

## Fiscal Year 2009-2010

## TITLE OF PROPOSAL

Flavored Malt Beverage

## DIVISION PRIORITY NUMBER

## PROGRAM IMPACTED

Alcoholic Beverage Tax

SUMMARY OF REQUEST *(including impact if request denied)*

On April 8, 2008 the Board adopted revised regulations to implement the taxation of flavored malt beverages (FMB) as distilled spirits. Alcoholic Beverage Tax Law Regulations: 2558. Distilled Spirits, 2559. Presumption - Distilled Spirits, 2559.1. Rebuttable Presumption - Distilled Spirits, 2559.3. Internet List and 2559.5. Correct Classifications are anticipated to be approved by the Office of Administrative Law (OAL) in June 2008 with the regulations fully operative on October 1, 2008. This proposal requests 4.0 permanent full-time positions and \$851,000 in fiscal year (FY) 2008-09; 5.5 permanent full-time positions and \$1,086,000 in FY 2009-10; and 5.5 permanent full-time positions and \$676,000 in FY 2010-11 and ongoing. This request includes costs for Data Entry Unit, Mail Services Unit, Cashiers Unit, Technology Services Department, Legal Department and the Excise Taxes Division. Ongoing revenue is estimated, per formal Board of Equalization (BOE) Revenue Estimate, at \$38.3 million and represents a benefit-to-cost ratio of 35.3:1 in FY 2009-10.

## BACKGROUND/HISTORY

FMB are defined by Federal regulations as malt beverages in which the majority of alcohol is the product of brewing. The Board exercised its legal authority to clarify and appropriately tax these beverages as distilled spirits. The regulations establish a rebuttable presumption that alcoholic beverages, except wine, contain alcohol obtained from distillation. If a manufacturer does not rebut the presumption as provided in Regulation 2559.1, the alcoholic beverage will be presumed to meet the definition of "distilled spirits" and be taxed at the higher distilled spirits tax rate. The regulations create a new workload for the BOE that cannot be absorbed or met through an internal redirection of resources. Implementation is underway as Regulation 2559.1 becomes effective upon approval by OAL. The remaining regulations, which impose the change in taxation of FMB products, becomes operative as of October 1, 2008. The BOE cannot meet the implementation time frame without continuing the pre-prep efforts already in progress.

STATE LEVEL CONSIDERATIONS *(including impact to other departments)*

The Excise Taxes Division, along with the Department of Alcoholic Beverage Control (ABC), jointly administer the Alcoholic Beverage Tax Program that imposes a per-gallon excise tax collected on the sale, distribution, or importation of alcoholic beverages in California. Revenues are deposited into the Alcohol Beverage Control Fund and are withdrawn for use by the State's General Fund or used to pay refunds under this program.

The ABC is assigned, among other things, the responsibility for the licensing of business locations that sell alcoholic beverages in California; the BOE is exclusively responsible for assessing and collecting tax on the manufacture, importation, and sale of alcoholic beverages in California. Pursuant to this authority (Revenue & Taxation (R & T) Code § 32451) the Board adopted these regulations to clarify, for the purpose of taxation, when an alcoholic beverage meets the definition of a "distilled spirit" or a "beer."

JUSTIFICATION *(including link to Strategic Plan)*

This proposal is consistent with both the Board's action to adopt regulations to FMB as distilled spirits and with the BOE's Strategic Plan, Strategic Focus, specifically, (Part II) (A), Purpose, to adopt rules and regulations to clarify the laws it administers; and (C), Vision, to respond quickly and effectively to new tax and fee programs and changes in existing programs.

## COSTS AND BENEFITS (BUDGET YEAR ONLY – FISCAL YEAR 2009-10)

New funding     Continuation     Redirection

COST	REVENUE <i>(if applicable)</i>
\$ 851,000	\$ 38,300,000
POSITIONS <i>(if applicable)</i>	COST SAVINGS <i>(if applicable)</i>
4.0	\$ 0

## PREPARED AND APPROVED

PREPARED BY Excise Taxes Division	DIVISION CHIEF APPROVAL
AUTHOR'S TELEPHONE NUMBER (916) 322-2768	DATE

## ACTION

Concept Approved     Request Denied

EXECUTIVE DIRECTOR *(signature)*
