

# Memorandum

To: Mr. Ramon J. Hirsig  
Executive Director

Date: January 15, 2009

From: David J. Gau, Deputy Director  
Property and Special Taxes Department



Subject: **Flavored Malt Beverage Update**  
(February 2009, Deputy Director's Report, Property and Special Taxes)

This is an update regarding the implementation of the Flavored Malt Beverage (FMB) regulations. As you're aware, the regulations were approved by the Office of Administrative Law on June 10, 2008, and became fully operative on October 1, 2008. To date, the total amount of distilled spirits tax revenue received as a result of the new regulations is \$6,451.49. The Excise Taxes Division (ETD) has processed tax returns for the periods October and November 2008. The December 2008 and Fourth Quarter 2008 returns are due on or before January 15, 2009. We expect to have all revenue figures for the period October 2008 through December 2008 by mid-February.

### Internet List

The Internet list required by Alcoholic Beverage Tax Law Regulation 2559.3 was created on September 17, 2008. The Internet list now reflects rebuttable presumption forms (BOE-505) received on 5,630 alcoholic beverage products for 691 manufacturers and importers.

### Budget Change Proposal

In November 2008, the Department of Finance approved the Budget Change Proposal (BCP) to address the workload associated with the new regulations. However, BOE's current year funding request was denied, so the BCP was revised to eliminate BOE's current year funding request. The BCP requests \$1,328,000 (General Fund) in FY 2009-10; \$959,000 (General Fund) in FY 2010-11; \$739,000 in FY 2011-12, and ongoing, to establish 5.9 permanent positions and related resources. These costs were predicated on revenue of \$38.3 million in FY 2009-10, and ongoing, in the absence of any reformulation of products by manufacturers.

### Outreach

The ETD continued taxpayer outreach by sending a special notice to wine growers and importers regarding alcoholic beverages that may not meet the definition of wine under Business and Professions Code section 23007. In the event that the alcoholic beverages produced and/or imported do not meet the definition of wine, taxpayers were to consider whether a report to rebut the presumption should be filed.

### Lawsuit

In regard to the Diageo-Guinness lawsuit, on December 16, 2008, the plaintiffs filed a dismissal of the second cause of action which asserted a violation of the Commerce Clause. The first cause of action remains intact and the hearings on all parties' motions for summary judgment are scheduled for January 27, 2009. We expect to have information pertaining to the outcome of this motion prior to the February 2009 Board meeting.

Rebuttable Presumption Forms

ETD staff is in the process of finalizing a letter that will be mailed to a number of alcoholic beverage manufacturers and winegrowers to make a formal request for documentation pertaining to rebuttable presumption forms that have been filed. This request will require the manufacturer or winegrower to provide the documentation necessary to verify that each product meets the criteria specified in the Alcoholic Beverage Tax Law Regulation 2559.1 to rebut the distilled spirits presumption. It is anticipated that letters will be mailed by the end of February 2009 for the verification of approximately 12 alcoholic beverage products.

With your approval, this item will be placed on the February 2009, calendar under Deputy Director, Property and Special Taxes Department.

DJG:kn

cc: Ms. Diane Olson

Approved: \_\_\_\_\_

  
Ramon J. Hirsig  
Executive Director

BOARD APPROVED  
at the \_\_\_\_\_ Board Meeting

Diane Olson, Chief  
Board Proceedings Division