Unfairly Taxed?

The unintended consequence of the federal excise tax could be that of driving some companies out of business entirely.

By Mike Pehanich

You'd be hard-pressed to find a 10 percent tax that is welcomed by anyone responsible for paying it.

But, in theory at least, the sportfishing community accepts the federal excise tax on fishing tackle with respect — and sometimes even a modicum of pride.

"We pay our way" is the phrase anglers and industry veterans repeatedly voice when referring to the wide-reaching Dingell-Johnson or Wallop-Breaux acts, which fund everything from state fisheries management agencies and projects to building, maintaining and improving access to waterways and angler recruitment.

The final chunk of what is now the $500 million Sport Fish Restoration & Boating Trust Fund is approximately $40 million collected on import duties from fishing equipment.

The FET History

The idea of a fund dedicated to sportfishing restoration and fueled by angler tax dollars first came to fruition in 1950. The Dingell-Johnson Act, or the Sport Fish Restoration Act, imposed a tax on rods, reels and fishing creels. The money collected was, and still is, apportioned to state fishery agencies in proportion to the size of the states and their licensed angler populations.

With industry support, the act was amended in 1984 behind the bipartisan work of then-Democratic Rep. John Breaux, of Louisiana, and Sen. Malcolm Wallop, of Wyoming. Most notably, it raised the number of taxable sportfishing categories from three to 25, which now includes terminal tackle.

With the amendment, anglers were linked with the boating community, directing a portion of the federal fuel tax derived from motorboat gasoline sales into the funding pool, which was renamed The Aquatic Resources Trust Fund.

The fund, which springs from a 10 percent toll on tackle purchases (3 percent on tackleboxes), quickly grew from $35 million to $90 million in the mid-'80s, before topping $100 million shortly thereafter.

The increased funds had an immediate impact. For example, numerous on-the-water facilities were expanded or received facelifts with monies, providing more angler and boater access.

After the 1984 amendment, the Aquatic Resources Trust Fund drew roughly $140 million annually from its apportioned share of the federal government's 18.2-cent-per-gallon tax on fuel. A later amendment also added the federal fuel tax attributable to small engines, which added another $50 million per year in additional fuel tax revenue.

A Needed Change

A 2004 amendment enabled anglers to recover all the federal fuel tax dollars attributable to motorboat gasoline consumption that had been withheld from sportsmen for years. The subsequent fuel tax collection brought an additional $110 million into the trust fund.

Oversight

The U.S. Fish & Wildlife Service oversees the program, and each of the regional offices has an oversight group. In addition, the sportfishing industry and other interested fishery conservation groups, as well as Congress, periodically review fund usage. Staff members from each of the U.S. Fish & Wildlife Service offices are assigned to the states within their jurisdiction to see that the money is spent for the purpose stated in law.

"If they don't, they can lose it all," says Gordon Robertson, vice president of the American Sportfishing Association. "[If wrongdoing is suspected], both the federal aid in Sport Fish Restoration and the Wildlife Restoration monies will be withheld until the state corrects the diversion. The state also can be asked to reimburse any trust fund and license monies that have been diverted to other purposes."

The Problem?

Manufacturers report chronic confusion regarding their tax liability when they are dealing with the Internal Revenue Service.

Why? For one reason, the

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seemingly black and white issue appears to be painted in many shades of camouflage when the canvas is the complex world of international trade. Secondly, the IRS has bigger fish to fry.

As with any big bureaucracy, the priorities of the IRS gravitate toward the biggest engines of revenue.

"The problem is there are 48 excise taxes in the U.S., and the taxes collected on sportfishing tackle rank 47th," says ASA's Robertson. "For example, there is a $40 billion excise tax on diesel fuel. Sportfishing's $110 million only ranks higher than the $20 million on archery equipment."

The result is varied interpretation of tax liability not only between different regional IRS offices, but among the various auditors within any one office.

"You'll find yourself dealing with a new guy who changes his mind and then makes it retroactive," said one manufacturer who spoke on the condition of anonymity.

His is a view shared by many others.

"Confusion between auditors is an absolute fact," says Tony Paino, owner of Optimum Bait Co. "The auditors themselves will admit it. They say the FETs are the most convoluted laws in the country."

Compounding those concerns is the fear of states diverting sportfishing moneys into general state funds to fulfill other fiscal needs. Tales alone of such practice can stir skepticism about the FET and dampen industry goodwill, making the tax seem even more burdensome.

Meetings between the American Sportfishing Association, fish and wildlife agencies and the IRS are held each year to clarify concerns and steer the system toward a fairer and more easily understood application of the tax law.

"It's important that the IRS treat everyone the same, that the playing field be the same for all manufacturers no matter what their geography or category might be," says Robertson. "But that's not always the case."

How well and how consistently IRS agents enforce the sportfishing FET depends not only on the degree of importance a given district office places on it, but also on how well they understand the pricing and relationships between the parties involved in the manufacture and exchange of tackle and component parts.

The flow of money and materials through the complex web of international manufacturing and exchange today can be tough to track. And it's hard to tell the players without a scorecard.

"In today's global economy, most of the fishing tackle is made overseas and it travels through the sales chain in many different ways," says Robertson. "Traditional manufacturers are making products overseas. Retailers are branding products they are importing. And there are many ways to bring products into the country."

Imported tackle was rare in the 1950s. By the 1980s, that had changed. And by the 1990s, imported tackle had become the norm. The massive profit swing that a 10 percent tax can effect has inspired many companies to find creative ways to limit their tax burden.

And working the seams of the 27 legal manufacturing/distribution scenarios outlined by the Internal Revenue Service are the "bootleggers," product manufacturers who operate outside the tax framework at least as long as they can evade the law. These may include counterfeiters, unlicensed "garage" operations and the off-the-books sale of unauthorized production runs by contract manufacturers.

The IRS intends to tighten up its regulation of the sportfishing industry FET, but many in the industry are afraid the agency will turn its attention to the domestic players who may end up paying more than their business can afford to bear.

"The scary thing is that the FET will literally put some manufacturers out of business," says one manufacturer. "And that is scary."

In the September issue of *FTR*, the third and final installment of "Unfairly Taxed?" examines some of the scenarios used by manufacturers and importing companies to limit tax liability. You'll also find out what the industry and the IRS can do to even the playing field. **FTR**

Where The Money Goes

FET moneys are directed to the following:

1. Management and restoration of fisheries. The Sport Fish Restoration & Boating Trust Fund provides vital financial support to the state natural resource and environmental agencies that manage, protect, create and restore sportfisheries. These include state hatcheries, fish surveys, research and management.
2. Create and improve access to waters. On a regional level, 15 percent of the fund must go to access parking for van and boat anglers; boat slides and access facilities for canoes and car-top craft; and boat ramps.
3. Boating safety grants. The FET funds instructional programs and license certification programs.
4. A competitive grant program for boating. Boating Infrastructure Grants are designated for approved boating facilities. Private marina operators may compete for these funds for improvements to docks, ramps and related infrastructure.
5. Recruitment and promotion. About $12 million goes to funding the Recreational Boating & Fishing Foundation, which conducts research on participation and promotes fishing and boating through such programs as Anglers' Legacy and the "Take Me Fishing" campaigns.