



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended	<b>04/23/02</b>	Bill No:	<b>AB 1922</b>
Tax:	<b>Alcoholic Beverage</b>	Author:	<b>Firebaugh</b>
Board Position:		Related Bills:	

**BILL SUMMARY**

This bill would prohibit a licensed wine importer from purchasing or accepting delivery of any imported brand of wine unless he or she is designated as an authorized importer of that brand by the brand owner or his or her authorized agent.

**ANALYSIS**

**Current Law**

Among other things, Sections 32151 and 32220 of the Revenue and Taxation Code impose a per-gallon excise tax upon all beer and wine sold in this State by a manufacturer, wine grower, or importer, and others selling such beverages with respect to which no tax has been paid. Section 32175 generally provides that it shall be presumed that all beer and wine imported into this State by a beer manufacturer or wine grower or importer has been sold in this State at the time it is received by the licensee.

The current taxes and surcharges on wine are as follows:

	<u>Tax Per Gallon</u>	<u>Surcharge Per Gallon</u>	<u>Total Per Gallon</u>
Wine (not more than 14 percent alcohol)	\$0.01	\$0.19	\$0.20
Wine (more than 14 percent alcohol)	\$0.02	\$0.18	\$0.20
Sparkling wine	\$0.30	None	\$0.30

The alcoholic beverage tax is paid to the Board of Equalization and deposited into the Alcohol Beverage Control Fund

Under existing law, Section 23672 of the Business and Professions Code provides that a licensed importer shall not purchase or accept delivery of any brand of distilled spirits unless he is designated as an authorized importer of such brand by the brand owner or his authorized agent. Such distilled spirits imported into California shall come to rest at the warehouse of the licensed importer or an authorized warehouse for the account of

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such licensed importer, before sale and delivery to a retail licensee. Existing law does not impose such a prohibition on wine importers.

### **Proposed Law**

This bill would add Section 23672.1 to the Business and Professions Code to provide that a licensed importer may not purchase or accept delivery of any imported brand of wine unless he or she is designated as an authorized importer of that brand by the brand owner or his or her authorized agent. These provisions would not apply to wine sold as vintage wine, as specified, or to wine imported by a retail off-sale licensee for sale by that licensee in a wine auction.

### **In General**

Upon the repeal of prohibition in 1933 and the return of the legal sale of alcoholic beverages to California, taxation and regulation of the manufacture, distribution, and sale of alcoholic beverages were given to the State Board of Equalization (Board). In 1955, an amendment to the State Constitution became effective removing the duty of regulating the manufacture and sale of alcoholic beverages from the Board and placing it in the new Department of Alcoholic Beverage Control. The Board is responsible for assessing and collecting the excise tax as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this state.

### **Background**

In 1973, Assembly Bill 1940 (Ch. 707) added Section 23672 to the Business and Professions Code imposing a "primary source law" upon distilled spirits. The statute was enacted in response to the effects of Oklahoma's alcoholic beverage laws. At the time, Oklahoma's statutes were understood to require any distiller or brand owner selling its products to Oklahoma wholesalers to sell to all wholesalers on a nondiscriminatory basis. Because of the perceived extraterritorial effect of Oklahoma's "open wholesaling" statutes, a licensed California importer who was unable to obtain distilled spirits through the distiller's established distribution system could obtain them from Oklahoma wholesalers. This was particularly attractive to California wholesalers since Oklahoma required distillers to sell to Oklahoma wholesalers at the lowest price charged for its products anywhere in the United States. As a result, this created intra-brand competition in California with designated importers who obtained the distiller's products through the distiller's distribution chain competing against non-designated importers who obtained the distiller's products from Oklahoma wholesalers. Section 23672 of the Business and Professions Code closed off the "Oklahoma connection" to California importers not authorized by the distiller to deal in its products.

During the 1985 Legislative Sessions, Senate Bill 589 would have prohibited a licensed importer from purchasing or accepting delivery of a brand of wine unless the importer is designated as an authorized importer for that brand. That bill passed the Legislature, but was vetoed by Governor Deukmejian. The veto message states, in part, the following:

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"I recognize that California wine and grape industry is facing serious problems in competition with wine imports, stemming from the high value of the dollar and reportedly unfair subsidies and trading practices from foreign wine producers. Yet this legislation is the wrong way to address these problems. This law would have no impact on the purchase of foreign wines in the other forty-nine states, yet it would result in higher prices for California consumers without producing significant relief for California growers and vintners."

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Guinness UDV and is intended to create a Primary Source Law in California for the importation of wine. According to the sponsor, this would help states enforce alcohol beverage control, health, and consumer protection laws through the three-tier system, prevent out-of-state vendors from transshipping goods into California without payment of taxes, and ensure the integrity of product.
2. **This bill may reduce the extent of auditing required for alcoholic beverage tax.** Currently, during an alcoholic beverage tax audit of an importer, the audit process includes verification of all purchases. Pursuant to the provisions of this bill, a California importer may be limited to only purchasing certain brands. As such, the proponents of this measure argue that the distribution would be limited to certain importers, which would create an "audit trail" reducing the record keeping and enforcement burdens on state agencies.
3. **This bill limits the prohibition to the purchase or delivery of any imported brand of wine.** In its current form, it appears this bill would prohibit a licensed importer from purchasing any imported brand of wine in this state if that importer is not designated as an authorized agent of that brand. This would include sales within California. However, this is not the author's intent. Based on discussions with the author's office, this measure is intended to prohibit a licensed importer from purchasing or accepting delivery, *on the importation into California only*, of any brand of wine if that importer is not an authorized importer or agent of that brand. It is not intended to prohibit non-designated importers from purchasing imported wine once the wine is in this State; nor is it intended to prevent non-designated importers from purchasing wine from California wine growers. As such, it is recommended that the bill be amended as follows:

23672.1. (a) A licensed importer may not purchase or accept delivery, on the importation only, of any ~~imported~~ brand of wine unless he or she is designated as an authorized importer of that brand by the brand owner or his or her authorized agent.

It should be noted that the provisions of this bill differ from the prohibition on distilled spirits (Section 23672 of the Business and Professions Code). The distilled spirits prohibition applies to any brand of distilled spirits, whether that brand is manufactured in, or imported into, California. In addition, the prohibition on distilled spirits applies to all sales, including sales within California.

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**COST ESTIMATE**

The cost avoidance resulting from the reduction of auditing required for each account is unknown because it is not possible to determine how many taxpayers would be considered designated as an authorized importer or an authorized agent of particular brands.

**REVENUE ESTIMATE**

The provisions of this bill should have a positive impact on the state excise tax collected on sales of wine imported to California. However, the Board has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

As a point of reference, there are 973 Beer and Wine Importer Accounts, of which 395 accounts report wine imports; 35 of these accounts paid more than \$20,000 (individually) in taxes in calendar year 2001, for a total of \$5,259,750. There were 334 accounts that paid less than \$20,000 (individually) for a total of \$943,349, and 26 accounts that had no tax liability because of exempt wine imports.

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