



GAO

Accountability \* Integrity \* Reliability

---

United States Government Accountability Office  
Washington, DC 20548

September 28, 2009

John J. Manfreda  
Administrator  
Alcohol and Tobacco Tax and Trade Bureau  
Department of the Treasury

Subject: *Alcohol and Tobacco Tax and Trade Bureau: Fiscal Year 2010 Proposed Licensing and Registration Fees Program*

Dear Mr. Manfreda:

Over the last several weeks, we reviewed the President's fiscal year 2010 budget request for the Alcohol and Tobacco Tax and Trade Bureau (TTB) to provide pertinent and timely information that the Congress could use during budget deliberations. Our objectives were to (1) examine any programs with significant increases from the prior year and any significant unexpended balances and (2) review any new programs in the budget request. To do our work, we compared prior and current year budget requests, reviewed key budget-related documents, and interviewed TTB officials. Given the objectives and scope of this work, we conducted this work in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions.

Based on our review, we are not recommending any reductions, realignments, or restrictions to TTB's fiscal year 2010 budget. However, given our nation's current fiscal challenges and the government's need to make the most effective use of its limited resources, we provide the following comments on TTB's legislative proposal for a licensing and registration fees program for alcohol businesses contained in the President's fiscal year 2010 budget request, which may be useful to TTB and the Congress during fiscal year 2011 budget preparations and deliberations. We provided TTB an opportunity to provide its views on our work and have incorporated these views, where appropriate.

### **Alternatives to an Annual Licensing and Registration Fee Program Exist**

The TTB legislative proposal would establish a permanent licensing and registration fee program to offset amounts appropriated from the general fund. The Department of the Treasury's congressional budget justification explains the legislative proposal as requiring entities in the alcohol business, including retail dealers in liquors and beer, wholesale dealers

in liquors and beer, alcohol producers, and brewers, to pay an annual licensing and registration fee. TTB would be responsible for implementing and administering this fee program. Generally, the legislative proposal recommended fixed-dollar annual fees for alcohol retailers at \$300, wholesalers at \$500, and producers at \$1,000.

According to TTB officials, TTB included this proposal in its budget request after consultation with the Office of Management and Budget (OMB). OMB maintained that TTB's funding would, then, be in line with other regulatory agencies' funding schemes. If the Congress enacted the language proposed by TTB in the President's budget request, the collection of these fees was expected to raise an estimated \$80 million, or about three-fourths of TTB's budget request for fiscal year 2010, and reduce amounts derived from the general fund. In the next year, fiscal year 2011, collections from the alcohol industries were estimated to cover TTB's entire costs, including the portion relating to the tobacco, firearms, and ammunition industries.

OMB issued a July 15, 2009, statement of administration policy in which the administration urged the Congress to authorize TTB to collect licensing and registration fees from producers, wholesalers, and retailers of beverage alcohol. Per the statement, funding TTB through fees would properly assign the cost of keeping consumers safe to those who profit from the sale of alcoholic beverages. However, our analysis of this fee proposal left us with questions about the overall design.

Alternative designs for TTB's fee proposal exist. A user-fee program can be designed to fund the portions of activities that provide benefits to identifiable users. However, to achieve such a goal, user fees must be well designed. TTB could use OMB and our report's guidance to refine its proposal and develop user fees that (1) tie to TTB's direct and indirect program costs of regulating alcohol, or (2) are set as percentages of some appropriate base, rather than fixed-dollar amounts, or that do both.<sup>1</sup> (The GAO user-fee guide can be obtained through the hyperlink in footnote 1.) Further, the guidance documents suggest that alternative fee designs could include one or more of the following:

- setting the user fees to fund the proportions of TTB's costs attributable to each industry type (i.e., alcohol, tobacco, and firearms);
- making the fee a percentage of a base that measures a business's size, such as sales; and
- varying the fees proportionately if the costs vary by type of business.<sup>2</sup>

When developing the fees, changes in consumer use may also need to be considered. For example, if fees are set based on an anticipated level of sales of alcohol and there is a decrease or an increase in sales, the revenues available to fund TTB would change. Accordingly, fees should be reviewed biennially to assure that existing charges are adjusted to reflect unanticipated changes, and reserve funds should be established.

---

<sup>1</sup>GAO, *Federal User Fees: A Design Guide*, [GAO-08-386SP](http://www.gao.gov/new.items/d08386sp.pdf) (Washington, D.C.: May 29, 2008) (<http://www.gao.gov/new.items/d08386sp.pdf> downloaded on Sept. 3, 2009) and OMB Circular No. A-25 Revised, *Memorandum for Heads of Executive Departments and Establishments; Subject: User Charges* (<http://www.whitehouse.gov/omb/circulars/a025/a025.html> downloaded on Sept. 3, 2009).

<sup>2</sup>TTB management would need to determine if the costs involved in designing an alternative fee, as we note, would outweigh any benefits gained.

These are not intended to be an exhaustive list nor are the alternatives necessarily mutually exclusive—some could be combined, but they illustrate some alternatives that are consistent with OMB guidance and our work.<sup>3</sup> Ultimately, decisions about how to fund an agency's operations are a policy judgment for the Congress. Consequently, this report does not make recommendations.

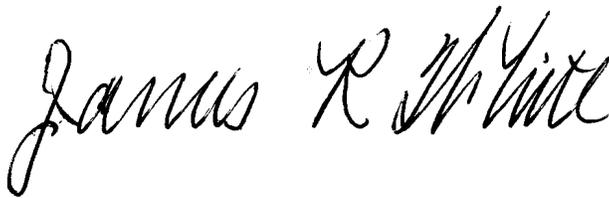
In commenting on a draft of this report, TTB commented that the agency's current licensing and registration fee program proposal already has many of the features consistent with those of a user fee program. Among other things, TTB also expressed concern that too many of the agency's activities do not lend themselves to a user fee program. We agree that many of TTB's activities are not straightforward for a simple user fee and that developing a well designed user fee program can be difficult. We do not take a position on the decision to establish a user fee program or on what portion of TTB's operations should be funded by the same. However, should some type of a fee be imposed, our design guide can assist with many of the challenges TTB identified, such as questions about fee design and collection. The full text of TTB's comments is reprinted in enclosure I.

---

We are sending copies of this report to appropriate congressional committees, the Secretary of the Treasury, the Director of OMB, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions concerning the information discussed in this report, please contact me at (202) 512-9110 or [whitej@gao.gov](mailto:whitej@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in enclosure II.

Sincerely yours,



James R. White  
Director, Tax Issues  
Strategic Issues Team

Enclosures – 2

---

<sup>3</sup>See also GAO, *Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations*, [GAO-09-180](#) (Washington, D.C.: Jan. 23, 2009) for additional information on designing user fees.

Comments from the Alcohol and Tobacco Tax and Trade Bureau



ADMINISTRATOR

DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
WASHINGTON, D.C. 20220

James R. White  
Director, Tax Issues  
Strategic Issues Team  
Government Accountability Office

Dear Mr. White:

Thank you for the opportunity to review and comment on GAO's report, dated September X, 2009, regarding "Alcohol and Tobacco Tax and Trade Bureau: Fiscal Year 2010 Proposed Licensing and Registration Fees Program (GAO-09-1023R)." While in this report GAO is not recommending any reductions, realignments, or restrictions to TTB's FY 2010 budget, the report offers for consideration alternative solutions to improve the licensing and registration fee proposal put forward in the budget request. Ultimately, as stated in the report, the matter is for congressional consideration and any final decision about how to fund an agency's operation rests with Congress.

The basic premise of the TTB licensing and registration fee program is to shift the burden of paying for TTB operations that support the alcohol, tobacco, and firearms industries from the American taxpayer to the producers, wholesalers, and retailers of those products, who benefit from TTB oversight and regulation. Many of the features of this fee proposal are consistent with those referenced in the GAO report, including varying the licensing and registration fees by the type and size of business. Further, our fee proposal responds to the Nation's fiscal crisis by fully funding the bureau through the collection of prescribed fees for conducting business within the regulated industries.

The theory behind user fees, as outlined in the GAO and OMB guidance, is that a nexus exists between the fee amount and the cost of the service, and that user fees can be used to recover the costs of a specific service to the benefited parties. We find merit in the principle of user fees, but too many of TTB's activities do not lend themselves to this sort of fee program, such as tax collection, audits, and regulatory enforcement. Other services, such as product safety inspections, trade talks, and compliance investigations, provide general benefit to the industry in the form of a safe and fair marketplace and increased access to trade opportunities, which again are not conducive to a direct fee-for-service structure. TTB, therefore, cannot recover the full cost of operations under a user fee program.

Though no fee proposal is without its drawbacks, TTB contends that the licensing and fee proposal is sound in its straight-forward approach to recouping the bureau's expenses from all sectors of these industries who benefit from our regulation and enforcement of Federal standards for producing, packaging, storing, importing, and distributing alcohol and tobacco products. The licensing and registration fee program offers the industry stability and predictability in the amount of fee owed, and the bureau a reliable funding stream. Industry could plan and budget for this nominal annual fee and avoid the uncertainty associated with major fluctuations in operating costs from user fees.



*A proud past... A focused future*

[www.TTB.gov](http://www.TTB.gov)

From a policy perspective, the main point of divergence between the user fee and licensing and registration fee programs concerns who bears the burden of the fee. Under a user fee program, an unbalanced proportion of the fees would be charged to producers, who receive permits, label approvals, and investigative oversight from TTB. As producers currently pay \$21 billion in excise taxes, many in the industry construe a user fee for these services as tantamount to double taxation. On the other hand, the licensing and registration fee is an assessment that covers the entire three-tier distribution system: manufacturers, wholesalers, and retailers. These fees would be borne primarily by retailers, who do not owe federal excise tax and who can pass the costs on to the consumers of these products. Our proposal focuses on retailers and wholesalers, who undeniably profit from the sale and marketing of TTB-regulated products.

As part of its user fee scheme, GAO suggests in the report to assess a proportional fee for services provided to firearms and ammunition industry members. TTB levies taxes and conducts audits of these taxpayers. While TTB challenges the wisdom and practicality of a user fee program like the one suggested by GAO, we will continue to review options for passing along to industry the cost of our services to regulated firearms and ammunition businesses.

Congress has not embraced past proposals to impose fees on these regulated industries. Those in opposition have claimed that imposing a fee on applicants seeking a permit to operate in the alcohol or tobacco industry would be a barrier to entry for small businesses. Other objections have been that industry innovation would be threatened, as those operating as manufacturers would need to weigh the costs to introduce new products to the market (i.e., multiple label application fees, laboratory analysis fee, formula review fee, etc.). The most common argument is that a fee program amounts to double taxation.

TTB has examined the cost of delivering its services, and has its own concerns with how a user fee program would impact mission performance. We expend considerable effort and resources on garnering voluntary compliance from industry members. Charging those in the industry for services associated with mandated requirements, such as the filing of an amendment to their permit due to operational changes, would predictably result in lower levels of compliance and work in opposition to our public protection goals.

Further, as a practical matter, developing and administering a user fee program that accounts for more than a dozen industry types with businesses of varying sizes, and that takes into consideration the varying complexity and volume of applications and requests, would be a considerable administrative challenge. As many of TTB's activities are not direct services to industry members, a user fee system as recommended by GAO would require a host of formulas to derive the fees, and TTB would still not recover the full cost of its operations. As GAO notes in its report, the costs of designing a user fee program may outweigh its benefits. The collection of multiple fees would necessitate extensive billings and would require significant additional staff and costly system updates to implement. As proposed, a licensing and registration fee program could be designed and administered at a minimum cost, while fully recovering operating costs, and without detracting from TTB's core mission.

Sincerely,



John J. Manfreda,  
Administrator, Alcohol and Tobacco Tax and Trade Bureau

**Enclosure II**

**GAO Contact and Staff Acknowledgments**

GAO Contact

James R. White, (202) 512-9110 or [whitej@gao.gov](mailto:whitej@gao.gov)

Staff Acknowledgments

In addition to the contact named above, Libby Mixon, Assistant Director; Amy Bowser; Bertha Dong; Carol Henn; Jacqueline M. Nowicki; Shellee Soliday; and Diana Zinkl made significant contributions to this report.

(450729)

---

---

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

---

---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site ([www.gao.gov](http://www.gao.gov)). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to [www.gao.gov](http://www.gao.gov) and select "E-mail Updates."

---

## Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: [www.gao.gov/fraudnet/fraudnet.htm](http://www.gao.gov/fraudnet/fraudnet.htm)

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Congressional Relations

Ralph Dawn, Managing Director, [dawnr@gao.gov](mailto:dawnr@gao.gov), (202) 512-4400  
U.S. Government Accountability Office, 441 G Street NW, Room 7125  
Washington, DC 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548