STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**03/08/10**	Bill No:	**AB 1694**
Tax:	**Alcoholic Beverage Fee**	Author:	**Beall**
Related Bills:	**AB 1019 (Beall)**		

This analysis will only address the bill's provisions which impact the State Board of Equalization (BOE).

BILL SUMMARY

This bill would impose a per-gallon mitigation fee on beer, wine, and distilled spirits sold at resale by an alcoholic beverage seller, as defined.

ANALYSIS

CURRENT LAW

The BOE administers the existing Alcoholic Beverage Tax Law (Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code (RTC)), which imposes an excise tax upon all beer, wine, and distilled spirits sold in this state. Sections 32151, 32201, and 32220 of the Alcoholic Beverage Tax Law impose the following taxes and surcharges on the sale of beer, wine, and distilled spirits:

	Per Gallon Tax	Per Gallon Surtax	Total
Beer	$0.04	$0.16	$0.20
Wine (not more than 14 percent alcohol)	$0.01	$0.19	$0.20
Wine (more than 14 percent alcohol)	$0.02	$0.18	$0.20
Champagne and Sparkling wine	$0.30	$0.00	$0.30
Sparkling hard cider	$0.02	$0.18	$0.20
Distilled spirits (100 proof)	$2.00	$1.30	$3.30
Distilled spirits (100+ proof)	$4.00	$2.60	$6.60

The proceeds from these taxes and surcharges are deposited into the Alcohol Beverage Control Fund and are withdrawn for use by the State's General Fund or used to pay refunds under the Alcoholic Beverage Tax program.

PROPOSED LAW

This bill would add Division 10.56 (commencing with Section 11972.10) to the Health and Safety Code to establish the Alcohol-Related Services Program within the California Department of Alcohol and Drug Programs (DADP).

Beginning January 1, 2011, this bill would impose a per-gallon mitigation fee on beer, wine, and distilled spirits sold by persons engaged in business in California, as defined in RTC Section 6203, who sell alcoholic beverages, where the sale is for the purpose of resale in the regular course of business of the purchaser. This bill requires the mitigation fee to be assessed at the first point of sale within California. The mitigation fee would be established at a per gallon rate of $0.53 for beer, $1.28 for wine, and $4.27 for distilled spirits. The tax, surtax rate, and proposed fee would be as follows:

	Tax	Per Gallon Surtax	Proposed Fee	Total
Beer	$0.04	$0.16	$0.53	$ 0.73
Wine (not more than 14 percent alcohol)	$0.01	$0.19	$1.28	$ 1.48
Wine (more than 14 percent alcohol)	$0.02	$0.18	$2.13	$ 2.33
Champagne and Sparkling wine	$0.30	$0.00	$1.28	$ 1.58
Sparkling hard cider	$0.02	$0.18	$2.13	$ 2.33
Distilled spirits (100 proof)	$2.00	$1.30	$4.27	$ 7.57
Distilled spirits (100+ proof)	$4.00	$2.60	$4.27	$10.87

This bill would authorize the BOE to annually increase the proposed fee in accordance with the California Consumer Price Index, as specified, and require the fee to be sufficient to defray the costs incurred by the BOE and the DAPD in implementing the provisions of the bill.

The BOE would be responsible for administration and collection of the fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the RTC).

This bill would establish the Alcohol-Related Services Program (Fund) in the State Treasury. The bill requires that all fees collected, except for payment of refunds of the fee and reimbursement to the BOE for its administrative costs, be deposited into the Fund. Moneys in the Fund would be expended, by continuous appropriation to the DADP, for the purposes of the Alcohol-Related Services Program (ARS Program).

This bill would make a number of legislative findings regarding the cost and harmful effects of alcohol use.

The bill's provisions would be operative on January 1, 2011.

BACKGROUND

In order to bridge the gap between revenues and expenses in the 1991-92 state budget, a surtax was added to the existing excise tax on alcoholic beverages. AB 30 (Chapter 86, Stats. 1991) added the alcoholic beverage surtax, codified as Section 32220, effective July 15, 1991. Before the tax increase, excise taxes on most alcoholic beverages had remained the same since the 1950's, with the exception of an increase in the excise tax on distilled spirits in 1967.

During the **2003-04 Legislative Session**, two bills were introduced, SBx1 5 (Romero) and SB 108 (Romero), which would have imposed a five-cent per drink fee on any wholesaler located in this state who distributes alcoholic beverages to retailers for consumption in the state. The fee would be based on 1.5 ounces of distilled spirits, 12 ounces of beer, and 5 ounces of wine. Both bills passed out of the Senate Health and Human Services Committee and were referred to, and subsequently died in the Senate Rules Committee. AB 216 (Chan), also introduced during the 2003-04 Legislative

Session, would have required the BOE to collect a fee from any beer manufacturer, distilled spirits manufacturer, beer importer, and distilled spirits importer of up to $100 million and required the DAPD to establish youth alcohol recovery and prevention programs in every county. AB 216 failed passage in the Assembly Health Committee.

SB 726 (Romero) and SB 656 (Romero) would have authorized counties, subject to voter approval, to impose a tax on the retail sale of beer, wine, or distilled spirits sold for consumption on the premises of the seller. SB 726, introduced during the 2003-04 Legislative Session, was never heard in a policy committee. SB 656, introduced during the **2005-06 Legislative Session**, died in the Senate Revenue and Taxation Committee.

During the **2009-10 First Extraordinary Session**, SB 1 (Ducheny) was introduced to, among other things, impose an additional surtax on beer of $0.53 per gallon, on wine of $1.28 per gallon, and on distilled spirits of $4.27 per gallon. SBx1 1 failed passage on the Assembly Floor. **Last year**, AB 1019 (Beall) contained provisions very similar to this bill. As amended April 29, 2009, it failed passage in the Assembly Health Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Marin Institute, an alcohol industry watchdog, in order to provide necessary funding to help pay for the $38 billion California spends annually on alcohol-related accidents, fatalities, and trauma care. According to the Marin Institute, this bill would help mitigate some of the $38 billion in alcohol-related harm. According to the sponsor, California lags in mitigating the costs of alcohol, especially in comparison to the reforms governing the sales of tobacco. According to the author's office, the alcohol excise tax rates have steadily been eroded by inflation because they are set at a fixed value per volume. California excise taxes on wine are among the lowest in the nation, while the state's excise taxes on beer and liquor fall below current national averages.

2. **Imposition of fee needs clarifying.** This bill imposes a mitigation fee on every person engaged in business in California, as described in RTC Section 6203, who sells alcoholic beverages, where the sale is for the purpose of resale. The bill specifies that the fee would be imposed at the first point of sale within California. Section 6203 provides conditions whereby retailers engaged in business in this state are liable for use tax collection. For example, when an out-of-state retailer, through its employees or representatives, enters California for the specific purpose of engaging in selling activities, the explicit provisions of Section 6203 require that a use tax collection duty be imposed on that retailer. The application of tax under Section 6203 also applies to out-of-state retailers who enter California for purposes of making sales at convention and trade shows.

   Since the bill would impose a fee on a sale for purposes of resale, BOE staff recommends using terms for "wholesaler" as defined in the Alcoholic Beverage Control Act (Business and Professions Code section 23021). In addition, limiting the imposition of the fee to the wholesale level could create a loophole allowing the retail sale of beer, wine, and distilled spirits made by manufacturers (e.g., winegrowers and local breweries) and importers to escape the fee. To ensure that the fee is properly imposed and to allow the BOE to more efficiently administer the proposed fee, it is recommended that the proposed fee be imposed at the same instances as are the current alcoholic beverage tax and surcharge. This will also make the collection and reporting of the fee easier for feepayers. BOE staff is willing to work with the author's office in drafting appropriate amendments.

3. **This bill does not contain floor stock tax provisions.** The proposed fee would be imposed by sellers of alcoholic beverages where the sale is for purposes of resale or at the wholesale level. At the time the proposed fee would become effective, any product in retail inventory would escape the fee since this bill does not contain floor stock tax provisions. A floor stock tax serves to equalize the fee paid by a wholesaler or retailer on alcoholic beverages in inventory and those gallons purchased after the effective date of a new fee. Having a large alcoholic beverage inventory before a fee increase takes effect can bring a small windfall to a seller. The selling price of alcoholic beverages can be raised and attributed to the new fee, but the additional funds collected are profit and not a fee paid to the state. A floor stock tax mitigates this windfall.

4. **This bill should contain a specific appropriation to the BOE.** The proposed mitigation fee is to be imposed beginning January 1, 2011, which would be in the middle of the state's fiscal year. Although this bill provides that the BOE would be reimbursed for administration of the proposed fee from the fee revenues, in order to begin to develop the feepayer base and reporting forms and to hire appropriate staff, an adequate appropriation would be required to cover the BOE's administrative start-up costs that would not be identified in the BOE's 2010-11 budget.

5. **Excess fees collected.** This bill provides that the proposed fees collected shall be used exclusively to cover the administrative costs of the proposed fee and to fund the ARS Program. The bill specifically provides that the BOE may not collect fees in excess of the amount needed to cover the administrative costs in fully implementing the new provisions. It is unclear how the BOE would know the amounts necessary to cover all potential amounts, so as not to collect an excess amount. It is also unclear what would happen if the amount to be collected would exceed amounts necessary to cover administrative costs, as there are no provisions in the bill to allow the BOE to reduce the amount of the fee.

6. **A Legal challenge might be made contending the fee is a tax.** In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products' adverse health effects.

   Although the Legislative Counsel has keyed this measure as a majority vote bill, opponents of this measure might question whether the fees imposed are in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature.

COST ESTIMATE

The BOE would incur substantial costs to develop and administer a new fee program. These costs would include identifying and registering feepayers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

The proposed mitigation fee would be imposed on all beer at a rate of $0.53 per gallon; on all still wines containing not more than 14 percent of absolute alcohol by volume at a rate of $1.28 per wine gallon; on all still wines containing more than 14 percent of absolute alcohol by volume and on sparkling hard cider at a rate of $ 2.13 per wine gallon; on champagne and sparkling wine, excepting sparkling hard cider, at a rate of $1.28 per wine gallon; and on all distilled spirits at a rate of $4.27 per wine gallon. The following chart shows the estimated gallonage in each alcoholic beverage category based on the FY 2008-09 actual gallons and the estimated revenue increase based upon the proposed mitigation fee.

Alcoholic Beverage Increase

	Per Gallon Rate	Estimated 2010-11 Gallons	Estimated Increased Revenue Jan-July 2011	Estimated 2011-12 Gallons	Estimated Increased Revenue 2011-12
Beer	$0.53	626,541	$166,034	624,382	$330,923
Wine <14%	1.28	106,271	68,013	107,173	137,182
Wine >14%	2.13	24,570	26,167	26,294	56,006
Champagne	1.28	6,863	4,392	6,794	8,697
Distilled Spirits	4.27	50,926	108,726	51,128	218,318

We estimate that this fee will increase excise tax revenues by $373 million for Jan-Jun 2011, and $751 million for 2011-12. However, we believe that consumers will be sensitive to the increase in the price of alcohol and respond accordingly by lowering their demand. To measure this response, we used the price elasticity of demand equal to -0.3%. Using this measure, we found that the net increase in excise tax revenue amounted to $367 million for Jan-Jun 2011 and $727 million for 2011-12.

REVENUE SUMMARY

The additional excise tax on alcoholic beverages from this bill would amount to $367 million for Jan-Jun 2011, and $727 million for 2011-12. Because the fee would most likely be passed on to the consumers, it would result in an increase in state and local sales and use tax of $33 million for Jan-Jun 2011, and $59 million for 2011-12. The total estimated revenue impact would therefore be $400 million for Jan-Jun 2011, and $786 million for FY 2011-12.

	Revenue Gain (in millions) Jan-Jun 2011	FY 2011-12
Alcoholic Beverage Fee	$367	$727
State Sales & Use Tax (6.00 % thru 6/30/2011, and 5.00% thereafter)	22	36
Fiscal Recovery Fund (0.25%)	1	2
Total State Revenue	$390	$765
Local Sales & Use Tax (2.00%)	7	15
Special District (0.85%)	3	6
Total Excise and Sales Tax Revenue	**$400**	**$786**

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.