



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended:	08/22/05	Bill No:	AB 417
Tax:	Alcoholic Beverage	Author:	Aghazarian
Related Bills:			

BILL SUMMARY

This bill would revise the definition of beer to include any alcoholic beverage that qualifies as a malt beverage under specified federal law.

Summary of Amendments

The previous versions of the bill did not impact the Board of Equalization (Board).

ANALYSIS

Current Law

ALCOHOLIC BEVERAGE TAX LAW

Under current law, Sections 32151, 32201, and 32220 of the Alcoholic Beverage Tax Law impose the following taxes and surcharges on the sale of beer and distilled spirits:

	<u>Tax</u>	<u>Per Gallon Surcharge</u>	<u>Total</u>
Beer	\$0.04	\$0.16	\$0.20
Distilled spirits (100 proof)	\$2.00	\$1.30	\$3.30
Distilled spirits (100+ proof)	\$4.00	\$2.60	\$6.60

For purposes of the Alcoholic Beverage Tax Law, the terms “distilled spirits” and “beer” are defined in Sections 23005 and 23006, respectively, of the Business and Professions Code to mean the following:

- **Distilled spirits** - an alcoholic beverage obtained by the 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.
- **Beer** - 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.

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.

Section 32101 of the Alcoholic Beverage Tax Law provides that issuance by the Department of Alcoholic Beverage Control (ABC) of a license under the Alcoholic Beverage Control Act to any person constitutes the registration of that person with the Board for purposes of the Alcoholic Beverage Tax Law.

The alcoholic beverage tax is paid to the Board and deposited into the Alcohol Beverage Control Fund.

FEDERAL ALCOHOLIC ADMINISTRATION ACT (27 U.S.C. SEC. 201 ET SEQ.)

Section 211(a)(7) defines the term "malt beverage" to mean "a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, or malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption."

The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently adopted regulations restricting the alcoholic makeup of flavored malt beverages. These new regulations, which are published in the Federal Register, January 3, 2005, require that, in order to continue to be taxed and treated as a beer or brewed beverage, the majority (51 percent or more) of the alcohol in a flavored malt beverage must be the product of brewing. No more than 49 percent of the alcohol may come from other flavorings added to the product. The new regulation is effective January 1, 2006.

Proposed Law

This bill would amend Section 23006 of the Business and Professions Code to include in the definition of "beer" any alcoholic beverage that qualifies as a malt beverage under the Federal Alcohol Administration Act (27 U.S.C. Sec. 201 et seq.).

This bill would become effective January 1, 2006.

In General

Upon the repeal of prohibition in 1933 and the return of the legal sale of alcoholic beverages to California, taxation and regulation of the manufacture, distribution, and sale of alcoholic beverages were given to the Board. In 1955, an amendment to the State Constitution became effective removing the duty of regulating the manufacture and sale of alcoholic beverages from the Board and placing it in the new Department of Alcoholic Beverage Control.

Article XX, Section 22 of the California Constitution provides, in part:

The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the manufacture, importation and sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof.

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Further:

The State Board of Equalization shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

The Board does not independently register taxpayers under the Alcoholic Beverage Tax Law. The Board must rely on ABC’s classification of such persons in its administration of the Alcoholic Beverage Control Act since the Board does not currently possess the expertise or resources to independently analyze any particular alcoholic beverage to determine its composition.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to codify “the current, long standing State regulatory administration of flavored malt beverages (FMBs) and conforms California’s legal definition of beer to that of the Federal Tax and Trade Bureau (TTB), namely a FMB must be a product that is 51% malt-based.”
2. **The bill would not be problematic to administer.** This measure would not be problematic for the Board to administer since the Board would continue to rely on ABC’s classification of alcoholic beverages for its administration of the Alcoholic Beverage Control Act for its administration and collection of the alcoholic beverage tax.

COST ESTIMATE

Enactment of this measure would not impact the Board’s administrative costs.

REVENUE ESTIMATE

ABC currently classifies flavored malt beverages as a beer for regulation and licensing purposes. Accordingly, such beverages are classified as a beer for excise tax purposes. Since these products are currently being taxed as a beer, this bill would not impact state revenues.

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