



STATE BOARD OF EQUALIZATION

101 N STREET, SACRAMENTO, CALIFORNIA  
BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001  
TELEPHONE (916) 322-0438  
FAX (916) 323-3387

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May 27, 1997

Re: Taxability of Alcoholic Beverages Containing Distilled Spirits  
and Malt Beverage or Wine

Dear

Your letter has been referred to me for reply. According to your letter, is contemplating producing a product which contains both malt beverage and distilled spirits, and/or a product which contains both wine and distilled spirits. You have requested an opinion on how tax would apply to these new types of alcoholic beverages. First, I should note that you have also requested an opinion on how these types of products would be classified for purposes of identifying the types of outlets in which such products could be sold; the following response, however, is limited to the California Alcoholic Beverage Tax Law. Any questions concerning licensing issues should be addressed by the Department of Alcoholic Beverage Control ("ABC"). In that regard, a copy of your letter was forwarded to the ABC on April 14, 1997. A copy of the cover letter forwarding your letter is enclosed for your file.

The Applicable Law:

The administration of the Alcoholic Beverage Tax Law<sup>1</sup> is closely related to the licensing of persons dealing in alcoholic beverages in the State of California. The tax (and surtax) is imposed on the "sale" of alcoholic beverages. The rates are set forth in three categories consisting of distilled spirits, beer and wine (See Rev. & Taxation Code §§ 32151, 32201 and 32220). The tax is imposed per wine gallon (distilled spirits and wine) and per barrel (beer), and there is no allowance in the law for any apportionment of tax as you propose in your letter. Therefore, the tax rate is dependent on whether the product is, by definition, a distilled spirit, beer or wine.

<sup>1</sup> For your convenience, I have enclosed a copy of the State Board of Equalization's pamphlet on the California Alcoholic Beverage Tax Law (Rev. & Taxation Code §§ 32001 et seq.), which includes the applicable sections of the Beverage Control Act found in the California Business and Professions Code.

The sections defining beer, wine and distilled spirits are contained in the Beverage Control Act found in the California Business and Professions Code beginning with § 2300. The relevant sections<sup>2</sup> which apply to the imposition of the Alcoholic Beverage Tax pursuant to Revenue and Taxation Code § 32002, provide as follows:

23005. **"Distilled spirits."** "Distilled spirits" means an alcoholic beverage obtained by distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

23006. **"Beer."** "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine.

23007. **"Wine."** "Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blended material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine. . . .

#### Application of the Law:

Wine plus Distilled Spirits: As can be seen from the definition of "wine," a product which is a mixture of wine and a distilled spirit will be defined for tax purposes as a wine only if the distilled spirit added is "distilled from the particular agricultural product or products of which the wine is made" and so long as the resulting product "does not contain more than 15 percent added . . . blending material and . . . contains not more than 24 percent of alcohol by volume. . . ." (See § 23007, emphasis added). Therefore, if you add a distilled spirit to a wine which is not distilled from the particular agricultural product or products of which the wine is made and/or the distilled spirit is more than 15 percent of the total volume of the product and/or the result of the mixture is more than 24 percent alcohol by volume, the product will no longer meet the definition of "wine" and will instead be considered, in its entirety, a distilled spirit for tax purposes.

This opinion also follows from the definition of a distilled spirit which includes an alcoholic beverage obtained by distillation of fermented agricultural products, and "all dilutions and mixtures thereof". Therefore, even if the amount of distilled spirit added to a wine is small, if it does not meet the definition of "wine," the product will fall into the definition of a distilled spirit (diluted/mixed distilled spirit) and be taxed as a distilled spirit.

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<sup>2</sup> Unless otherwise indicated, all code section references are to the California Business and Professions Code.

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Beer plus Distilled Spirits: The analysis of this proposed product mirrors the analysis set forth above for wine mixed with distilled spirits, except that, unlike the definition of wine, the definition of beer does not include any circumstances under which beer mixed with distilled spirits will still come within the definition of beer. Therefore, a product including beer and any amount or kind of distilled spirit will not meet the definition of beer and will instead be a distilled spirit (diluted) and taxed as such.

I hope that this letter responds to your request. If you have any further questions or wish additional information, please feel free to write to me at the address above.

Sincerely,

  
Monica Gonzalez Brisbane  
Tax Counsel

MGB:es

Enclosures

cc: (w/o encls.)  
Mr. Monte Williams (MIC:56)  
Ms. Janet Vining

bc: (w/o encls.)  
Mr. Bill Kimsey (MIC:56)  
Mr. Vic Day (MIC:56)  
Ms. M. Judith Nelson