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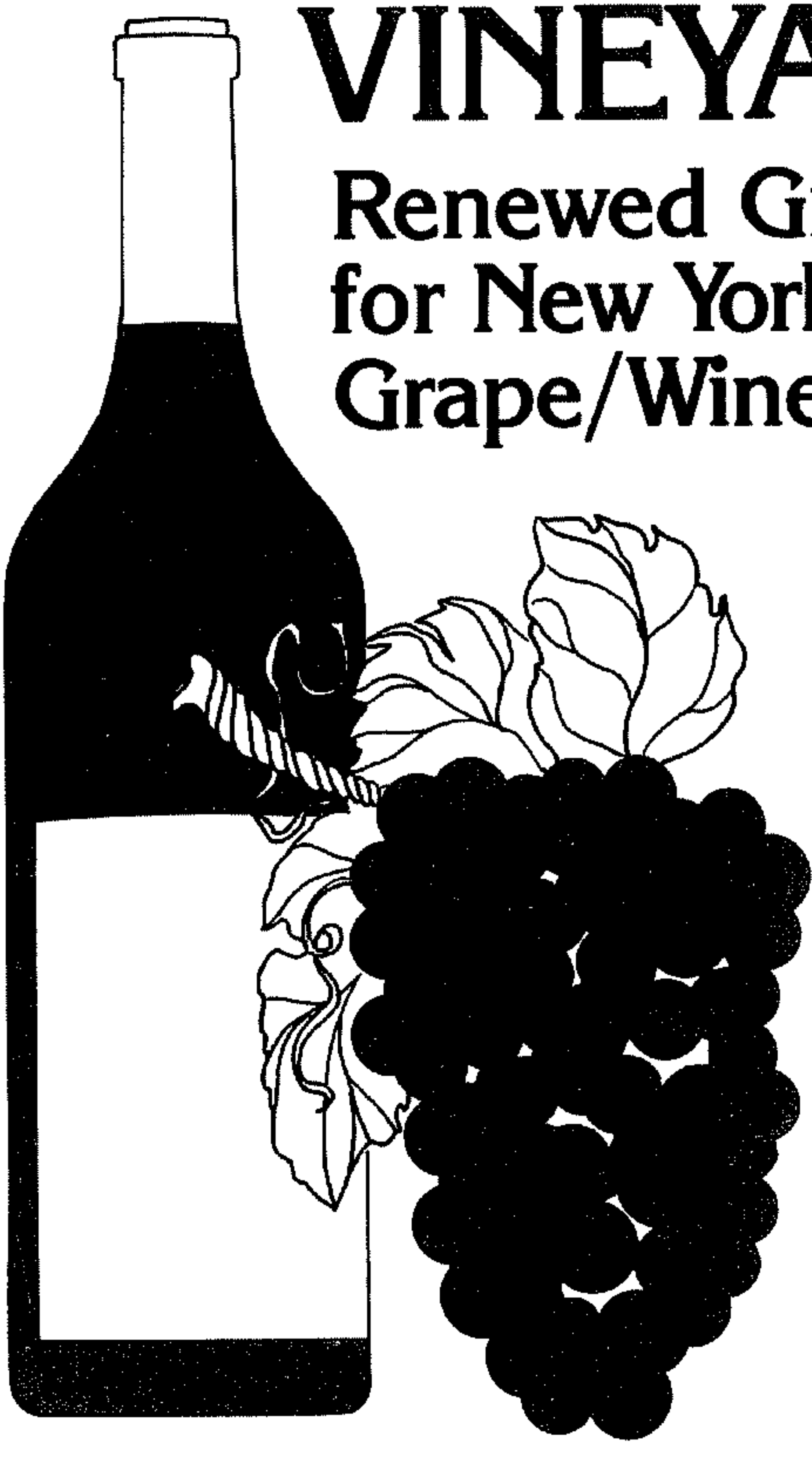
TENDING THE VINEYARDS

Renewed Growth for New York's Grape/Wine Industry



TASK FORCE ON
CRITICAL PROBLEMS
NEW YORK STATE SENATE
ALBANY, NEW YORK

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TENDING THE VINEYARDS

Renewed Growth for New York's

Grape/Wine Industry

A Report by the
New York Senate Research Service
Task Force on Critical Problems
for the
Special Senate Majority Committee on the
New York State Grape/Wine Industry

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EXECUTIVE SUMMARY

AN INDUSTRY IN DISTRESS

Recent years have brought economic troubles for New York's grape/wine industry, especially for the grape growers. Faced by contract cancellations and cutbacks in grape orders and squeezed between increasing production costs and declining grape prices, large numbers of growers seem to be approaching business failure.

The threat to growers' earnings derives partly from a surplus of grapes, but is related also to the recently accelerated decline in New York vintners' share of the national wine market. After World War II, the California industry took a commanding lead in the market. Its existing acreage and organizational capacities made it better able to conform its product with the trend of consumer preference toward white table wine. In the past decade alone, New York wineries lost perhaps one-half of their national market share as the California industry confirmed its dominance and the percentage of foreign wines increased dramatically.

These developments warrant concern, for the grape/wine industry is a significant part of the state's agricultural sector and is highly important in certain localities. Growers' and vintners' investments, payrolls, sales and tourism value represent hundreds of millions of dollars to the economies of the grape/wine regions, especially in the Great Lakes, Niagara and Finger Lakes areas, but also in the Hudson Valley and Long Island areas. The Senate Majority, in order to bring special attention to the industry's problems, created in December, 1983, the Special Senate Majority Committee on the New York State Grape/Wine Industry. The Special Committee, composed of Majority Senators from grape/wine regions, held hearings at five locations during January and February, 1984.

PRODUCTION AND OUTLOOK

The grape/wine industry is complex, composed of different kinds of producers and several markets. The grape crop has three outlets: unfermented juice, wine and table grapes. For many years, however, the table grape market has represented no more than two percent of New York's tonnage. Wineries buy about 40 percent of the New York crop, and juice processors buy the balance. New York's recent annual grape tonnage has been about 157,000 (California's tonnage has been about 6 million).

New York's historic strengths in wine production have been in the kosher, dessert and sparkling wines. In 1960, dessert wines constituted more than one-half of U.S. wine sales, but this share has steadily declined to less than 10 percent today. The wine producers who have profited most from the 20-year trend of consumer preference toward white table wine have been those in foreign countries and California. Today, New York vintners annually produce about 29 million gallons of wine (California vintners produce about 513 million).

The outlook for growth in the unfermented juice industry, while not dim, is not especially optimistic. The outlook for wine market expansion is much more positive. Industry watchers predict continued growth in U.S. per capita consumption because of growth in the population age groups 25-34 and 35-44, the two age groups which account for almost 50 percent of total wine consumption. To realize benefits from the opportunities that the market presents, however, the industry will have to develop a greater capacity for adaptability.

WINE-RELATED LAWS IN CALIFORNIA AND NEW YORK

California's grape/wine industry has had steady growth for decades and dominates every state's wine market. Even in New York State, California wines comprise about 43 percent of wine sales. Foreign imports comprise another 43 percent, leaving only 14 percent for New York wineries.

The success of the California industry invites observation by those concerned with New York's troubled grape/wine industry to try to ascertain the factors that have caused the California industry to flourish. Some observers have suggested that one factor in the California industry's greater competitiveness has been the over-regulation of the New York State industry.

A review of both states' wine-related laws reveals many differences, the most dramatic of which are the following.

- Producer Licenses--California vintners have somewhat greater powers. They may open branch facilities where they conduct tastings, make sales, hold inventory and generally conduct their businesses in locations of market advantage. Also in contrast to New York vintners' more limited powers is the California vintners' right to hold retail licenses to sell all kinds of alcoholic beverages for off-premises consumption.

- Retail Licenses--The number of points at which Californians can purchase wine for off-premises consumption exceeds by about 21,000 the number of points at which New Yorkers can purchase it. The main reason for this difference is that California food stores may sell wine. Other retail differences are that California retailers who sell for off-premises consumption can own more than one such establishment, and retail beer and wine licenses for on-premises consumption permit the sale of bottles of wine to go.

- Taxes--California's excise taxes are very much lower, especially with regard to table wines: California charges one cent per gallon while New York charges about 12 cents per gallon. And unlike New York, California exempts newly planted acreage from property taxes. Newly planted vines do not provide income for three to five years. The exemption provides some compensation for this income loss and therefore encourages growers to replant acreage with more marketable varieties of grapes.

- Credit--In California, there is essentially no limitation on the extension of retail credit for wine sales. New York law, on the other hand, mainly prohibits credit for sales of wine for off-premises consumption.

- Tastings--The California Department of Alcoholic Beverage Control has derived a method by which retailers for off-premises consumption may sponsor tastings. Such retailers in New York may not conduct tastings.

- Promotion--California vintners have organized to use a state-sponsored promotional and research vehicle called a "marketing order," while New York producers have not. A marketing order, available under provisions of the states' agriculture laws, essentially is an agreement among producers to assess themselves to provide funding for their collective purposes. California had a wine marketing order from 1938 through 1975. In New York, two 1981 attempts at grape marketing orders failed, the first through court invalidation and the second through rejection by the growers at referendum.

- Academic Support--Academic support for grape and wine research and education in California is decidedly greater than in New York. At the University of California at Davis, there is an entire department of viticulture and enology which offers a major in "fermentation science" and has 14 full-time professors, 285 students, $1.5 million in state funding and more than $600,000 in non-state research support. New York's chief educational and research efforts are carried out at Cornell University and the State Agricultural Experiment Station at Geneva. There is one course in viticulture, and a food science course incorporates the subject of enology. Full-time staff includes four professors, and there are fewer than five students. State funding--about $300,000--is one-fifth and overall research support--also about $300,000--is half of that in California.

WHICH ARE THE SIGNIFICANT DIFFERENCES?

Do these differences of law constitute advantages that explain why California's industry flourishes while much of New York's struggles? The California industry does appear to have advantages if one compares California and New York vintners' and retailers' powers, but those advantages are largely confined to the California market.

One clear advantage is the California growers' property tax exemption for newly-planted acreage. Even though newly planted acreage does not produce income for three years, a California grower might choose to replant because the property tax exemption for newly planted acreage somewhat offsets the loss in income. New York growers have no such compensation.

With regard to the other differences, significant advantage is harder to perceive. A California vintner selling in New York is constrained by the higher excise taxes and the restrictions on retail credit and food store sales just as are the New York vintners. And New York vintners selling in California may benefit from retail credit, food store sales and lower excise taxes. California vintners, because of their greater proximity, may be better able to exploit the food store outlets in California. But why do they also dominate New York's market, where New York vintners are the more proximate?

INDUSTRY ORGANIZATION, PROMOTION, ADAPTABILITY

There are differences between the two industries which seem much more powerful than relative legal constraints in explaining why one industry flourishes and the other struggles. Essentially, those differences have to do with producer organization and the promotion and adaptability it engenders.

The most notable producer organization in California is the Wine Institute, the promotional activities of which have been highly successful. Whatever the objective relative quality of wines, popular and critical opinion does appear to be that California wines are America's best, sometimes the world's best. And the research activities fostered by the Institute and the state have helped California vintners to encourage and adapt quickly to the change in American wine preferences toward the lighter, table wines.

The New York industry's problems regarding promotion and adaptability are due in great part to the fact that it has never had an organization that is as funded, active and cohesive as the Wine Institute has been. And, as has been noted, the New York grape/wine industry has never been supported by academic efforts in magnitudes approaching the support the California industry receives.

WILL PRESCRIPTION FOLLOW FROM DIAGNOSIS?

It seems clear that efforts to assist and improve New York vintners' research and promotion efforts ought to be the first, fundamental order of business. But before exploring the nature of such efforts, special attention should be given to the most frequent proposal for assisting New York's industry--licensing food stores to sell wine.

Food Store Proposals--Too Soon?

Recent economic stress in the grape/wine industry has understandably engendered a desire for a fast solution, the most notable of which is the proposal to permit New York food stores to sell wine.

Food store licensing may or may not damage package stores' business and increase alcohol abuse. Most pertinent in this discussion, however, is the probability that it would be ineffective and possibly counterproductive. Most of those who at the Special Committee's hearings recommended food store licensing did so with the condition that such licenses for a period of time permit the sale of New York State wines only. But if a specified period of protection proved to be too short to alter established consumer preferences, the New York industry at the end of the protective period would be faced with package store antipathy in addition to continuing apathy among consumers who would now buy their wine in places at which the consumer-preferred foreign and California competitors have experienced and well-funded market operations. In addition:

- Excluding out-of-state wines from food stores while permitting such sale of New York wines may violate the rights of wholesalers and out-of-state producers under the equal protection and due process clauses of the U.S. Constitution.

- Food store licensing would, at best, help only the largest New York State vintners.

- Such protectionism, unless greatly limited, occurs at the cost of consumer choice among products and prices.

To simply go ahead with food store licensing without first strengthening the competitiveness of the New York industry, then, would be to risk the costs originally noted by the opponents (i.e., damage to package stores and increased alcoholic pathology) without any reasonable expectation that the benefits noted by the proponents will occur. A question, therefore, recurs--why do California wines produce far better sales in any setting and locale than do New York wines?

BACK TO BASICS: ORGANIZATION

California does offer a model. Organization--an organization perhaps assisted by the state--does seem to be the first order of business.

Membership

Grape growers' current economic difficulties are perhaps even greater than are those of vintners of any size class. The urgency of the growers' economic situation, then, may make it advisable to incorporate them directly into an industry organization representing both groups. In addition, such an organization might profit from the inclusion of pertinent government and academic people in its membership.

General Purposes: Promotion and Research

The New York State grape/wine industry's current lack of effective organization appears to have resulted in two chief disadvantages:

- a relative lack of adaptability engendered in part by the comparatively small scale of research that supports the industry; and

- lack of widespread identification of its product as one of distinctly high quality, a lack that results, in part, from promotional efforts that are not as sophisticated or extensive as those of California vintners.

It is these two disadvantages that it would be most important to address with an industry organization.

In general, the new organization's promotional efforts would probably involve such initiatives as New York-generic advertising and tie-ins with tourism. Research would continue to pertain to viticultural matters such as introduction of new kinds of grapes (including ways of speedily introducing them), but it would also pertain to improvement of wine making techniques and, perhaps most critically, the identification of new, market-viable products (e.g., low-calorie, low-alcohol or dealcoholized wines) and movement of the industry toward the production of them.

It may be profitable also for an industry organization to give promotional and research attention to unfermented grape products and non-food uses of grapes.

One of the most basic decisions of the organization's governing body would be specifying the promotion-to-research ratio of expenditures. Too little spent on research would jeopardize the long-term health of the industry, while too little spent on promotion could jeopardize the short-term health on which long-term performance depends. Even within the categories of promotion and research, however, there would be difficult decisions which would produce different levels of benefits for the different parts of the industry.

Administration

The administration of such an industry organization should represent several parties: the state (assuming that the state in some way sponsors the organization); grape growers; grape processors; and viticultural and enological researchers. These parties are internally various enough so that it is advisable that an administrative board representing these four parties exceed four members.

Funding

It is hard to tell how much money it would take to re-energize the New York wine industry. But even if efforts were limited to those being made for other less troubled commodities, it appears doubtful that New York's grape/wine industry could raise the needed funds on its own.

There are no pleasant alternatives to producer and processor assessments, but alternatives do exist.

- State Appropriations--One alternative would be state appropriations to support a grape/wine industry promotion and research program, perhaps under the principal direction of the Department of Agriculture and Markets.

- Excise Tax Dedication--Another alternative would be to dedicate part of existing wine excise taxes to the support of such an organization. This would probably draw objections from out-of-state wine producers. And if the organization also represented the interests of unfermented grape product businesses, all wine producers might object to the use of wine excise tax revenues for non-wine purposes. Such dedication would furnish a considerable amount of money: In FY 1983, the State Department of Taxation and Finance collected $6.6 million in wine excise taxes on still and sparkling wines.

- Special Excise Tax--The Legislature could enact a special excise tax specifically to support the organization. A special excise tax that was half of the regular excise tax would have raised approximately $3 million in FY 1983.

- Preferential Excise Tax--One variation of excise tax financing would be a preferential excise tax which assessed out-of-state wine at a higher rate.

A preferential excise tax on wine is not a new idea. Sixteen states have such a statute. The range of differentiation is considerable--in Florida, excise taxes for out-of-state wines vary from $2.25 to $3.50 per gallon while in-state wines are untaxed; in Maine, the difference for table wine is only 10 cents per gallon.

The size of the preferential difference would determine the amount of money that could be raised in this manner. If a tax of an average of an extra 10 cents per gallon was applied to the non-New York State gallonage in 1983, the amount of increased revenue would have been about $4.5 million; if the assessment was an average of an extra 15 cents per gallon, the amount of increased revenue would have been about $6.8 million. An assessment of an average of an extra 15 cents per gallon in 1983, then, would have increased from $6.6 million to $13.4 million the revenue obtained from excise taxation of still, sparkling and carbonated wines.

The existence of such statutes in sixteen other states and early litigation regarding a Hawaii statute which exempts certain Hawaiian beverages from excise taxation indicate that preferential excise tax statutes do not violate the U.S. Constitution. The U.S. Supreme Court is considering the Hawaiian case. There are, however, other considerations which lawmakers developing a preferential tax statute might wish to consider.

- Should foreign wines carry higher assessments than wines of other states?

- Should the preferential treatment be given only to New York State labeled wines, at least 75 percent of the ingredients of which must be New York State-produced, or to all wine produced by New York State-based wineries?

- Is there a possibility of damaging retaliation by other states regarding some commodity or product which New York has been successful in exporting?

And relative to any kind of tax support, lawmakers may wish to consider the following:

- Would it be best to support an organization through a combination of producer assessment, appropriations, excise tax dedication and/or special excise taxation?

- If a development program is successful, the industry organization should eventually be capable of supporting its efforts with its own resources. Should the tax enactment, then, have a sunset date after which the configuration of funding sources might be altered?

OTHER MEASURES

Vineyard Tax Exemptions

A New York grape grower who is facing a declining market for a particular variety of grape must make a painful decision between, on one hand, obtaining whatever income he can from acreage planted in a decreasingly marketable commodity and, on the other hand, obtaining no income at all from newly planted vines for a period of several years. Under these circumstances, some growers understandably do not replant in the often inadvisable hope that the market for the already-planted vines will turn around. A tax exemption for land on which he plants new vines may well be the budget factor which could cause a grower to take the chance of replanting rather than persisting in the growth of a crop with declining marketability.

Lawmakers may wish to consider whether or not exemptions for newly planted acreage are a matter regarding which the difference between the California and New York industries ought to be redressed. The exemptions, rather than being absolute for a period of time and then completely withdrawn, could be withdrawn gradually as vines began to produce income (e.g., a full exemption for the three non-income-producing years, a partial exemption for perhaps two years during which the vines have not yet reached full productivity and then a complete withdrawal of the exemption).

Farmers' Markets

Testimony at the Special Committee's hearings suggested that fairs and farmers' markets have important promotional and sales potential, particularly for small wineries which depend considerably on direct sales. In order to limit the proliferation of unlicensed wine outlets, current thinking on this matter holds that only not-for-profit farmers' markets should be permitted to entertain direct wine sales. While most of the state's farmers' markets have not-for-profit sponsorship, such limitation would deprive vintners the use of large, but privately operated farmers' markets. There may be some special license-related alternatives to the not-for-profit limitation.

Fairs

As sales sites, fairs might offer a special promotional potential. Compared to other direct sales sites, they have particularly high volumes of attendance and are identified as showplaces for New York's finest agricultural products.

Package Store Tastings

The State of California has, in a somewhat ad hoc manner, facilitated package store tastings. And in 1981, the State of Massachusetts explicitly permitted them. Were lawmakers to consider permission for such tastings, there are several matters relating to conditions that they might wish to treat, including special licensing, liability and sponsorship.

Tourist Area Efforts

In order to maximize the potential for exposing tourists to New York State wines, the State might develop a tourist seasonal license (e.g., May through October) that would permit businesses that particularly serve tourists to sell New York State wines.

Miscellaneous Considerations

Those who have observed and worked in the wine industry over the years have developed many proposals to make it easier for vintners to do business. Not all of these matters relate closely to the adaptability and promotional factors which this study has emphasized, but they may warrant consideration. These matters include multiple solicitation, pooled transportation, combination packaging and reduction of red tape pertaining to price filing and label approval.

THE CRITICAL DIFFERENCE

Without an industrial organization and the promotion and research it facilitates, however, it would seem improbable that any combination of actions regarding the other matters would prove to be sufficient to reverse the decline of the New York wine industry's market share. The chief objective of a grape/wine industry development policy ought to be more than short-term survival. Rather, it should be the fostering of an industry that is capable of deft reaction to and active participation in the shaping of the market for grape products. The industry has in recent decades not been able to seize the opportunities that changes in the market have presented. The market continues to change, however, with regard both to preferred varieties of grape and new kinds of products. The fundamental hope should be that the industry will develop a greater capacity to vigorously seize these opportunities as they arise.

INTRODUCTION

THE PROBLEM

A surplus of grapes, especially red varieties, has in recent years increasingly brought financial stress to grape growers. Another factor in growers' difficulties, however, has been that New York vintners' share of the national wine market declined during the past two decades as the California wines became more dominant and foreign vintners seized substantial proportions of the market. Current estimates are that New York-based wineries produce only 14 percent of the wine sold in New York State; California and foreign wines account equally for the balance of 86 percent. This development has been problematic not only for New York's vintners, but also for its grape growers. In recent years, about 40 percent of the state's grape crop has been used for wine production.

The growers have increasingly been squeezed by the decades-long upward trend in production costs--as much as 64 percent during the last half of the 1970s--and the recent downward trend in grape prices. As 1984 approached, the growers' economic stress clearly worsened: wineries canceled contracts and reduced their orders for grapes, and growers considered selling (sometimes by auction) their vineyards. And it became more apparent that many of the small vintners who had started their operations under the provisions of the 1976 Farm Winery Act were having particularly great difficulty finding outlets for their products.

THE SPECIAL COMMITTEE

The Senate in recent years had considered numerous proposals for assisting the grape/wine industry and had, in fact, passed legislation to ease growers' property tax burden. As the economic stress on the industry increased, however, the Senate Majority judged that special attention was warranted. Therefore, the Special Senate Majority Committee on the New York State Grape/Wine Industry was created to inquire into the industry's problems and make recommendations during the 1984 Legislative Session. The Senate Task Force on Critical

Problems prepared this report to assist the Special Committee in its deliberations.

Senate Majority Leader Warren M. Anderson, in announcing the creation of the Special Committee, noted that "the State's laws governing the grape and wine industry have not been comprehensively evaluated since Prohibition. Therefore, it is timely for us to review New York's policy toward this important segment of our economy." Serving on the Special Committee are Senators who represent the various wine regions.

- Chairing the Special Committee is Senator William T. Smith II from the Finger Lakes region.
- Also serving from the Finger Lakes region are Senators L. Paul Kehoe and William M. Steinfeldt.
- Senators Jess J. Present, Dale M. Volker and Walter J. Floss, Jr., represent the Erie-Chautauqua region.
- Senator John B. Daly represents the Niagara region and part of Erie County.
- Senators Richard E. Schermerhorn, Jay P. Rolison, Jr., and Mary B. Goodhue represent the Hudson River Valley region.
- Senator Kenneth P. LaValle represents the Long Island region.

These Senators and the Special Committee staff, in order to obtain as representative a view of the industry's problems as they could, held hearings in January and February, 1984, at five locations: Albany, Bath, Fredonia, Marlboro and Riverhead. The hearing transcripts comprise about 1,000 pages of testimony by grape growers, representatives of large and small wineries, state and local officials and other interested citizens. At the very least, the volume and substance of the testimony confirmed two points:

- there is a significant probability of imminent and increasing business failure among grape growers; and
- the industry's problems warrant the degree of attention that the Senate Majority has indicated by creating a Special Committee.

THE REPORT

Early conversations with principal staff of the Special Committee drew the Task Force's attention to the California wine industry. By reputation and by volume, California is the nation's premier wine-producing state, and it was thought that attention to the regulatory conditions under which the California industry has developed and operated might provide insights about how New York could provide better conditions for its own industry. That New York over-regulates its industry has, in fact, been a frequently suggested reason for its declining hold on the retail wine market.

While the California comparison has been the primary subject of this report, there should be no simplistic suggestion that the success of the California industry is the cause of the New York industry's problems. And even when viewing the matter simplistically, it is apparent that foreign wines hold as much of the New York State wine market as do California wines. It is not highly improbable that the imports will soon hold 50 percent or more of the New York State wine market. The Task Force, however, has not examined the conditions of development and operations of foreign wine producers. Concentration instead on California resulted from:

- the assumption that the lessons to be drawn from a comparison with California would be more applicable to and <u>by</u> New York State than would comparisons of New York State with foreign countries;
- the fact that the competitiveness of the foreign wines is due to subsidies and tariff-related matters which are more susceptible to Congressional redress than to state action; and
- the fact that time was too limited to examine the development and operations of all of the New York State industry's competitors.

Despite the concentration of this report on a comparison with California, then, it should be remembered that the renewed health of the New York State wine industry involves winning back market shares from the imported wines as well as the California wines. It also involves holding market shares against the competition from fledgling, but ambitious wine industries in other states such as Texas, Virginia, Washington, Ohio and Oregon.

There are several limits in this study which should be acknowledged:

- Imports--One limit, for reasons already noted, is that foreign wines receive only passing attention.

- Selection--The two states' alcoholic beverage control laws are extensive and complicated, as are economic factors affecting the wine industries. The desire to develop a report in time to assist the Special Committee's deliberations for action in the 1984 Legislative Session required some selective emphasis. While the Task Force is confident that it has treated the major factors distinguishing the two industries and offering prescriptions for improvement of New York's industry, there unquestionably are subjects of regulation which this report has given little or no treatment. Inclusion or exclusion of a particular matter depended on the voiced and written opinions of industry professionals, government officials or Task Force staff regarding its probable importance to the development of the New York industry's health. For instance:

  - Some of the restrictions on wine sales do not apply to wine sold to religious organizations for sacramental purposes. Under the assumption that sacramental uses do not constitute a great proportion of purchases, the sacramental wine exceptions have been largely excluded from the analysis.

  - The report does not deal with the potential or laws pertaining to brandy production and sales. Brandy, a liquor distilled from wine, has generally been treated in alcoholic beverage control laws as the distilled--rather than simply fermented--beverage that it is. Winery licensees, therefore, may not produce it for retail sale. Industry observers, however, have indicated that brandy does not promise to be a high-volume retail product which could prove to be a key to the new flourishing of the New York State wine industry.

- Unfermented Products--Grape growers' markets include not only wine, but also unfermented products such as juice and table grapes. This research, although there are points pertaining to unfermented products in Chapters Two and Four, has concentrated on the nature and potential of the wine market.

Preparation of this report entailed attendance of the Special Committee's hearings and review of the hearing transcripts; interviews with industry, government and academic people in California and New York State; and surveys of published information and data.

The contents of the report are the result, then, not only of reading published materials, but of conversations with persons associated in various ways with the grape/wine industries. The people whose kind cooperation has helped the Task Force to develop this report are affiliated with diverse organizations, including:

- the New York State Liquor Authority, Department of Agriculture and Markets and Board of Equalization and Assessment;

- the Wine Institute, the California Wine Grape Growers Association and the New York Wine Council;

- Cornell University, Columbia University and the University of California at Berkeley and Davis;

- the California Department of Alcoholic Beverage Control, Department of Food and Agriculture and Board of Equalization; and

- the Prevention Research Group, Berkeley, California.

Of the published sources, two deserve special note. James N. Putnam's study entitled The New York Grape Industry was most helpful in developing the economic data presented in this report. And the Commerce Clearing House's Liquor Control Law Reporter provided necessary orientation to the complicated alcoholic beverage control laws.

Also of special note has been the continuous research of the Wine Institute. The Institute has developed clarifying information regarding the laws and economics pertaining not only to California's wine industry, but also to other states' industries and the international wine trade. This information was made available through publications and interviews.

The Executive Summary surveys the Task Force's findings and recommendations. Chapter One describes the development of the current problems. Chapter Two is an economic profile of the New York industry, with comparative comments regarding California's industry. Chapter Three is a comparison of the two states' wine-related laws. Chapter Four contains the Task Force's major inferences regarding differences in the economic and regulatory structures of the two states' industries.

THE INDUSTRY'S TROUBLES: CHANGES IN CONDITIONS, CHANGES IN TASTES AND DIFFICULT ADAPTATION

NEW YORK'S GRAPE/WINE INDUSTRY: LEFT BEHIND?

New York's grape/wine industry is experiencing one of its most troubled times ever. This is confirmed not only in testimony at the hearings of the Special Senate Majority Committee on the Grape/Wine Industry, but also in the conversations of academic observers and business people in the affected localities. Somehow, the national wine market has boomed in a manner that has to a large degree left out the New York producers. New York grape growers have faced increasing costs of production while grape prices have fallen. New York vintners' share of the national wine market has steadily declined as California vintners have confirmed their dominance and foreign vintners have increased their share.

Why have New York's producers, in contrast to California's producers, failed to flourish in the growing and changing wine market? There probably are several reasons, but one has to do with change in wine drinkers' preferences. At about mid-century, there developed a mismatch between the kind of wines that new wine consumers liked to drink and most of the kinds of wines American vintners, and especially New York vintners, produced. California's industry managed to adapt to the new tastes more successfully than did New York's industry. To fully appreciate the nature of the New York industry's current troubles, a historical view is necessary.

A LEGACY OF PROHIBITION: NEW YORK AND THE TEMPERANCE GRAPE

An Established Industry and Its Basis: the Concord

New York was one of the first states to cultivate grapes, with vineyards planted on Manhattan Island in the 17th century. The oldest active winery, the Brotherhood Corporation, was established in the Hudson Valley in 1839. Although the Finger Lakes had been a popular grape-growing area from the early 19th century, the commercial production of wine did not begin there until 1860 with the founding of the Pleasant Valley Winery (now Great Western). After the Civil War the Finger Lakes wine industry expanded rapidly, and by 1900 New York wines from that region and from the Hudson Valley districts were highly acclaimed and served by restaurants and hotels throughout the country.

At the same time that the wine industry was expanding, a contrary force was making itself felt. In the early 19th century the Temperance Movement, born in Saratoga County, began to spread across the state and then the nation. Chautauqua County was one of the centers of the Dry Crusade and the place where the Concord grape, a variety of the native American vitis labrusca, was introduced for the purpose of producing table grapes or unfermented juice, rather than wine. The Drys were successful and influential, and the Concords were highly marketable. To this day nearly 90 percent of the annual grape tonnage in the Great Lakes region is from Concords, and Concords represent over 65 percent of the entire state's tonnage.

The Drys' most familiar success was in the enactment of Prohibition in 1919. While most wineries were forced to close, some survived by switching to the production of unfermented juice, jams, and jellies or by obtaining permits to continue making wine for sacramental use. The industry remained particularly strong in the Finger Lakes region, and at the end of Prohibition in 1933 the vintners in that region were better able to resume production of wine than their California competitors. But the Prohibitionist forces in New York and elsewhere also retained their strength and managed to influence today's production and distribution of wine through strict beverage control laws. (1)

Grape growing had continued in New York State throughout Prohibition, stimulated by the demand from individuals who were making wine in their homes. (2) When Prohibition ended in 1933, growers and wineries were ready to reestablish commercial operations. Work on wine grape breeding at the New York State Agricultural Experiment Station at Geneva (Ontario County), interrupted by Prohibition, began once again in 1934. (3) The Concord grape still predominated in New York State and was used as the base for kosher sweet Concord wine as well as for dessert wines such as ports and sherries. Other native varieties such as Catawba, Delaware and Niagara were used to make champagnes and sparkling wines. In both the dessert and champagne categories, New York State wineries began to make a national market for themselves as wine consumption grew after Repeal.

The Concord grape was important also to the juice processing industry because its characteristic grapy taste was considered essential for the production of bottled and canned juice, jelly and jam and, later, frozen concentrate.

Throughout the wine expansion period (1960-1980), fully one-half and often more of the New York grape crop, particularly the Concord grapes, was purchased by juice processors for such purposes. With both wineries and juice processors making steady use of the Concord, growers were encouraged to plant more of the vines from the late 1950s until the mid-1960s and again in the early 1970s.

In all of the early grape growing and wine making regions of New York State--the Finger Lakes, the Great Lakes, Niagara County and the Hudson River Valley--the Concord grape has been the mainstay of the grape industry. Only in the fifth and newest (since the 1970s) of the regions--Suffolk County on Long Island--have the European vinifera varieties predominated. Figure 1 illustrates where the grape/wine industry is concentrated in the state.

The Rise of the California Industry

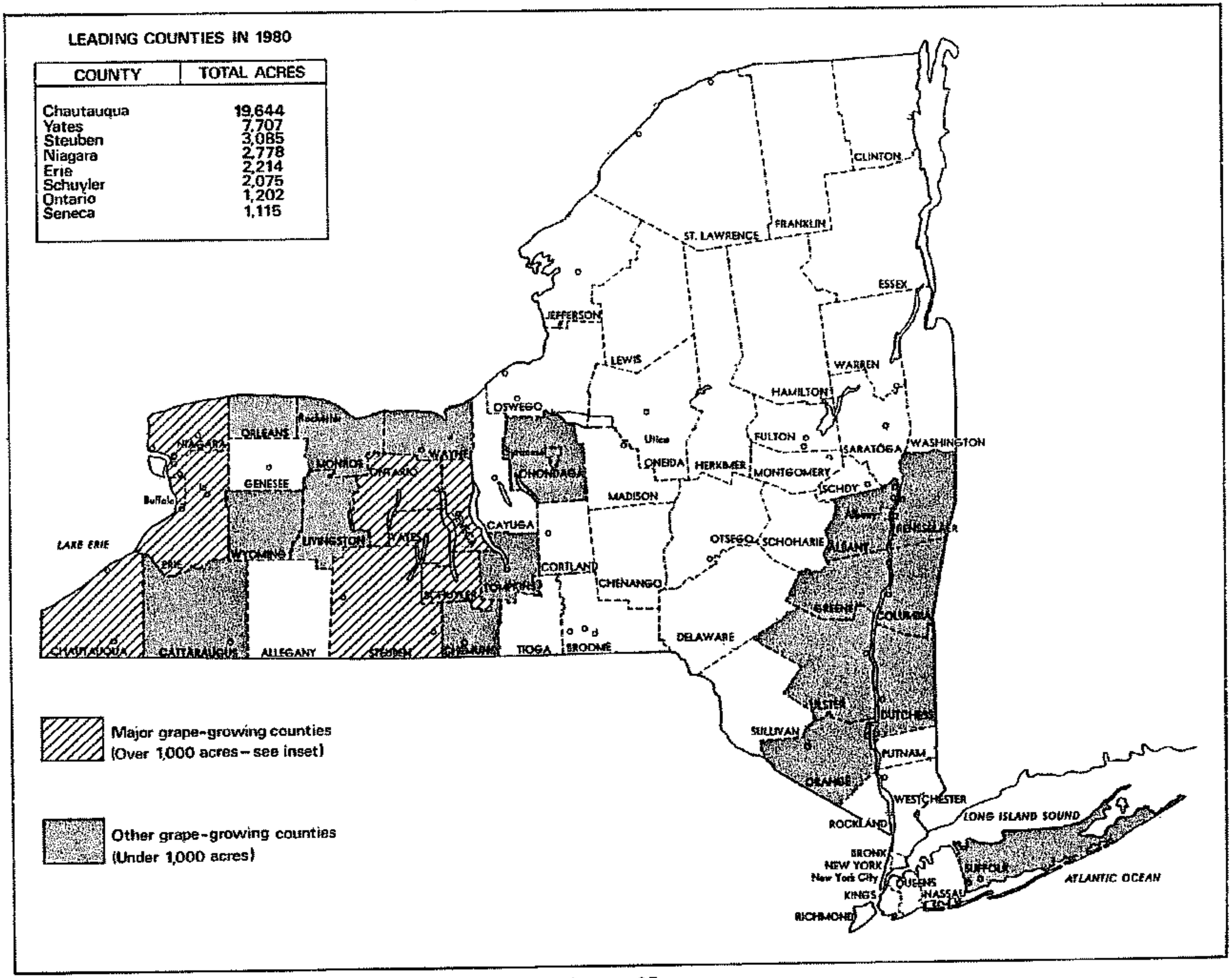
Across the country in California, after years of dominance by leaders of the table grape and raisin industries, who viewed wine production as a salvage operation for the grape crop, that state's wine industry began a process of rehabilitation. In 1934, a group of vintners established the Wine Institute, the purposes of which included promotion of wine quality standards, production of good, inexpensive table wine and education of the public to encourage consumers to drink wine daily with food. They were successful in persuading wineries to pay a tax to fund a nationwide educational and promotional campaign. After World War II, the California wine industry began to grow even more dramatically as growers took advantage of research results in grape-breeding at the University of California and vintners discovered that new technology would allow them to produce reliable, palatable and inexpensive table wines. In the 1950s, as now, these wines were produced mostly from the varieties used for table grapes and raisins. However, California's coast counties were beginning to produce premium* wines made from the European vinifera varieties such as Riesling, Pinot and Cabernet. (4)

In New York State, growers were beginning to add new French hybrid varieties (such as Aurora, Baco Noir, deChaunac, and Seyval Blanc) to their vineyards, particularly in the Finger Lakes, but it had always been believed that the European viniferas could not survive the New York winters. In the late 1950s, a Finger Lakes vintner showed that in fact such varieties could thrive,

*Premium refers to wines selling at substantially (at least 10 percent) higher prices than popular-priced brands. They are generally varietal wines, that is, made from one grape variety.

FIGURE 1

Grape Production Areas in New York State



LEADING COUNTIES IN 1980

COUNTY	TOTAL ACRES
Chautauqua	19,644
Yates	7,707
Steuben	3,085
Niagara	2,778
Erie	2,214
Schuyler	2,075
Ontario	1,202
Seneca	1,115

Source: New York Orchard and Vineyard Survey 1980, p. 37.

but it was not until the 1970s and later that his example was followed extensively, and then most of the new vines were planted in the eastern part of the state, specifically on Long Island. (5)

Meanwhile, consumer tastes were changing for many reasons, not the least of which were greater national prosperity and increased foreign travel after World War II. Table wine consumption was increasing while the market for dessert wines was shrinking. Although New York growers had begun to plant French hybrids and even some viniferas, these varieties were still overshadowed by the crop size of the Concord and other native grapes.

The wine boom continued, and in the 1960s and 1970s both New York and California over-planted red grape varieties. New York planted more Concords, and the wineries used them successfully for a brief time in making "Cold Duck." But its other reds, and soon its Concords, were swamped by the veritable lake of red wine resulting from the oversupply in California. This came at the moment when the steady trend in consumer preference for white wines was becoming clear. Though faced with a surfeit of red wine, California was able to recover by selling some of its supply cheaply as bulk wine for blending and turning much of its vast acreage of white varieties into wine. Oversupply lowered prices for grapes just as production costs were increasing significantly. At the same time, New York vintners watched the steady increase in sales of imported wines diminish their market share, which was already a distant second to California's. Tied historically to the temperance grape and its traditional product uses, New York State fell behind in the latest trends in U.S. grape growing, wine making and wine sales. (6)

THE CURRENT TROUBLES

Growers: Rising Production Costs, Declining Prices

Caught between rising production costs and stagnating prices for their crop for the last ten years, grape growers in New York State are facing critical choices. A close look at the Finger Lakes and Great Lakes regions, for which there exists a significant amount of historical and current information about grape farming, provides a representative view of some of the industry's problems. A comparison of some selected measures for 1977 and 1981 for these two regions reveals the dramatic increase in expenses (Table 1). (7) Set against the average price paid by wineries and processors for Concords and all varieties for those same years, the figures show what grape growers are up against. Production costs

TABLE 1

Vineyard Costs Versus Grape Prices
1977 and 1981

	1977	1981	% Change
Cash expenses per grape acre:			
Finger Lakes	$625	$1,026	+64
Great Lakes*	623	937	+50
Average price paid by wineries processors:			
Concords ($/ton)	224	185	-17
All varieties	240	234	- 2.5

Sources: Grape Farm Business Summary, 1981: Finger Lakes Region; Grape Farm Business Summary, 1981: Great Lakes Region.

in the Finger Lakes increased 64 percent between those years while the average state prices for all grape varieties were down 2.5 percent. In the Great Lakes, where production costs rose 50 percent, the price for Concords, that region's most important grape, was down 17 percent.

Among the highest of the production costs are interest payments, which increased dramatically in five years. In 1976, interest payments for commercial grape farms (over 20 acres) in the Finger Lakes and Great Lakes regions averaged $5,347; by 1981, the average was $9,094. (8) For the 568 commercial grape farms in these two regions, interest payments in 1981 totaled approximately $5.4 million. (9) As growers' costs have increased while market prices for their crops have stagnated or declined, they have been forced to borrow money at higher and higher interest rates to keep up with operating expenses. Little thought could be given by growers to the capital investment needed over several years to replace vines or expand vineyards with varieties in demand. In fact, it is questionable whether market demand would have made it worthwhile to change since most growers sell to local processors, and as far as wine grapes are concerned, New York wineries were no more farsighted than growers in realizing that wine consumption preferences were changing.

Vineyard market values in New York State, which had been rising in the early 1970s, peaked in 1975-76 and have been stagnant ever since. If the value is adjusted for inflation, a significant loss has occurred. For example, a Yates County vineyard acre worth $1,600 in 1972 was worth $966 in 1981, a loss of 40 percent. A similar acre in Chautauqua County declined from $1,240 to $1,051 during that same period, a loss of 15 percent. The lowered market value reflects the poor economic returns on the grape crop and lack of optimism in the industry generally. (10)

With such an unfavorable situation regarding production costs and appreciation of investment, it is unfortunate that New York State grape growers have not been able to offset these difficulties by increased yields from their crops or by higher prices. There has been a long-term trend (1965-1980) of static yields in the state's grape crop. Some reasons for this are that: expanded acreage in the late 1960s and early 1970s was often on marginal sites; significant expansion was in the Finger Lakes region, which has lower yield potential than the Great Lakes region; and for some years, these newer plantings did not produce at their mature potential. (11)

During the late 1950s and the 1960s, New York growers held an advantage over other states in terms of price per ton for their grape crop. However, in the last 12 years, grower prices for California and Washington wine grapes have increased much faster than New York prices and have eroded New York's advantage. In terms of all grape varieties, New York has seen its position slide as well. (12)

For some of the growers, to stay in business means to continue to drain their savings or alter retirement plans in order to have the necessary cash to maintain their vineyards or to change to varieties with more marketability. Replanting is not only a financial burden, costing up to $3,000 an acre, but also time-consuming since a new vineyard requires at least four to seven years before it produces a significant crop. (13) Without personal resources or backing by a lender, the grower may let some of his land go fallow and thus jeopardize the future productive capacity of the vines. For some growers, particularly in the Finger Lakes region, it is not feasible to shift to other crops because the climate and topography are best suited to grape growing.

In this situation, a grower may decide to sell a vineyard that has perhaps been in the family for several generations. If grapes have not proved profitable for the present owner, then there is little likelihood of recovering a significant part of his equity through sale of the farm as a vineyard. In such a case the grower may tear out the vines and sell the land for development.

Wineries: A Declining Percentage of Sales

Over the last few years, many of the large wineries and some juice processors in New York State have continued to buy grapes even when their inventories were high, thus helping to keep growers in business. Now the major wineries hold large inventories, and at the same time relative sales of their product have declined as imported wines have steadily carved a greater market share at the expense of both New York State and California vintners. As seen in Table 2, from 1973 to 1982, the "other states" lost approximately half their market share, while California's loss was much smaller. New York's share of the "other states" category is about two-thirds; therefore, in 1982 New York's share of wine sales was approximately 5.2 percent. (14)

Many of the smaller wineries (those producing less than 200,000 gallons annually) came into existence as a result of the national expansion of wine consumption that began in the 1960s. Whether stimulated predominantly by the mood of the times or by the state's Farm Winery Act of 1976, the number of small wineries in New York State increased dramatically after that date. The Farm

TABLE 2

Wine Entering Distribution[1] Channels in the U.S. by Percentage of Areas Where Produced 1973-1982

Year	California	New York[2]	Other States[3]	Foreign
1973	69.3	9.8	14.8	16.0
1974	70.6	9.7	14.7	14.7
1975	73.4	8.7	13.2	13.4
1976	71.6	8.4	12.8	15.7
1977	71.0	7.8	11.8	17.3
1978	68.5	6.4	9.7	21.8
1979	69.4	6.5	9.9	20.7
1980	68.9	6.5	9.8	21.4
1981	68.6	5.7	8.7	22.7
1982	68.2	5.2	7.9	23.8

[1] Standard terminology representing assumed sales though the concept represents wine movement.

[2] Calculated as two-thirds of "Other States"; see footnote 13.

[3] "Other States" includes New York.

Source: Wines and Vines, v. 64, no. 7, July, 1983, p. 37.

Winery Act, Chapter 275 of the Laws of 1976, created a reduced-fee winery license for vintners who would produce no more than 50,000 gallons per year and would use New York grapes exclusively. Before the legislation there were 14 small wineries, each producing less than 200,000 gallons of wine per year. By 1981 there were 35, and by 1983 there were over 50. (15) These wineries have suffered in the general decline in sales of New York State wines, but they are mostly hampered by promotion and marketing difficulties. Many of them produce premium table wines from French hybrid or vinifera grapes, and these wines have fared well in taste tests against California and foreign wines. However, they still struggle against an image of New York State wines as "foxy" (i.e., grapy-tasting) and against being unknown to most wine consumers. Were these smaller wineries to become well known and were demand to increase, they might have difficulty supplying the market demand.

The Most Recent Bad News

Overall, then, the New York State wine and grape industry appears to be in economic trouble. One result of the wineries' large inventory is an announced cancellation of 1984 contracts for 15,000 tons of Concord grapes and reduction in purchases of Catawba and Ives grapes by the largest winery in the Finger Lakes region. Another large winery has announced a cutback of 300-400 tons of Delaware, Seyval Blanc and deChaunac grapes. Further, the largest juice processor announced that it may use allocations in 1984. (Basically, allocating is the division of the total amount of grapes to be purchased among a set of growers and is in contrast to the more customary practice of buying the entire volume from growers with whom a processor has contracted.)

The industry's hard times are bad not only for the growers and vintners. As the next chapter describes, these developments have serious economic implications for localities and regions.

GRAPES AND WINE IN THE ECONOMY

REGIONAL SIGNIFICANCE

The grape/wine industry's troubles are important matters in some regions and affect sufficiently large areas and groups to warrant state-level concern. Agriculture is a vital part of the New York State economy, cited often as one of its largest industries. Cash receipts for farm marketings were $2.6 billion in 1982. Grapes ranked second among fruit crops in cash receipts, the 157,000-ton total having a market value of $36.6 million as compared with apples' $100.5 million. (In 1983, total grape tonnage increased markedly, to 191,000.) (1)

Grape processors, such as wineries and producers of unfermented juice and jelly, are a significant part of New York's food processing and beverage industries. The largest unfermented grape juice processor reported net sales of $235.2 million in 1981. (2) Such information for wineries is not readily accessible because some of the large wineries in the state are either subsidiaries of larger corporations which do not furnish separate data or are closely-held family corporations, and the farm wineries are nearly always family businesses. In a major study of the New York grape industry, James Putnam, a farm credit analyst, cited a 1976 net sales figure of over $60 million for the largest winery, but this figure should be treated with caution since it is old and certainly does not represent the entire state. (3) The juice processing industry is one of the two major markets for the state's grape crop, and some examination of its condition and impact on grape growing will be made in this chapter. The major focus, however, will be on the wineries' role in processing the grape crop.

It is instructive, at this point, to look at where New York State stands generally in relation to the leader both in grape and wine production--California--and those states which follow New York. In 1982, California's grape crop totaled 5,958,000 tons while New York's was 157,000 tons. Of the California tonnage, 3,085,000 tons (51.8 percent), including wine, table and raisin grapes, were crushed, primarily for wine. The remaining grapes were sold as fresh table grapes or dried for raisins. New York State processed 86,500 tons (56.2 percent) for juice and 67,500 tons (43.8 percent) for wine. California's cash receipts for grapes the same year were $1.2 billion while New York's were $36.6 million as noted previously. The second-ranking state in grape production was Washington with 168,900 tons, of which 92.3 percent were crushed for juice and 7.7 percent for wine. Washington's total crop value was $31.3 million. (4)

California's wineries produced 513.2 million gallons of wine in 1982 while New York's produced 28.6 million gallons. The third leading producer was Virginia with 2.8 million gallons. (5) As seen in Table 2, reports of New York State production are included with "other states," but it is a misleading inclusion because New York is as far ahead of the nearest other wine producer as it is behind California.

Grapes

Nearly 42,000 acres of grapes are grown in 25 of New York's counties, with the heaviest concentration in the Great Lakes and Finger Lakes regions as Table 3 and Figure 1 illustrate. Especially for the eight leading counties within those regions, grapes represent a significant contribution to their agricultural economies. (6) The coastal zone of Chautauqua County alone contains almost 50 percent of the total New York vineyard acreage.

TABLE 3

New York Grape Farms by Size and Region, 1980

	Number of Farms by Size (acres)					Total Farms	Total Acreage
Region	Under 5	5-19.9	20-49.9	50-99.9	100+		
Great Lakes Cattaraugus Chautauqua Erie	242	509	207	80	30	1,068	22,417
Niagara	72	81	36	12	--	201	2,778
Finger Lakes Ontario Schuyler Seneca Steuben Yates	110	254	129	49	25	567	15,184
Other Western Counties Chemung Livingston Monroe Onodaga Orleans Tompkins Wayne Wyoming	30	10	10	--	--	50	648
Eastern Counties Albany Columbia Dutchess Greene Orange Rensselaer Suffolk Ulster	31	37	13	1	--	82	952
New York State	485(25%)	891(45%)	393(20%)	143(7.2%)	55(2.8%)	1,968	41,979

Source: New York Orchard and Vineyard Survey 1980, p. 39.

Investment--In terms of the value of land, buildings, machinery and other supplies, grape farms represent a sizable agricultural investment. The annual Grape Farm Business Summary for each of the major regions surveys the business records from self-selected commercial grape farms. The 1981 summaries surveyed a total of 32 such farms. Although these farms' acreage averaged 47 in the Finger Lakes and 71 in the Great Lakes, Putnam's research showed that the figure of 20 acres is an appropriate dividing line between commercial and non-commercial grape farms in New York State. (7) Using the capital investment average figure from the summaries, Table 4 shows what this investment would be for all of the commercial farms (those over 20 acres) in the two largest regions. For the Finger Lakes, the 203 commercial farms would have an estimated value of $45.5 million, while in the Great Lakes, the 365 commercial farms would have an estimated value of $96.4 million.

In each case, the commercial farms represent less than half the total number of grape farms in each region. Therefore, the figures in Table 4 constitute an understatement of regional investment. Since much of the equipment and supplies used in grape growing is needed by farms as small as five to ten acres,

TABLE 4

Estimated Capital Investment for Commercial Grape Farms in Finger Lakes and Great Lakes Regions 1981

	Finger Lakes	Great Lakes
Average Farm Investment	$ 234,095[1]	$ 264,197[2]
Number commercial farms (over 20 acres)	203	365
Estimate of Total Capital Investment for Commercial Farms	$47,521,285	$96,431,905
Remaining number of farms--all sizes	364	904

[1] Grape Farm Business Summary 1981: Finger Lakes Region, p. 4.

[2] Grape Farm Business Summary 1981: Great Lakes Region, p. 4.

it is reasonable to assume that the non-commercial farms' capital investment would add significantly to each region's investment total. As indicated in Table 3, there are only 14 other commercial farms outside these two large regions.

Jobs--Despite advances in mechanical harvesting and vineyard maintenance, grapes are a labor intensive crop and provide both regular and seasonal employment. The New York Wine Council (an umbrella organization composed of the New York Association of Wine Producers and the New York State Wine Grape Growers) estimates that statewide grape industry employment is approximately 16,000, of which 6,000 is full time and 10,000 is seasonal. (8) (Table 5 shows an approximate total for full-time workers in commercial vineyards in the two major regions. These calculations are based on the annual summaries' averages for a small number of reporting growers rather than a survey of all growers. In addition, these figures refer to commercial farms only. The total, therefore, is not representative of the industry's full-time employment. The summaries give no averages for seasonal employment.)

TABLE 5

Estimated Employment on Commercial Grape Farms in Finger Lakes and Great Lakes Region 1981

	Finger Lakes	Great Lakes
Average number hired workers per commercial farm	2.5[1]	2.8[2]
Number of commercial farms (over 20 acres)	203	365
Estimated total hired workers for all commercial farms	508	1,022

[1] Grape Farm Business Summary 1981: Finger Lakes Region, p. 2.

[2] Grape Farm Business Summary 1981: Great Lakes Region, p. 2.

Taxes--The vineyards' contribution to their local communities' tax bases is of a greater degree than that of other farmlands because grape growers pay, as part of their farm assessment, a real property tax on the vines themselves. However, those who apply to the State Board of Equalization and Assessment for a reassessment under the Agricultural Districts Law may receive a lower assessment than their local assessor has given them. The annual summaries for 1981 show average property taxes of $2,239 for commercial farms in the Finger Lakes and $3,912 for those in the Great Lakes. (9, 10) The 203 commercial farms in the Finger Lakes would pay an estimated total of $454,517 in property taxes, while the 365 farms in the Great Lakes region would pay $1.4 million.

Other Contributions--Besides providing jobs and taxes for their local communities, grape growers purchase materials and services and borrow money, thus providing income for many businesses in their localities. Table 6 details selected expenditures by growers in the two regions for such items as machinery repair, fertilizer, pesticides, insurance, utilities and interest. Among the highest expenditures are: fertilizer, pesticides and other crop expenses at $1.5 million in the Finger Lakes and $4.4 million in the Great Lakes; and machinery parts and repairs at $500,000 in the Finger Lakes and $1.4 million in the Great Lakes.

These expenditures represent substantial contributions to local farm support businesses. Interest payments, also high at $1.6 million in the Finger Lakes and $3.8 million in the Great Lakes, represent grape growers' dependence on and considerable support of the local farm credit industry.

As noted earlier, this part of the discussion has focused on the largest of the grape-growing regions. This does not deny the importance of the developing grape/wine industry in eastern New York, particularly on Long Island. There are some 700 acres of mostly vinifera grapes planted in Suffolk County now, and the growers there expect 8,000 to 10,000 acres within eight years. (11) It can be assumed that as the number of vineyards expands, their effect on local economies will grow. At the projected rate of growth that their growers association expects, Long Island's grape farmers might represent one-fifth of New York State's vineyard acreage in ten years.

Wine

Though New York over the last six years lost its second place position in U.S. grape production to Washington State, it has retained that slot in number of wineries and wine produced. New York has 70 licensed wineries of the U.S.

TABLE 6

Selected Commercial Grape Farm Expenditures 1981

	Finger Lakes Region		Great Lakes Region	
	Per Farm[1]	All Farms Over 20 Acres (203)	Per Farm[2]	All Farms Over 20 Acres (365)
Machinery parts, repairs, etc.	$2,744	$557,032	$3,810	$1,390,650
Fertilizer, trellis, supplies, pesticides, gasoline and oil, replacement rootstocks, other crop expenses	$7,537	$1,530,011	$12,184	$4,447,160
Insurance	$1,470	$298,410	$2,672	$975,280
Utilities	$507	$102,921	$908	$326,880
Interest	$7,845	$1,592,535	$10,344	$3,775,560
Taxes	$2,239	$454,517	$3,912	$1,427,880

[1] Grape Farm Business Summary 1981: Finger Lakes Region, p. 6.

[2] Grape Farm Business Summary 1981: Great Lakes Region, p. 6.

total of 1,028 compared to 591 in California and 43 in Ohio. (12) Table 7 shows the distribution of growers, wineries and juice processors by region, underscoring the fact that the grape industry is concentrated in the Great Lakes and Finger Lakes regions while the wine industry is concentrated in the Finger Lakes, Hudson Valley and Long Island regions. The eastern vineyards and wineries are, in fact, the ones that are increasing most rapidly. According to the growers association, Long Island vintners expect to have a total of nine wineries by 1985 and 50 when the region's wine capacity is fully developed (13).

Gross sales figures for wineries for any year are difficult if not impossible to determine. Most statistical reports of the industry refer to gallons shipped. The New York Wine Council uses a figure of $156 million for 1981 members of the Council, but it is a self-reported figure, represents only a part of the state's wine industry and cannot be considered authoritative. (14) If all wineries were included, the total would surely be much higher. The most

TABLE 7

Growers, Wineries, and Juice Processors
in NYS by Region, 1982

Region	Growers	Wineries	Juice Processors
Great Lakes	1,269	8	4
Finger Lakes	569	35	5
Other Western Counties	50	6	-
Eastern Counties	82	21	2
Total	1,968	70	11

Source: Information tabulated from "Annual Directory 1982" in Eastern Grape Grower and Winery News, v. 7, 1982.

recent figure available from the U.S. Census of Manufacturers was the 1977 figure of $168.8 million.

In 1981, New York State wineries paid $6.2 million in state excise taxes and $24.6 million in federal excise taxes. (15) The 20 wineries which are members of the New York Wine Council and are among the largest of the wine producers employed approximately 1,700 employees--1,300 regular and 400 casual--with a payroll of $18 million. (16) Inasmuch as this information is unavailable for the remaining 50 wineries, these figures understate the significance of the industry.

The wineries, like the grape growers, contribute in many ways to the economies of the state and their localities. In addition to the federal and state excise taxes, the wineries pay property, corporate and sales taxes. They provide income for local businesses that service their industry, and together with the grape farms they provide a strong drawing card for tourism, also one of the state's leading industries.

A Note on Tourism

According to a figure given to the Finger Lakes Association by a State Department of Commerce representative, the tourism industry brought approximately $546 million to the Finger Lakes region in 1978; the association currently estimates that the annual expenditures are in excess of $600 million. (17) The association believes that the greatest value of the wineries and vineyards to the area is in the way they enhance the perception by tourists that it is a beautiful and hospitable place to visit. While it is difficult to place a monetary value on such a perception, the director of the association estimated in one of the Special Committee's public hearings that at least $30 million in tourism would be lost to the region if the presence of either vineyards or wineries were significantly diminished. (18) A study prepared for the Commerce Department on perceptions and appeal of New York State regional attractions showed that within the 25 top-ranking points of interest (out of 57 choices), Finger Lakes wineries ranked 7th, Catskills wineries 11th and Hudson Valley wineries 12th. Also, the wineries' appeal was especially strong for repeat visits. (19)

The Finger Lakes Association has stated that 350,000 is a solid, perhaps slightly conservative, figure for the number of people touring wineries in 1982. (20) Since that is only one region, it is likely that the figure would be closer to 500,000 if one included attendance at all other wineries, particularly those in the eastern part of the state, which tend to have day-tripper tourists from the metropolitan area. According to the Long Island Grape Growers Association, its developing industry will be a major tourist attraction in the years to come. The Association president said at a recent hearing:

> We have over 13 million people to draw visitors from within two hours of our vineyards and wineries and this is not counting East by ferry from Orient Point to New England. (21)

A Cause for Concern

Clearly, then, grape and wine production are of great importance in several regions of the state, and it is in those regions that a threat to those industries is first felt. Further decline will cause damage to regional economies through loss of direct employment, diminution of the tax bases and further loss of income as industry-servicing businesses suffer. Disruptions of regional economies, however, are not matters of only regional concern. Economic dislocations in one place inevitably affect economic factors in neighboring places through migration of newly unemployed people, reduction in markets for supra-regional businesses and the necessity for state services to distressed localities and residents.

INDUSTRY CONCENTRATION AND MARKETS

The preceding description of grapes and wine in the state's economy was essentially an aggregate description. Within the categories of grape grower and vintner, however, are differences in size, products and markets, and while data deficiencies make it difficult to be exact, the extent to which a producer is having trouble can vary with such differences.

Grapes

Concentration--As noted earlier, grape growing in New York State occurs mainly in the Great Lakes and Finger Lakes regions, and the Concord grape is by far the predominant variety, representing 69 percent of the 1983 processed tonnage. Other American varieties follow at 20 percent, French hybrids at 9 percent, European vinifera at less than 0.1 percent and all other varieties accounting for the remainder. Regionally, the Concord predominates in the Great Lakes and even in the Finger Lakes. The latter has been the home of the greatest growth in French hybrid plantings (currently 25 percent of annual tonnage), just as Long Island is the region with the largest and fastest increasing number of acres in vinifera varieties, specifically the white ones. (22)

This chapter relies on the latest published figures from the 1980 New York Orchard and Vineyard Survey, which shows a total of 1,968 growers. (23) According to James Putnam's study previously noted, these growers fall into two distinct groups--commercial growers who farm 20 or more acres of vineyards and "who depend on grapes and sometimes other crops for a full-time living" and the part-time growers who farm less than 20 acres as a "supplemental income or as a hobby." (24) Table 8 shows these two groups by region and acreage. The part-time group, with 1,376 of the state's grape farms, accounts for 70 percent of the farms and 26 percent of the grape acreage with an average of 7.8 acres per farm. The commercial group, with 20 acres or more, has 592 farms. It accounts for 30 percent of the farms, but 74 percent of the grape acreage. The average acreage for this group is 52.8.

Because the full-time growers' livelihood depends on good vineyard management, the farmers in this group have generally been alert to improved viticultural practices and were mainly the ones who added new grape plantings in

TABLE 8

Full-Time and Part-Time Grape Growers by Region

	Commercial (20+ acres)			Part-Time (Less than 20 acres)			Total		
	No. Farms	No. Acres	Average Acres Per Farm	No. Farms	No. Acres	Average Acres Per Farm	No. Farms	No. Acres	Average Acres Per Farm
Great Lakes (Including Niagara)	365	18,192	49.8	904	7,003	7.7	1,269	25,195	19.8
Finger Lakes	203	12,093	59.6	364	3,091	8.5	567	15,184	24.7
Other Western Counties	10	468	47	40	180	4.5	50	648	13
Eastern Counties	14	497	35.5	68	455	6.7	82	952	11.6
Total	592	31,250	52.8	1,376	10,729	7.8	1,968	41,979	21.3

Source: Information tabulated from New York Orchard and Vineyard Survey 1980, p. 39.

the mid-1960s and early 1970s. As Putnam points out:

> Because of the relatively good grape farm profitability of the 1950's and 1960's, the full-time growers were able to operate with relatively lower levels of debt, a factor which has enabled many of them to withstand the economic stress of recent years better than might otherwise have been true. (25)

The last three years, however, have seen even this group caught between the high cost of producing their grapes and the grapes' low market value. At a recent meeting of the New York State Wine Grape Growers in January, 1984, an informal survey of 42 such commercial growers revealed that 15 of them believed they would be out of business within three years. According to the Wine Council, these 15 growers represent a substantial (92-acre average) and long-term (up to 20 years) investment in the kind of full-time grape farming that gives careful attention to proper vineyard practices and maintenance. Their case is quite different from growers who, through certain cost-cutting measures--overcropping, reducing spray applications and poor pruning--have endangered their yield potential. The farmers in the survey are rather those who have conscientiously tried to continue both efficient and profitable grape farming and nonetheless find themselves unable to market their crop at a level to enable them to stay in business. (26)

The part-time growers who farm small grape acreages are primarily dependent on off-farm income, often from jobs in nearby metropolitan areas. Some of them inherited their vineyards; some operate such farms as a hobby only. Because they are not dependent on their grape farms for their livelihood, they are less vulnerable to the market and can sustain a considerable loss per acre for longer than a commercial grower can. Within the grape industry, this division of interest in the need for economic return has contributed to a lack of unity on industry problems. (27)

In sheer numbers, then, the part-time group is larger while the commercial group farms have larger acreage, consequently producing a larger proportion of the annual crop. While it is not possible to say with any exactitude that one group is suffering more than another, it is clear from testimony at the Special Committee's public hearings and reports of farm auctions in the newspapers that some growers will go out of business over the next few years, and it is likely that this will happen for growers in both categories. The result will be a more highly concentrated industry with fewer farmers in each group.

A somewhat similar breakdown of growers occurs in California. In that state there are approximately 5,000 growers, of whom about 3,000, or 60 percent, have farms of 10 to 15 acres. They are "weekend growers," have other jobs and are located in the north and south coastal areas. About 1,000, or 20 percent, of the growers have farms of 70 to 100 acres located in premium areas such as the Napa Valley. These acres have a concentration of the vinifera grape varieties. Approximately 1,000 are "professional growers" operating 150 or more acres. (28) Many of these large farms are in the interior San Joaquin Valley which produces large crops of table grapes and raisin grapes which are also crushed for inexpensive, non-varietal wine.

Markets: Unfermented Products and Wine--The New York State grape crop has three outlets: unfermented juice, wine and table grapes. For many years, the fresh or table grape market has represented no more than two percent of the total annual tonnage. This is unlike California, where table grapes utilized as fresh grapes represent approximately ten percent of the total grape tonnage.

In both California and New York State, many growers--both commercial and part-time--operate under contract to an unfermented juice processor or winery or both. This generally means that the processor or winery declares which kind and how many tons of grapes it will buy on an annual basis. Wineries in New York State announce their anticipated prices in January and their final prices in August. Prices in the juice processing industry are set differently; cooperatives owned by grape farmers control that industry in New York State. Nonetheless, the prices paid by the leaders in each processing industry affect other processors' prices and in fact set the standard annually.

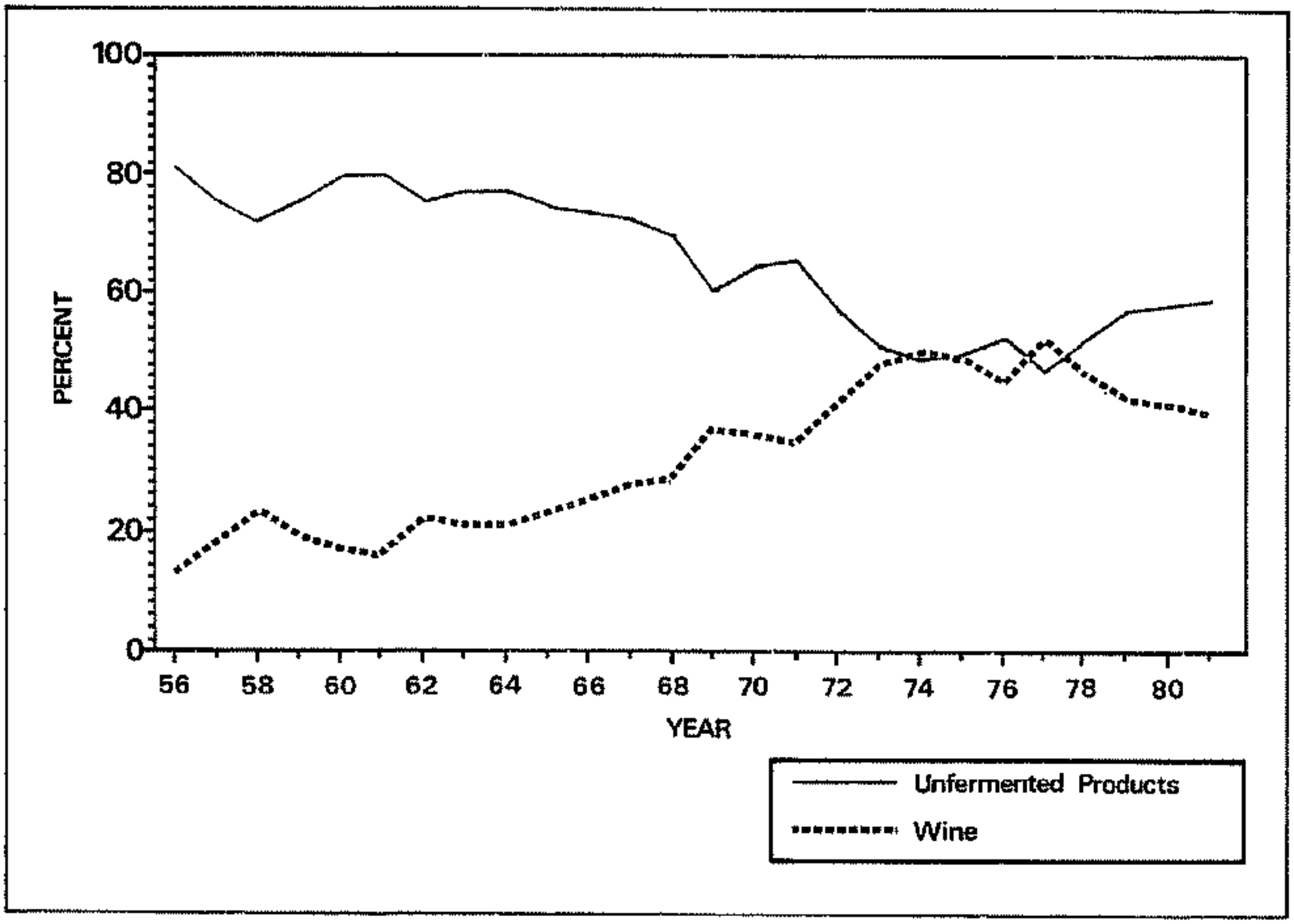
The major buyers of the New York crop are juice processors and wineries. Figure 2 vividly depicts the change in share utilized by processors and wineries from 1956 to 1981. There was a slow but steady decrease in the juice processors' share while the wineries' share rose more dramatically until 1977, when the shares reversed direction. This reflects the situation of the growers who, having emphasized grape production for wine, found that wineries with too many grapes or the wrong kind reduced their utilization; growers were forced "into the cash market for unfermented product utilization where there really was not a good home for them." (29) An examination of what has been happening in each of these markets will give some perspective on the many factors affecting grape growers and their crop prices.

At the national level, Concord grapes find their largest market in the manufacturing of unfermented products, and this has also been true in New York State even though there has been a long-established use of the Concords for the production of wine. Of the unfermented products made from grapes, juice is by far the most important, being used to make bottled/canned grape juice, frozen grape concentrate, bottled/canned grape drink and chilled grape juice. (30) Although some percentage of each year's crop is made into jelly and jam, that use does not represent a major outlet for growers.

Within New York State, the unfermented grape juice industry is dominated by one grower-owned cooperative with a manufacturing subsidiary that is the largest processor of Concord grapes in the United States and one of the most well-recognized consumer brands in America. (31) Although there appear to be 11

FIGURE 2

Grape Crop Market Trends



Source: James N. Putnam, II, <u>The New York Grape Industry: Lake Erie Grape Belt and the Finger Lakes</u>, p. 116. Used by permission.

juice processors in the state (Table 7), this one, because of its dominance, effectively sets the price statewide for grapes for use in unfermented products.

The price paid to growers is determined by the market situation in the juice industry at the time, and it is important to look at what has been happening there. Grape juice is part of the much larger and highly competitive fruit juice market. In the bottled/canned form, grape juice is generally the most expensive fruit juice on the market, and this fact, along with some other characteristics, such as its ability to stain and perceptions by some that it has a strong aftertaste, are thought to work against its market growth. In the last few years, the introduction of white grape juice, made primarily from Niagara grapes, has helped to alleviate the second and third of those factors, but price remains a barrier to growth in spite of a devoted following of consumers who like purple grape juice. (32)

Most of the sales growth in the fruit juice industry over the last 20 years has been in frozen concentrate. In that form, grape juice is more competitive with orange juice, the industry leader. During the late 1960s and early 1970s, when the orange juice industry faced price increases during crop shortages, grape juice profited by becoming more price-competitive. However, in recent years the cheaper imports of orange concentrate from Brazil have increased from 1.9 percent to 23 percent of the market, thus keeping the price of orange concentrate relatively stable and more competitive than grape concentrate. (33)

There are other factors affecting the grape juice industry. One has been the growth in use of California non-Concord grapes for blending with Concord juice. This practice began during the Concord shortage years of the late 1960s and early 1970s and has continued. Another factor is the shifting in the location of Concord grape growing for use in unfermented products. The big shift has been from the East to the West Coast as Washington State has overtaken New York in production of Concord grapes. From 1956 to 1981, Washington increased its unfermented product utilization by 209 percent while New York increased such utilization by only 14 percent. (34)

All of these factors are operating in the market place when the grower is ready to sell his grapes and may affect the prices paid to him either favorably or unfavorably. The second major market--wineries--has another (although somewhat similar) set of factors.

Wine

Concentration--Of New York's 70 licensed wineries, 11 rank among the 100 largest wineries in the U.S. Five of these are located in the Finger Lakes region and one in the Great Lakes. These six wineries produce from 1 million to 5 million gallons annually, and those in the Finger Lakes account for the bulk of New York State wine production. The remaining 59 licensed wineries range in production size from under 10,000 to 1 million gallons annually. Approximately 60 percent produce under 25,000 gallons. All wineries together produced over 35 million gallons in 1981. (35)

The breakdown of California's 591 wineries has some similarities to New York's. There are, for example, two industry leaders who account for more than 50 percent of California's wine shipments. Below them are some large corporate wineries (perhaps 70) and following them is the large number (over 300) of the small premium wineries which have done so much to promote the prestige of California as a premium wine producer. The remaining wineries are either farmer cooperatives or small family-owned businesses. (36) All of these wineries contributed to the production of 385 million gallons in 1981.

Markets--Except for those wineries producing primarily kosher sweet Concord wine, New York's other large wineries have a product mix of wines made from Concord and other native American grapes as well as French hybrids. In addition to table wines in both popular-priced and premium categories, some have specialized in the production of dessert wines, such as ports and sherries, for which the Concord supplies a significant base. Others have emphasized sparkling wines such as champagne and the once popular "Cold Duck," also a significant user of Concord grapes. It is the smaller farm wineries, particularly on Long Island and in the Hudson Valley, and a few in the western regions, that have specialized in producing premium table wines from vinifera grapes.

New York's historic strengths in wine production have been in the kosher, dessert and sparkling wines. In the 1950s, the early days of the wine expansion, New York captured a large share of these markets and held that share until the 1970s. In 1960, dessert wines had over one-half of the U.S. wine market, but this share has steadily declined to less than 10 percent of today's wine market. In the late 1960s, a sudden consumer preference for sparkling wines resulted in large sales of Cold Duck and Sparkling Burgundy by New York wineries. The market for Concords expanded with this popularity, drawing a significant part of the annual crops away from the unfermented products industry and encouraging additional plantings of Concords. When the boom ended in the early 1970s, large quantities of Concords had no market. Since the late 1970s, sales of sparkling wines, particularly the white champagnes, have made significant increases. While this trend is good for New York's champagnes, they compete in a relatively small market dominated by California, France, Italy and Spain. (37, 38)

The American market for wine has changed dramatically in the past 20 years. U.S. sales of wine have grown at an annual rate of 5.5 percent, but that rate varies among categories of wine and for wine producing states and countries. The most significant growth has been in the table wine category. In 1961, table wines represented one-third of U.S. wine sales; in 1980, they represented three-fourths. And within table wines, the most important trend was the shift toward white wines. By 1979, over one-half of U.S. table wine sales were white wine, and there is little reason to think that this trend will reverse. (39)

The wine producers who have profited most from these two trends have been those in foreign countries and California. Imports have grown the fastest, having increased to a market share of 24 percent of the 1982 U.S. wine sales. (40) Their success has been largely attributed to the continued strength of the U.S. dollar in relation to other currencies and to the apparent government subsidies of wine production and promotion by France, Italy and other European countries.

California has dominated the U.S. wine market almost from the beginning, and despite its growers' and vintners' misjudgment of the table wine variety that would be in demand in the 1970s, it was able to turn around both its plantings and production to take advantage of not only the growth in table wine but also the popularity of the white varieties. Economy of scale has been a significant factor here, as has the flexibility of using both their table grape and raisin grape varieties for wine production. In addition, many of California's 591 wineries have emphasized the vinifera grape varieties from which they produce highly competitive premium wines. Thus, California is the leader in both the popular-priced jug wines and the higher-priced premium varietal wines.

All other wine-producing states, including New York, have increased their table wine production at a much lower rate than California. Historically, these states were not strong producers of dry, particularly white, table wines. Those producers who, like New York State's producers, emphasized sweet wines have found that their market has not only not shared in the growth of the national wine market, but has diminished.

INDUSTRY FUTURE: OPPORTUNITIES AND CONSTRAINTS

Unfermented Products

The outlook for growth in the unfermented juice industry, while not dim, is not especially optimistic. The per capita consumption of grape beverages increased by 1.61 percent annually between 1961 and 1980, and that rate is expected to hold for the 1980s. At that level of growth there were enough Concord grapes at 1978-1980 production levels to maintain an adequate supply. Much more would have to be done by the industry to promote grape juice products in order to stimulate an increase in annual growth of sales. The cost of developing new products and advertising them is closely tied to the market price of the finished product as well as the raw product. In order to be competitive and yet pay the cost of expanded advertising, processors would have to lower the price paid to growers to an unacceptable level. On the whole, there appear to be some opportunities for expansion, especially in food service and fast food outlets and in blended drinks, white grape juice and sparkling grape juice. But there are opposing factors at work. California has entered the grape beverage market, and the best market for grape juice--children--is the slowest growing group in the population. (41)

Some agricultural experts think that grape growers could expand the market for table grapes through greater production of seedless varieties. With large commercial plantings, markets could be developed to compete with California. (42)

Wine

The future for wine market expansion is much more positive. Wine consumption continues to grow in the U.S. As pointed out earlier, wine sales have increased at a compound annual rate of 5.5 percent for 20 years, although the growth has been significantly different within specific categories of wine. According to a major industry publication, table wines currently hold 75 percent of the market and are expected to grow to 87 percent by 1990. Sparkling wine sales, following a drop in sales after the Cold Duck popularity faded, recovered and reached a six percent market share. Although expected to rise to seven percent by 1985, sparkling wine is expected to return to six percent through the remainder of the 1980s. Dessert wines have suffered most, with sales declining by 3.6 percent annually since the 1970s. They now hold less than nine percent of the market and are expected to slide to three percent by 1990. (43)

The same publication predicts that wine producers' ranks will shift also: Imports will continue to cut into domestic producers' share, probably growing to 31 percent by 1990. This will affect California to some extent, which will drop from a 1981 level of 69.1 percent to a 1990 level of 65 percent. Other states, including New York, will continue to lose market share until they reach about four percent of the market by 1990. If New York still accounts for two-thirds of the market shared by that group, then the state's share of the market will be 2.6 percent. (44)

In terms of wine consumption, America ranks low (28th) in relation to many other countries. Compare the 1982 U.S. per capita annual consumption of 2.11 gallons with that of France at 23.78 or Portugal at 20.34. (45) Industry watchers predict continued growth in U.S. per capita consumption because of growth in population age groups 25-34 and 35-44, the two age groups which account for almost 50 percent of total wine consumption. (46) Within the U.S., New York ranked 12th in 1982 at 2.99 gallons per capita, while California ranked 3rd at 4.45 gallons. (47) As the second most populous state, New York provides a significant potential market for growth of wine sales.

A number of possibilities exist for New York wine producers and, consequently, grape growers:

- The Italian lambruscos or soft-type wines seem to have a permanent place in the market. New York wineries may be able to develop competitors in this category. (48)

- One point in New York's favor is that it has the right climate for the production of white grapes and therefore of the currently preferred white table wine. But expanded plantings, requiring investment of capital, labor and time, could only take place with a major commitment by one or more of the large wineries. (49)

- While New York's sweet wines will continue to have some market, their popularity has declined, and little hope for growth is seen there. Because the market will continue to exist, there will be a need for Concord grapes to produce the wines. For this reason and for the unfermented products market, Concord grapes will still be important for New York's grape-growing industry. (50)

- New York can compete well in the sparkling wine category, but it is a small market and cannot make up for losses in dessert and red table wine categories. (51)

CONCLUSION: THE NEED FOR ADAPTABILITY

Changes in the tastes of American wine consumers have made adaptability important to maintenance of the health of a state's grape/wine industry. The decline in marketing opportunities in the wine categories which have been New York vintners' strengths have been especially hard on the New York industry. The California industry, although having also overplanted red varieties, has managed to alter its planting and production patterns sufficiently to maintain a dominant market position.

As Chapter Four will indicate, the California industry's adaptability derives in large part from tax exemptions for replanting and research support obtained from both state and private sources. If the New York industry is to recover and seize the opportunities that the evolving wine market presents, it will have to enhance its adaptability. And if it is to enhance its adaptability to a point equal to the California industry's, there will have to be significantly greater research efforts and perhaps tax initiatives to encourage replanting.

Tax and research matters are only two aspects of a state's involvement with the wine industry. There have been popular perceptions, in fact, that the differences in wine-related laws and regulations between California and New York have been significant in determining which of them has flourished. The next chapter compares wine-related laws in order to permit some examination of this contention.

RESTORING COMPETITIVENESS

SIMILARITY IN FUNDAMENTALS--DIFFERENCES OF DETAIL

How have the States of California and New York significantly differed in their attitudes toward their respective wine industries? It will be difficult to answer this question, and probably impossible to answer it in full. Between the two states' bodies of wine-related laws, there is a host of differences, some that strike the intuition as large and others that would not seem to have much effect on whether or not a state's wine industry would flourish. Regarding most differences--both those that seem large and those that seem small--there have been few, if any, market analyses to demonstrate significance or insignificance.

Wine-related statutes are found in a variety of laws, including tax, agricultural and health. The great preponderance of each state's wine-related law, however, is contained in its Alcoholic Beverage Control (ABC) law. Both legislatures, in enacting the ABC laws at the end of Prohibition in 1933, specified that a fundamental purpose of the ABC laws was to promote temperance in consumption of alcoholic beverages. It may be that, taken as whole bodies, the states' ABC laws engender similarly temperate societies. Implicit in the many and various details of the ABC laws, however, are different ideas about what it is that constitutes temperance and, especially, about how temperance is best promoted.

While this discussion will concentrate on differences between the two ABC laws, we should note at the outset that there are points of profound and fundamental agreement in methods. For instance, both legislatures:

- enacted licensing systems to control the distribution of alcoholic beverages;
- distinguished within the licensing systems among producers, wholesalers and retailers and arranged for some separation in their business operations;
- provided for price posting and regulation;

- limited the geographic density of retail outlets; and
- forbade sale to minors.

The ABC laws are substantial and complicated documents, essentially constituting books of hundreds of pages. California's appears as Division 9 of its Business and Professions Code; New York's is Book 3 of the McKinney's Consolidated Laws. In addition, both states have extensive administrative regulations.

A NOTE ABOUT FEDERAL LAWS

It has been noted that enactment of the ABC laws followed the end of Prohibition. Section 1 of the Twenty-first Amendment of the U.S. Constitution ended Prohibition by repealing the Eighteenth Amendment. Section 2 specified that:

> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

The Twenty-first Amendment, then, vests power to regulate alcoholic beverage trade with the states, but not to the exclusion of a role for the federal government. In fact, the federal government has a considerable regulatory role in alcoholic beverage trade. There have been changes, however, in the identity of the federal regulatory agency. The basic federal alcoholic beverage control law is the 1935 Federal Alcohol Administration Act. (1) This act created the Federal Alcohol Administration as an office within the U.S. Treasury Department. Responsibility for administration of the Act's provisions passed in 1940 to the Internal Revenue Service and then, in 1972, to the newly created Bureau of Alcohol, Tobacco and Firearms (BATF) within the Treasury Department. BATF's responsibilities include federal alcohol tax collection as well as enforcement of federal alcohol laws.

There are several wine-related matters which are chiefly or in great part under federal jurisdiction. These matters include:

- storage;
- transportion, including specification of standard containers for shipping;

- labeling, including specification of classes of wine (e.g., sparkling, table, appetizer, dessert), grape varietal designations, geographic appellations (e.g., "Napa Valley" or "Finger Lakes") and methods of production; and

- advertising, including specifications regarding signs and displays and unlawful trade practices (including special inducements to or pressures on retailers).

The chief purposes of the federal laws are ensurance that the products are legally produced and distributed, federally taxed, safe to consume and not misrepresented to the buying public. Because some of these purposes fall also within the range of general duties of the Federal Trade Commission and the Food and Drug Administration, these agencies have also been involved with alcoholic beverage trade.

STATE LAWS

There exists, then, federal law and bureaucracy regarding some important alcoholic beverage control matters. Nevertheless, the states have specifications regarding many of these same matters and more. The range of state laws and regulations pertaining to alcoholic beverage production, distribution and sales is more extensive and often more controversial. Both in California and New York, the size and complexity of the ABC laws have been sufficient to warrant the close attention of wine producers, wholesalers and retailers.

The remainder of this discussion will focus on California's and New York's wine-related laws, comparing:

- general powers and duties of licensees;

- taxes and fees;

- terms of retail sale (i.e., method of payment, price, quantities);

- marketing (i.e., specifications affecting market size through limitations, for instance, regarding people who may buy and number of wine outlets); and

- promotion.

GENERAL POWERS AND DUTIES OF LICENSEES

The wine trade occurs through the efforts of producers, retailers and wholesalers and other middlemen who mainly expedite the transfer of the product from producers to retailers.

Producer Licensees

Wines are highly various with regard to how many kinds of grapes are used to produce them and what kinds of processes are used to make crushed grapes into salable wines. One might think of the basic process of crushing and fermenting a variety of grape to produce wine as the classic work of a vintner. Much bottled wine, however, is the result not just of fermenting a variety of grape, but of blending wines made from various grapes. And some wine which has not itself developed into a palatable beverage can be used in the production of wine if it is refined through the efforts of wine "rectifiers."

The states have recognized these facets of wine production in their licensing schemes. In California, this recognition is somewhat more explicit than in New York: the basic wine producer license designations in California are "winegrower", "rectifier" and "wine blender". In New York, the designations--"winery" and "farm winery"--are fewer and more general. The main difference between the two New York producer designations are that a farm winery may manufacture no more than 50,000 gallons annually and it must do so entirely from grapes grown in New York State.

Essentially, California winegrowers have all the powers of the other California licensees, and more. (2) Among their major powers are the powers to:

- produce wine through fermentation, blending and rectification;
- package and process their own and received wine;
- sell from winery premises to licensees and consumers for off-premises consumption;
- conduct tastings;
- sell for consumption in a restaurant on the licensed winery premises;
- hold a license for general sale of alcoholic beverages (i.e., including distilled spirits) for off-premises consumption;

- solicit orders; and

- operate branch offices.

Wine blenders, in contrast to winegrowers, may not produce from grapes, have branches, sell to consumers for off-premises consumption, or sell for consumption in restaurants on the winery premises. And unless a blender was licensed before February 2, 1968, he may not conduct tastings or hold retail licenses.* Rectifiers are far more limited than either winegrowers or blenders. Essentially, a rectifier may treat and process existing wine and sell it to other licensees. Some rectifiers may also be involved in the production of distilled spirits.

The California winegrower's branching license is called a "duplicate" license. Multiple winery branches are not uncommon in California, and at branch offices, winegrowers may exercise all of their license privileges (e.g., packaging, sale to licensees, sales for off-premises consumption, tastings, solicitation) except for actual production and sale for consumption in restaurants on the premises. (Winegrowers obtaining duplicate licenses after September, 1965, may conduct tastings and sell for off-premises consumption at only one of their branches.)*

By virtue of their winery licenses, New York vintners may, like California winegrowers, produce wine from grapes and through blending (it is not clear whether or not they can rectify), conduct tastings on the premises and solicit orders. In contrast to California winegrowers, however, New York vintners may not:

- hold a retail license for general (i.e., including distilled spirits) sales of alcoholic beverages for off-premises consumption; or

- operate out of an unlimited number of branch offices.

A New York vintner may apply for a license to sell New York State labeled wine (i.e., the ingredients of which are at least 75 percent New York State products) at retail for consumption off the premises. The extra license may be obtained for only one location, which may be anywhere in the State and at

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*The California Legislature in 1968 reduced wine blenders' marketing and promotional powers and in 1965 reduced winegrowers' sales and tasting rights at branches. Those who had already expanded facilities were permitted to maintain them under grandfather clauses.

which he may also hold tastings. A New York vintner may also apply for a license to sell wine in a restaurant which is located in or adjacent to the winery. A New York farm winery licensee is authorized by virtue of his license to make retail sales from the winery premises for off-premises consumption; a winery licensee may do so by obtaining a special certificate.

Chapter 692 of the Laws of 1980 permitted New York vintners to sell wine supplies, food items and souvenirs at the winery premises, a privilege the California vintners long had held.

Either through their general license privileges or application for extra licenses, then, New York vintners can arrange to have most of the major license powers that California vintners have. The most dramatic differences seem to be the California vintners':

- duplicate license, which permits with very little impediment the opening of branch facilities across the state; and
- power to hold a license for general retail sale of alcoholic beverages for off-premises consumption.

Retail Licensees

In general, both states have two basic kinds of retail licenses: those authorizing sale for consumption on the premises ("on-sale") and those authorizing sale for consumption off the premises ("off-sale"). With variations in combinations of beverages and places and seasons of sale, the number of retail licenses permitting sale of wine in each state exceeds twenty. (For a list of retail licenses, see Table 11).

There are some important differences between the two states' alcoholic beverage retail trade structures, especially as they relate to wine.

- In California, there are several kinds of retail "beer and wine" licenses. In New York, wine is separated from beer regarding off-sale retail licenses.
- In California, in contrast to New York:
  - off-sale retailers can own more than one off-sale establishment;
  - on-sale beer and wine licensees may sell bottles of wine to go; and
  - owners of food stores can hold off-sale licenses.

The total effect is that the number of points at which Californians can purchase wine considerably exceeds the number of points at which New Yorkers can purchase it. The extent to which this is so will be reviewed in the section of this discussion called "Marketing."

The Middlemen

Certain licenses authorize various kinds of parties to expedite the sale of wine by producers to retailers. The following list shows these licenses by state.

California	New York
Beer and Wine Wholesaler	Liquor Wholesaler
Beer and Wine Importer	Wine Wholesaler
Beer and Wine Importer - General	Solicitor's Permit
Winegrower's Agent	Temporary Solicitor's Permit
Wine Broker	Broker's Permit

Once again implicit in California's classifications, and in contrast to New York's, is a grouping of wine with beer and an at least semantic segregation of the two from the distilled spirits trade. The wholesaling privilege in California belongs to the "beer and wine wholesaler." (Distilled spirits wholesalers, however, can hold beer and wine wholesale licenses.) In New York, a liquor license as well as a wine wholesale license authorizes one to deal in wine. Vintners in both states have wholesale powers as a function of their winery licenses.

The California winegrower's agent license and the New York solicitor's permit are comparable in general function, if not powers. Both entitle a person to represent a winery to wholesalers and retailers.

A California winegrower's agent, essentially, may handle virtually all of the vintner's dealings with a wholesaler: he may possess the product of the vintner, conduct tastings, solicit and sell to wholesalers and collect payment. A winegrower may employ only one winegrower's agent.

A New York solicitor permittee may not own the product of the firm he is representing nor conduct tastings. He can, however, make sales and collect payment. Unlike California vintners, New York vintners may employ more than one such agent.

A wine broker works on commission, and his role in a transaction is limited to bringing a buyer and a seller together. His value in the transaction, likewise, is limited mainly to identifying parties who will yield high values in goods and services to each other.

The State of California explicitly separates importation of out-of-state wines (and other alcoholic beverages) from other wholesaling functions. California controls the flow of alcoholic beverages into the state by requiring that shipments from outside California come into the state only by consignment to a licensed importer. One importer's license carries no fee and is held by parties who are already licensed to sell. It permits them to take shipment of imported beverages and transfer them to their ownership under another license. The other importer's license, the "beer and wine importer's general" license, is issued to California agents for out-of-state beverages. Winegrowers and wholesalers not only <u>can</u> obtain an importer's license; they <u>must</u> obtain one in order to receive shipments of wine from out of state for further processing and sales.

New York does not require a special license for importation. Throughout the ABC law, however, it is clear that alcoholic beverages produced out of state are to be subject to the same procedures and qualifications as are beverages produced in New York State. That is, only licensees--mainly wineries and wholesalers--may handle such beverages for sale. Wine imported by a vintner for blending or a wholesaler for sales to retailers is subject, for instance, to the same health standards and taxes as are applicable to wines produced within the state.

A Note About "Tied-house" Restrictions

The differentiation of powers among different levels of trade--producers, retailers and middlemen--reflect an important consideration in both states' systems of alcoholic beverage trade: "Tied-house" restrictions are laws which require that a licensee at one level of the trade not have an ownership interest in a licensee at another level of the trade (e.g., a wholesaler cannot own a retail outlet). Legislators following the repeal of Prohibition believed that such separation would prevent a producer from being able to pressure a small retailer into an anti-competitive practice such as stocking only a few brands of beverage or into purchasing several lines of beverage in order to obtain the one he wants.

While some tied-house restrictions state simply, for instance, that a wholesale licensee may not hold an interest in a retail business, other tied-house restrictions carefully address specific ways in which licensees at different levels may interact with each other. For instance, producers and wholesalers may not give gifts to retailers to persuade them to purchase products, and credit extended by producers and wholesalers to retailers is strictly limited so that indebtedness does not render a retailer vulnerable to supplier manipulation.

Originally, both states enacted tied-house restrictions that, most importantly, separated producers and wholesalers from having interests in retailers. (3) In recent decades, however, California has deviated from the original restrictions by enacting exceptions to the tied-house restrictions. (4) California winegrowers may hold:

- an off-sale general license;
- limited interests in an on- or off-sale retail business via interest in a hotel or motel (this authorization, however, is given within strict tied-house limitations--the hotel restaurant cannot sell the winegrower's product); and
- wholesalers' and importers' licenses and other kinds of producers' licenses.

A winegrower may not hold a beer and wine wholesaler's or importer's license if he holds an off-sale general license.

Blenders may not hold retailers' licenses, but may hold other producer or wholesaler licenses. Wholesalers and importers may not have interests in retail operations, but may have interests in producer or other wholesale licenses. Winegrower's agents may not have interests in retail or, generally, wholesale operations. Tied-house considerations among brokers are dealt with on a case-by-case basis.

New York has generally maintained the nature of its tied-house restrictions since their enactment. In general, producers and wholesalers may not have retail interests. A very minor exception is that a producer may, upon consent of the State Liquor Authority and with strict limits on selling to the retailer, acquire retail premises if the premises are contiguous to the producer's premises and acquisition is necessary for the producer's expansion. Producers may have interests in wholesalers, and vice versa. On-sale retailers may have interests in other kinds of retailers. An off-sale retailer may have an interest in an on-sale retailer, but not in another off-sale retailer (in contrast to California off-sale retailers, then, New York off-sale retailers cannot in any way have off-sale branches). (5)

The states' major differences regarding these kinds of restrictions, then, seem to be that:

- California vintners may hold off-sale general licenses; and
- California off-sale retailers may operate chains.

TAXES AND FEES

Taxes

The grape/wine industries of California and New York directly yield revenue to their states through four taxes: the excise tax on alcoholic beverages; the sales tax; property taxes on winery and grape grower properties; and income taxes (including corporate income taxes for those wineries and growers which are corporations). The pertinent tax statutes do not appear in the ABC laws, but we will treat them in this chapter in the interest of providing a consolidated comparison of significant legal differences.

Not very controversial insofar as they relate specifically to wine have been the sales taxes, income taxes and property taxes on wineries. The state sales tax in California is 4.75 percent, to which most localities add 1.25 percent (and certain counties in the San Francisco Bay area add a sales assessment of 0.5 percent to support rapid transit). The State-levied sales tax in New York is four percent. Localities add sales taxes ranging from one percent to four percent. Corporate and franchise taxes in California are 9.3 percent of allocated net income; in New York, they are ten percent of allocated net income. (6) Property taxation is a matter of assessment.

It is in excise taxation and grower property assessment that wine-related tax differences between the two states are decidedly significant. (7)

Excise Taxes--California's excise taxes are very much lower, especially with regard to still wines. The following display shows the taxes per gallon.

	California	New York	
		Through 4/30/85:	After 4/30/85:
Table wine	1¢	12.11¢	9.84¢
Dessert wine	2¢	12.11¢	9.84¢
Sparkling wine	30¢	66.24¢	53.37¢
Carbonated wine	30¢	33.31¢	26.50¢

New York State in 1983 (Chapter 15 of the Laws of 1983) temporarily raised a variety of taxes in order to close a projected budget deficit. The tax rates in effect after April 30, 1985, constitute a reversion to the pre-1983 rates.

The greatest difference is in the excise taxes on table wines, which comprise the largest percentage of wine sales. California charges one cent per gallon of table wine while New York charges about 12 cents per gallon.

Excise taxes are paid at the origination site upon removal from a winery's premises for sale within state. Neither California nor New York applies excise taxes to wine which a vintner is exporting. Excise taxes for exported wine are paid by the importing wholesaler at the rate of the state into which it is imported.

Vineyard Taxation: The Exemption Difference--The Special Committee's hearings elicited complaints about three separate matters pertaining to the real property taxes which grape growers must pay. Those matters were:

- the general method of assessment, especially insofar as there is an "add-on" in assessed property value because of the presence of vineyards (or orchards);
- the inclusion of trellises in the assessed value of the property (a trellis is a structure of posts and wire on which vines grow); and
- taxation of property which is planted with new vines which are not yet producing income.

The matter relating to the "add-on" is by far the most complicated. In 1971, recognizing the need to protect farmland from urban encroachment, New York enacted an Agricultural Districts Law. (8) The law facilitated the creation of agricultural districts covered by certain protective measures to maintain the land in farm production. It established an agricultural value assessment system which allows eligible farmland to be taxed at its agricultural use value (i.e., its value if used for farming purposes only). These use values were to be set annually by the State Board of Equalization and Assessment (E & A), and farmers had to apply annually for assessment under this system. In the early years, use values were based on the market sales of farmland, but in 1980, the law was amended to use the income capitalization method (reflecting the net income that an average farmer can produce on the land) and based on a soil classification system. Using this new approach, E & A found most cash crops over-assessed and orchard and vineyard land under-assessed and therefore proposed separate determinations for orchards and vineyards to be added to their value under their soil classification.

Since 1981, there has been a continuing battle over this matter between farming interests and E & A. At issue is whether orchards and vineyards should be taxed solely on the basis of their soil classification or have added to this figure a value for the income from fruit-bearing trees and vines. Farmers insist that the Agricultural Districts Law makes no provision for separate determination of agricultural use values for specific crops and to thus interpret the law penalizes growers for making management decisions about what to grow. E & A argues that unless the value added to the land by trees and vines is exempt under the Agricultural Districts Law, provisions regarding trees and undergrowth under the Real Property Tax Law are controlling.

E & A proposed separate values for orchards and vineyards beginning in 1981, but after public hearings the schedule was modified and the separate values omitted. E & A warned, however, that the matter had to be clarified legally by the Legislature. A 1982 bill which would have eliminated any value attributable to fruit-bearing trees and grape vines in the determination of agricultural use value was passed by the Legislature but vetoed by the Governor. (9) In 1983, the final schedule showed a separate determination for orchards and vineyards by region. That same year, the Senate passed bills which would have exempted the value of trees and vines in calculating agricultural use values (S. 1618-B, S. 1619-B, Cook). The Assembly passed a Governor's program bill (A. 6099) which would have created a separate income capitalization assessment method for orchards and vineyards. The Senate in 1984 has again passed bills exempting the value of trees and vines in calculating agricultural use values (S. 1618-C, S. 1619-C, Cook).

The 1984 schedule again has an orchards and vineyards "add-on" value with different rates, one for Upstate and one for Long Island. This concept was developed through discussion with several advisory groups representing growers, farm organizations, Cooperative Extension and the State Department of Agriculture and Markets. (10)

The other two property tax matters are far less complicated. Growers argue that trellises should be regarded not as part of the land, but as equipment. And there is discontent with some local assessors' non-depreciating treatment of trellises: By some estimates, it costs about $1,200 per acre to install trellises, but there have been reports of assessed value reaching $1,600. (11)

Growers also argue that land which does not produce income--i.e., land with newly planted vines--should not be assessed at the same value as land which does.

California, like New York, treats orchards and vines as additions to the value of land. And California, like New York, taxes trellises as an improvement of the land. Unlike New York, however, California has exemptions specifically applicable to fruit bearing trees and vines and, additionally, a preferential assessment statute which is applicable to certain orchards and vineyards. The most significant statute provides an exemption from property taxation for grape vines until three years after the season in which they were planted in vineyard form. This gives the grower the advantage of not having to pay taxes on his non-income-producing vines. The preferential assessment statute provides that qualified land within an agricultural preserve must be valued for tax purposes in accordance with a specified income capitalization methodology. Taxable vines must be valued as land, and no other value may be given to them for assessment purposes. (12)

Fees

The multiplicity of licenses available in each state is reflected by an even greater number of fees because the states distinguish size classes and locations in their fee structures.

Tables 9-11 show fees for various licenses. (13)

Producers--In California, annual license fees for wine producers mainly vary (depending on amount of wine produced) from $22 to $165; the rectifier's fee is $276. In addition, each licensee must pay a renewal fee of ten percent of the annual fee, and rectifiers must pay an annual fee of $52 to support ABC department investigations.

New York wineries' annual license fee is $625; for farm wineries, it is $125. Wineries (but not farm wineries) must, in addition, pay $200 for the initial application and $100 for renewals.

Whether or not the differences in these costs of business are significant in a producer's annual budget, it is clear that license fees for California vintners are lower than for their New York counterparts.

TABLE 9

Wine-Related Producer License Fees

California		New York	
Winegrower and Wine Blender		Winery	$625
5,000 gal. or less	$ 22	Off-sale certificate	
5,000 - 20,000 gal.	44	for winery premises	125
20,000 - 100,000 gal.	82.50	Farm Winery	125
100,000 - 200,000 gal.	110	Off-Sale Premises	
200,000 - 1M gal.	165	New York City	500
each additional 1M gal.	110	Cities 100,001 - 999,999	250
duplicates	24	Elsewhere	125
Wine Rectifier	276		

Each licensee's annual renewal fee is ten percent of his annual fee.

Rectifiers pay an additional fee of $52.

Wineries' initial application fee is $200; their renewal application fee is $100.

TABLE 10

Fees Applicable to Wine-Related Middlemen

California		New York	
Beer & Wine Importer	no fee	Liquor Wholesaler	$5,000
Beer & Wine Importer - General	$ 56	Wine Wholesaler	625
Winegrower's Agent	276	Sacramental	125
Wine Broker	56	Solicitor's Permit	20
Beer & Wine Wholesaler	56	Temp. Solicitor's Permit	30
		Broker's Permit	
		Single Transaction	20
		Annual	200

Each licensee pays an annual renewal fee of ten percent of his annual fee.

Winegrower's agents pay an additional fee of $52.

The initial application fee for liquor wholesalers and wine wholesalers is $200. Their renewal application fee is $100.

The initial and renewal application fees for solicitors' permits and brokers' permits are $10.

Wholesalers, along with wineries and other producers, must pay a sum equal to 15 percent of their license fees to defray the State Liquor Authority's administrative expenses in connection with price filing.

TABLE 11

Major Wine-Related Retail License Fees

California

Off-sale:	
Beer & wine	$ 24
General	350
On-sale:	
Beer & wine	168
Beer & wine (trains)	16
Beer and wine (boats)	56
Beer and wine (plane flights)	16
General	
Cities of 40,000 or more	580
Cities 20,001 - 39,999	412
Other localities	360
General - seasonal	
Cities of 40,000 or more	145/qtr.
Cities 20,001 - 39,999	103/qtr.
Other localities	90/qtr.
General	
Bona fide clubs, Art. 4 clubs, veterans' clubs	
Cities of 40,000 or more	330
Cities of 20,001 - 39,999	248
Other localities	220
General (trains)	128
Duplicate	32
General (boats)	332
General (planes)	332
Duplicate	10
General (vessels of more than 1,000 tons burden)	128
Duplicate	32
General (bona fide eating place intermittent dockside vessels of more than 10,000 tons burden)	360
Special beer & wine for hospitals, convalescent homes, rest homes	56

Each license renewal fee is ten percent of the annual fee.

Off-sale general retailers pay an additional fee of $24.

Original Fees:	
On-sale gen.	$6,000
On-sale gen.-seasonal	4,500
On-sale beer & wine	300
Off-sale beer & wine	50
Off-sale gen.	6,000
On-sale gen. - restaurant intermittent dockside	2,000

New York

Off-sale:	
Liquor (inc. wine)	
Counties of New York, Kings Bronx, Queens	$1,067
Richmond County and cities 100,001 - 999,999	667
Elsewhere	400
Hotel on-sale	62.50
Wine	
New York City	500
Cities 100,001 - 999,999	250
Elsewhere	125
On-sale	
Liquor (inc. wine and beer)	
Hotel, restaurant, bottle club	
Counties of New York, Kings, Bronx, Queens	1,700
Richmond County and cities 100,001 - 999,999	1,200
Cities 50,001 - 99,999	950
Elsewhere	700
Summer and winter licenses	prorated
Catering Establishment	
Counties of New York, Kings, Bronx, Queens	1,133.34
Richmond County and cities 100,001 - 999,999	800
Cities 50,001 - 99,999	633.34
Elsewhere	466.67
Clubs (except luncheon or golf)	
Counties of New York, Kings, Bronx, Queens	750
Richmond County and cities 100,001 - 999,999	500
Cities 50,001 - 99,999	350
Elsewhere	250
Luncheon Club	375
Golf club	
Counties of New York, Kings Bronx, Queens	250
Elsewhere	187.50
Railroad car	150
Vessel	
Annual	1,250
Summer	625
Airline	
20 or less aircraft	1,500
More than 20 aircraft	2,000
Wine (includes beer)	
Hotel, restaurant, catering establishment, club	
Cities of 100,000 or more	350
Elsewhere	187.50
Special	
Cities of 100,000 or more	450
Elsewhere	225

Renewal fees for the following licenses are $40: off-sale liquor, on-sale liquor, special on-sale liquor, bottle club liquor. Renewal fees for the following licenses are $25: off-sale wine, on-sale wine, special on-sale wine.

Initial application fees for the following licenses are $100: off-sale, on-sale liquor, special on-sale liquor, bottle club liquor. Initial application fees for the following licenses are $50: off-sale wine, on-sale wine, special on-sale wine.

Middlemen--Comparison of license fees for wholesalers, agents and solicitors and brokers is difficult because licensees' powers in the two states differ sufficiently to make licensee designations noncomparable. For instance, New York has no analog to California's beer and wine wholesaler, and California has no analog to New York's liquor wholesaler, who deals in distilled spirits as well as wine.

It is clear, however, that a California wholesaler who holds both a distilled spirits wholesaler license ($276) and a beer and wine wholesaler's license ($56) pays nowhere near the $5,000 fee that a New York liquor wholesaler pays. Other differences are not so large. For instance, a California winegrower's agent pays an annual fee of $276 plus an additional fee of $52, whereas a New York solicitor pays $20 for his permit. As noted earlier in the discussion, however, the winegrower's agent's powers are somewhat greater, including the power to take title to inventory and to conduct tastings.

Retailers--Retailer licenses present almost as difficult a problem of comparison as do the middlemen's licenses. It is difficult to find in both states licenses which empower the retailers to sell exactly the same beverages for exactly the same kind (on- or off-premises) of consumption and, if for on-premises consumption, for exactly the same kind of establishment. Table 12 contains some comparisons that may make some intuitive sense and which might yield a generalization.

The initial fees for the California retail licenses are usually much larger than for New York's, and the annual fees for the New York retail licenses are considerably higher than for California's. It seems that it costs more to gain entry to the retail business in California and more to remain in business in New York.

TERMS OF RETAIL SALE: PRICE, CREDIT, QUANTITY

Price: Control Invalidated

Both California and New York, until recent years, had relatively stringent price control laws. (14) California's price control law, however, was held invalid in an important U.S. Supreme Court decision popularly known as "the Midcal decision." (15) The Midcal decision also effectively invalidated New York's price control law.

TABLE 12

Some Comparisons of Retail Fees

California		New York	
Off-sale General		Off-sale Liquor (includes wine)	
annual fee	$ 350	annual fee	$400 - 1,067
renewal fee	35	renewal fee	50
additional fee	24	initial fee	100
original fee	6,000		
Off-sale Beer & Wine		Off-sale Wine	
annual fee	24	annual fee	125-500
renewal fee	2.40	renewal fee	20
original fee	50	initial fee	50
On-sale General		On-sale General - Hotel or Restaurant	
annual fee	360 -580	annual fee	700 - 1,700
renewal fee	36 - 58	renewal fee	40
original fee	6,000	initial fee	100
On-sale Beer & Wine		On-Sale Wine (includes beer) - Hotel or Restaurant	
annual fee	168	annual fee	187.50 - 450
renewal fee	16.80	renewal fee	20
original fee	300	initial fee	50

(California's renewal fees are ten percent of the annual fees.)

Under the California pricing statute, wine producers and wholesalers were required to enter into, and file with the State, "fair trade contracts" (i.e., wine price schedules). Producers and wholesalers were prohibited from selling wine to retail customers at prices lower than those filed. The rationales for price control were that: it would prevent price wars that would jeopardize small retailers and thereby permit an unhealthy consolidating of wine retailing; and it tempered the consumption of wine by maintaining a reasonably high price.

The Supreme Court ruling, affirming a decision of the California Court of Appeals, was that the wine price schedules constituted a restraint of trade that violated federal antitrust law: the producers and wholesalers set prices and the state enforced them without any other substantial involvement and without adequate demonstration of a public benefit deriving from such cooperative action. The court decided that without such involvement and demonstration, it was not sensible for the state directive to have an effect superior to the national policy in favor of commercial competition. The court, furthermore, cited other cases involving contradictions between state and federal alcoholic beverage control law and noted that:

> There is no bright line between federal and state powers over liquor. The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system. Although States retain substantial discretion to establish other liquor regulations, those controls may be subject to the federal commerce power in appropriate situations. The competing state and federal interests can be reconciled only after careful scrutiny of those concerns in a 'concrete case.' (16)

(The Midcal decision was not a great surprise: A similar California pricing law for distilled spirits had been similarly invalidated in 1979.) (17)

New York's price control law was essentially the same as California's. The New York law required producers and wholesalers to file "minimum consumer resale prices" with the State Liquor Authority and specified that retail licensees may not sell wine at a price less than the minimum consumer resale price. New York's law had been challenged prior to the Midcal decision. In a 1978 decision (the "Mezzetti case"), the State Appellate Court ruled that control of consumer resale prices on wine fell within the scope of states' powers granted under the Twenty-first Amendment. The U.S. Supreme Court's Midcal decision was clearly discrepant from the State Appellate Court's conclusion. Soon after the Midcal decision, therefore, the Mezzetti decision was reargued before the Court of Appeals and the earlier judgment reversed--New York's wine consumer price control statute, too, was now held invalid. (18)

The deregulation of consumer wine prices was highly publicized. Retailers expressed fear that price wars and a general reduction in wine prices would result in attrition among off-sale retailers. (The court noted that "the State of California has shown less than an enthusiastic interest in its wine pricing system....[It] did not appeal the decision of the California Court of Appeal....[The appeal action] has been maintained by the California Retail Liquor Dealers Association, a private intervenor.")

The effects on the two states' wine control structures were not identical. The Midcal decision invalidated not only wine price control in California, but also price filing. The Mezzetti decision did not invalidate price filing in

New York. A statute separate from the price control statute requires parties who sell wine to wholesalers or retailers to file prices with the State Liquor Authority. (19) The law requires that filers convey to the Authority 20 copies of each schedule of prices to wholesalers on or before the twenty-fifth day of each month and each schedule of prices to retailers on or before the fifth day of each month. Law and regulation permit amendment of the schedules. The Authority uses the copies to convey price information, via publication, throughout the New York State alcoholic beverage industry.

Both in California and New York, producers are constrained from varying their wine prices by locality or region. (20)

Retail Credit: Limited in New York

Both California and New York have strict and low limits on the amount of credit which licensees may extend to each other in alcoholic beverage trade. This is relatively noncontroversial and consistent with the tied-house provisions' purpose especially of insulating retailers from supplier pressure.

More clearly different, and decidedly more controversial, are the states' positions on the subject of consumer credit. (21) In California, there is essentially no special limitation on the extension of retail credit for wine sales. New York law, on the other hand, specifies that there shall be no off-sale credit (except that a winery licensee having the right to sell wine at retail for off-premises consumption may accept major credit cards).

Authorization for New York's on-sale retailers to extend credit to their customers is not so limited and now includes taverns.

Quantity

Retail quantity restrictions have occurred in two ways: restrictions on the amount of wine that may be put in a single container and restrictions on the total amount of wine a consumer can purchase at once. The former limit is related to the temperance purpose of the law; the single-sale limit on the amount of wine was thought to reduce the likelihood that an unlicensed purchaser will be operating a resale business.

California has no specific requirements regarding container size, deferring instead to federal requirements. The limit per sale is 52 gallons. (22)

In New York, containers of wine may hold no less than six ounces of fluid. (23) This is a higher minimum than the federal regulations require. The federal standard of fill for wine permits containers of as little as 3.4 fluid ounces. (24) New York no longer has a per sale limit; Chapter 819, L. 1983, removed the restriction of 15 gallons per sale to individuals.

MARKETING

The chief purpose of this section is to indicate the relative amount of opportunity California and New York wine producers and retailers have to sell wine within their respective states. Such a comparison, however, would not constitute an evaluation of the total marketing opportunity of such businesses, for each state is essentially open to the promotion and sale of wines produced in the other.

Points of Access: The Food Store Difference

Here are the relative numbers of retailers selling wine in California and New York. (25)

	California	New York
Off-sale	26,094	4,403
On-sale	33,928	24,940

One major reason for the greater amount of access in California is the permission for food stores to sell wine. A statement of the specific number of food store licensees in California was unavailable. The number of food stores in California in 1981 was 15,132, and it is probably safe to assume that the great majority of them hold licenses. (26) In New York in 1981, there were 17,984 food stores with beer licenses. If these stores were licensed to sell wine, the number of off-sale wine outlets would increase from 4,403 to 22,387. The difference between the two states' numbers of off-sale licensees would shrink from about 21,000 to about 4,000.

Possibly also of importance in explaining California's greater number of outlets per capita is the fact that California off-sale retailers may hold more than one off-sale license. That is, in contrast to New York off-sale retailers, they may, in effect, open branches. To whatever extent, then, that an off-sale retailer in business is more likely to open a new retail business in a particular location than is a person who is not yet in the business, the "branching" privilege increases the number of outlets.

Drinking Age: Lower in New York

With respect to minimum drinking age, New York retailers appear to work under the advantageous statute. The minimum drinking age in California is 21 years; in New York, it is 19 years. (27) This difference makes for a substantial difference in the two states' legal markets. The number of 19- and 20-year-old people in California in 1980 was 931,476; in New York, it was 637,308. That is, if California's minimum drinking age were also 19 years, its alcoholic beverage market would be larger by almost one million people. If New York's minimum drinking age were the same as California's, its market would be smaller by more than 600,000 people.

Fairs

Both California and New York have well-developed, well-attended systems of agricultural expositions. California has 24 county fairs, 54 agricultural district fairs and a state fair; attendance has reached nine million. New York has 51 county fairs and a state fair; attendance has reached almost four million. (28)

California winegrowers do not directly sell their products by the bottle at the fair sites. The ABC department has suggested to the winegrowers that they may apply for duplicate licenses at fair sites. The winegrowers, however, have not done so, apparently because they do not regard this to be the best use they could make of a duplicate license (inasmuch as they may sell for off-premises consumption and conduct tastings at only one branch, doing so at a fair would mean that they could not do so at another branch which is available to the public all year and perhaps better located). Instead, arrangements are made with on-sale beer and wine licensees at fairs to sell bottles of wine (on-sale licensees in California may sell wine to go). (29)

In New York, vintners do not sell at fairs, and on-sale retailers may not sell bottles of wine to go. It was noted earlier that a vintner can apply for a license to sell at one location other than the winery premises. It appears that such a location could be at a fair. Because a fair operates for a very small part of the year, however, vintners do not choose to use them as the one extra retail outlet location. (30)

PROMOTION

The chief promotional matters regarding which there are important differences or controversy are tastings, solicitation, and marketing orders. Before turning to them, however, it may be worthwhile to note three other promotion-related subjects: advertising, samples, and labels.

Both federal and state governments regulate the nature of advertising of alcoholic beverages. The chief purposes are to reduce what each legislature regards as promotion of intemperance or indecency and to guard against misrepresentation. The states, through law and administrative regulation, have a variety of prescriptions and proscriptions relating to such matters as: use of "advertising specialties" such as ash trays, matchbooks and post cards; retailer-supplier cooperative advertising; false statements; encouragement of minors to drink; advertisement of price; size and placement of signs and displays; and use of promotional contests. Often, the states' rules conform to the federal rules, and they indicate a pervasive sensitivity to tied-house considerations (i.e., there are detailed limits on how suppliers can assist retail advertising). Whether because of sheer complicatedness or because of similarity in total effect, differences between California and New York (and, indeed, differences among most states) are not highly controversial at this time. There is a perception among alcoholic beverage industry observers that wine producers are the most stringently self-regulating among advertisers of alcoholic beverages. (31)

Both California and New York have laws limiting the conveyance of samples from suppliers to retailers. In California, for instance, ABC Department rules require that wine samples shall not exceed one quart or one liter when bottled and must be given only to licensees who have not previously purchased the particular product. Likewise in New York, sample containers of wine may be given only to retailers who do not carry the sample brand, and only one container may be given to a retailer. If retailers or suppliers in either state have any significant problem with the laws and regulations pertaining to sampling, they do not seem to have been vociferous about it. (32)

The required contents of labels are a matter of some recurrent controversy, but this is mainly at the federal level. According to one legal scholar, "the regulations of California...and New York...reflect an attitude of nearly complete deference to the federal government." (33) Indeed, New York's basic law on alcoholic beverage labeling directs that the State Liquor Authority's regulations on the matter "shall be calculated...to achieve national uniformity in this field as far as possible." (34)

Tastings

In General--Tastings are a form of sampling; the difference from "sampling" is that the tasters are wine consumers rather than alcoholic beverage licensees. A "wine tasting" or "wine tasting event" or "wine tasting party" is generally thought of as an occurrence involving a group of consumers. The promotional intention derives from the assumption that consumers, after trying several products, will in the future choose to buy some.

Vintners' opportunities to use tasting as a promotional vehicle are substantial in both California and New York. (35) Tastings in California can be arranged in the following ways:

- Winegrowers; winegrower's agents; and wine blenders licensed before February 2, 1968, may conduct tastings:
  - on their main premises unless those premises are licensed for retail business;
  - at one branch unless that branch is licensed for retail business (and there are grandfather privileges permitting some winegrowers to have tastings at more than one branch);
  - on unlicensed premises by invitation of certain sponsoring private organizations, at which event the organization may not charge; and
  - on unlicensed premises by invitation of a sponsoring nonprofit organization, at which event there is usually a charge. The sponsor must obtain a temporary wine license in order to sponsor the event.
- On-sale retailers may hold tastings, but they must charge the consumers.

Producers who donate wine for tastings must treat the donations, for tax purposes, as sales.

In New York, tastings may be conducted:

- on and off the premises by wineries, farm wineries and wine wholesalers;
- on the licensed premises by on-sale retailers; and
- by grape growers' and producers' organizations.

Generally, they may charge the attending public.

The powers to hold tastings at branches and through winegrower's agents perhaps give the California vintners a slightly greater capacity to reach the public via tastings. A more important tastings-related difference between the two states, however, has to do with tastings at off-sale premises.

Package Store Tastings--Until recently, off-sale retailers in California, like those in New York, had not been able to conduct or simulate wine tastings. The California ABC Department, however, has adapted a retail license privilege to essentially permit off-sale retailers to sponsor tastings. Off-sale retailers are permitted to obtain a license for on-premises consumption and sell wine by the glass if they do so in rooms that are clearly separate from the rest of the store and if they have satisfied the ABC Department that they have sufficiently protected against serving minors. Retailers are not permitted to give products to consumers, so unlike winegrowers, they must charge for the samples.

California grocery stores may not obtain licenses for on-premises consumption, so they may not conduct such "tastings". The larger grocery stores, however, conduct much of their wine business through off-sale subsidiaries not physically connected with a grocery store, and the subsidiaries may conduct such tastings in the described manner derived by the California ABC Department. (36)

New York off-sale retailers may not conduct tastings.

Fairs--Some fairs, especially in California, sponsor wine competitions, and there seems to be considerable prestige value in winning. Also, the fairs are points at which people from many different regions converge; this creates an opportunity to increase the geographic range of acquaintance with one's product.

As is the case with sales at California fairs, tastings are conducted by on-sale wine and beer licensees. A tasting at a fair is usually organized on some group basis (e.g., Napa Valley producers). An attendee purchases a ticket which entitles him to a limited number of tastes (perhaps $3 for three glasses). (37)

Vintners' connections with tastings at New York fairs can be more direct. Chapter 795 of the Laws of 1983 facilitated such tastings by permitting vintners to charge for tastings and thereby cover their costs for booth space rental at fairs. At the 1983 State Fair, six vintners participated in a tasting at which they charged one dollar for a four-ounce glass and two dollars for a ten-ounce glass. (38)

Farmers' Markets--California has about 90 certified farmers' markets. The number of participating producers at each gathering is about 25-40 for a one- or two-day period. Neither tastings nor sales are conducted at these events. (39)

Promotion potential at New York farmers' markets is somewhat greater. There are about 115 farmers' markets ranging in size from four to 120 producer participants. Tastings at these events, as at fairs, have been facilitated by Chapter 795 of the Laws of 1983. So far, the only farmers' market tasting has been one which the Department of Agriculture and Markets sponsored at a farmers' market in New York City. (40)

Solicitation

The earlier discussion of general license powers compared the powers of the California winegrower's agent license and the New York solicitor's permit. (41) The powers of the winegrower's agent appear to be somewhat greater, including the power to hold inventory and conduct tastings. A New York vintner, however, may employ more than one solicitor, while a California vintner may employ only one winegrower's agent.

Brokers' powers in the two states are quite similar--brokers work on commission and are limited to bringing a buyer and seller together.

Marketing Orders

Both states offer to farmers of all kinds the opportunity to use the state government to help organize efforts for promotion, research and marketing. The vehicle by which they can do this is called a "marketing order," which is facilitated not by the ABC laws, but by the agriculture laws (42). Here, basically, is how a marketing order comes about:

- A significant percentage of an area's producers of an agricultural commodity petition the chief officer of the state's department of agriculture.
- The department of agriculture holds hearings on the subject of whether or not there should be a marketing order and how it should be organized.
- Following hearings, the department writes a marketing order upon which the producers vote in a referendum. The marketing order

specifies how much each producer will contribute to the marketing order fund, the purposes for which the money will be spent and the size and makeup of an advisory board to help the agriculture department determine how to best administer the marketing order.

In order to become effective, a marketing order must receive approval of a specified minimum percentage of producers. In general, approval must be by two-thirds of the producers or of producers constituting about two-thirds of production. Whatever the minimum percentage, the terms of the marketing order, if approved, become binding on all producers.

California--California has had a wine-related marketing order; New York has not. In 1938, California's wineries approved a marketing order with an assessment that ranged from 0.75¢ to 1.5¢ per gallon; by 1975, the marketing order resulted in the collection of $2.5 million annually. (43)

Most of the money raised through this marketing order was spent for promotion and research through contract with the Wine Institute, a vintners' association headquartered in San Francisco. The marketing order lapsed in 1975. Some observers had suggested that it was inappropriate that the preponderance of the marketing order monies was being spent through the Institute, and pressure to alter the administration of the marketing order was growing. The vintners chose to permit the marketing order to lapse.

New York--In New York, where apple and cherry marketing orders are well-established, there have been two attempts at grape marketing orders. The first was a wine grape marketing order which actually received producer approval and went into effect in 1981. It applied only to production in the Finger Lakes and the Western Counties (it did not apply to the Hudson Valley or Long Island). The Department of Agriculture and Markets projected that the order would raise $175,000 annually for promotion and research. (44)

The Wine Grape Marketing Order was challenged in court by a vintner and several growers, and the court invalidated the order. The original wording of the order was such that the assessment would be made on wine grapes sold to wineries. This meant that wineries which grew and used their own grapes would not pay an assessment on those grapes. Some vintners, therefore, recognizing that they did not have a direct interest in the marketing order, chose not to participate in the hearings. But after the hearings, the wording of the marketing order was altered so that the assessment would be made on wine grapes utilized by a winery. This change meant that the wineries would have to pay the assessment on the grapes they grew for their own winemaking use. It also meant that:

- the voted-on proposal had not, in all its major details, been the subject of the hearings; and
- parties who had not participated in the hearings because the original proposal was not the voted-on proposal had not been afforded reasonable opportunity to be heard.

The Appellate Division of the Supreme Court affirmed the invalidation of this marketing order on May 26, 1983. (45)

Also in 1981 was an attempt to create a Processing Grapes Marketing Order. This order would have applied, essentially, to all New York-produced grapes used for purposes other than wine or fresh table grapes. In the referendum, almost 80 percent of the growers rejected the order.

A NOTE ON ACADEMIC EFFORTS

The scales of educational and research support for viticulture and enology (study of wine making) in California and New York differ tremendously. At the University of California at Davis, there is an entire department of viticulture and enology which offers a major in "fermentation science." This department has 14 full-time professors and several emeritus professors, 170 undergraduate students concentrating on enology, 50 undergraduate students concentrating on viticulture, and 65 graduate students divided about equally between enology and viticulture.

State funding (about $1.5 million) for this academic department mainly supports salaries and overhead. The department, in addition, obtains research funding from a variety of non-state sources. Currently, its contracts yield $50,000 from the U.S. Department of Agriculture, $200,000 from the Raisin Advisory Board and Table Grape Commission, $90,000 from the American Vineyard Foundation, and $90,000 from the National Science Foundation. Most of this research money is for viticulture; miscellaneous grants yield about $200,000 for enology research. (46)

New York's chief educational and research efforts are carried out at Cornell University and the State Agricultural Experiment Station at Geneva. Recent research projects include efforts to control crown gall, a bacterial disease of grapevines; continuing development of new varieties of grape and subsequent fermentation and taste testing of hundreds of wine samples per year; investigation of compounds affecting the odor of Labrusca wines; and mechanization of vineyard operations. (47)

Cornell offers one course each in viticulture and wine appreciation. A food science course incorporates the subject of enology. Staff includes four professors at the Geneva Station who study viticulture and enology on a full-time basis. Five more professors study fruit-related subjects which pertain to grapes. Student enrollment in viticulture and enology appears to be fewer than five, all graduate students. (48)

State funding for the viticultural and enological faculty, technicians, facilities, supplies and equipment is about $300,000, and research contracts from non-state sources contribute perhaps another $100,000. Total research funding specifically for grape- or fermentation-related projects seems to be about $300,000--about half of the amount at Davis. (49) Non-state sponsors include grape growers' research funds, a foundation, in-state wineries, a California winery and the State of Ohio grape research fund. Various observers from academia suggested that the fact that vine grafting research is supported by the State of Ohio is particularly indicative of inadequacy in New York State support.

Despite the inexactitude regarding money, it seems clear that the academic effort in California is of a larger scale, especially with regard to course offerings, numbers of students, number of faculty and level of research contract funding.

CONCLUSION: THERE ARE DIFFERENCES--
BUT WHAT IS THEIR SIGNIFICANCE?

New York's wine producers, wholesalers and retailers do operate their businesses under laws that differ from those that govern California's wine-related transactions. Table 13 summarizes these differences. These summarized comparisons, however, are not necessarily very meaningful. The cataloged advantages pertain to sales <u>within California</u>, but California wines dominate every state's wine market, including New York's. Even though the laws vary from state to state, New York vintners may compete with California's on the same basis in every state except California.

TABLE 13

Some Major Differences in California's and New York's Wine-Related Laws

GENERAL

Producers	Retailers	Middle Transactions
CA vintners may open an unlimited number of branches and hold general off-sale licenses. NY vintners may open one retail outlet for off-premises consumption of their products only and, in general, may hold no other retail licenses.	Beer and wine are not segregated in CA off-sale operations. CA retailers may: • operate off-sale chains; • sell wine to go from on-sale premises; and • sell food (i.e., there is food store licensing). In NY, wine is segregated from beer regarding off-sale transactions and there are no such retail powers.	CA has "beer and wine" wholesalers. NY's liquor wholesalers sell distilled spirits and wine. CA winegrower's agents may conduct tastings. NY vintners may have more than one solicitor. CA requires a separate license to receive wine from out of state.

TAXES AND FEES

Taxes	Fees
CA excise taxes are lower (e.g. 1¢/gallon on table wine vs. 12.11¢/gallon in NY). CA exempts newly-planted vineyard acreage from property taxation for three years.	At the retail level, initial fees are generally higher in CA while annual fees are higher in NY. Comparison at the wholesale level is difficult because of significant differences in the powers of the major licenses, but annual fees in the major categories seem higher in NY. At most size levels, NY vintners pay higher annual fees.

TERMS OF RETAIL SALE

Pricing	Credit	Quantity
Retail price control statutes were judicially invalidated in both states. NY vintners and wholesalers, however, remain subject to wine price filing requirements.	Retail credit in CA is essentially unlimited. In NY, only on-sale retailers and vintners may offer retail credit.	CA has a per retail sale limit (52 gallons). CA law permits containers smaller than NY's 6 oz. minimum.

MARKETING

Points of Access	Age	Fairs
| | CA | NY | Off-sale 26,094 4,403 On-sale 33,928 24,940 Food stores constitute the preponderance of the off-sale difference.	CA - 21 NY - 19	Off-sale sales at CA fairs occur via on-sale premises. In NY, a special license is required, and sales at fairs practically do not occur.

PROMOTION AND RESEARCH

Tastings	Solicitation	Marketing Orders	Academia
Some CA vintners may hold tastings at more than one of their branches. CA off-sale retailers hold tastings after obtaining a special on-sale license. NY farmers' markets entertain tastings.	CA winegrower's agents may hold inventory and conduct tastings. NY vintners may employ more than one solicitor.	CA had a wine marketing order from 1939 to 1975. In NY, a 1981 wine grape marketing order was judicially invalidated.	UC-Davis: a department of viticulture and enology, 14 faculty, 250-300 graduate and undergradute students, more than $600,000 in non-State research funding. Cornell/Geneva: one course in viticulture, one course incorporating enology, about five faculty, fewer than five graduate students, about $300,000 in grape- or wine-specific research.

Here are some of the obvious and major differences between the two states' laws which, more or less, do affect vintners' opportunities to sell their products profitably.

- Branching--California vintners, under the powers of duplicate licenses, are able to open branches. Branching creates points at which vintners may sell their products directly and conduct tastings (especially for those vintners whose branches were grandfathered in the 1965 reduction in branching privileges), and it constitutes a logistical advantage: from branches, California producers can hold inventory, solicit and sell to wholesalers and retailers.

- Taxes--Any wine sold in California is subject to lower excise taxes than are wines sold in New York.

- Retail Credit--Retail credit for wine sales for off-premises consumption in California is unrestricted; in New York, it is rarely available.

- Tastings--The opportunity to conduct tastings in California is greater than the opportunity in New York because of California winegrower branching and the tasting-like activities at California off-sale premises.

- Food Store Sales--Wine sales in California, due mainly to the right of food stores to obtain licenses, occur at a significantly higher number of points.

There seems to be a dearth of market studies that would indicate whether or not these differences were important in the development of the California industry's predominance and the New York industry's current difficulties. Some of the differences would seem to constitute advantages of some degree:

- Branching gives the California vintners selling in California a logistical device not available to New York vintners selling in California, and it increases the California vintners' opportunity to expose Californians to their products via tastings and sales.

- Perhaps package store tastings also are a way by which California vintners obtain greater exposure of their products to Californians.

With regard to the other wine market differences, advantages are harder to perceive. The differences in opportunities and constraints relating to retail credit, food store sales and excise taxes pertain to vintners of both states. That is:

- it is legal for California food stores to sell wine, including New York wine, and it is illegal for New York food stores to sell wine, including California wine;
- California off-sale retailers may sell New York wines as well as California wines on credit while New York off-sale retailers may not (except for a sacramental wine exception) sell any wine on credit; and
- the lower excise taxes in California pertain also to those New York wines which California importers buy; California wines sold in New York are assessed at New York's higher rate.

It seems unlikely that those differences which clearly favor California vintners--differences relating mainly to sales in California--would explain the extraordinary national dominance (almost 70 percent of the market) of California wines. California vintners, because of their greater proximity, may be better able to exploit the food store outlets in California. But does this explain why they also dominate New York's market, where New York vintners are the more proximate? According to testimony before the Special Committee, California wines comprise 43 percent of wine sales in New York State; wines manufactured in New York comprise about 14 percent. Foreign imports comprise the balance--another 43 percent--of New York wine sales. Only about one-fifth of New York's 14 percent is New York State labeled wines (i.e., wines composed at least 75-percent of New York grapes). (50)

Other noted differences, however, might offer considerable explanation of California's success. In Chapter Two, it was suggested that difficulty in adapting to changing consumer tastes has been more of a problem for the New York industry than for the California industry. The California industry's adaptability almost certainly results in part from the facts that:

- California grape growers are eligible for property tax exemptions on newly-planted acreage; and
- the scale of research and educational support for the California industry is decidedly greater.

The state, then, offers some "slack" in the growers' budgets to help them to afford planting grapes which will be more easily marketed, and through research, it helps them to determine which varieties will be most marketable and to bring those varieties more quickly into production.

These factors are not unrelated to another difference that will be explored in the next chapter. That difference is industrial organization and the capacity not only for research, but also for promotion that it engenders.

WINE-RELATED LAWS IN CALIFORNIA AND NEW YORK: DO THE DIFFERENCES CONSTITUTE ADVANTAGES?

WHICH ARE THE SIGNIFICANT DIFFERENCES?

The relative decline of New York's wine industry is not simply a blow to a state's prestige. It is, more seriously, a problem for those vintners, growers and associated business people whose livelihoods and investments are at stake. Such circumstances easily and understandably elicit feelings of urgency, even desperation, and the desire for a fast solution is great. And even if there is no fast solution, it may be tempting--whether for political expedience or to give people reason for more hope--to try whatever various parties may regard as that which will work fastest. Such an approach, however, has risks:

- it may defer efforts that, while not as fast in solving the problem as we would like, are more assuredly aimed at the true causes of the problem; and
- if the "solutions" do not grow out of a correct diagnosis of the problem, they may have exacerbating side effects.

That is why it is important to ask: Which differences of law and other factors are significant in explaining the fact that California's industry flourishes while much of New York's struggles? The answers may be somewhat painful. For instance, one analyst concluded the following in his study sponsored by various local and regional farm credit institutions:

> ...with New York's present mix of grape varieties and present levels of national production, New York has serious long-term market problems....There is nothing in the market fundamentals for this industry that suggests an easy or quick adjustment, nor are there easy solutions for these problems at the grower, processor, government, or industry levels. (1)

It is an unavoidable fact that foreign and California wines command far more of the market regardless of the setting and locale of sale. It is important to think about why this is so; ignoring it will result, at best, in short-term remedies and, more likely, in ineffective and perhaps disastrous prescriptions.

INDUSTRY ORGANIZATION, PROMOTION, ADAPTABILITY

As reviewed in Chapter Three, most of the noted statutory differences--differences pertaining to general license powers, taxes and fees, terms of retail sale, marketing and promotion--seem either small or confined in effect to the California wine market. There are differences between the two industries which seem much more powerful than relative legal constraints in explaining why one industry flourishes and the other struggles. Essentially, those differences have to do with producer organization and the promotion and adaptability it engenders.

The Wine Institute, headquartered in San Francisco, stands as evidence that California vintners have had the benefit of decades of organization and promotion. By establishing the Institute in June 1934, the California industry seized with tremendous vigor and foresight the opportunities that the new, post-Prohibition wine market presented.

The Wine Institute represents most of California's commercial wineries, and it has associate members from auxiliary industries such as banking and glass manufacturing. The Institute's resources for its early efforts came in great part through the cooperation of the State of California. Under authorization of the California Marketing Act of 1937, California vintners in 1938 elected a Wine Advisory Board. The purpose of this board, considered to be a state agency, was to administer marketing order monies. The producers had voted to tax themselves by the gallon in order to fund promotional and research activities. The Wine Advisory Board conveyed the marketing order monies to the Institute by contract in order to expedite these activities.

As was noted in Chapter 2, the marketing order lapsed in 1975. Some observers had suggested that it was inappropriate that the preponderance of the marketing order monies (in 1975, almost $2.5 million) was used through the Institute, and there was pressure to alter the administration of the marketing order. The vintners chose to permit the marketing order and authorization for the Wine Advisory Board to lapse. The Institute's activities now are funded by membership fees.

In its history, the Institute has lobbied federal and state governments to improve the marketing opportunities of its members; pressed for the development and statement of wine quality standards in the industry; and promoted wine in general and California wine in particular. Its promotional efforts (including support for the development of publications on the medicinal and food value of wine) were a major factor in the changing of wine's image from that of a skid row beverage. (2)

The Wine Institute's promotional activities have been important in the development of the recently fast-growing national wine market, and the Institute has understandably conducted its promotion in a manner that particularly benefits its members. Whatever the objective relative quality of wines, popular opinion does appear to be that California wines are America's best, sometimes the world's best. And the research activities fostered by the Institute have helped California vintners to encourage and adapt quickly to the change in American wine tastes toward the lighter, table wines.

New York vintners have never had an organization that is as funded, active and cohesive as the Wine Institute has been. Here is testimony from the Executive Director of the New York Wine Council:

> ...[the] California Wine Institute budget is probably in the neighborhood of about $5 million. The New York Wine Council is as close as New York State gets to a wine institute type of operation. My budget, which is not for promotion or for lobbying or anything else--this is the whole budget for a year, for two employees in the office, rent and the copy machine and everything else--is about $70,000 to $75,000. (3)

Similarly, the New York grape/wine industry has never been supported by academic efforts in magnitudes anything like the California industry has been supported. The brief comparison in Chapter Two was stark: an entire department in contrast to a few courses; hundreds of students in contrast to fewer than five; 14 full-time professors in contrast to four; and research support perhaps twice that in New York.

Given the promotional and research advantages--i.e., reputation and adaptability--that the State of California and its vintners developed, it is not very surprising that they dominate the national wine market to the extent they do. Now, California vintners have no domestic peers in experience and resources for marketing in every kind of wine market that the American states offer.

WILL PRESCRIPTION FOLLOW FROM DIAGNOSIS?

What is it, then, that would improve New York vintners' chances of competing well in such circumstances?

It seems clear that efforts to assist and improve New York vintners' research and promotion efforts ought to be the first, fundamental order of business. We ought not attend to it, however, without taking special note of the most frequent proposal for assisting New York's industry: licensing food stores to sell wine.

The Food Store Proposals

Basic Arguments--Some who propose that the State permit food stores to sell wine do so on the premise that it will particularly help the New York State grape/wine industry. The basic reasoning seems to be: Increased availability will lead to increased wine consumption, and enough of this increased consumption will be of New York State wines so that New York State vintners and grape growers will gain a significant infusion of income.

This proposal has occurred with some frequency, and as its failure so far attests, various parties have always expressed reservations about it. By most accounts, the most prominent and most effective among the opponents' contentions have been the following:

- Food store licensing would alter the pattern of alcoholic beverage distribution which this state created in the 1930s, which retailers have become accustomed to, and for which they have developed their businesses via payment of license fees and investments in merchandise and market development. This alteration would unfairly result in the business failure of many off-sale retailers who depend on wine sales to make their enterprises viable.

- Increasing access to more alcoholic beverages in such an everyday place of shopping as are food stores would increase consumption to the effect of increasing alcohol-related pathology. That is, increasing exposure of people, both minors and legal drinkers, to alcoholic beverage purchase opportunities would increase general consumption and thereby increase the incidence of phenomena such as underage drinking, driving while intoxicated, cirrhosis and alcohol-related domestic violence. It would convey a message to minors and others that drinking alcoholic beverages should not be for special occasions, but instead routine.

Who is Accurate?--However reasonable or unreasonable these reservations are, there seems to be little or no unbiased data and analyses to help determine their accuracy.

- With respect to the effect on package stores, prediction is made even more complicated by the fact that the proposals often include some kind of compensation for package store operators. The most often proposed compensation is permission for them to sell snack foods.
- The research problem of understanding links between increased access and increased consumption, and then between increased consumption and increased pathology, is complicated, and few if any alcoholism researchers would claim to have made or even heard of a definitive study. There has during the past decade been increased debate about the "Ledermann Model", a theory which implies that increases in general consumption of alcohol causes increases in the general incidence of alcohol-related problems. This view is in contrast to the view, predominant since the 1930's, that problems of alcohol have more to do with the percentage of "problem drinkers" in a society than with the general, per capita consumption of alcoholic beverages. Which view is correct is by no means a settled matter. (4)

Protection and a Question: How Quick a Fix?

There is another reservation regarding food store licenses, however, that has recently been more often heard and that may be even more daunting. This reservation is that permission for food store sales would not be effective, that California and foreign wines are so well reputed and their marketers so experienced with food store sales that the percentage of New York wines sold in New York food stores would be even less than it is currently in package stores. And since much of the food store sales would substitute for package store sales, the overall percentage of New York wines sold in New York State could decline precipitously.

Even the recent proponents of food store licensing are persuaded by this argument: Most of those who at the Special Committee's hearings recommended food store licensing did so with the condition that such licenses for a period of time permit the sale only of New York State wines.

There seems, by the lack of arguments to the contrary, to be general agreement that unqualified licensing of food store sales would result in an increase in wine consumption among New Yorkers. There are claims that wine sales would in short order be at least doubled, and longer-term predictions range to increases of 1000 percent. Evidence for most of these claims is based on observations of states which changed from systems of state store monopoly to systems of license control which included food store sales. New York, already a license control state, would probably not experience so large an increase. Still, it is not unreasonable to expect that a significant increase in general wine consumption would result from food store licensing. Proponents and opponents of such licensing seem to agree, however, that non-New York wines would comprise the overwhelming bulk of the increased sales. From this perception come the proposals that such licensing be at least temporarily protectionist.

Occurring at the hearings, also, was the statement that food store licensing, to the extent that it did improve the earnings of New York vintners, would provide significant help only for the largest vintners. (5) Apparently (and similar to the California market), the smaller vintners find their buyers through direct marketing and stores that are not parts of large grocery chains.

Necessary or Sufficient?

Whether or not food store licensing would help at least part of the industry, then, it appears that proposals for food store licensing usually do ignore several important considerations:

- Most important is the great risk that advocates of protectionist food store licensing are willing to take. Implicit in the proposals for protectionist food store licensing is the assumption that current consumer preferences will be significantly altered by food store availability of New York wines. The extent to which the currently great consumer preference for California and foreign wines is alterable by such means is highly uncertain, and the proposals do not duly note dramatic differences among the respective wine industries' characteristics of organization, promotion and capacity to respond to changes in consumer tastes. What would happen to sales of New York wines if the period of protection proved to be too short? An industry which has a product of limited marketability would be faced with package store antipathy in addition to continuing apathy among consumers who would now buy their wine in places at which the consumer-preferred foreign and California competitors have experienced and well-funded market operations.

- Such protectionism, unless greatly limited, occurs at the cost of consumer choice among products and prices. How long would protection have to last in order to bring about the change in consumer tastes which is its premise? What would happen if, as does not seem highly improbable, it was found that after a specified period of time (e.g., two years), consumer tastes had not changed and New York vintners' production capacities had not increased sufficiently to withstand the entry of California and foreign products into the food store wine market? Would the state extend the protection indefinitely until that had occurred?

- Some observers have suggested that excluding out-of-state wines from food stores while permitting such sale of New York wines may violate the rights of the state's wholesalers who handle out-of-state wines (and perhaps of the out-of-state producers, too) under the equal protection and due process clauses of the U.S. Constitution.

- Food store licensing is not a panacea: Testimony before the Special Committee indicated that those other than the largest New York State vintners would probably gain little from food store licensing. Would food store sales help those in the industry who most need help?

In addition, fixation on the food store licensing question ignores the fact that a considerable part of the economic value of the grape/wine industry lies in its role as an attractor of tourists to particular regions. This value is not only in the form of tourist dollars spent at hotels and restaurants; a high volume of tourists represents a collection of people who could take a preference for New York State wines back to their farflung places of residence.

It is not at this point clear that licensing food stores to sell wine will not eventually prove necessary to the survival of the New York State wine industry at its current scale. (There is a perception that established, well-reputed premium wineries in this state find adequate markets and are in no danger, so there will always be an industry of some scale.) The arguments of both the opponents and the protectionist proponents of such licensing, however, imply that the New York industry is not fully competitive and attest to the expectation that food store licensing will surely not be sufficient. To simply go ahead with food store licensing, then, would be to risk the costs noted by the opponents without any reasonable expectation that the benefits noted by the proponents will occur.

A question, therefore, recurs: Why do California wines produce far better sales in any setting and locale than do New York wines?

BACK TO BASICS: ORGANIZATION

The uncertainties about the efficacy of grocery store licensing points again to a fundamental conclusion: The California wine industry, whatever the relative excellence of its product, has been characterized by superb promotion and research. And the fact that the development of the California industry has been abetted by the California state government's administrative, tax and research assistance makes it clear that part of the blame for the decline of New York's industry belongs to its less active state government.

What, then, can reasonably be done to improve the reputation and adaptability of the New York wine industry to the extent necessary to allow it to once again flourish? In this matter, California does indeed offer a model. Organization--an organization perhaps assisted by the state--does seem to be the first order of business.

Consideration of the development of an industry organization brings forth several fundamental questions: Who should the organization represent, what should be its purposes and activities, who should constitute the administration and how should it be funded?

Membership

The Wine Institute is primarily a vintner organization, and its success in improving wine sales does indirectly bring benefits to California grape growers. But would wine-related benefits alone be sufficient help for New York's grape growers?

One reasonable inference to be drawn from the first chapter is that grape growers' current economic difficulties are perhaps even greater than are those of vintners of any size class. Whereas there have been few reports or predictions of imminent failure among wineries and farm wineries, reports and predictions of imminent failure among grape growers have been common. The urgency of the growers' economic situation, then, may make it advisable to incorporate them directly into an industry organization and to consider efforts regarding more grape products than just wine.

In addition, such an organization might profit from the inclusion of pertinent government and academic people in its membership.

General Purposes

What, then, would be the purposes of a consolidated grower-vintner industry organization? The New York State grape/wine industry's current lack of effective organization appears to have resulted in two chief disadvantages:

- a relative lack of adaptability engendered in part by the comparatively small scale of research that supports the industry; and
- lack of widespread identification of its product as one of distinctly high quality, a lack that results in part from promotional efforts that are not as sophisticated or extensive as those of California vintners.

It is these two disadvantages that it would be most important to address with an industry organization.

Promotion--In general, the new organization's promotional efforts would probably involve such initiatives as:

- New York-generic advertising via magazines, television, radio, newspapers, posters and wine retail shelf identifications; and
- tie-ins with tourism and wine competitions.

There seems little doubt that each California vintner, regardless of the specific quality of his product, benefits from the mystique and image which the California industry as a whole has built during recent decades. Millions of people, regardless of their wine-appreciation acumen, regard California wines as the best and think of the beautiful surroundings of the Napa Valley vineyards when they encounter California wines. Building (or rebuilding) an identity for New York wines would involve not only increasing consumer awareness of New York's high-quality wines, but also linking the image of those wines with the distinctive aspects of the landscape and culture where those wines are produced.

Research--Identity, however, may not be sufficient. As was noted in Chapter One, California vintners' current dominance developed in great part because of their ability to replant vineyards with the grapes that yielded the wines to which American consumers were turning in the 1960s and 1970s. If the New York industry is to be characterized by both continuingly high quality and adaptability, it must be supported by research efforts that engender those characteristics.

Current research efforts at the Geneva Experiment Station involve the development of new grape varieties, techniques to convert vineyard acreage to new varieties, methods of controlling pests and machinery to improve productivity. Research supported through a large, well-funded umbrella organization would continue to pertain to viticultural matters such as introduction of new kinds of grapes (including ways of speedily introducing them). It would also pertain, however, to improvement of wine making techniques and, perhaps most critically, the identification of new, market-viable products and movement of the industry toward the production of them. For example, wine industry observers perceive that a market for low-calorie, low-alcohol or dealcoholized wines may develop to the same great extent as has the market for light beers. It might reasonably be hoped that a sound research program would derive techniques by which New York vintners could efficiently produce such new beverages while maintaining adherence to a taste quality standard that will become identified with New York wines.

Other Products--Chapter Two indicated that a great proportion of the growers' market is unfermented products. If an industry organization includes growers and explicitly recognizes their interests and needs, it may be reasonable for it to give promotional and research attention also to the possibilities for building identity and developing new products in the market for unfermented grape products.

A final research-related point is that there may be uses of the grape that are not related to food. For example, some have suggested (although they admit that it is not at this time commercially feasible) the production of fuel alcohol through grape fermentation.

Administration

The administration of such an industry organization should represent several parties: the State (assuming that the State in some way sponsors the organization); grape growers; grape processors; and viticultural and enological researchers.

These parties are internally various enough so that it is advisable that an administrative board representing these four parties exceed four members. For instance, State agencies with apparent interests in these matters include the Department of Agriculture and Markets, the Department of Commerce and the State Liquor Authority. The growers, working in five regions, produce different grapes for different kinds of wine and unfermented product markets. The processors include not only vintners, but also companies producing juice and preserves. And while research is currently concentrated at Cornell and the Geneva Experiment Station, research on Long Island may develop because of the distinctive climate of that region.

With such differentiation, it is not difficult to envision that a governing board should have at least ten members. One way it could be empaneled would be in a manner similar to marketing order advisory boards. The Department of Agriculture and Markets, for instance, could be designated as the State's "lead agency" in this matter, and grower, processor and academic organizations could nominate board members among which the Commissioner of Agriculture would choose.

Funding and Allocation

Promotion vs. Research?--The diversity and balance of the governing board of an industry organization is important in determining how to spend its money. Perhaps the most basic decision would be specifying the promotion-to-research ratio of expenditures. Too little spent on research would jeopardize the long-term health of the industry, while too little spent on promotion could jeopardize the short-term health without which there would be no long-term performance. Representatives of a segment of the industry which has no short-term problems, for instance, might feel that their interests were being poorly served if promotion was overemphasized at the expense of research.

Even within the categories of promotion and research, however, there would be difficult decisions which would produce different levels of benefits for the different parts of the industry. Board members might have to make decisions or give advice regarding, for instance, the relative values of projects on vine grafting and on fermentation technology. Likewise, money spent on promoting a new variety of table grape would therefore not be available to promote a variety of wine that may be on the verge of succeeding or failing. And it will be important that board members realize that some important viticultural research experiments can take up to two decades to finish.

How Big an Effort?--The level of funding will be important in determining how difficult such decisions will be. The amount of money to be raised for the use of an industry organization depends not only on the organization's needs, but on the potentials of available funding methods.

The condition of New York's grape/wine industry seems precarious; the ability of the grower members, and some processor members, to assess themselves in support of the organization, therefore, may be limited. The 1981 Wine Grape

Marketing Order, which the growers approved, would have raised approximately $175,000 per year. By several comparisons, this amount seems inadequate. In 1975 (its last year), the California winegrowers' marketing order raised $2.5 million for an industry which was not in a precarious condition. New York's apple marketing order in 1983 raised approximately $1 million. And under the milk promotion article of the Agriculture and Markets Law, New York milk producers will raise an estimated $9.5 million in 1984. (6)

Such comparisons do not make it easy to specify an appropriate level of effort. It might very conservatively be assumed, for instance, that the 1975 California winegrower marketing order figure of $2.5 million is an index of the appropriate scale of effort for a wine industry that is already thriving. One industry observer in 1983 wrote that:

> ...the State of Ohio has established a fund financed by the excise tax on wine sold in their state. This fund allows dollars for research and market development. This year's budget was $368,000 for the Ohio Grape Industry Program. A comparable figure for the size of our industry (Ohio has about 3,000 acres of vineyard versus our 42,000 acres) would be $5.1 million! Missouri growers are actively pursuing state legislation this spring, which would give them about $250,000 for viticulture and enology research and extension. A comparable figure for New York State (Missouri has about 1,200 acres of vineyard) would calculate to be $8.7 million! Admittedly, these calculations yield unrealistic totals. On the other hand, we have no activity at present in New York to adequately fund development of the New York Grape Industry. (7)

How much would it take, then, to re-energize a New York wine industry which is troubled, but also much smaller than California's? And how much more would be needed to support the activities of an organization which dealt with unfermented products as well as wine? Answering such questions, even with credible speculation, would require some detailed research and projection which has so far not occurred. If it was assumed that the amount of money required is only in the middle of the range of the efforts surveyed here; and if the 1981 marketing order projection of $175,000 accurately indicates the capacities of a significant part of the industry to assess itself in support of an industry organization; then it probably is not unreasonable to expect that New York's troubled grape/wine industry would have some difficulty raising the necessary money.

Funding Alternatives--Producer and processor assessments at a sufficient level, then, may at present be as unfeasible as they are ideal as a method of funding a grape/wine industry organization. There are no pleasant alternatives to producer and processor assessments, but alternatives do exist.

One alternative would be state appropriations to a program which would perhaps then be more under State direction than the one that has so far been discussed. Another alternative would be to dedicate part of the existing wine excise taxes to the support of such an organization. This would probably draw objections from out-of-state wine producers, who would consider it unfair that the taxes paid by distributors of their products--taxes which, therefore, affect the price and marketability of the products--would be used to promote rival products. In addition, if the organization also represented the interests of unfermented grape product businesses, all wine producers might object to the use of wine excise tax revenues for non-wine purposes.

Such dedication could raise a considerable amount of money. In FY 1983, the State Department of Taxation and Finance collected $6.6 million in wine excise taxes on still and sparkling wines. (8) If other interests in the State did not wish to permit dedication of revenue which has heretofore been used for general State purposes, an alternative would be a special excise tax that would be enacted specifically to support the organization. A special excise tax that was half of the regular excise tax would have raised approximately $3 million in FY 1983. (Such special excise tax amounts would be approximately 5¢/gallon for still wines, 27¢/gallon for sparkling wines and 13¢/gallon for carbonated wines.)

A variation of excise tax financing would be a preferential excise tax which assessed out-of-state wine at a higher rate. Sixteen states have preferential structures of wine excise taxation. Table 14 summarizes these preferential taxes. The range of differentiation is considerable: In Florida, excise taxes for out-of-state wines vary from $2.25 to $3.50 per gallon while in-state wines are untaxed; in Maine, the difference for table wine is only 10¢ per gallon. (9)

The size of the preferential difference would determine the amount of money that could be raised in this manner. In 1983, the total excise taxed gallonage of still, sparkling and carbonated wine in New York State was 52,588,551. (10) Testimony before the Special Committee indicated that only 14 percent of this wine was produced by New York State-based wineries; the residual of 86 percent was divided about equally between California and foreign wineries. If that is accurate, then 45,226,154 of the total 1983 taxed gallonage came from non-New York State producers. If a tax of an average of an extra 10 cents per gallon was applied to this non-New York State gallonage, the amount of increased

TABLE 14

Preferential Excise Taxes

		Table	Dessert	Sparkling	Carbonated
ALA	in-state	- 5 cents per gallon -			
	out-of-state	- 35 percent of wholesaler's cost -			
ARK	in-state	- 5 cents per gallon -			
	out-of-state	- 75 cents per gallon -			
FLA	in-state	- no tax -			
	out-of-state	$2.25/g.	$3.00/g.	$3.50/g.	$3.50/g.
GA	in-state	11¢/g.	27¢/g.	11¢/g.	11¢/g.
	out-of-state	40¢/g.	67¢/g.	40¢/g.	40¢/g.
IN	in-state	- 27 cents per gallon -			
	out-of-state	- 47 cents per gallon -			
ME	in-state	35¢/g.	75¢/g.*	$1.12/g.	35¢/g.
	out-of-state	45¢/g.	75¢/g.*	$1.12/g.	45¢/g.
MICH	in-state	- 1 cent per liter -			
	out-of-state	13.5¢/l.	20¢/l.	13.5¢/l.	13.5¢/l.
MINN	in-state	4¢/l.	13¢/l.	4¢/l.	4¢/l.
	out-of-state	27¢/g.	79¢/g.	27¢/g.	27¢/g.
MISS	in-state	5¢ per gallon*		$1.00*	$1.00*
	out-of-state	35 cents per gallon*		$1.00*	$1.00*
NH	in-state	For sales by wineries on the premises, 15¢/g. For all			
	out-of-state	other wine sales, markups of 55 - 144 percent.			
NJ	in-state	- 10 cents per liter -			
	out-of-state	- 30 cents per liter -			
NC	in-state	- 12.5 cents per liter -			
	out-of-state	21¢/l.	24¢/l.	21¢/l.	21¢/l.
RI	in-state	20¢/g.	20¢/g.	50¢/g.	50¢/g.
	out-of-state	40¢/g.	40¢/g.	50¢/g.	50¢/g.
SC	in-state	6.76¢/l.	20.28¢/l.	6.76¢/l.	6.76¢/l.
	out-of-state	- 30.4 cents per liter -			
TENN	in-state	- five cents per gallon -			
	out-of-state	- $1.10 per gallon -			
VA	in-state	- no tax -			
	out-of-state	- 40¢/l.*			

g. = gallon
l. = liter
* plus various markups

Sources: Wine Institute materials furnished by the New York State Special Senate Majority Committee on the Grape/Wine Industry and telephone interviews with tax officials of various states.

revenue would be about $4.5 million; if the assessment was an average of an extra 15 cents per gallon, the amount of increased revenue would be about $6.8 million. This assessment of an average of 15 cents per gallon in 1983, then, would have increased from $6.6 million to $13.4 million the revenue obtained from excise taxation of still, sparkling and carbonated wines.

The fact that preferential excise tax structures have long been part of some states' revenue-raising statutes and early litigation regarding a Hawaii law both indicate that such preferential tax statutes do not violate the U.S. Constitution. In December of 1982, the Supreme Court of Hawaii ruled, in the "Matter of Bacchus Imports, Ltd," that the exemption of native fruit wines from the state's liquor tax is not in conflict with the U.S. Constitution's equal protection clause. The court noted that:

> The United States Supreme Court does not countenance the unequal treatment of taxpayers based solely on state residence; but if the classification rests upon some reasonable consideration of difference or policy, there is no denial of equal protection....In deciding whether a statute meets the rational-basis test, the dispositive questions are: (1) Does the challenged legislation have a legitimate purpose? and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose? (11)

The Hawaii Supreme Court concluded that "No one could quarrel with the proposition that the promotion of domestic industry is a legitimate state purpose." Whether or not the U.S. Supreme Court agrees with that conclusion in this case should be clear before the end of the year.

In developing a preferential assessment statute, lawmakers might wish to have it reflect regular excise tax distinctions among still, sparkling and carbonated wines. They might also wish to consider the following:

- Should foreign wines carry higher assessments than wines of other states?
- Should the preferential treatment be given only to New York State labeled wines, at least 75 percent of the ingredients of which must be New York State-produced, or to all wine produced by New York State-based wineries?
- Is there a possibility of damaging retaliation by other states regarding some commodity or product which New York has been successful in exporting?

And with regard to any tax-supported efforts to develop an organization, lawmakers might wish to consider the following:

- Would some combination of producer assessment, appropriations, excise tax dedication and/or special excise taxation be best?

- Should the tax enactment have a sunset date after which the configuration of funding sources should be altered, perhaps in recognition or expectation that the industry organization had become capable of supporting its efforts with its own resources.

The effect of the extra excise tax on the retail price of out-of-state wine would not necessarily be limited to the amount of the excise tax; its effect could be magnified by the sales tax. If the excise tax was in the ranges discussed here, however, the increase in basic price would not often be so much that the addition of the sales tax would change the actual selling price. A bottle of out-of-state wine that currently sells for $4.00 plus sales tax would, under the condition of an extra excise tax of 15¢ per gallon, have an absolute increase in price of approximately 3¢ per bottle.

OTHER MEASURES

The creation of an industry organization would be a major step in addressing the two primary differences--adaptability and promotion--between California's and New York's wine industries. There are other less dramatic measures, however, which could be taken to enhance the industry's adaptability and promotion.

Vineyard Tax Exemptions

The property tax burden of grape growers--by some estimates, five percent of their expenditures--is a subject of complaint with regard to the general calculation of land values, the incorporation of trellis values into the land assessment and the lack of exemption of newly planted vines which are not productive until three to five years after planting. No doubt a grape grower would welcome relief regarding any and all of these property tax matters. It is in the lack of exemption of newly planted vines, however, that the New York State property tax statutes most obviously cause disadvantage for New York growers when compared to the situation in California, where there is a three-year exemption.

A New York grape grower who is facing a declining market for a particular variety of grape must make a painful decision between, on one hand, obtaining whatever income he can from acreage planted in a decreasingly marketable commodity and, on the other hand, obtaining no income at all from newly planted vines for a period of several years. Under these circumstances, some growers understandably do not replant in the often inadvisable hope that the market for the already-planted vines will turn around. A tax exemption for land on which he plants new vines may well be the budget factor which causes a grower to take the chance of replanting rather than persisting in the growth of a crop with declining marketability.

The loss of revenue from replanted acreage would accrue to localities, and it may be that such a loss would be difficult to replace in those areas with a heavy concentration of grape growers. Whether or not this is so is a matter of difficult and intensive tax research. With that consideration in mind, however, lawmakers may nonetheless wish to consider whether or not exemptions for newly planted acreage are a matter regarding which the difference between the California and New York industries ought to be redressed. The exemptions, rather than being absolute for a period of time and then completely withdrawn, could be withdrawn gradually as the vines began to produce income (e.g., a full exemption for the three non-income-producing years, a partial exemption for perhaps two years during which the vines have not yet reached full productivity and then a complete withdrawal of the exemption).

If the state established a funding mechanism for grape/wine organization, promotion and research, policymakers may also wish to consider whether or not some of the money might be used to compensate localities for the loss of revenue caused by vineyard exemptions. Estimating the local fiscal impact of the exemptions would require difficult tax research which has not occurred.

Of related interest is recent Senate action regarding determination of land value. Both in 1983 and 1984, the Senate has passed bills (S. 1618-B/C and 1619-B/C, Cook) which would have required the continuation of the exemption of vines (and fruit trees) from separate consideration in determining agricultural land values. The Assembly has not passed these measures.

Farmers' Markets

Testimony at the Special Committee's hearings suggested that fairs and farmers' markets have important promotional and sales potential, particularly for small wineries. Smaller scales of operation make it uneconomical to mount large advertising campaigns, and because of their lack of notoriety, smaller vintners have difficulty finding package stores which will handle their products. Package store operators are understandably more interested in wines which already have a high degree of public recognition. Testimony also indicated that small vintners probably would have the same difficulty with regard to food stores if food stores were licensed to sell wine. (12)

Small vintners particularly, then, regard direct contact with consumers to be an important mode of sale. It appears that many believe that it is in great part through word of mouth that the quality of their products is most likely to become widely known. Direct sales do occur at their wineries, and they attempt to create interest in their products by conducting tastings at wineries and elsewhere. Most notable has been a 1983 tasting sponsored by the State Department of Agriculture and Markets at a New York City farmers' market. Some of the small vintners believe that the permission to sell at many direct sale venues would be their best possible chance at "cracking" the state's city wine markets which, although nearby and huge, have so far been unresponsive to in-state wines.

"Farmers' market" does not appear to have a clear statutory definition. There are small grocery stores which the owners call "farmers' markets." There is some fear that permission for direct wine sales at farmers' markets would allow some food store owners, and perhaps commercial developers who called their areas of property "farmers' markets", to somehow subvert the intention of such permission to the effect of creating a large number of unlicensed outlets for wine. This would occur through arrangements between a store owner and a vintner to permit the vintner to sell his product at the store. One way in which this might be prevented is to specify that only not-for-profit farmers' markets would be permitted to entertain direct wine sales. Most of the State's farmers' markets have not-for-profit sponsorship by chambers of commerce, other local civic organizations and churches.

Limitation to not-for-profit operations, however, would deprive vintners the use of large, but privately operated farmers' markets. Most notable in this regard is the Bronx Terminal Market. An alternative method of permitting farmers' markets to entertain wine sales--an alternative which would extend such permission to private farmers' markets--would be to create a special licensing procedure for them. The State Liquor Authority, however, has long been attempting to deal with a backlog of applications and reduce the months-long application process, and it is likely that some of the not-for-profit sponsors would prefer to leave vintners off their schedules of participants rather than go through a licensing process. (13)

Another alternative, then, would be to issue blanket permission for not-for-profit farmers' markets to permit wine sales and to require licensing only for commercial farmers' markets.

Fairs

The ABC law permits winery and farm winery licensees to apply for a license to operate off-sale premises for selling and tasting their wine at one location other than winery premises. Because fairs are so limited in frequency and duration, vintners do not attempt to designate fairs as the locations for the extra retail licenses.

As sales sites, fairs might offer a special promotional potential. Compared to other direct sales sites, they have particularly high volumes of attendance and are identified as showplaces for New York's finest agricultural products. Therefore, most vintners--again, especially small vintners--would probably welcome the opportunity to sell their products at fairs if they could do so without designating them as the location of their extra retail license.

The idea of permitting sales at fairs has in the past drawn legislative interest. In 1984, S. 5419 (Kehoe) would facilitate the sale of wine at fairs by permitting the State Liquor Authority, upon a vintner's payment of an annual fee of $50, to issue a license to sell wine at the State, county and local fairs.

Package Store Tastings

The conduct of tastings at off-sale premises is an innovation that has increasingly drawn industry and lawmakers' attention. Chapter Three indicated how the State of California has, in a somewhat ad hoc manner, facilitated such tastings. And in 1981, the State of Massachusetts explicitly permitted it, subjecting it only to the requirement that sampled wine be a brand purchasable on the premises. (14)

Were lawmakers to consider permission for such tastings, there are several matters relating to conditions that they might wish to treat.

- Should a special license be required for a package store to conduct a tasting? If not, should there be some notification procedure so that this activity would not occur completely without the State Liquor Authority's knowledge or approval?

- What efforts should be required in order to minimize the incidence of minors and intoxicated persons obtaining drinks?

- Should there be any physical separation of the room in which the tasting occurs from the main off-sale premises?

- May the tastings be conducted at no charge?

- Who would be liable if an accident ensued from tasting-engendered drunkeness? In recent years, civil actions against bar owners and bartenders have made this a question of much more than academic interest.

- If it is required that tastings at package stores be sponsored and conducted by wineries, should a winery's solicitor be permitted to sponsor and conduct them on a winery's behalf?

Beyond these critical matters, lawmakers might also wish to consider whether or not the authorization of package stores to hold tastings will produce benefits for the larger off-sale businesses that would give them a particularly destructive advantage over the smaller off-sale businesses, the premises of which may not be large enough for tastings.

Tourist Area Efforts

In order to maximize the potential for exposing tourists to New York State wines, the State might develop a tourist seasonal license (e.g., May through October) that would permit businesses that particularly serve tourists to sell New York State wines. Such businesses would include mainly businesses that are usually described as "souvenir shops" or "gift shops." In creating such a license, lawmakers might wish to consider whether or not:

- the definition of the places of business that would be eligible for the license excludes places such as food stores (which might sell tourist-related items such as banners and mugs with local identifications) while not excluding many of the businesses for which the license is intended and which might, for instance, sell food of some kind;

- the definition of tourist season is sensitive to the potentials in those localities which have a large winter tourist volume; and
- such tourist seasonal licensing should pertain to New York State labeled wines or to all wines produced by New York State-based wineries.

Miscellaneous Considerations

Those who have observed and worked in the wine industry over the years have developed many proposals to make it easier for vintners to do business. Not all of these matters relate closely to the adaptability and promotional factors which this study has emphasized, but they may warrant consideration. The following are some of the most notable among them.

Price Filing Procedures--Of all the state requirements which producers must meet, the price filing procedures have drawn the most ridicule. The law requires that vintners and wholesalers who handle wine must file monthly 20 copies of prices to retailers and prices to wholesalers. The law also requires filing for amendments which a producer or wholesaler may wish to make between times of regular filing. The State Liquor Authority has eased this requirement to some extent by permitting filing of a "master schedule" and use of a short form for other months. (15)

Those who must file schedules would prefer filing a master schedule once per year and, after that, only for amendments. They also would prefer filing fewer than 20 copies of each schedule.

Label Approval--The ABC law empowers the State Liquor Authority to establish standards regarding labeling of alcoholic beverages. The federal Bureau of Alcohol, Tobacco and Firearms also has requirements for approval and registration of labels. Producers regard the process as fundamentally duplicative, and there have been proposals to repeal the state requirement. (16)

Multiple Solicitation--Smaller vintners have indicated that the limitation of a solicitor to one employer hinders wineries' promotional efforts. They suggest that a single small vintner cannot afford to hire a full-time solicitor and that it would be useful if the regulations permitted several of them to hire a single solicitor to work for all of them. It appears that this limitation on solicitors' employment developed partly from the perception that a solicitor would be unlikely to exert equal effort for each of several employers. By suggesting that the law should be changed, smaller vintners seem to be implying that it would be preferable to let them judge whether or not they are receiving sufficient value for the money they pay to a solicitor.

Permission for multiple solicitation could be accomplished through a regulatory amendment. (17)

Pooled Transportation--Smaller vintners sometimes make shipments that are not large enough to fill a truck. Many of them believe, however, that the law and regulations prohibit them from sharing a truck with one or more other vintners to make shipments. The ABC Law does prohibit "wholesalers" (which, because they can sell to retailers, includes vintners) from conducting other business, and it may be that this prohibits a vintner who owns a truck from renting part of its space to another vintner (i.e., the vintner/owner of the truck would be conducting other business: trucking). It is not clear, however, that small vintners could not collectively contract with an independent trucking firm to share shipping expenses. (18) Nevertheless, lawmakers could consider whether or not to explicitly permit both kinds of shared shipping.

Combination Packaging--A combination package is an essentially promotional device wherein the seller would include, for instance, glasses, a cork screw and cheese with a bottle of wine, perhaps all enclosed in a basket. There are limitations on the use of such a device which limit its sales potential. Retail potential is limited because off-sale stores may not sell food. And while vintners are empowered to sell wine supplies, certain food items and souvenirs, they may do so only from their licensed premises. (19) An additional problem in selling combination packages at retail is that the ABC Law requires that filed wine price schedules must be "individual for each item and not in 'combination' with any other item." (20) Finally, State Liquor Authority regulations require that the price of a basket be reflected in the total cost of a package. (21)

Vintners would like to be able to easily offer, at wineries and at off-sale stores, packages containing wine, wine supplies and food at prices that would be "promotional".

THE CRITICAL DIFFERENCE

Without an industrial organization and the promotion and research it facilitates, it would seem improbable that any combination of actions regarding the other matters would prove to be sufficient to reverse the decline of the New

York wine industry's market share. The chief objective of a grape/wine industry development policy ought to be more than short-term survival. Rather, it should be the fostering of an industry that is capable of deft reaction to and active participation in the shaping of the market for grape products. The industry has in recent decades not been able to seize the opportunities that changes in the market have presented. The market continues to change, however, with regard both to preferred varieties of grape and new kinds of products. The fundamental hope should be that the industry will develop a greater capacity to recognize and vigorously move toward the opportunities that an evolving market presents.

FOOTNOTES

THE INDUSTRY'S TROUBLES: CHANGES IN CONDITIONS, CHANGES IN TASTES AND DIFFICULT ADAPTATION

1. Leon D. Adams, _The Wines of America_, McGraw-Hill, 1978, pp.112-115.

2. _Ibid_., p. 26.

3. _Ibid_., p. 34.

4. _Ibid_., pp. 35-38, 238-239.

5. _Ibid_., p. 39.

6. Information for this paragraph was derived from a variety of sources including: Adams, _The Wines of America_ and James N. Putnam II, _The New York Grape Industry: Lake Erie Grape Belt and the Finger Lakes_, Federal Intermediate Credit Bank, Springfield, Mass., 1982.

7. In all tables except Table 3, the term "Great Lakes region" includes Niagara County.

8. Trenholm D. Jordan, _A Look at the Economic Impact of the Grape Industry in New York_, Cornell Agricultural Economics Staff Paper, no. 77-36, Cornell University, Department of Agricultural Economics, 1977, p. 7.

9. Cornell University, Department of Agricultural Economics, _Grape Farm Business Summary: Finger Lakes 1981_, p. 6 and _Great Lakes 1981_, p. 6.

10. Putnam, _The New York Grape Industry: Lake Erie Grape Belt and the Finger Lakes_, pp. 197-198.

11. _Ibid_., pp. 138-140, 194-195.

12. _Ibid_., pp. 195-196.

13. _Ibid_., Table 52, p. 200.

14. _Ibid_., pp. 97-98. The two-thirds proportion was calculated as an average from 1976-1979.

15. The figure of 200,000 gallons was used in the following study to define small wineries, which includes farm wineries: Richard C. Cooper, _Some Economic Aspects of Small Wineries in New York_, A. E. Res. 81-27, Cornell University, Department of Agricultural Economics, 1981, pp. 1, 35.

GRAPES AND WINE IN THE ECONOMY

1. Figures are taken from:

    State University of New York at Albany, Nelson A. Rockefeller Institute of Government, with the New York State Division of the Budget, *1983-84 New York Statistical Yearbook*, 10th ed., Table I-4, pp. 328-329.

    New York State Department of Agriculture and Markets Crop Reporting Service, *Fruit: 1983 Annual Summary*, January, 1984.

2. Putnam, p. 143.

3. *Ibid*., p. 158.

4. "The 40th Annual Statistical Survey," *Wines & Vines* 64 (1983), p. 49.

5. Comparison figures for California, New York and Virginia are taken from: Wine Institute, *Economic Research Report: 1982 Wine Industry Statistical Report*, Table 3, p. 14. These figures may be lower than others cited for 1982 because they exclude "increases after fermentation by amelioration, sweetening, and addition of wine spirits," which other sources often include.

6. A comparison of statistics from the *1983-1984 New York Statistical Yearbook* and the *New York Orchard and Vineyard Survey 1980* supports this statement. In the agriculture section of the former, Table I-4, "Value of Products Sold,..." shows the dollar value for various agricultural commodities for 1978. In most cases, fruit is in second or third place for these counties. An examination of the fruit profile by county from the *1980 Survey* shows that except for one of those same counties, grapes represent the largest number of fruit crop acreage.

7. Putnam, p. 137.

8. New York Wine Council, "Profile: New York Wine Industry."

9. Cornell University, Department of Agricultural Economics, *Grape Farm Business Summary: Finger Lakes 1981*, p. 6.

10. Cornell University, Department of Agricultural Economics, *Grape Farm Business Summary: Great Lakes 1981*, p. 6.

11. Testimony by David L. Mudd, President, Long Island Grape Growers Association, at Public Hearing held by Special Senate Majority Committee on the New York State Grape/Wine Industry, February 9, 1984.

12. "The 40th Annual Statistical Survey," p. 46.

13. Mudd, testimony.

14. New York Wine Council, *op. cit.*

15. New York tax figure from Samuel Chait, Department of Taxation and Finance; U.S. tax figure from 1981 Annual Report of the Commissioner of the Internal Revenue Service, p. 31.

16. New York Wine Council, op. cit.

17. Personal communication with Conrad Tunney, Executive Director of the Finger Lakes Association, March 30, 1984.

18. Testimony by Conrad Tunney, Executive Director, Finger Lakes Association, Special Committee Hearing, January 26, 1984.

19. Consumer Behavior, Inc., A Study of Perceptions and Appeal of New York State Regional Attractions. Prepared for the New York State Department of Commerce, December, 1980, pp. 17-18, 28-29, 46-47, 58-59.

20. Tunney, testimony.

21. Mudd, testimony.

22. Percentages based on figures reported in: New York State Department of Agriculture and Markets Crop Reporting Service, "Survey of Wineries and Grape Processing Plants in New York," January 24, 1984.

23. New York State Department of Agriculture and Markets Crop Reporting Service, New York Orchard and Vineyard Survey 1980, p. 37.

24. Putnam, p. 137.

25. Ibid.

26. Personal communication with James Trezise, Executive Director, New York Wine Council, March, 1984.

27. Putnam, p. 138.

28. Interview with Robert Hartzell, President, California Winegrape Growers Association, February, 1984.

29. Putnam, pp. 116-117.

30. Putnam. pp. 12-14.

31. Putnam, p. 3.

32. Putnam, pp. 14-15.

33. Putnam, pp. 62, 65, 74.

34. Putnam, pp. 71-72.

35. Statistics taken from: "The 40th Annual Statistical Survey," pp. 47, 58-59 and "Annual Directory, 1982" in Eastern Grape Grower and Winery News 17, 1983, pp. 15-21.

36. Putnam, pp. 183-185.

37. Putnam, Executive Summary, pp. 8-10.

38. "The 40th Annual Statistical Survey," pp. 34-36.

39. Putnam, *loc. cit.*

40. "The 40th Annual Statistical Survey," p. 37.

41. Putnam, *The New York Grape Industry*, pp. 210-211.

42. *Ibid.*, p. 229.

43. *Impact American Wine Market Review and Forecast 1982*, pp. 66, 68.

44. *Ibid.*, p. 70.

45. "The 40th Annual Statistical Survey," p. 58.

46. *Impact*, p. 66.

47. "The 40th Annual Statistical Survey," p. 34.

48. Putnam, p. 214.

49. Putnam, p. 216.

50. Putnam, p. 237.

51. Putnam, p. 217.

WINE-RELATED LAWS IN CALIFORNIA AND NEW YORK-- DO THE DIFFERENCES CONSTITUTE ADVANTAGES?

1. 49 Stat. 977, 1935.

2. Most of the rights of all kinds of California licensees are specified throughout Chapter 3 of California's ABC law. Regarding New York licensees: most producers' rights are found in Article 6 and section 103; most retailers' rights are found in sections 105 and 106 (see also sections 79 and 81); and most wholesalers' rights are found in Article 8, especially section 104 (see also section 78).

3. California's tied-house restrictions are found mostly in Chapter 15; New York's are found mostly in section 101.

4. The California tied-house exceptions include sections 23358.7, 23362, 23772, 25500, 25503.1, 25503.9, 25503.13, 25503.15 and 25505.

5. Section 105(16).

6. California sales tax: Revenue and Taxation Code, section 6051. California corporate and franchise taxes: Revenue and Taxation Code, sections 23151, 23153, 23501. New York sales tax: Tax Law, section 1105; New York corporate and franchise tax: Tax Law, section 210.

7. California excise tax: Revenue and Taxation Code, section 32151. New York excise tax: Tax Law, section 424.

8. Chapter 479 of the Laws of 1971. Article 25-AA of the Agriculture and Markets Law.

9. S. 8096-A, Veto 296, 1982.

10. Michael E. Kupferman and Christine Lynk. Memorandum. State Board of Equalization and Assessment, February 1, 1982.

    New York State Senate Research Service. Issues in Focus 82-70-A and 83-116.

    State Board of Equalization and Assessment. Determination of Proposed Agricultural Use Values. December, 1982.

11. Interview with Mark J. Twentyman and Judith G. Simon, State Board of Equalization and Assessment, March 1984.

12. Basic property assessment: Revenue and Taxation Code, section 105. Exemption: Revenue and Taxation Code, section 211. Preferential assessment statute: Revenue and Taxation Code, section 421 et seq.

13. California: Chapter 3, Article 2. New York: sections 64, 66, 76, 76-a, 78, 83.

14. California: Chapter 11 (repealed). New York: section 101-bbb.

15. California Retail Liquor Dealers Association v. Midcal Aluminum, Inc. 445 U.S. 97.

16. 445 U.S. 110

17. Rice v. Alcoholic Beverage Control Appeals Board, California Supreme Court, May 30, 1978. S.F. 23631.

18. William J. Mezzetti Associates, Inc. v. State Liquor Authority, 66 A.D. 2d 800, Dec. 11, 1978; 51 N.Y.2d 761, Sept. 9, 1980.

19. Section 101-b (3) and (4)

20. California: Business and Professions Code, section 17040. In New York, the inability to vary by locality or region arises from ABC law section 101-b (2), which limits price discrimination in sales to wholesalers and retailers.

21. California: section 25509. New York: for retail credit, section 100(5); for other credit, section 101-a.

22. Section 23393.

23. Sections 105(5), 106(2).

24. 27 CFR 4.

25. The figures are the most recent available: 1983 for the California retail licensees and 1981 for the New York retail licensees. The difference of two years should not present a problem of comparability because there has been great stability in numbers of licensees. For instance, the total numbers of New York licenses of all kinds issued by the State Liquor Authority in the five-year period from 1977 through 1981 were as follows:

1977	50,642
1978	50,638
1979	50,674
1980	50,710
1981	50,693

26. U.S. Bureau of the Census. County Business Patterns, 1981.

27. California: section 25658. New York: section 65.

28. California information made available in telephone interview in March 1984 with Esther Armstrong of the Department of Food and Agriculture. New York information made available in telephone interview in March 1984 with Wanda Losee of the Department of Agriculture and Markets.

29. Interview with Manuel R. Espinoza, Department of Alcoholic Beverage Control, March 1984.

30. Interview with Grace M. Longinetti and Lawrence J. Gedda, New York State Liquor Authority, March 1984.

31. California advertising specifications are found mainly in Chapters 15-16 and pursuant regulations. New York specifications are found in various places in Article 8 and pursuant regulations. See Chapter 242 of the Laws of 1970 regarding legislative intent.

32. California: section 23386. New York: Chiefly State Liquor Authority Bulletin 76, November 6, 1941, and Rule 25.

33. Robert W. Benson, "Regulation of American Wine Labeling: In Vino Veritas?" UC Davis Law Review, Vol. 11, 1978, p. 133

34. Section 107-a.

35. California: Chapter 3. New York: Sections 76(4) and 77(4)(c,d).

36. Interview with Manuel R. Espinoza, California Department of Alcoholic Beverage Control, March 1984.

37. Ibid.

38. Interview with Philip Schweppenhauser, New York State Department of Agriculture and Markets, March 1984.

39. Interview with Jeffrey Jacobs, California Department of Food and Agriculture, March 1984.

40. Interviews with Earl Gordon and Robert Lewis, New York State Department of Agriculture and Markets, March 1984.

41. California: sections 23373-23373.5. New York: mainly sections 93 and 102.

42. California: section 58615 of the Agricultural Code. New York: Article 25 of the Agriculture and Markets Law

43. Benson, p. 147-148.

44. Interviews with Michael J. McCarthy and Donald H. Neilson, New York State Department of Agriculture and Markets, March 1984.

45. 463 N.Y.S.2d 325 (A.D. 3 Dept. 1983).

46. Interview with Prof. Cornelius S. Ough, Department of Viticulture and Enology, University of California-Davis, March 1984.

47. New York State Agricultural Experiment Station. 1981 Annual Report.

48. Interviews with Professors Robert Pool, Thomas Cottrell and Lamartine F. Hood, March 1984.

49. Interview with and supplementary information from Professor Lamartine F. Hood, Director of the New York State Agricultural Experiment Station, March 1984, and letter from Professor Hood, March 30, 1984.

50. Testimony of James Trezise, Special Committee Hearing, January 16, 1984.

RESTORING COMPETITIVENESS

1. Putnam, Executive Summary, May 1982, p. 1.

2. Several publications contain historical information on the Wine Institute. Some of them are:

   Adams, The Wines of America.

   Richard Bunce, "The Political Economy of California's Wine Industry." A Study Prepared for the International Study of Alcohol Control Experiences Project for the Social Research Group, School of Public Health, University of California, Berkeley, 1979.

   Benson, "Regulation of American Wine Labeling," p. 147-148.

3. Testimony of James Trezise, Special Committee Hearing, February 2, 1984.

4. Dan. E. Beauchamp, Beyond Alcoholism: Alcohol and Public Health Policy. Temple University Press, 1980.

5. Testimony of David Bagley, Special Committee Hearing, January 16, 1984.

6. Interviews with Michael J. McCarthy, Donald H. Neilson, and Lyle A. Newcomb, New York State Department of Agriculture and Markets, March 1984.

7. Thomas J. Zabadal, "Cultural Practices and Management Considerations for Finger Lakes Grape Growers." Proceedings of the 34th Annual Finger Lakes Grape Growers' Convention, Keuka College, Keuka Park, New York, February 26, 1983.

8. New York State Department of Taxation and Finance and New York State Tax Commission, 1982-83 Statistical Supplement to the Annual Report, Tables 11 and 12.

9. The table represents generalizations of the preferential tax laws. Not apparent in the table are variations relating to size of winery and blend of in-state and out-of-state products. For instance, to benefit from the preferential tax structure in Indiana, an Indiana winery must not exceed 100,000 gallons in annual production. A Michigan winery which blends its product up to 25 percent with out-of-state wine may benefit from Michigan's preferential structure; in Minnesota, a simple majority of the ingredients must be Minnesota products. In New Jersey, 100 percent of the ingredients must be in-state products in order to qualify for the preferential rate. Also a point of difference are the distinctions between table and dessert wines. In Michigan, for instance, dessert wine is more than 16 percent alcohol, while in Georgia it is more than 14 percent alcohol.

10. New York State Department of Taxation and Finance and New York State Tax Commission, 1982-83 Statistical Supplement.

11. 656 P.2d 724.

12. Bagley, Testimony.

13. Interviews with Robert Lewis, New York State Department of Agriculture and Markets, March 1984.

14. Chapter 177 of the Laws of 1981. Chapter 138, section 15 of the Massachusetts General Laws Annotated.

15. Requirement of three filings per year occurs as a result of State Liquor Authority Rule 16.

16. New York: Section 107-a. Federal: 27 U.S.C. 205.

17. New York State Liquor Authority Bulletin 84, September 28, 1942.

18. Sections 104(1) and 111.

19. Sections 76-a(4) and 77(4).

20. Section 101-b(3).

21. State Liquor Authority Regulations, section 66.9.

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Insurance and Women. October, 1974. 30 pages.

The Other Side of Crime...The Victim. January, 1975. 18 pages.

No Deposit, No Return... A Report on Beverage Containers. February, 1975. 106 pages and Appendices.

Subsistence or Family Care...A Policy for the Mentally Disabled. March, 1975. 37 pages and Appendices.

"...But We Can't Get A Mortgage!" Causes and Cures. May, 1975. 61 pages and Appendices.

Productivity. October, 1975. 107 pages.

One in Every Two...Facing the Risk of Alcoholism. February, 1976. 101 pages.

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