



Special Notice

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Alcoholic Beverages Taxed as Wine for Federal Purposes, May Not Meet California's Definition of Wine and Therefore May be Subject to Tax as Distilled Spirits for California Tax Purposes

Alcoholic beverages taxed as wine for federal tax purposes may not meet California's wine definition under Business and Professions Code section 23007, if the wine has **more than 15 percent added flavoring, coloring, and blending material.**

The types of alcoholic beverages that may not meet California's definition of wine may fall under the following federal tax classifications such as wine specialties, flavored table wine, wine cocktails, wine coolers or other wine-based products or blends of wine from different fruits. Such products may be taxed as a distilled spirit in California.

The Board of Equalization's (BOE) Alcoholic Beverage [Regulation 2559](#) creates a rebuttable presumption that **all alcoholic beverages, except wine as defined by Business and Professions Code section 23007**, contain 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products and are "distilled spirits." [Regulation 2559.1](#) prescribes procedures for rebutting this presumption.

According to Business and Professions Code section 23007:

Wine means the product obtained from normal 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 blending material and which contains not more than 24 percent of alcohol by volume**, and includes vermouth and sake, known as Japanese rice wine.

Accordingly, unless a manufacturer files the attached BOE-505, *Alcoholic Beverage Tax Report for Rebutting Regulation 2559 Presumption*, to rebut the presumption, any alcoholic beverage (including any wine-based products) that does not meet the definition of wine under Business and Professions Code section 23007 is presumed to be a distilled spirit for purposes of the Alcoholic Beverage Tax Law.

If the alcoholic beverage meets the definition of wine under Business and Profession Code section 23007, no action is required.

Alcoholic beverages that have rebutted the presumption are listed on BOE's website at www.boe.ca.gov/sptaxprog/alcoholicbeverage.htm.

As part of the BOE audit and compliance program, manufacturers may be required to provide the BOE with a copy of the their Statement of Process or Formula and Batch reports filed with the Federal Alcohol and Tobacco Tax and Trade Bureau for our review, to ensure the correct tax amounts are being reported.

For your convenience, attached is a summary of the new Alcoholic Beverage Tax Regulations 2558, 2559, 2559.1, 2559.3, and 2559.5. For the full text of the regulations, visit www.boe.ca.gov/sptaxprog/sptaxregs.htm. If you have any questions regarding this notice, please contact the Excise Tax Division at 800-400-7115.

*Special Notice
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Beverages Taxed
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Regulation 2558. Distilled Spirits

This regulation clarifies that, effective October 1, 2008, distilled spirits include any alcoholic beverage, except wine as defined by Business and Professions Code section 23007, which contains 0.5 percent or more alcohol by volume from flavors or ingredients containing alcohol obtained from the distillation of fermented agricultural products. The purpose of this regulation is to establish a bright line to determine when an alcoholic beverage is a "distilled spirit" under the Alcoholic Beverage Tax Law.

Regulation 2559. Presumption—Distilled Spirits

Effective October 1, 2008, this regulation established a rebuttable presumption that alcoholic beverages, except wine as defined by Business and Professions Code section 23007, contain 0.5 percent or more alcohol by volume from flavors or ingredients containing alcohol obtained from the distillation of fermented agricultural products. If a manufacturer does not rebut the presumption as provided in Regulation 2559.1, the alcoholic beverage will be presumed to meet the definition of "distilled spirits."

Regulation 2559.1. Rebuttable Presumption—Distilled Spirits

This regulation, effective July 10, 2008, allows the manufacturer to rebut the presumption set forth in Regulation 2559 with respect to any alcoholic beverage by filing a report, under penalty of perjury, that specifies the sources and amount of the alcohol content of the beverage. The regulation additionally provides that the BOE may require a copy of the manufacturer's Statement of Process or Formula filed with the Federal Alcohol and Tobacco Tax and Trade Bureau, or its predecessor agency or successor agency, only if the BOE obtains information that casts a doubt on the accuracy or truthfulness of a report filed or for purposes of verifying any report filed.

Regulation 2559.3. Internet List

Effective October 1, 2008, this regulation requires the BOE to establish and maintain a listing of alcoholic beverages that have successfully rebutted the presumption on its website. The current list can be accessed on the BOE's website at www.boe.ca.gov/sptaxprog/pdf/product_list.pdf.

Regulation 2559.5. Correct Classification

This regulation provides that effective October 1, 2008, taxpayers who rely for reporting purposes on the BOE Internet list required by Regulation 2559.3 will be afforded a "safe harbor" from potential tax liabilities.

If you would like to know more about your rights as a taxpayer or if you have not been able to resolve a problem through normal channels (for example, by speaking to a supervisor), please see [publication 70](#), *Understanding Your Rights as a California Taxpayer*, or contact the Taxpayers' Rights Advocate Office for help at 916-324-2798 (or toll-free, 888-324-2798). Their fax number is 916-323-3319. If you prefer, you can write to: Taxpayers' Rights Advocate, MIC:70; State Board of Equalization; P.O. Box 942879; Sacramento, CA 94279-0070.