

**STATE OF NEBRASKA
ATTESTATION REVIEW
OF THE
NEBRASKA LIQUOR CONTROL COMMISSION**

JULY 1, 2007 THROUGH JUNE 30, 2008

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Issued on June 23, 2009

NEBRASKA LIQUOR CONTROL COMMISSION
ATTESTATION REVIEW

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NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley
State Auditor

Mike.Foley@nebraska.gov
P.O. Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301
www.auditors.state.ne.us

Independent Accountant's Report

Citizens of the State of Nebraska:

We have reviewed the expenditures, fixed assets, payroll, and revenues of the Liquor Control Commission (Commission) for the period July 1, 2007, through June 30, 2008. The Commission's management is responsible for the expenditures, fixed assets, payroll, and revenues. We did not obtain a written assertion regarding such matters from management.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on the expenditures, fixed assets, payroll, and revenues. Accordingly, we do not express such an opinion.

Based on our review, nothing came to our attention that caused us to believe that the expenditures, fixed assets, payroll, and revenues are not presented, in all material respects, in conformity with the criteria set forth in the Criteria section.

In accordance with *Government Auditing Standards*, we are required to report findings of deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Commission's expenditures, fixed assets, payroll, and revenues and any fraud and illegal acts that are more than inconsequential that come to our attention during our review. We are also required to obtain the views of management on those matters. We did not perform our review for the purpose of expressing an opinion on the internal control over the Commission's expenditures, fixed assets, payroll, and revenues or on compliance and other matters; accordingly, we express no such opinions.

Our review disclosed no findings that are required to be reported under *Government Auditing Standards*. However, we noted certain other matters, and those findings, along with the views of management, are described below in the Summary of Results.

This report is intended solely for the information and use of the Citizens of the State of Nebraska, management of the Commission, others within the Commission, and the appropriate Federal and regulatory agencies; however, this report is a matter of public record, and its distribution is not limited.

Signed Original on File

Mike Foley
Auditor of Public Accounts

Don Dunlap, CPA
Assistant Deputy Auditor

June 23, 2009

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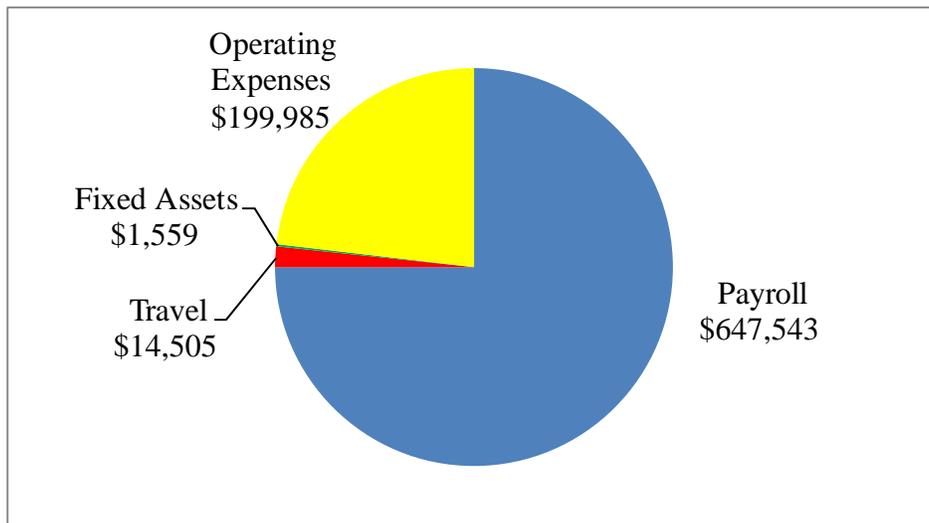
Background

The Commission, created by the Liquor Control Act of 1935, regulates and controls all phases of the manufacture, sale, distribution, and traffic of alcoholic beverages in the State. The Commission regulates the liquor industry by the issuance, revocation, or suspension of liquor licenses as provided by statute. The Commission is also responsible for the collection of applicable license and permit fees and the excise tax on alcoholic beverages, which are remitted to the State Treasurer.

The Commission is composed of three members who are appointed for a term of six years by the Governor with the approval of the Legislature. The Commission meets at least once a month. Each member is paid \$12,500 a year, receives certain State benefits, and is reimbursed for expenses.

Expenditures of the Commission for the fiscal year ended June 30, 2008, consisted of payroll, travel, fixed assets, and operating expenses. For these areas, the total amounts for the fiscal year are noted in the chart below. The Commission's total expenditures for fiscal year 2008 were \$863,592.

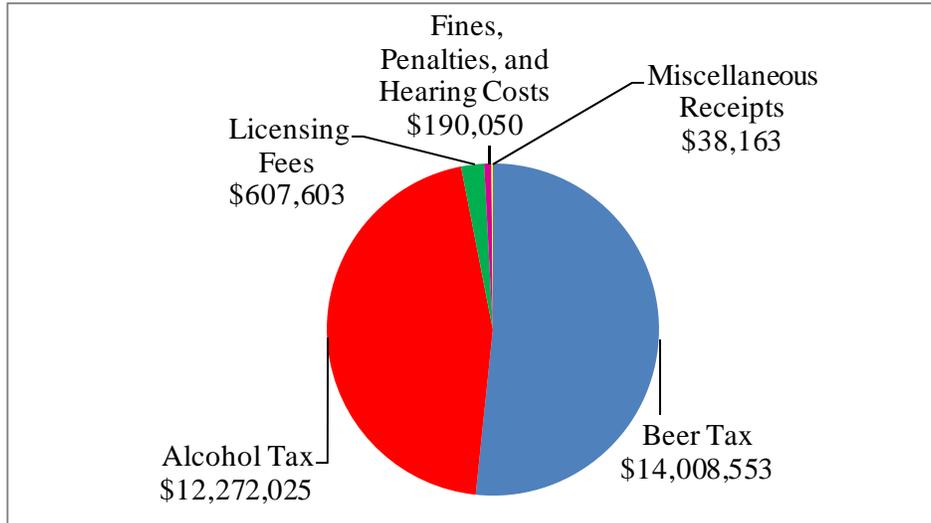
Expenditures for the Fiscal Year Ended June 30, 2008



Revenues of the Commission for the fiscal year ended June 30, 2008, consisted of Beer Tax, Alcohol Tax, Licensing Fees, and Fines, Penalties, and Hearing Costs. For these areas, the total amounts for the fiscal year are noted in the chart below. The Commission's total revenues for fiscal year 2008 were \$27,116,394, of this Beer Tax accounted for \$14,008,553 and Alcohol Tax accounted for \$12,272,025. The Commission deposited \$26,766,674 into the State General Fund during the fiscal year ended June 30, 2008.

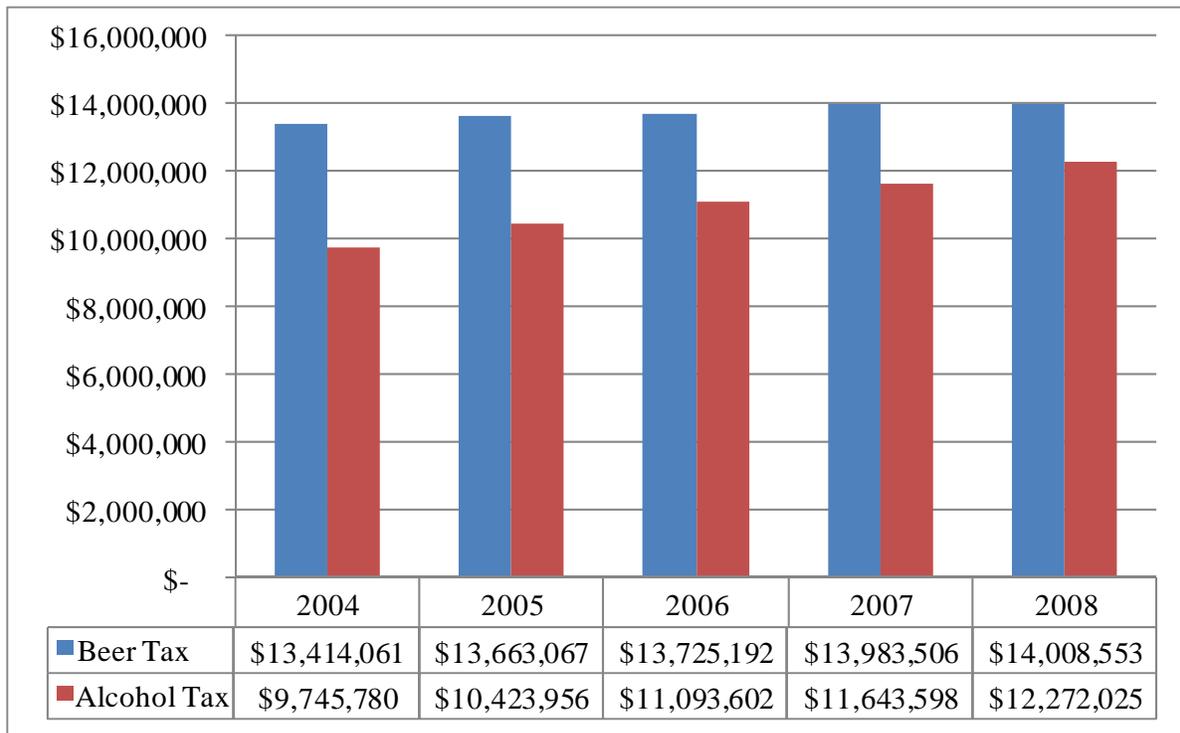
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Revenues for the Fiscal Year Ended June 30, 2008



Beer and Alcohol Tax Revenue

For the Fiscal Years Ended June 30, 2004, 2005, 2006, 2007, and 2008



Criteria

The criteria used in this attestation review were the Administrative Services State Accounting Manual, Commission’s Administrative Regulations, State Statutes, and Agency Contracts.

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Summary of Procedures

Pursuant to Neb. Rev. Stat. § 84-304 (Reissue 2008), the Auditor of Public Accounts (APA) conducted an attestation review of the expenditures, fixed assets, payroll, and revenues for the fiscal year ended June 30, 2008, in accordance with standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The APA's attestation review consisted of the following procedures:

The APA performed a number of procedures common to the subject matter identified. These procedures included gaining an understanding of internal controls, analytical procedures, and follow-up on prior year recommendations. Procedures performed unique to a certain subject matter are identified below.

Expenditures

1. Reviewed and tested various expenditure transactions, including travel related expenses.
2. Reviewed contract procedures.
3. Tested journal entries and negative account transactions.

Fixed Assets

1. Reviewed fixed asset transaction reports.

Payroll

1. Tested employee compensation including leave earnings, usage, and balances.
2. Tested compensation paid to Commission members.

Revenues

1. Reviewed appropriations and traced to legislative bills. Verified restrictions or specific purposes were adhered to.
2. Tested fees charged to statutory authority and fee schedules.
3. Reviewed the Commission's enforcement and monitoring process.

Summary of Results

The summary of our attestation review noted the following findings and recommendations:

1. Controls Over Cash, Checks, and Licensing Process

Good internal control requires an adequate segregation of duties or compensating controls to ensure no one individual is able to both perpetrate and/or conceal errors and/or irregularities. Good internal control also requires procedures to ensure all licenses issued have been properly accounted for.

There was a lack of initial control over monies received for licenses issued by the Commission. A list of cash and checks received was not made immediately upon opening the mail. Lists are not made until the cash and checks were routed to the various divisions. We also noted checks were not stamped for deposit only until reaching the division level. In addition, we noted the following lack of controls over the licensing process:

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- There was a lack of segregation of duties, as one person was capable of handling all aspects of processing licenses from beginning to end.
- The Commission was able to print a license without ensuring license fees were received. The computer system was not monitored to ensure money had been received for all issued licenses.
- License numbers were not reconciled or tracked to ensure they were properly accounted for.
- The Commission was not able to provide a current or past listing of the number of licenses they had issued for the fiscal year ended June 30, 2008.

Without controls to ensure monies received are properly deposited, there is an increased risk that cash or checks could be misplaced, lost, or stolen. Without checks being stamped for deposit only immediately upon opening the mail, there is an increased risk checks could be taken and cashed by someone other than the Commission. Without proper procedures in place over the licensing process, it is possible for licenses to be issued without payment being receipted. A license number could be improperly printed and used without detection.

We recommend the Commission make a complete listing of all monies received and stamp all checks received for deposit only immediately upon opening the mail. The listing should be reconciled to the daily deposit. If cash or checks are returned these should be indicated on the listing and verified. We also recommend the Commission strengthen its controls over the licensing process. Procedures should be implemented to ensure one individual cannot process a licensing transaction from beginning to end. Procedures should also be implemented to ensure licenses cannot be printed without receipt of money and license numbers should be monitored to ensure they are properly accounted for.

Commission's Response: All monies received (cash, check, coin) will be recorded at the mail opening function level.

- *An adding machine tape will be run when the mail documents are opened. The total receipt tape will then be reconciled to the daily deposit document to the State Treasurer.*
- *All checks will be endorsed at the mail opening function and checks then transferred to divisions accordingly.*

Licensing Supervisor will no longer be any part of the mail opening function and therefore closing any window to process the entire license application from start to finish.

The Commission will explore options to enhance the current computer system in place to include the following:

- *Two separate computer license application categories:*
 - *Applications for a license that require no license fees.*

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- *Applications for a license that require a fee. In this instance, a financial required field with no override function will be implemented stopping any further processing of the application until the license fee is received and entered into the system. This will eliminate any license requiring a fee to be issued.*

A monthly report has been created that will serve as a tool to reconcile license fees received with the number of licenses issued requiring such fee.

Beginning July 1, 2009 a beginning license number will be established with following license numbers assigned in numeric sequence.

- *A block of numeric numbers will be assigned to each license staff assistant by the licensing supervisor. Each staff assistant will be held accountable for the numbers within the block. Within this plan, the supervisor will audit the block of numbers as to the status.*

2. License Fees

The Commission may issue a shipping license to a manufacturer outside the State of Nebraska. The Commission has two different types of shipper licenses: 1) licenses issued to the manufacturer who ship to Nebraska wholesalers, and 2) licenses issued to any person, usually it is a manufacturer, who sell and ship directly to a consumer in the State of Nebraska.

Neb. Rev. Stat. § 53-138.01 (Reissue 2004) states, “The State Treasurer shall credit all license fees received by the commission for licenses issued pertaining to alcoholic liquor, including beer, to the temporary school fund...”

Neb. Rev. Stat. § 53-123.15(4) (Supp. 2007) states, “The commission may issue a shipping license to any person who sells and ships alcoholic liquor from another state directly to a consumer in this state...such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.”

The Commission deposited \$96,000 into the Winery and Grape Producers Promotional Fund for the fiscal year ended June 30, 2008, related to the shipping license issued to any person who sells and ships directly to a consumer in the State of Nebraska. This appears to be in compliance with State statute 53-125.15.

However, the Commission deposited shipper license fees issued to a manufacturer who ships to Nebraska wholesalers into the General Fund rather than the Temporary School Fund. This does not appear to be in compliance with State statute 53-138.01. The total amount for the fiscal year ended June 30, 2008, deposited into the General Fund for shipper license fees was \$127,500.

When shipper license fees are deposited into the General Fund it does not appear they are being deposited into the correct fund per State statute 53-138.01.

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We recommend the Commission request a legal opinion from the Attorney General requesting guidance for the appropriate fund to deposit license fees. If it is determined by the Attorney General that the licenses should be deposited into the Temporary School Fund, we would then also recommend the Commission ask the Attorney General to also provide guidance on the transfer of the fees that have been previously deposited into the General Fund from past years.

Commission's Response: The Commission will consult with the Attorney General's office to determine whether a formal attorney general's opinion is warranted. If so, the Commission will request accordingly.

3. Commissioners' Payroll Benefits

Neb. Rev. Stat. § 53-112 (Reissue 2004) states, in relevant part, "Each member of the commission shall receive an annual salary of not to exceed twelve thousand five hundred dollars, to be fixed by the Governor..."

Neb. Rev. Stat. § 84-1601(1) (Reissue 2008) states, in relevant part, "There is hereby established a program of group life and health insurance for all permanent employees of this state who work one-half or more of the regularly scheduled hours during each pay period..."

Neb. Rev. Stat. § 84-1604 (Reissue 2008) states, in relevant part, "The coverages provided for by sections 84-1601 to 84-1615 shall be afforded to each permanent state employee who works one-half or more of the regularly scheduled hours during each pay period, commencing after thirty days of such employment..."

The Commissioners are currently receiving, as they have for at least the past decade, health insurance and other benefits. For the fiscal year ended, June 30, 2008, the State paid a total of \$26,655 for the Commissioners' benefits. According to the Executive Director of the Commission, the Commissioners may have begun receiving these benefits as early as the 1970's; however, he could not provide, and we have been unable to locate, any documentation to indicate the actual number of years the benefits in question have been provided.

Upon appointment of a new Commissioner during the past many years, the Governor's office has issued a single-page document which, in addition to reflecting the new appointee's salary, contains this statement: "Commissioners are considered employees and therefore are eligible for health insurance and other benefits." Though offering no statutory or other supporting authority for that particular claim, the document has apparently been relied upon by some as the rationale for granting benefits to the Commissioners.

The Commissioners do not work regularly scheduled hours. Based upon information provided to us by management of the Commission, the Commissioners work approximately five days per month. Thus, it appears the Commissioners do not work the number of hours specified in both

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Neb. Rev. Stat. § 84-1601(1) and 84-1604 as a prerequisite for receiving State benefits. Therefore, contrary to both the established practice and the tacit approval received over the years, it appears the Commissioners are not entitled to receive health insurance and other benefits.

Unnecessary expenses are incurred by the State when employee benefits are granted to those, as appears to be the case with the Commissioners, who do not meet the statutory requirements for receiving them.

We recommend the Commission discontinue the provision of health insurance benefits to the Commissioners or request a formal legal opinion from the Attorney General to seek clarification as to whether the Commissioners are eligible to receive health insurance and other benefits paid for by the State.

Commission's Response: In accordance with Nebraska Statute § 53-106, the Commissioners are direct gubernatorial appointees. Based upon appointment letters referenced in your report, the Commission is directed to consider the Commissioners as employees qualifying for health insurance and other benefits. Therefore, it appears that the Governor should be the proper authority to request an opinion on the issue.

APA Response: The APA does not agree that the responsibility is that of the Governor's office with regard to the Commissioners' payroll benefits. It is the Commission's responsibility to ensure compliance and proper authority for providing payroll benefits to the Commissioners.

Overall Conclusion

Internal Control

We believe the Commission could improve controls and procedures over cash receipts and the licensing process. Implementing a segregation of duties or a compensating control in the licensing process would reduce the risk of errors or irregularities occurring and not being detected.

License Fees

The Commission should take action to ensure all fees are recorded in the proper fund.

Commissioner's Payroll Benefits

The Commission should discontinue providing payroll benefits to the Commissioners or request an Attorney General's opinion on whether or not State statute provides for such benefits.

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The APA staff members involved in this attestation review were:

Don Dunlap, CPA, Assistant Deputy Auditor

Pam Peters, Auditor-in-Charge

Joan Arnold, Auditor II

Erica Kellogg, Auditor II

Tim Weller, Auditor

If you have any questions regarding the above information, please contact our office.

NEBRASKA LIQUOR CONTROL COMMISSION
BEER AND ALCOHOL TAX REVENUE FEES

Beer Wholesalers Tax Rate	\$0.31 per gallon
Spirits Wholesalers Tax Rate	\$3.75 per gallon
Wine Wholesalers Tax Rate	\$0.95 per gallon
Farm Wineries Tax Rate	\$0.06 per gallon
Craft Breweries Tax Rate	\$0.31 per gallon
Direct Shippers:	
Beer Tax Rate	\$0.31 per gallon
Spirits Tax Rate	\$3.75 per gallon
Wine Tax Rate	\$0.95 per gallon

Note: Tax rates noted above are per Neb. Rev. Stat. § 53-160 (2004) and have not changed in the last five years.

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ACTIVE LICENSE HOLDERS
AS OF APRIL 30, 2009

<u>License Description</u>	<u>Subtotal</u>
Beer On Sale Only	128
Beer On/Off Sale	28
Beer On/Off Sale/Catering	1
Beer On Sale/Alcohol Liquor Off Sale	3
Beer On Sale Only/Catering	2
Beer Off Sale Only	464
Spirits, Wine, Beer On and Off Sale	1,683
Alcohol Liquor On/Off Sale/Catering	290
Alcohol Liquor Off Sale	827
Alcohol Liquor Off Sale/Catering	56
Alcohol Liquor On Sale Only	868
Alcohol Liquor On Sale/Beer Off Sale	123
Alcohol Liquor On Sale/Beer Off Sale/Catering	4
Alcohol Liquor On/Off Sale	71
Alcohol Liquor On/Off Sale/Catering	19
Alcohol Liquor On Sale/Catering	65
Craft Brewery (Brew Pub)	16
Brew Pub/Catering	3
Non-Beverage Use	7
Non-Beverage Use	4
Non-Beverage Use	1
Non-Beverage Use	1
Non-Beverage Use	3
Boat	2
Airplane	11
Railroad	4
Liquor Shipper	493
Direct Alcohol	239
Beer Shipper	118
Wholesale Beer	28
Wholesale Liquor	27
Farm Winery	19
Farm Winery/Catering	7
Micro Distillery	1
Total Active License Holders	<u><u>5,616</u></u>

Note: This list includes all active license holders as well as new applications that may not yet be approved as of April 30, 2009. The Commission did not have this information as of June 30, 2008. Per discussion with the Commission, the Total Active License Holders for the previous four fiscal years (fiscal years ended June 30, 2008, 2007, 2006, and 2005) has not varied significantly from the 5,616 figure above.