this law, given that it seems difficult or impossible to justify.

Arkansas consumers are steadily increasing their purchases of wine. State law should reflect this reality and allow them freedom of choice in wet-county grocery stores. This advancement of economic freedom won't just benefit consumers – it will also create jobs and grow the state's tax revenue. It's a true case of a win-win-win situation. The current state of Arkansas law in this area, as best we can tell, creates no benefit to the public at all – and, from the perspective of foregone tax revenue, it leaves money on the table.

1. The Consumer Wine Market in Arkansas

Summary: A large consumer wine market exists in Arkansas, and expanded wine sales could meet this demand.

The Arkansas consumer wine market's size can be estimated using the state Department of Finance and Administration's *Wine Monthly Revenue* report. Each month, the report lists wholesale excise taxes from three different types of wines: small farm wines, wines, and light wines. These reports reveal a significant fact about the consumer wine market – on an annualized basis, consumer purchases from non-small farm wineries generally exceed purchases from small farm wineries by more than 10-to-1.

The following chart demonstrates this relationship. In 2001, non-small farm wine taxed at the wholesale level totaled 1,907,888 gallons, while small farm wine totaled 119,907 gallons. This relationship continues to the present day.

Year	Small Farm Wine[1]	Other Wine[2]
2001	119,907 gallons	1,907,888 gallons
2002	144,621 gallons	1,979,948 gallons
2003	202,715 gallons	2,075,437 gallons
2004	226,069 gallons	2,192,819 gallons
2005	225,184 gallons	2,241,017 gallons
2006	237,083 gallons	2,484,257 gallons
2007	242,853 gallons	2,422,544 gallons
2008	256,215 gallons	2,732,177 gallons

2009	254,321 gallons	2,748,787 gallons
2010	257,395 gallons	3,009,456 gallons
2011	277,275 gallons	3,127,164 gallons
2012	300,601 gallons	3,278,948 gallons
2013	335,337 gallons	3,349,421 gallons
2014	345,852 gallons	3,324,643 gallons

As these numbers illustrate, wine consumption is growing in Arkansas. Consumer demand for non-small farm wine has increased by 74 percent since FY2001. Notably, however, consumer demand for small farm wines expanded much more in the same period: namely, 188 percent. It seems likely that both sectors would continue to expand if state law respected consumer choice. Restricting sales of non-small farm wine frustrates consumer demand, causing both lower economic activity and lower tax revenue.

It makes no economic sense to prohibit grocery stores – places that are heavily visited by consumers – from selling a product that is growing in popularity. A rough estimate suggests that Arkansas grocery stores already employ over 50,000 people. Given access a wider selection of wines and the revenue from its sale, it is likely these stores would see an increase in employment.

2. Wine and Arkansas State Revenues

Summary: Tax revenue from Arkansas wine sales is growing, and policy adjustments could make it grow faster.

As the state's Department of Finance Administration's *Wine Monthly Revenue* reports reveal, state revenues from wine sales have doubled in the 21st century. Expanded wine sales would likely increase this revenue even more.

The following chart demonstrates this relationship in one area: the $0.75 tax per gallon imposed on vinous liquor.[3]

Year	Wine Tax Receipts (Small Farm)	Other Wine Tax Receipts
2001	$89,930	$1,430,916
2002	$108,466	$1,484,961
2003	$152,036	$1,556,578
2004	$169,552	$1,644,614
2005	$168,888	$1,680,763
2006	$177,812	$1,863,193
2007	$182,140	$1,816,908
2008	$192,161	$2,049,133
2009	$190,741	$2,061,590
2010	$193,046	$2,257,092
2011	$207,956	$2,345,373
2012	$225,451	$2,459,211
2013	$251,503	$2,512,066
2014	$259,389	$2,493,482

Both small and non-small wine sales have generated millions of dollars in tax revenues in the 21st century. If there were more locations where these sales could take place, it is likely this revenue would increase even more. Furthermore, consumers visiting grocery stores to purchase wine are also likely to purchase other products. This would drive up sales in those locations. Although deadline pressures have made it difficult for us to get exact figures, we believe that just two large branch grocery store companies generated over $425 million in sales tax revenue for state and local government last year. More people shopping at such stores would mean even more sales tax revenue for the state.

3. The Urgent Need to Create Jobs in Arkansas

Summary: The U.S. Bureau of Labor Statistics reports a net 100-job gain in Arkansas since the Great Recession started in late 2007. In other words, for the last eight years, our state has seen practically no net job growth at all. While many occupations are shrinking, professional and business services – as well as leisure and hospitality services – are growing. This points to a way for Arkansas to create jobs through reforms in its laws governing the sales of beer and wine.

Arkansas is still struggling to recover from the Great Recession. The period between December 2007 to June 2009[4] was one of the worst economic contractions of the postwar era. How bad was the economic damage? U.S. payroll employment, the broadest economic indicator, declined by 7,406,000 jobs, or 5.4 percent. Arkansas jobs fell by 46,300, a 3.8 percent decline.[5]

At the start of the Great Recession, Arkansas had 1,207,600 payroll jobs. In December 2014, the U.S. Bureau of Labor Statistics (BLS) reported Arkansas had 1,207,700 payroll jobs. That is a net gain of only 100 jobs in a seven-year period. BLS records show that job creation in the wider U.S. economy has occurred at a greater rate than job creation in Arkansas since the Great Recession ended. U.S.

payroll employment has increased 7.2 percent versus 3.99 percent in Arkansas.[6] This is not a new trend. In the last decade, Arkansas's yearly job creation rate has exceeded that of the United States only once, in 2010.

While jobs are growing in other areas of the nation, the Great Recession's damage is still being felt by the people of Arkansas.

Digging deeper into the BLS's employment numbers allows one to better understand the sectors of the Arkansas economy that have shed jobs in this period. They include financial services, government, manufacturing, and mining and logging. There are sectors of the economy that are gaining jobs, however:

Arkansas Employment Sector	Percentage Jobs Growth
Professional & Business Services	17.0%
Leisure and Hospitality	13.8%
Education & Health Services	9.0%
Trade, Transportation & Utilities	4.0%
Construction	2.0%

Leisure and hospitality includes food services and drinking establishments. Given the growth of jobs in this sector, the time is right for Arkansas policymakers to update the state's laws governing the sale of wine.

4. Free-Market Economic Development Strategies

Summary: Arkansas should pursue free-market economic development strategies to create jobs in Arkansas.

There are many ways that government seeks to encourage economic development. Sometimes, government tries to manage and direct economic growth through tax credits, subsidies, and other incentives. This is generally a risky way to encourage growth: it often fails, in that the cost to the public often dwarfs any benefit produced by the incentive. In the event of failure, the taxpayer money given away by the government disappears with no jobs or economic growth to show for it.

A less risky way to grow the economy is to relax government impediments to growth. A variety of laws require licenses that seem largely unrelated to consumer welfare; or ban certain products from being sold; or otherwise restrict the ability of business owners to grow their businesses and employ more people. Knocking down these barriers involves little risk to taxpayers. In fact, by expanding business opportunities, taxpayers will likely see more revenue coming into government coffers. A pro-growth economic development strategy also improves Arkansas's quality of life, because consumers will have a wider range of products and services to enjoy.

Consider, for instance, food trucks. A decade ago, the phenomenon of a "restaurant on wheels" was largely unknown. However, as entrepreneurs challenged existing city restrictions on mobile food sales, we've seen a large expansion of food trucks in cities across America. The growth of the food truck industry has created jobs for those working for (or in) them while imposing no direct costs on local taxpayers. In fact, food trucks contribute revenue to local governments through their sales.

These food trucks have also given citizens in the area they serve something new in terms of quality of life. By providing new (and sometimes exotic) food choices, this new business model has enriched the lives of those it serves. By competing with existing eateries, these food trucks even indirectly improve the quality of food for those who do not patronize them.

Wine sales in grocery stores can serve a similar function. By expanding the products sold in grocery stores, creating more choices for consumers will provide new jobs and revenue to these businesses. It will also give consumers a greater selection of wine products. Having more choices will increase the quality of life for shoppers.

Notably, Arkansas is looking to lure corporations from around the world to do business in the state. Corporations from around the world have already invested in the state, bringing with them workers who desire a certain quality of life. Part of a better quality of life is a wide range of consumer products. Among these products is wine. Providing greater consumer access to this amenity should be one part of a larger strategy to lure well-educated professionals to Arkansas.

The importance of amenities should not be overlooked by policymakers. Consider the case of Downriver Detroit. In the late 1970s, it was among the last places on earth where one would expect to find a major Japanese auto manufacturer contemplating construction of a multi-million dollar factory employing thousands of workers.

In the 1980s, a small group of Downriver entrepreneurs and officials sensed an opportunity and pursued Japanese capital investment for the declining automotive area of Detroit. They achieved the improbable in 1984 when the Mazda Motor Company, a Japanese manufacturer, announced that a $450 million assembly plant would be constructed in Flat Rock.

Conventional economic development strategies were part of the process. Flat Rock gave Mazda a 12-year property-tax abatement worth nearly $80 million which helped it beat competitors in Nebraska and South Carolina. But amenities also played an important role in the choice of Flat Rock. Mazda executives and managers would live close to two metropolitan areas with cultural institutions such as libraries, museums, operas, and theaters. Their families would enjoy year-round recreational facilities including parks, gardens, ice rinks, and pools.

Other researchers have noted the significance of retail alcohol sales to Arkansas's economic development. In a 2014 paper, Kathy Deck of the Center for Business and Economic Research at the Walton College of Business in Fayetteville recognized that "local retail alcohol sales are a signal of a contemporary economic development environment." She added that retail alcohol availability improves an area's "ability to recruit talented individuals who value alcohol consumption from across the nation and the world."[7]

Those who consider locating in Arkansas take taxes, education, and infrastructure into account. They also consider quality-of-life amenities that policymakers often overlook. A free-market reform of the law governing wine sales could make a difference. Moreover, one sometimes-unappreciated virtue of free-market reforms is that they require no special economic knowledge to design or administer; in a very real sense, free-market reforms administer themselves.

5. Estimated Revenue Impact

Summary: It is reasonable to predict that expanding wine sales would pour millions of dollars into Arkansas's treasury.

The state Department of Finance and Administration publishes *excise tax* data on revenues and tax rates. The *Wine Monthly Revenue Report* (FY 2014) lists excise taxes collected from wholesalers and tax rates in six categories: Small Farm Winery Tax, $259,389 ($0.75 Gallon); Small Farm Winery Tax, $7,120 ($0.05 Case); Wine Tax, $2,493,482 ($0.75 Gallon); Wine Tax, $59,981 ($0.05 Case); Light Wine Tax, $58,158 ($0.25 Gallon); and Light Wine Tax, $4,811 ($0.05 Case). Excise taxes collected from wine sales in FY 2014 totaled $2,882,940, with the largest amount (86.5 percent) originating with the Wine Tax ($0.75 Gallon).

Excise tax collections from wine have been a reliable source of state revenues in the 21st century, and these revenues continue to grow. Small farm winery excise revenues have increased 14.4 percent annually since FY 2001, while wine tax ($0.75 gallon) revenues, the largest category, increased 5.7 percent in the same period. Wine and liquor sales also generate sales and special retail tax revenues, though DFA does not report these as separate categories. Consumers pay these taxes when they make retail purchases. These revenues have increased 9 percent annually since FY 2002, the earliest year reported on the DFA's site. These revenues flow to the state treasury, even though the largest Arkansas retailers (grocery stores) are not allowed to fully meet consumer demand in the existing wine market. In the current regulatory climate wine sales occur, but grocers are severely restricted in what they can offer Arkansas consumers.

What might a less regulated consumer market look like? When Kathy Deck compared annual alcoholic beverage consumption expenditures by income grouping using data from the 2012-2013 U.S. Bureau of Labor Statistics Consumer Expenditure Survey, she found that Arkansas households with higher average incomes spent more on alcoholic beverages than those with lower average incomes.[8] Dividing sales by Arkansas's over-21 population, Deck estimated the average Arkansan over the age of 21 spent $153 on liquor and wine purchases annually. This average is likely to increase if a more consumer-friendly market exists in Arkansas.

Of course, consumers pay retail sales taxes on wine. The DFA does not publish *sales tax* data on wine sales as a separate category. Nor are retail sales by wine type (white, red, rose, etc.) or producer reported by Arkansas retailers to DFA. Thus, increased *sales taxes* accruing from pro-consumer policies are difficult to estimate. However, Deck estimated Arkansas liquor and wine sales at just over $323 million in 2013.[9] We infer from this estimate that the state takes in roughly $21 million in sales taxes from liquor and wine, given the state's 6.5 percent sales tax rate.

Deck is not the only researcher who has provided estimates of wine sales revenues. Frank, Rimerman + Co. LLP found that the Arkansas "wine and wine grape industry generates significant tax dollars, benefiting federal, state and local governments."[10] The 2010 study, commissioned by Arkansas Tech University, found that the local wine industry generated $12.5 million in state and local tax revenue including "roughly $1.1 million in total excise taxes." These sources include excise, sales, payroll and property taxes, and "other" sources such as dividends, licenses, fines and fees. The study defines the local wine industry as 13 wineries, "the majority of which produce less than 5,000 cases per year." The study notes, "There are very few wineries that sell wine through the three-tier system as the majority of the wineries sell their wine direct to consumer, direct to trade/self-distribute and at various wine events and festivals." Respecting consumer sovereignty would not affect this model, and could benefit local wineries through greater consumer visibility.

Revenue estimates can be calculated using growth rates derived from the *Wine Monthly Revenue Report* and other studies as baselines. First, assume more revenue will be generated for Arkansas state and local governments as wine markets expand in response to policy changes that respect consumer sovereignty. Revenue growth has already occurred, with excise tax collections from wine wholesalers nearly doubling in the 21st century, the DFA's *Wine Monthly Revenue Report* shows. State revenues from excise taxes on wine have increased since the 2010 report. Five and 10 percent growth rates are possible in the market, though it is impossible to estimate the exact amount of lost excise and sales tax revenues if current anti-consumer policies remain in place.

Increased *excise taxes* accruing from pro-consumer policies can reasonably be estimated in a range from $137,000 (low estimate) to $302,000 (high estimate) in FY 2016. Increased sales taxes can reasonably be estimated in a range from $1,776,000 (low estimate) to $3,552,000 (high estimate). Estimates are, of course, inherently imperfect; our estimates are based on the following assumptions. In a world in which Arkansas consumers had more choice in wine when shopping in supermarkets, they would spend more disposable income on wine; current policies do not encourage convenience. Consumers will not reduce their consumption or substitute other alcoholic beverages if new policies encourage convenience. Liquor and wine sales increase 5 percent annually, and consumers increase wine purchases by 5 to 10 percent as more brands become available.

It is reasonable to assume, speaking very roughly, that expanding consumer choice of wine in groceries would increase state revenue somewhere between two million to four million dollars every year.

6. Consumer Sovereignty

Summary: Beyond the economic and revenue benefits that would come from expanding wine sales, there is another reason to do so: consumer sovereignty. Consumer sovereignty is a foundation of the modern American free-enterprise system.

This concept has been described as “the customer is always right.” One of consumer sovereignty's most influential proponents was the Nobel Laureate F.A. Hayek.[11] Hayek was among a small group of economists in the 1920s and 1930s who questioned the viability of central planning in the Soviet Union, a system that ignored consumer sovereignty in favor of pursuing bureaucratic objectives. When the Communist system eventually collapsed, this vindicated his critique.

Hayek was a contemporary of William Harold Hutt, who coined the term “consumer sovereignty.” Hutt stressed the importance of deferring economic decisions to consumers. He wrote, ”The use to which I have personally tried to put it may perhaps be said to have resulted in a doctrine; but as a concept it simply refers to the controlling power exercised by free individuals in choosing between ends, over the custodian's of the community's resources, when the resources by which those ends can be served are scarce."[12] In other words, market economies do not permit businesspeople to control the production and sales of goods. It is consumers who make the choices which lead to successes or failures in business; if businesses fail, they leave the marketplace, and their assets are controlled by someone else who faces the same exacting standard. Consumers who exercise their freedom to choose the goods and services they buy therefore acquire a kind of sovereignty and dignity by virtue of their actions.

7. Choice and Convenience

Summary: Freedom of choice leads, in this area as in many others, to increases in personal happiness, social progress, and business excellence.

The state-imposed distinction between small and non-small farm wine products is anti-consumer. Why should Arkansas encourage small farm wine products when revenue data suggest Arkansas consumers have other preferences? Why aren't large wine farm products available at Arkansas grocery stores? Shouldn't adult Arkansas consumers be allowed to purchase either kind of wine, at the regulated outlet of their choice? Indeed, they would enjoy this freedom if the principle of consumer sovereignty was consistently applied to the Arkansas wine market.

Current law does not recognize the consumer as king. The law limits grocery stores in wet counties to selling "small farm" wines. That is a wine where no more than 250,000 gallons are produced for sale. Some may see this as necessary to protect small wineries. In fact, it is an incentive for failure, or at least for mediocrity. That is because if a wine entrepreneur produces a great and popular wine, he is limited to producing only 250,000 gallons. If he produces more than that, he destroys much of his market. Current law discourages economic growth and commercial success: you might say it penalizes excellence.

The restriction on wider wine sales in supermarkets is ultimately anti-consumer: it reduces the choice of those who would enjoy a wider selection of wines than they can currently get from supermarkets. It is difficult to understand what rational policy is being furthered by walling off most wines from consumer access. After all, *some* wine is available in supermarkets, just not as wide a selection as is legally sold in a liquor store down the road. The difference between permissible and impermissible wine is not related to alcohol content or some other public-health rationale. Instead, it is based solely on whether the maker of the wine produces a large amount of it or not.

Our healthy respect for consumer choice should not be construed as a call for lawmakers to repeal Arkansas's wet-dry system (that is, the existing system of allowing alcohol sales in some counties but banning them in others). The popularity of county control over alcohol sales was demonstrated in 2014, when over 57 percent of voters rejected a constitutional amendment to allow alcohol sales statewide. Policymakers who respect Arkansas's cultural attachment to collective determination of county-by-county alcohol regulation should note that the policy change we recommend in this paper is entirely consistent with the policy choice expressed in 2014 by the majority of Arkansas voters.

In counties that have chosen to allow alcohol sales, it makes little sense to force wine consumers to choose from such a limited selection in supermarkets. Wine consumer satisfaction could be increased substantially by allowing places already permitted to sell wine the ability to sell a larger selection of it. As a general matter, it is reasonable to draw the conclusion that a large majority of Arkansans would prefer more choice in wine selections, given the baseline fact of existing wine availability.

8. Is The 250,000-Gallon Limit Constitutional?

Summary: A reasonable case can be made that the 250,000-gallon limit rule is unconstitutional, because it is difficult to imagine what rational basis it has.

No law can survive a court finding of unconstitutionality. The rule for determining the constitutionality of occupational and commercial regulation is generally this: if a judge is provided with any reason for the disputed regulation, or if a judge can *imagine* some kind of a reason, that is sufficient to let the regulation stand as constitutional.

Speaking very generally, this has been the law since the 1955 U.S. Supreme Court case of *Williamson v. Lee Optical Co*.[13] That case involved an Oklahoma law that prevented opticians from copying eyeglass lenses, or swapping old lenses into new frames, absent a doctor's prescription. It is difficult to see how this law was good for consumers or good public policy generally, but it is easy to see how it was very good at creating an income stream for eye doctors; regrettably, it seems plausible that the interests of eye doctors and not the general public were the primary motivator of the Oklahoma legislature. However, the Supreme Court ultimately determined that this law was constitutional, despite what appears to be its anti-consumer impact.

The lower court had determined that opticians are perfectly capable of swapping old lenses into new frames without a doctor's prescription. That lower court held that the legislature had "arbitrarily" blocked opticians from practicing a "long recognized trade."[14] But the Supreme Court reversed that lower court and determined that the Oklahoma law was constitutional. In the Supreme Court's decision, it offered a series of *guesses* about what Oklahoma legislators *might* have thought the benefits would be of requiring eye doctor visits in order to swap or copy lenses.[15] But there was never any actual evidence offered in court to support these guesses by the Supreme Court.

This "rational basis" standard of review – namely, if the court can imagine a reason for the law, then the law stands – is often used today and is obviously an easy standard to meet. All it takes is a judge who is clever or who has a reasonably good imagination. If a judge can imagine a rational basis for a law, then it passes the rational basis standard. As you can imagine, just about any law will win in court (and be judged constitutional) on this standard, because you can imagine a rational basis for just about any law.

Is it possible to imagine a rational basis for the 250,000-gallon limit? It is difficult. Perhaps its advocates can imagine a rational basis for it. Perhaps, if the law ends up challenged in court, it will be heard by an especially imaginative or creative (or, at least, credulous) judge. It is hard to see what justification such a law would have, but courts do sometimes uphold liquor regulations that seem equally groundless. (For instance, a Kentucky law that prevented stores from acquiring a license to sell wine if more than 10 percent of their income came from selling groceries or gas was recently upheld at the federal appellate level, apparently on the theory that the presence of wine in such stores might be harmful to minors.[16]) Nonetheless, legislators ought to give some consideration to stripping laws that have no obvious rational basis off the books, especially because that the award of attorneys' fees to the lawyers who successfully challenge such laws can result in a sizable hit to the state treasury – an event which is, of course, ultimately detrimental to citizens and taxpayers.

CONCLUSION

Arkansas consumers have demonstrated their preference for consuming wine, even (and especially) non-small farm wines. However, state law gives small farm wines an unwarranted commercial advantage by forcing grocery stores to carry them and by prohibiting these stores from selling more popular brands. This law denies the customer his sovereignty.

Beyond its anti-consumer aspect, this policy also hurts the state's economy. It prohibits the sale of popular products in stores that employ tens of thousands of Arkansans. By foiling consumer choice, it not only stifles job creation but also reduces tax revenue. It also presents some risk of a constitutional challenge, and the possibility of its failure to pass a constitutional challenge presents the related possibility of significant taxpayer expense.

Permitting wet-county grocery stores to offer more choices in wine would be a pro-market policy change that will allow stores to serve consumers better while creating jobs and increasing tax revenue. Arkansas has yet to recover in any significant way from the Great Recession, and so this is a policy change that should be seriously considered by lawmakers in Little Rock.

APPENDIX: HOW WINE IS TAXED

The DFA's Office of Tax Administration consists of five sections including Miscellaneous Tax and Special Refunds.[17] The Miscellaneous Tax section administers "the interpretation, collection, and enforcement of twenty seven (27) taxes, licenses and fees."[18] These include taxes on beer, liquor, and wine.

Wine taxes are "collected by the wholesaler, acting as an agent for the State." The excise tax levied on "vinous liquor" and "light wine" is reported and paid to DFA "on or before the fifteenth (15th) day of the month following the month in which the wholesaler or other person authorized to sell obtains delivery from the supplier." *Vinous liquor* is defined as "the fermented juices of grapes, berries, or other fruits and other mixture containing the fermented juices of grapes, berries, or other fruits, having an alcoholic content of more than five percent (5 percent) alcohol by weight. *Light wine* means "the fermented juices of grapes, berries, or other fruits and other mixture containing the fermented juices of grapes, berries, or other fruits, having an alcoholic content between one-half of one percent (0.5 percent) and five percent (5 percent) alcohol by weight. Light wine definition generally encompasses wine coolers."[19] Both are taxed at the aforementioned tax rates.

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[1] Arkansas law defines "small farm winery" as "a wine-making establishment that sells no more than two hundred fifty thousand (250,000) gallons of wine" annually. A "winery or a group of wineries consisting of at least fifty percent (50%) common ownership is to be considered one (1) small farm winery." Act 668 of 2007.
[2] Both categories of wine are considered vinous liquor for purposes of taxation.
[3] DFA, *Wine Monthly Revenue*, FY ending 6/30/2013 with Appendix (FYs2001-2012), and 6/30/2014.
[4] National Bureau of Economic Research (NBER) Business Cycle Dating Committee
[5] U.S. Bureau of Labor Statistics, Current Employment Statistics. (United States) 138,250,000 (December 2007) and 130,944,000 (June 2009); (Arkansas) 1,207,600 (December 2007) and 1,161,300 (June 2009).
[6] BLS, CES: (U.S.) 130,944,000 (June 2009) and 140,347,000 (December 2014); (Arkansas) 1,161,300 (June 2009) and 1,207,700 (December 2014)
[7] Deck, Kathy. 2014. *Economic Impact of Legalizing Retail Alcohol Sales in Craighead, Faulkner, and Saline Counties*. Univ. of Arkansas Sam. M. Walton College of Business, Center for Business and Economic Research.
[8] Id.
[9] Id., at 4.
[10] The Economic Impact of Arkansas Grapes and Wine, 2010.
[11] Hayek spent part of 1950 at the University of Arkansas at Fayetteville.
[12] Hutt, W.H. 1940. "The Concept of Consumers' Sovereignty." The Economic Journal (March) 66-77.
[13] 348 U.S. 483.
[14] 120 F. Supp. 128, 137 (W.D. Okla. 1954).
[15] 348 U.S. 483, 487-90.
[16] *Maxwell's Pic-Pac, Inc. v. Dehner*, 739 F.3d 936 (6th Cir. 2014).
[17] Others are Excise Tax Administration, Sales and Use Tax, Motor Fuel Tax and Tax Credits and Business Incentive Programs.
[18] http://www.dfa.arkansas.gov/offices/exciseTax/MiscTax/Pages/
[19] DFA, ibid.

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