



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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December 15, 2011

KRISTINE CAZADD  
Executive Director

VIA INTERNET

Dear Interested Party:

The Audit Manual (AM) is a guide for the Board of Equalization (BOE) staff in conducting tax and fee audits. It is located at the BOE web page <http://www.boe.ca.gov/sutax/staxmanuals.htm> and is available to the public.

SUTD is proposing to revise section 0806.40 of AM Chapter 8, *Bars and Restaurants*, to update and clarify existing procedures for conducting an undercover pour test. The full text of the revised AM section is displayed on the following page for the convenience of interested parties who may wish to submit comments or suggestions.

You may contact the BOE at [AM.RevisionSuggestions@boe.ca.gov](mailto:AM.RevisionSuggestions@boe.ca.gov) for any comments or suggestions related to the proposed AM revisions. Your comments or suggestions must be received by BOE no later than **February 15, 2012** in order to be considered by staff. Thank you for your consideration.

Sincerely,

Susanne Buehler, Chief  
Tax Policy Division  
Sales and Use Tax Department

## 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.

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 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. Since the undercover pour test is designed to capture the taxpayer's standard pour for use in the mark-up calculation and to project sales, 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.~~ The pour size This may also vary occur when the taxpayer serves mainly ~~regular, repeat customers~~ or there are other ~~influencing~~ variables, such as ~~tips received or~~ those discussed in AM section 0802.20. Auditors should also keep in mind that tipping may influence the size of the pour and auditors are instructed to provide a reasonable tip when paying for the first round of drinks. The audit working papers should document that a tip was given during the undercover pour test.