

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director (MIC 73)

Date: January 6, 2010


From : Randie L. Henry, Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : **Proposed Revisions to Audit Manual Section 0806.40, *Undercover Pour Test*, and Appendix C, *Undercover Pour Test Procedures***

In accordance with the established procedures for audit and compliance manual revisions, I am submitting the proposed revisions to Audit Manual (AM) section 0806.40, *Undercover Pour Test*, and Appendix C, *Undercover Pour Test Procedures*, for your approval to forward to the Board Proceedings Division. These revisions incorporate additional guidance to auditors when conducting an undercover pour test.

The proposed revisions have been reviewed and approved by SUTD management, provided to Board Members, and posted at <http://www.boe.ca.gov/sutax/staxmanuals.htm> on the Board's website for two months to solicit comments from interested parties. We received no comments from the public.

A copy of the revised AM section 0806.40 and Appendix C are attached for your reference. We request your approval to forward them to the Board Proceedings Division for placement on the next Administrative Agenda as a consent item.

If you have any questions, please let me know or contact Mr. Jeff McGuire at 324-1825.

RLH:nvm
Attachment

Approved:



Ramon J. Hirsig
Executive Director

cc: (all without attachments)
Mr. Stephen Rudd (MIC 46)
Ms. Freda Orendt (MIC 47)
Mr. Jeff McGuire (MIC 92)
Mr. Kevin Hank (MIC 49)
Ms. Kelly Reilly (MIC 47)
Ms. Erin Little (MIC 46)

UNDERCOVER POUR TEST

0806.40

The prior approval of the District Principal Auditor or Branch Office Supervisor is required for an undercover pour test. The auditor is encouraged to perform an undercover pour test when the taxpayer has indicated on the Bar Fact Sheet (AM section 0802.15) a pour size that exceeds the 1.5 ounces for mixed drinks, over-the-rocks, and straight shots, and the pour size cannot be verified by other means.

When an undercover test is conducted, a complete report must be prepared and included in the audit working papers. This report should include the date and time the test was conducted, the name of the bartender, the approximate number of customers present, the type of drink, how it was measured, and other pertinent information. When possible, such tests should be done when a full-time bartender is on duty that has been employed for a significant length of time. In addition, if possible, the tests should be conducted during a period (i.e., hour) that is most representative of the business activity. This may entail conducting the test after normal work hours.

~~It is important in conducting the test for the auditor to consider that the pour size may vary according to the type of drink, the proof of the alcohol, and the temperature of the drink. The auditor should also consider that the pour size might vary depending whether or not the customer is a "regular customer" and whether or not a customer is drinking excessively.~~

~~The results of the test should be discussed with the taxpayer and/or bartender at the time it is completed. To assist the auditor, the procedure to conduct an undercover pour test is described in Appendix C. Unless an employee of the Department of Justice or the Department of Alcoholic Beverage Control (ABC) accompanies the auditor(s), the taxpayer or bartender may legitimately refuse to let the alcohol be taken off the premises for testing. The auditor may contact the Department of Justice or the Department of Alcohol and Beverage Control ABC to obtain their assistance or information (e.g., reports on any prior undercover tests).~~

After an undercover test is conducted, the results of the test should be discussed with the taxpayer and/or bartender at the time it is completed. It is important when analyzing the results of the test for the auditor to consider that the pour size may vary according to the type of drink, the proof of the alcohol, and the temperature of the drink. The auditor should also keep an open mind and use good judgment when the taxpayer asserts that their regular pour size is larger than the test results. This may occur when the taxpayer mainly serves regular, repeat customers or there are other influencing variables, such as those discussed in AM section 0802.20.

UNDERCOVER POUR TEST PROCEDURES

APPENDIX C

Before the Test

1. Choose three auditors to conduct the test. It is important that at least one of the three auditors has experience in conducting an undercover pour test in audits of bars and restaurants. The auditor assigned to the audit should not participate in the undercover pour test. One auditor will be assigned as the designated driver and the same auditor should also conduct the actual measuring of the pour size. The designated driver should drive the other participating auditors to their respective homes upon completion of the test.
2. Determine the days and hours of the business operations.
3. Determine a representative day and time to conduct the test. Avoid holidays, special events, happy hour, and entertainment hours.
4. When the test is conducted after normal work hours, designate a contact person that the auditors can reach by telephone in case of an emergency, preferably an audit supervisor or the District Principal Auditor.
5. Obtain written approval for the test from the District Principal Auditor or the Branch Office Supervisor. The written approval must identify the date, time and names of the participants who will conduct the undercover pour test.
6. ~~Be sure a~~All participants ~~must have take~~ both their BOE ID's Identification Card and ~~a~~ driver's license with them.
7. Examine the Bar Fact Sheet (AM section 0802.15) to determine the type of drinks sold, and decide beforehand what drinks will be purchased. Drinks are to be ordered straight or mixed with only water.
8. Have all necessary equipment available (~~See~~ equipment list). Be familiar with the equipment before the test by performing several test runs at the office.
9. Decide beforehand whether the testing will be done at the bar by the auditors or sent to a designated lab for results. However, unless an employee of the Department of Justice or ~~the Alcoholic Beverage Control~~ ABC accompanies the auditors, the ~~bar~~ taxpayer/bartender may legitimately refuse to let the alcohol be taken off the premises for testing. BOE should not remove an alcoholic drink for testing without the taxpayer's consent.
10. It is recommended that the District Administrator or District Principal Auditor contact the District/Branch Administrator or Supervisor of the local ABC office to discuss the specific tests and ensure there are no conflicts between a BOE undercover pour test and any ABC investigation. The administrator or supervisor of the local ABC office can properly advise the BOE whether or not to reschedule the undercover test. The telephone numbers and addresses of ABC district offices are located at <http://www.abc.ca.gov/distmap.html>.
11. It is also recommended that the District Administrator or District Principal Auditor contact the local authorities (law enforcement) of the city or county where the business is located to inform them about the BOE, what BOE auditors do when conducting an undercover pour test, and to obtain a contact person or unit name and number, in case staff encounters a problem while conducting a test.

Equipment

1. 4 to 5 ounce graduate
2. Hydrometer (generally a Van Waters & Rogers Inc. #3417-1)
3. Hydrometer Cylinder: 1 ¼ inches in diameter and 10 inches tall. This is used to float the hydrometer.
4. Thermometer
5. Funnel
6. Temperature Conversion Table
7. Calculator
8. If transporting the container to the lab or delivering the container within 24 hours, the auditor must keep the drinks in a refrigerated container (cooler w/ice or stored in refrigerator).

During the Test

1. Two drinks will generally be purchased, one call and one well drink (a mixed drink, a straight shot or "on-the-rocks," or a cocktail, if either is claimed to have significant sales volume). When testing is done with a hydrometer, only drinks mixed with water can be ordered. Pay for the drinks. If the assigned designated driver orders a drink (this would be an additional drink); it should be a straight shot and should not be drunk by the Board of Equalization (BOE) employee. This drink may be used as a "control test" to test the proof listed on the liquor bottle if the testing is to be done by a lab; otherwise it may be included as one of the drinks used to test the pour size if the measurement is done at the business location. The other two drinks are to be drunk by the BOE employees.
2. Order an identical round of drinks. Pay for drinks. This second round of drinks is used for testing purposes only.
3. At this point, identify yourself to the bartender. Inform the bartender of your name, where you work, the reason why you are there, and what you intend to do with the drinks (i.e., to test the drinks at the business location or transport the drinks to a lab). If necessary present your BOE identification card.
4. Ask bartender to see the liquor bottles from which the drinks were poured. Note the proof and brand name of each drink being tested.
5. If the taxpayer/bartender has agreed to let the BOE employees remove the drinks from the premises for testing by a lab, pour each drink into a sealable container for transporting to the lab. When transporting the container to the lab or delivering the container to the lab within no more than 24 hours, the BOE employees must keep the container cool by storing it in a refrigerated container (cooler with ice or stored in a refrigerator). Each container submitted for analysis must be properly labeled with all the pertinent information (i.e., the proof of the liquor; if more than one liquor, list each along with ratios, the taxpayer's name, permit number, brand of liquor, the date sample was obtained, the name of the person obtaining the sample, bartender's name).
6. If the testing is to be done at the business location, request that the bartender notify the taxpayer and request from the taxpayer/bartender an appropriate location to perform the testing. If possible, avoid using a main room or the bar.
7. Remove any ice from the drinks being tested. Do this by pouring the drink into the graduate, which has a lip for pouring. Pour drink back into glass through a

funnel to strain off the ice. Discard the ice. The reason for this is to allow the drink to warm to 60 degrees Fahrenheit. Pour drink back into graduate being careful not to lose liquid.

8. If the drink was ordered "straight-up," measure the amount of liquid in the glass. Place thermometer in the measurement glass. After three to five minutes, record the temperature. Remove the thermometer and record the liquid volume total. Use recorded temperature, recorded proof, and conversion table to obtain the correct factor. Multiply the factor by the liquid volume total. Record your answer as the measured pour.
9. If drink was ordered on the rocks, chilled, or shaken, pour tap water into measurement glass until the total amount of liquid equals four to five ounces.
10. Place thermometer in the measurement glass. After three to five minutes, record temperature. A temperature correction factor is used as hydrometers are calibrated at 60 degrees Fahrenheit. Remove the thermometer and record the liquid volume total.
11. Pour the liquid into the graduated cylinder.
12. Place the hydrometer in the cylinder. Verify that the hydrometer is buoyant. If the hydrometer is still touching the base of the cylinder, you will need to add additional water. Water will have no effect on the outcome of the test.
13. Record the hydrometer reading. If the hydrometer is somewhat difficult to read because of the capillary action of the liquid, the reading at the tip of the capillary curve has been found to be most accurate.
14. Use the total test volume of liquid multiplied by the hydrometer reading (or temperature corrected hydrometer reading). Divide by the proof. Record your answer as the measured pour.
15. Provide detailed comments on the results of the pour test with all pertinent information: type of drink(s), method of pour, date, time, proof, bartender's name, auditors' names, etc. The auditor may use the "Results of Undercover Pour Test" form or an equivalent form at his or her discretion.
16. Do not forget to clean and dry all equipment.