MEETING OF INTERESTED PARTIES FOR CLASSIFCATION AND TAX RATES OF FLAVORED MALT BEVERAGES

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

FEBRUARY 22, 2007

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1

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7

8 ---o0o---

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10 ---o0o---

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 FEBRUARY 22, 2007
4 ---oOo---
5 DAVID GAU
6 ---oOo---
7 DAVID GAU: Director for the Property and
8 Special Taxes Department here at the Board of
9 Equalization. Thank you for taking the time to attend
10 the first public meeting to discuss flavored malt
11 beverages.
12 As you know, the Board voted in its December
13 meeting to grant a petition made by the Students Making
14 a Community Change and the California Youth Council to
15 initiate the rulemaking process regarding the
16 classification and tax rates of flavored malt beverages
17 The Board vote directs staff to hold a series of public
18 meetings with taxpayers, interested parties and industry
19 officials to vet out the issues surrounding flavored
20 malt beverages including what they are, what are some of
21 the classifications and licensing issues around these
22 products and the administrative issues and concerns
23 surrounding the sale and taxation of these products.
24 This is truly an information gathering
25 meeting. We also understand it's an emotionally charged
26 issue for the interested parties and so, we, therefore,
27 ask that when the speaker is up, just be mindful of the
28 comment time and if they could help staff by focusing on

1 those points that would help us better understand what a
2 flavored malt beverage is.
3 Today's meeting is being audiostreamed to the
4 internet and is being court reported. Therefore, for
5 the benefit of everyone here and those listening through
6 the internet and the reporter, we ask that before you
7 speak that you identify yourself and your affiliation,
8 if you have one.
9 This is one of the -- this is probably the
10 first interested parties meeting that we are streaming
11 on the internet and we are proud to do so today.
12 So, in the end, what staff will ultimately do
13 is recommending alternatives to the Board, likely in the
14 form of proposed regulatory language. The Board will
15 consider these recommendations at its August 14th
16 Business Tax Committee meeting. For the record, that is
17 a date change from the earlier notified July 31st
18 because of a change to the Board's calendar meeting.
19 The packet of materials was available at the
20 front door. Hopefully you picked one up. If not,
21 staff's available to help you get a copy of that that
22 has the updated dated rulemaking process calendar and
23 it's going to be discussed a little bit later here.
24 Next I would like to introduce the staff
25 that's at the front table and we'll go over a little bit
26 about the rules of order for the meeting.
27 First, to my immediate right here is Lynn
28 Bartolo, she's the Chief of the Excise Taxes Division.

1 And they are charged with administering the alcohol
2 beverage tax here at the Board of Equalization.
3 Next to her is Mike Hale. He will be the
4 moderating proceedings today.
5 And then to Mike's right is Monica Brisbane.
6 And the end of table are -- is Randy Ferris. And they
7 are attorneys in our legal Department here at the Board
8 of Equalization.
9 So, again, we're here today to hear your
10 comments and suggestions that relate to the
11 classification and tax rates of flavored malt beverages.
12 We anticipate there are many who would like to speak
13 today and, hopefully, you signed up at the door when you
14 came in and we'll take the speakers in the order of
15 their sign-in.
16 And as a courtesy, if you would, please
17 withhold your comments until it's your turn to speak.
18 We'll also have, if you can come to the podium, and
19 again, please identify yourself and your affiliation for
20 the record.
21 We are very much interested in hearing what
22 you have to say today. The alternatives will be
23 presented to the Board, as I mentioned earlier, and
24 we'll be issuing an issue paper again.
25 And, as a reminder, your preliminary response
26 to the initial discussion paper that was out is due by
27 March 16th.
28 So, at this time, I'm going to turn it over to

1 Geoff Lyle, up front here, he's the Chief of the Board's
2 Business Taxes Committee. He's going to talk a little
3 bit more and explain the Business Tax Committee timeline
4 and a little bit more about the rulemaking process.
5 Geoff?
6 ---o0o---
7 GEOFFREY LYLE
8 ---o0o---
9 GEOFFREY LYLE: Good morning, everyone. As
10 David said, my name is Geoff Lyle. And, actually, I'm a
11 Supervisor in the Sales and Use tax Department. And I
12 have a section -- my section often has -- takes care of
13 these Business Taxes Committee issues. We run them
14 through.
15 However, since this is not a sales tax issue,
16 it's an excise tax issue, our friends in the Excise Tax
17 Department will be our experts who run these meetings,
18 do the research and write the papers.
19 Now as it said in the beginning of the issue
20 paper there, that the Board directed staff to initiate
21 the rulemaking process and to hold a series of public
22 meetings with interested parties. And what I've been
23 asked to do is briefly explain just what that rulemaking
24 process is and how it's going to be handled here for
25 this particular issue.
26 We at the Board -- and this rulemaking process
27 does become employed when there is change to a
28 regulation, to the regulation or rulemaking process. We

1 have a two phase process to that.
2 The first part of it is considered the
3 Business Taxes Committee process or interested party
4 meeting process it's also referred to sometimes. That
5 is what we are doing here now. The Business Taxes
6 Committee, which I am referring to, I just want to
7 clarify that that is actually the Board Members acting
8 as a committee. And, as David said, this will be
9 brought to them on August 14th and they will be the ones
10 who will actually be making the decisions based on where
11 to go with this. In the meantime, it is an assigned to
12 staff.
13 What they do is they will research the issue,
14 gather information from independent parties -- we've
15 already had a number of written submissions which we
16 circulate to the Board Members, their -- key members of
17 their staff and Board management. And they combine all
18 of this into their initial discussion paper. That's
19 what was available in the lobby. Many of you have
20 received these directly in the mail.
21 In this first initial paper we try to cover
22 what the issues are, the background on it. It is
23 leading up to this first interested parties meeting.
24 At this meeting, as David also said, we are
25 again trying to gather information from the interested
26 parties.
27 After this you will be invited to provide, if
28 you'd like, any more submissions and staff will take

1 what we learn here and from you and put this into a
2 second discussion paper.
3 That is followed by a second interested
4 parties meeting similar to this one.
5 Following that, more submissions can come in.
6 Staff will be refining their position on it and we will
7 be putting together in a formal issue paper. This is
8 what goes to the Board. It provides, again, some
9 background, some of the same information you will have
10 seen in the initial discussion paper. But what will be
11 different in that is there will be a staff
12 recommendation and, depending upon how things work out,
13 there may be alternatives presented by interested
14 parties.
15 It is, of course, nice to keep those to very
16 few, maybe one or two, because that can make clear cut
17 differences for the Board Members if they have to make a
18 selection on that.
19 What will happen then, this is August 14th,
20 is a Business Taxes Committee meeting. It's part of the
21 Board meeting process. There are a number of other
22 committees that will meet the same day. What they will
23 do at that meeting is they will consider the issue and
24 then decide whether or not to approve of this
25 regulation, perhaps if it is a change to a regulation or
26 perhaps no change or an interested parties'
27 recommendation on that and approve it for publication.
28 At that point we prepare a Notice of

1 Regulatory Change that is sent over to something called
2 the Office of Administrative Law. They publish this.
3 It has to be published for a 45 day period. Following
4 that -- this is -- actually begins the second phase of
5 the rulemaking process, the more formal phase of it,
6 where after that 45 days there will be a Board hearing,
7 a public hearing on this regulation.
8 The Board will then -- they may approve it,
9 adopt it as their own then and send it back to the
10 Office of Administrative Law, which would have 30 days
11 to review it.
12 If they approve of it, it goes to the
13 Secretary of State. Thirty days after that it becomes
14 law or that is it's a regulation and has the force and
15 effect of law.
16 I'm not going to go into it, but there's a lot
17 of other avenues it can take -- it can be slowed down at
18 different processes, it can be sent back for changes to
19 the process, reviewed again.
20 But what I have given you there is the
21 general -- the normal process that it goes through for
22 rulemaking. I have had a one note here that I believe
23 in some information you have been asked to send any
24 information or submissions you have to Bob Lambert and
25 that is not correct. They should be sent to Lynn
26 Bartolo Again, what we do when we receive those is
27 distribute those to a number of concerned parties. We
28 do like to comment on that, that you should not put any

1 confidential information in there because they may
2 become public also. We have put all of them out in the
3 lobby there, what we have have received thus far.
4 At this point, I am going to turn it over to
5 the experts, Lynn, are you ready to take the meeting
6 over?
7 LYNN BARTOLO: Yes.
8 GEOFF LYLE: I better check first.
9 Does anybody have any questions on the
10 rulemaking process?
11 Lynn, it's all yours.
12 ---o0o---
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1 LYNN BARTOLO: Good morning, I think we'll go
2 ahead and start right -- right away with our speakers.
3 And Mike Hale has a few words before we do that.
4 MIKE HALE: Good morning. I'm glad you're
5 all here. I just wanted to reiterate that our purpose
6 here today is to -- to hear what you have to say, to
7 continue this solicitation of your views, the input,
8 begin to get into some of the technical language.
9 Anything you have to give us today or maybe back up in
10 writing would be most welcome.
11 From that we will develop the second issue
12 paper, as they said and get out with the alternatives as
13 we begin to see them.
14 At this point we're still trying to identify
15 the issues. Your initial -- and, again, your initial
16 submissions to the -- to the first discussion paper,
17 we're looking to get those back by March 16th.
18 And then part of the packet out there,
19 Attachment number 1, is the actual calendar for the
20 whole process as we have it out there right now. Due
21 dates and -- and what we'll be doing and when.
22 With that said, we are going to be calling the
23 speakers up, as was said, in the -- in the order you've
24 signed up. And I would like to invite -- and bear with
25 me on this, Nicole Worldman.
26 Thank you. If you could come up to the podium
27 to speak, state your name and who you represent and --
28 ---oOo---

1 NICOLE WORDELMAN

2 NICOLE WORDELMAN: I didn't realize I'd be
3 first. That's quite an honor. Good morning. I'm
4 Nicole Wordelman with Lynn Suter and Associates on
5 behalf of the Alameda County Board of Supervisors.
6 They're extremely concerned about the alcopops issue due
7 to all of the underage drinking going on in their
8 county.
9 I essentially came here for a "me too" and I
10 just want you all to know that it's an important issue
11 in terms of keeping alcohol away from underage youth.
12 Thank you.
13 MIKE HALE: Thank you.
14 ---oOo---
15 JOAN KILEY
16 MIKE HALE: Next would be Joan Kiley. Joan, I
17 think you're with the Alcohol Policy Network.
18 JOAN KILEY: That's correct.
19 MIKE HALE: Thank you
20 JOAN KILEY: Yes, my name is Joan Kiley. I'm
21 representing the Alcohol Policy Network. And we are in
22 full support of the youth petition that brought us all
23 here today. And we have a youth component called EPIC.
24 And we know sort of firsthand what some of these issues
25 are. So we're in full support of the youth's petition.
26 MIKE HALE: Thank you.
27 You probably saw from the schedule that we --
28 we allowed to go until 5 o'clock this afternoon for this

1 meeting. And we're going to break at noon for a lunch.
2 We're flexible on that.
3 We'll see how this goes, how much time everyone
4 needs. We may be wrapping up a little earlier.
5 Thank you.
6 Next would be Eileena Yaeger -- Yarger. Friday
7 Night Live. Aah.
8 UNIDENTIFIED SPEAKER: Can we have people form
9 a line just so they can be ready to go?
10 MIKE HALE: That would probably be good. Does
11 the Friday Night Live -- do you have multiple speakers
12 that you'd like to bring all -- bring all of them down
13 and -- looks like Elaina, Jimmy Jordan, and then Judy
14 Walsh Jackson would be following up.
15 ---oOo---
16 ELIANNA YANGER
17 ELIANNA YANGER: Okay. Hello, my name is
18 Elianna Yanger and I'm speaking on behalf of Friday
19 Night Live and the California Youth Council. And good
20 morning, Ladies and Gentlemen and interested parties.
21 And we thank you for giving this -- giving us the
22 opportunity to come speak to you today.
23 This issue is important to youth because
24 alcopops are specifically targeted towards youth and we
25 are the ones affected by them.
26 And shown here is an energy drink called
27 Monster, which is -- which I see a lot on my campus.
28 And then here is the -- another drink called Rockstar,

1 which is -- which contains alcohol, and you can see that
2 they both look very much alike. And we just wanted to
3 point that out to you.
4 And also the voice of the young people is
5 important in this decision because we make a change that
6 will affect our peers. And our voice is also important
7 because youth can see us and they can feel empowered to
8 make a change that will affect the young people now and
9 in the future.
10 Thank you.
11 ---oOo---
12 CINDY SONG
13 CINDY SONG: I'm Cindy Song from FNL and
14 Students Making a Community Change. Alcopops are
15 distilled spirits and should be taxed as distilled
16 spirits under Revenue and Taxation Code Section 32201
17 not as beer under Revenue and Taxation Code 32151.
18 Thank you.
19 ---oOo---
20 JAMES DUI
21 JAMES DUI: I'm James Dui from FNL and there's
22 a question -- I think there's a question of the
23 (inaudible) about the taxation of the alcopops. It's up
24 to the alcoholic companies to prove that it is a wine
25 and not distilled spirits.
26 ---oOo---
27 JIMMY JORDAN
28 JIMMY JORDAN: Hello. My name is Jimmy

1 Jordan. I'm from California Council. And we as young
2 people are asked to follow the law, and we should keep
3 this issue uncomplicated and follow the law. If there
4 are distilled spirits in it then distilled spirits
5 should be taxed that way.
6 Taxing these beverages as distilled spirits is
7 constant (sic) with the California law. We speak on
8 behalf of peers from all over California and most all of
9 them do support us on this petition.
10 Thank you for accepting our petition and
11 hearing our concerns on the issue.
12 MIKE HALE: Thank you very much.
13 ---oOo---
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1 JUDY WALSH JACKSON

2 ---o0o---

3 MIKE HALE: Judy?

4 JUDY WALSH JACKSON: Good morning, my name is
5 Judy Walsh Jackson. I am the Director of the San Diego
6 County Policy Panel on Youth Access to Alcohol, which is
7 a Countywide coalition of community leaders in San Diego
8 to prevent underage drinking.

9 I am also Chair of the California Council --
10 excuse me, California Coalition on Alcopops and Youth.
11 This is a coalition that was formed after the veto of of
12 AB 417. And it is comprised of at least twenty to
13 twenty-five organizations from around the State of
14 California. Those organizations include the California
15 P. T. A., the Alcohol Policy Groups, like the California
16 Council on Alcohol Policy, the California Prevention
17 Collaborative. And we've have also enjoyed quite a bit
18 of support from the Cal Chiefs Association and the
19 Sheriff's Association. And we are also comprised of
20 public health professionals and medical professionals.
21 We have other members in our coalition who are doctors
22 and nurses because underage drinking is a problem, a
23 public health problem, of major proportions to our
24 state.

25 It costs the State of California over
26 $7 billion a year in unintentional injuries, suicides
27 traffic crashes, deaths, academic failure, job failure,
28 because kids can't go on to sustain themselves with

1 effective employment.
2 And the -- this product, alcopops, is
3 extremely problematic because of the way that it's
4 packaged and the appeal that it has towards young
5 people. And it is a gateway, so to speak. You hear
6 people in, you know, the medical community and the
7 community talking about gateway drugs. Well, this is a
8 gateway product.
9 It's smooth on the teen palate. And I have
10 talked to so many women who are of drinking age, that
11 are over the age of 21, and, you know, what they say to
12 me, they say, "Alcopops, what? These things -- Smirnoff
13 Ice? This is for kids. We don't drink this stuff."
14 They are high in calories. They are too sweet.
15 Basically this product is training wheels, training
16 wheels. And I am not saying it's intentional, that the
17 industry is intentionally doing this, but the problem is
18 it's happening.
19 And I am very pleased that the Board voted to
20 begin the rulemaking process to tax and classify these
21 beverages as distilled spirits, as they should. The law
22 states regardless of the federal Trade and Tax Bureau's
23 ruling, the State law says that any product made with
24 distilled spirits should be classified as a distilled
25 spirit. It is a distilled spirit And we believe that
26 the manufacturers of alcopops employ the process of
27 taking beer, sucking everything out of it until all that
28 is left is water and then adding things back in, that

1 this process is used to gain favorable -- favorable tax
2 and licensing classification, to pull the wool over the
3 consumers in the State of California. By calling these
4 products as a beer and not as a distilled spirit it's
5 pulling the wool over the eyes of consumers.
6 And I can tell you -- ask you -- I would like
7 to ask if you have been into the bathroom of a high
8 school lately? Our state could use the $40 million a
9 year that is being lost with the improper taxation of
10 these products. That $40 million a year could go into
11 treatment, recovery, emergency rooms, school -- schools.
12 And I know that I have been talking for a long
13 time and I greatly appreciate the respect that you have
14 given to me by listening intently. And I hope that you
15 will help the Board Members to see that their decision
16 back in December was the right one. And this is
17 something that we have to do to compete with the
18 billions of dollars of money that goes into the alcohol
19 advertising and marketing of products to youth that
20 create the demand for youth consumption. It's the
21 advertising and marketing that creates -- and the appeal
22 of the products that create the demand for underage
23 drinking and we need to do something about it because
24 our kids are dying. Thank you.
25 MIKE HALE: Thank you very much. I'm going to
26 go ahead and call up the next three speakers, which I
27 think is the Girl Scouts, Katherine and Alix.
28 Then also I'd like to invite up Lorraine

1 Lieber and John Nicolletti.
2 Thanks. Go ahead.
3 ---o0o---
4 KATHERINE GARLAND
5 ---o0o---
6 KATHERINE GARLAND: Hi, my name is Katie
7 Garland and I am a 16 year-old junior at Rio Americana
8 High School.
9 I have come here today to show my support for
10 my fellow teens and my peers and their petition here to
11 the Board of Equalization. I believe that it is -- it
12 is right that the California government has decided to
13 consider this issue and I hope that they make the right
14 decision.
15 I support my fellow teens because I have read
16 the California law and I have done my research on this
17 issue, but more importantly as a teenager I have seen
18 how popular these drinks are. Most adults don't really
19 know very much about these types of drinks, but almost
20 every teen my age is very aware of them. They are
21 extremely popular among teenagers Although I do not
22 drink them, I do know people who do. And every Monday
23 morning I hear about the weekend parties from my
24 classmates, who got drunk, who drank what and who got
25 busted by their parents. The color and fruity taste of
26 these alcoholic drinks make they very appealing to
27 teenage girls who are my peers and our future.
28 And because they are so popular, everyone my

1 age wants to buy them. I volunteered to come here today
2 to ask our government to the right thing and follow the
3 law.
4 As a young person I have step up because these
5 drinks should not be considered as market -- and
6 marketed as beer. Our government, adults and our
7 parents want to protect us from drinking, it doesn't
8 seem right that I have to be here before I can even vote
9 to ask the government to follow the law about alcoholic
10 drinks.
11 These drinks -- everyone knows these drinks are
12 popular and easy to get. I believe it is a very
13 important issue for teen safety so I am here to ask the
14 government to do their job.
15 In my opinion the law is clear, these drinks
16 should not be considered beer. And I am here to protect
17 my friends, my peers and the future of California.
18 Thank you.
19 MIKE HALE: Thank you.
20 LAURIE LEIBER: We've changed the order for
21 just a moment. I'm a little out of breath, sorry.
22 MIKE HALE: Sure.
23 ---o0o---
24 LAURIE LIEBER
25 ---o0o---
26 LAURIE LEIBER: My name is Laurie Lieber. I'm
27 with the Marin Institute. We're an alcohol industry
28 watch dog that works nationally and, to some extent,

1 internationally. And these products are a problem all
2 over the world.
3 And it's very interesting to me that in
4 Europe, the manufacturers don't start with beer and take
5 out the flavor to color and the alcohol, they just start
6 with a distilled spirit because they're creating a
7 product that doesn't taste like alcohol. And they are
8 doing that very consciously to appeal to a market that
9 doesn't like the taste. Now, it may not be their
10 intention, but a part of that market is underage
11 drinkers, certainly in California.
12 It's been said that holding young people
13 solely responsible for underage drink like blaming fish
14 for dying in a polluted stream. The BOE has the
15 opportunity to clean up some of that pollution by
16 correctly taxing these products, making them less
17 accessible to young people and simultaneously collect
18 money that is needed for services in California.
19 And I hope that you will do so. Thank you.
20 MIKE HALE: Thank you.
21 ---o0o---
22 ALIX POWELL
23 ---o0o---
24 ALIX POWELL: Hello, my name is Alix Powell and
25 I am eighth grader in Arden Middle School and I have
26 been a Girl Scout for nine years.
27 I am here to support the youth petitions
28 requesting the Board of Equalization to reclassify

1 alcopops. i am strongly supporting my peers and
2 speaking up for girls everywhere.
3 When I heard about this issue, my mom and I
4 went to the store to see if we could tell these drinks
5 from soda. We couldn't. This is dangerous. And this
6 is dangerous because these drinks are so available to
7 girls and other kids in every convenience store and
8 corner market.
9 I am asking you, the adults in government, to
10 do your job and follow the law about these alcoholic
11 drinks.
12 I am sure you understand how important it is
13 for adults with power and responsibility to take action.
14 It is wrong that young people have to speak out to draw
15 attention to this situation and issue.
16 So, I ask you to enforce the law and protect
17 kids in California everywhere. Thank you.
18 MIKE HALE: Thank you.
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1 MIKE HALE: John.

2 JOHN NICOLETTI

3 JOHN NICOLETTI: Yes, great. Thanks.

4 Thank you. I'm John Nicoletti. I'm a Yuba
5 County Supervisor and here today in support of the
6 consideration for the adjustment of taxation for
7 alcopops or the flavored malt beverages listed.

8 A couple of observations I've had in -- in the
9 last year that's really brought my focus forward has
10 been statewide we've seen for -- for my experience
11 in being surprised by the comparisons of those cans that
12 we saw, like the Monster version versus the alcoholic
13 version, they look alike. Cops can't tell the
14 difference if kids are across the street. Parents can't
15 tell the difference if we agree to get one in a
16 convenience store. It seems okay, maybe.

17 The scanner reads and the check clerk looks up
18 and sees the parent and says there's a 21-year-old, and
19 then when they get in the car they pass it back. It's
20 sort of a -- we aren't thinking about it because it's
21 not -- it's not a product that appeals to the
22 demographic consumer.

23 And I just wanted to say also nationally I went
24 to the office of Juvenile Justice Delinquency Program
25 National Conference. This group normally attracts about
26 700 people every year to its national event. This last
27 year, a few months back, it attracted over 1500 folks.
28 And we just couldn't squeeze enough people into the

1 rooms.

2 There is a raising of consciousness and

3 awareness because we're reaching a point where it's just

4 pretty alarming.

5 And I'd just like to also point out that prior

6 to being elected I was a restaurant and a bar owner for

7 about 25 years. Had -- had a bunch of restaurants and

8 saw -- saw the marketplace had lots of different

9 demographics that we worked with.

10 But I take a personal offense when I see the --

11 the kind of marketing and -- and product line that first

12 appeals to young folks. That's a -- a regulation that

13 is a hard battle for independent operations that already

14 are trying to abide by the law to not let underage

15 drinkers into their establishments. And it's -- it's an

16 assault. It makes it more difficult.

17 That kind of a thing translates into a lot of

18 different ways and you might look back on San

19 Francisco's -- towards Fat Tuesday a couple of nights

20 ago. The news is it had a number of demonstrations on

21 how the police increased their staff, huge -- huge

22 numbers of staff were brought in. So, it's a big cost

23 to the city and the counties.

24 But they dispersed crowds and they also

25 enforced curfews. Because besides the fact whether they

26 have alcohol in the street or not, just the fact that

27 young folks are in the environment. So it compounds the

28 problems for the law enforcement community when you have

1 a disguised can, when you have a can that's easily
2 confused with a non-alcoholic beverage.
3 And so that -- it's difficult for the industry.
4 And -- and I just wanted to make sure that that gets put
5 out.
6 I have three -- three points -- two other
7 points I'd like to make.
8 One, as a -- as a restaurant and a bar owner,
9 when somebody comes in to make a decision to have an
10 alcoholic beverage, they -- there was concern that if
11 there was a -- a raised taxation on this beverage that
12 it would price itself out of the market, it would affect
13 tons and tons of independent businesses.
14 In reality, if a beverage of choice is not
15 available, if it's not selected, it doesn't make a
16 customer turn around and leave. They're generally there
17 for a reason, to meet somebody or to have some -- they
18 make a different choice. You don't lose a sale as an
19 independent business person, they just choose something
20 different.
21 And so, you're not eliminating an industry.
22 You're not destroying jobs. You're -- you're simply
23 taking an approach that equalizes the playing field, as
24 it were, because the prevention folks, the folks that
25 have to deal with the implications that occur as a
26 result of drinking this stuff, are also out there trying
27 to carry the cart. It's just kind of done differently.
28 Up in Yuba County we have a Mental Health

1 area, Sutter-Yuba Mental Health. We've had a couple of
2 different workshops. One of the things that we found
3 with young people that are in treatment today in our
4 mental health area is we surveyed them about the dangers
5 of cigarettes, marijuana or alcohol. And it was pretty
6 clear and conclusive that cigarettes are far more
7 dangerous than either of the other two elements.
8 The only reason we know that that was an
9 opinion meant by them is because of a solid education
10 program. We know that as a result of the Joe Camel's
11 approach towards young smokers, nation recognized it, we
12 have dealt with it years ago, and through that and
13 through State and National lawsuits we've implemented a
14 huge education program. Very successful.
15 We've actually convinced people that smoking
16 is the most dangerous thing out there.
17 So that if -- the difference here is -- if
18 that -- if that taxation comes into play and that money
19 that -- that is generated goes towards the education
20 process, it will -- it will have a scientific effect.
21 It will have a betterment of the challenges we're facing
22 as community-wide issues. We just haven't -- we haven't
23 addressed it. We haven't hit it with the same power
24 and -- and money that the cigarette industry has
25 provided for with the increase of taxation in that
26 segment, because we know it affects young.
27 This is the same sort of a thing. This is the
28 next Joe Camel.

1 Some of the unintended consequences that have
2 occurred since we've kind of begun with the process of
3 Mike's Hard Lemonade or Zima, it's kind of emerged and
4 it's getting a broader base. --
5 We -- we just pulled off the internet some
6 Pocket Shots that are cartoon-oriented. They're in --
7 they're in the pan this big. And they're Purple Hooters
8 and Lemon Drops and, you know, they're -- they're --
9 they're not things we think about going after. But
10 they're things that young folks would go after and would
11 look for on a regular basis.
12 So, it's just -- this -- this angle, this
13 alcopops or flavored malt beverages angle has a specific
14 impact in the marketplace that is a lot like that area.
15 And I think, if I might, I just want to take a
16 quick look if I can remember one more note I wanted to
17 bring in. I do. I haven't heard it mentioned, but
18 if -- in terms of looking for further research and a
19 real quality DVD on this process, if you Google
20 lynngoodwin.org and in that page there's a lot of great
21 information. But she has an alcopops DVD that is very
22 descriptive and -- and very helpful. Really kind of
23 brings it very forward.
24 Thank you very much.
25 MIKE HALE: Thank you very much. I'd -- I'd
26 also like to -- to reiterate that if -- if anyone has
27 technical information, resources that they'd like to let
28 us know, you -- my name is in the initial discussion

1 paper. You can route that to me. We'd be very
2 interested in all that kind of background information
3 that we could use as research in developing this.
4 I'd like to invite up the next three speakers.
5 First Scott Dickey. And then did we get all of the
6 Friday Night Live people? I have down here Cindy Song
7 and another name. I'm not sure if you -- have you --
8 did you speak with the other group?
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1 MIKE HALE: I'd like to invite up the next three
2 speakers, first, Scott Dickey and then did we get all of
3 the Friday Night Livepeople?
4 I have down here Cindy Song and another
5 name -- I'm not sure if -- did you speak with the other
6 group?
7 VOICE: I did.
8 MIKE HALE: Okay, then, Marc Sorini and
9 Allyson Hauck will be the next in order.
10 Thank you and go ahead.
11 ---o0o---
12 SCOTT DICKEY
13 ---o0o---
14 SCOTT DICKEY: My name is Scott Dickey. I am
15 an attorney with Renne Sloan Holtzman & Sakai in
16 San Francisco.
17 I am here today on behalf the County of
18 Santa Clara, Patricia L. Drieslein and the coalition
19 that includes the Girl Scouts, Friday Night Live, the
20 California Youth Council, Sandy Capp.
21 We've heard a lot of powerful testimony
22 already today about sort of the societal problems
23 associated with alcopops, their availability, the way
24 that they appeal to kids, but I want to talk now
25 instead a little bit about the regulation you guys are
26 going to have to try to craft.
27 We submitted a letter in -- a couple of weeks
28 ago, February 9th that proposes language and just to --

1 to sort of bring you up to speed on it here, this isn't
2 a problem of the definition. The legislature has
3 absolutely defined what distilled spirits are, what beer
4 and wine are. The courts are, so far, uniform in
5 agreeing that an alcoholic beverage that contains any
6 kind or amount of distilled spirit is a distilled spirit
7 for purposes of California law.
8 The Attorney General has come to that
9 conclusion. And the State Board of Equalization has
10 also come to that conclusion in a 1997 opinion that it
11 issued in response to a question about whether a product
12 that contained malt beverages and distilled spirits were
13 distilled spirits -- or how would they be classified?
14 The Board came to the conclusion that they had
15 to be classified as distilled spirits because the law in
16 California is very clear.
17 So, it's not for the Board to come up with a
18 new definition or a new classification for flavored malt
19 beverages. It's really about identification of which
20 alcoholic beverages are distilled spirits, which are
21 beer and wine.
22 And so, rather than trying to come up with a
23 new classification, we are proposing that the Board
24 enhance its existing powers of investigation and amend
25 its regulations in a way that reinforces the burden that
26 its regulations in the Revenue and Taxation Code already
27 puts on taxpayers to identify the product that it is
28 they are selling for the purpose of -- so that they can

1 be properly taxed.

2 In our letter you will see that we suggest

3 specific amendment to Regulation 2500, which is 18 -- I

4 am sure, as you know, USC 2500, which specifically says

5 that as a taxpayer, all producers of alcoholic beverages

6 in California should be required to identify the kind of

7 alcohol that they have put into their alcoholic

8 beverages in a form to be prescribed by the State Board

9 of Equalization and to be signed by them under penalty

10 of perjury.

11 It's a simple addition that would -- would

12 simply reinforce the existing requirements of

13 Section 4901 of your regulations as well as the

14 requirements provided by the Revenue and Taxation Code

15 under Sections 32451, et seq.

16 This is a significant problem with the State,

17 as we have heard. The Board itself admits that it is

18 losing $40 million a year in revenue it could be getting

19 if it was taxing these products as distilled spirits.

20 It is, again, simply a question of enforcement and

21 identification.

22 We urge to move forward with regulations that

23 will capture these products and identify them properly

24 and tax them and regulate them properly so that some of

25 the societal consequences that we have been hearing

26 about today will be diminished or eliminated.

27 Thank you.

28 ---o0o---

1

2 ALLYSON HAUCK

3 ---o0o---

4 MS. HAUCK: Good morning, my name is Allyson

5 Hauck. I'm a research attorney with the Pacific

6 Institute for Research and Evaluation.

7 I am here today on behalf of the Institute to

8 really just support the petition filed by the young

9 people here today. I am also a member of the California

10 Coalition on Alcopops and Youth and a lot of the

11 testimony that was already given today from my coalition

12 members is similar to the testimony that I'm going to

13 give, so, I'll make this short.

14 Really the reason that we're part of this

15 issue here today as a research institute is because this

16 is a very serious issue for underage drink.

17 My director, Jim Mosier, has been following

18 this issue for many years and he completed research in

19 2005 where he found that the -- that this process done

20 to call these drinks flavored malt beverages is really

21 possibly a consumer deception and has the purpose -- the

22 sole purpose -- of gaining regulatory advantages by

23 promoting an illegal classification of these products as

24 beer.

25 This research was published in the Journal of

26 Public Health Policy. I have provided that to the Board

27 and have extra copies here if you would like that as

28 well.

1 Again, our research has really said that these
2 drinks -- that calling these a malt beverage is really
3 misleading because these drinks bear no resemblance to
4 beer.
5 I would like to quote from the federal Tax and
6 Trade Bureau, who's researched these drinks. They found
7 that these drinks exhibit little or no traditional beer
8 or malt beverage character. Brewers remove the color,
9 bitterness and taste that are generally associated with
10 beer. This leaves a base product to which they add
11 various flavors, which typically contain distilled
12 spirits, to achieve the desired taste profile.
13 Now, our research has suggested that this is
14 processes done to gain regulatory advantage. Because in
15 other countries, as was pointed out, where there are
16 differing licensing and taxation structures, the
17 manufacturers produce the same product using a distilled
18 spirits base and don't go through this process starting
19 with the beer.
20 And here in California, they have done just
21 that. They have attained these regulatory advantages.
22 And, as you've heard from the young people
23 today, the implications are huge. Underage drinking is
24 a serious issue in this state. And these drinks are
25 incredibly appealing to young people.
26 And they are also appealing to young people
27 because they are cheap. We have research that shows
28 that young people are particularly price sensitive and,

1 therefore, they are less likely consume alcohol as price
2 increases.
3 So, finally, I would just like to also
4 reiterate that they retain this regulatory advantage,
5 despite the fact of California law. As the Board knows,
6 back in May of 2005, the Attorney General Bill Lockyer
7 sent a letter to the Board stating that under California
8 law these drinks should be classified as a distilled
9 spirit. Yet here we are, almost two years later,
10 waiting for the Board of Equalization to tax these
11 products as a distilled spirit.
12 So, I really applaud the young people that
13 brought this petition before the Board today. And on
14 behalf of the Pacific Institute and the coalition, I
15 really encourage you to retax these drinks as a
16 distilled spirit.
17 Thank you.
18 MIKE HALE: Thank you. I've been asked to
19 remind the speakers to identify themselves for the
20 record.
21 Thank you.
22 ---o0o---
23 MARC SORINI
24 ---o0o---
25 MARC SORINI: Good morning, my name is Marc
26 Sorini with the Flavored Malt Beverages Coalition.
27 I am an attorney and the coalition is a group
28 of six companies that collectively produce and market

1 about -- over 50 percent of the flavored malt beverages
2 that are produced and distributed in the United States.
3 Don't worry, I'm not going to read all of that
4 material, I promise. But I did want to get a few
5 statutory things perfectly right.
6 Therefore, I brought a couple of props. The
7 companies that I represent certainly don't belittle the
8 issue of underage drinking. Underage drinking is a very
9 serious question, but the question right now before this
10 committee is a very specific and technical one, which is
11 the proper taxation of flavored malt beverages.
12 And contrary to what a few speakers have said,
13 the law -- well, I agree that the law clear, but I think
14 the law is very clear that these products are not -- are
15 not distilled spirits.
16 Why is that? Here is where I am going to have
17 to use my props. California law does not define any
18 product that contains some sort of distilled alcohol as
19 a distilled spirit. Were it so, we would be regulating
20 every soft drink manufacturer, every food manufacturer,
21 every flavoring manufacturer, every hospital, which
22 frequently uses alcohol for disinfecting purposes.
23 Now, all of this alcohol is -- theoretically,
24 it's not poisonous, it's not denatured alcohol, which is
25 another category of alcohol. It's not wood alcohol.
26 It's ethyl alcohol. And if you put it in the right
27 combination of materials, it would be drinkable, okay.
28 But the point is that these are beverage

1 products. Now let's look the statute here -- this is
2 right out of the California Code, this what a distilled
3 spirit is, it's an alcoholic beverage obtained by the
4 distillation of fermented agricultural products and
5 includes alcohol for beverage use, spirits of wine,
6 whiskey, rum, brandy, gin -- things that we think about
7 when we think of distilled spirits -- and including all
8 dilutions and mixtures thereof.
9 Okay, let's parse that language for a moment.
10 It is an alcoholic beverage. Then they give examples.
11 The legislature gave examples -- and most of them are
12 what you would consider the usual suspects -- gin,
13 spirits of wine, brandy -- we think of these as
14 distilled spirits. And then there's alcohol for
15 beverage use.
16 I think that's very significant. Alcohol is
17 also defined in the Code. Alcohol is defined to include
18 everything -- the stuff that gets used in laboratories,
19 the stuff that gets used in hospitals, the stuff that
20 gets put in flavors. But they didn't -- they said
21 alcohol for beverage use, all right.
22 So, now what is a distilled spirit? Well,
23 it's one of these things or it's a dilution or mixture
24 thereof. A dilution and mixture of what? Something
25 that's an alcoholic beverage.
26 Now let's go back to flavored malt beverages.
27 Flavored malt beverages start out with beer base. By
28 the way, I will -- please excuse me on the nomenclature.

1 Federally the statutory term under the FAA Act is malt
2 beverage. In California the statutory term is beer. I
3 try to keep to the statutory definition here in
4 California, but excuse me if I lapse into federalese. I
5 myself am based out of Washington, so, apologies for all
6 those inside the Beltway haters.
7 When you go back then and look at the
8 definition, a malt beverage base, now you can't add a
9 distilled spirit -- rum, gin, vodka, whiskey -- to a
10 beer.
11 Why not? Well, California law and federal law
12 are completely consistent on that fact. If I take
13 something that is a distilled alcohol product that's a
14 beverage product, I can't even bring it on to a brewery
15 per federal law. You can't bring distilled spirits onto
16 a manufacturing plant for beer, which is a holder of a
17 brewer's notice, it's a bonded area and it gets very
18 complicated and interesting.
19 But for your purposes, just recognize you
20 couldn't do this. Federal and California law are
21 completely consistent. And I think that the mistake
22 that many people look at when they look at this
23 question, like Mr. Dickey and some others, including the
24 Attorney General's letter from two years ago, you're
25 looking at apples and oranges.
26 Distilled spirits does not equal flavor. Just
27 as distilled spirit does not equal the alcohol that's
28 being put into foods that we -- foods that we eat, the

1 soft drinks, the flavoring in soft drinks. I mean
2 virtually every flavor -- and there's a whole lot of
3 others -- we all know that medicines contain alcohol.
4 What is that alcohol? It's a neutral spirit. It's --
5 theoretically it's distilled alcohol, but is it
6 distilled spirits under California law?
7 Absolutely not because distilled spirits is an
8 alcoholic beverage or a mixture or dilution thereof.
9 So, I think the law is very clear.
10 Another thing about the -- that you have to
11 recognize is that the federal government has looked at
12 this and is continuing to look at this. In other words,
13 the federal TTB has to review and approve every single
14 flavor that gets approved for use as a flavor.
15 You submit -- and this is for the manufacturers of
16 flavors, you know, the Gividans, the Vercocos, these
17 very large flavor houses, they have to submit their
18 flavors to the federal government.
19 The federal government has a whole laboratory
20 and some experts that look at these things. And they
21 do -- this is sort of a joke around my office, they do
22 the yuck test, which is that they test the product. If
23 it is potable, then it's a distilled spirit -- excuse
24 me, not potable, fit for beverage use. Potability
25 applies to some health and safety issue. Obviously, if
26 you're making a flavor, you want to put it in a beverage
27 want to put it in a food. But they test this for
28 fitness for beverage use.

1 And If it's drinkable, well, it's an alcoholic
2 beverage, but if it's not drink on its own, then it is a
3 flavor.
4 And so you have to look at flavors as
5 something completely outside of the -- completely
6 outside of the standard categories of beer, wine and
7 spirits.
8 Now what are flavors added to? Now, we all
9 know they're added to lots of foods, they're added to
10 soft drinks, they're added to quite a few wines.
11 They're even used, if you look at hop extract as a
12 flavor, they're used in traditional beers. So, there is
13 whole lot of potential unintended consequences that the
14 Board, by trying to fit a square peg in a round hole or
15 treat an apple like an orange, is going to run into.
16 I think that the position paper very -- very
17 clearly recognizes this as far as I am concerned. The
18 one issue with the position paper is the statement that
19 says, "We all know distilled spirits are in -- are in
20 flavored beer." That's absolutely not right. I think
21 if you carefully look at the definitions, you will
22 conclude that they are not -- that they are not
23 containing distilled spirits. Yes, they contain alcohol
24 from flavors, that's a different story.
25 I do think the TTB rulemaking was quite good
26 on this. For example, much has been made -- I just
27 looked at some of the submissions that were filed, I
28 just got them this morning -- of the study that said

1 that flavored -- flavored beers were deriving oftentimes
2 a majority of their alcohol from the flavors.
3 Well, the federal government has looked at
4 that and it's acted. I mean, any flavored beer that's
5 on sale in the United States right now has to have at
6 least a majority of its alcohol from the -- from the
7 beer base.
8 So, quoting from the TTB study in 2002, these
9 exactly what TTB was doing, they were studying this and
10 coming up with appropriate limits.
11 TTB has acted. They have the expertise. They
12 review every single flavor in this country. They review
13 every single -- every single formula for a flavored beer
14 before it can be sold in California.
15 And federal law is consistent with California
16 law, you can't put a rum, a gin, a vodka, a tequila into
17 a beer, then it becomes -- well, you really can't do it
18 in the United States because of that rule about brewery
19 premises. But even if you could, that would be a
20 distilled spirits So, some of the citations I've seen
21 that have been thrown out by the Attorney General and
22 since the Attorney General by others, things like People
23 v. Tucks Winery, they're completely inapplicable. I
24 mean, they were talking about a beverage that had gin,
25 brandy, vodka, that kind of beverage added to, I guess,
26 it was a wine base in that case.
27 But I think we're talking apples and oranges
28 here. Flavor does not equal distilled spirits and I'd

1 be happy to answer any questions that you might have on
2 the subject.
3 MIKE HALE: Does anyone have any questions?
4 LYNN BARTOLO: I'd like to ask, have you
5 put -- submitted this in writing to us?
6 MARC SORINI: Very briefly in the letter that
7 I submitted to you a few days ago, which is in the
8 package.
9 I am very happy and plan to supplement it with
10 some more detailed -- detailed material, though.
11 LYNN BARTOLO: Great, thank you.
12 TOM HUDSON: I just have a question because --
13 I think all of us in the audience have kind of the same
14 problems because of the proprietary nature of the
15 formulas for how beer is made. We don't have a lot of
16 ability to sort of know what has been added and what
17 hasn't.
18 And so, the question I had for you, you're
19 familiar with California's definition of beer, an
20 infusion or concoction of barley, fermented barley,
21 hops, malt and other similar products, I think, are how
22 it's defined.
23 Are there to your knowledge -- I think you
24 mentioned alcohol based flavorings that are added to
25 other beers, would this affect the majority of other
26 beers if we were to say that anything added would turn
27 beer into something other than beer, would that affect
28 most beers or would that affect a small category of

1 things besides the so-called flavored malt beverages?
2 MARC SORINI: Well, if you take the view on
3 the malt -- on the beer definition, I think the beer
4 definition, if you take the view that the list of
5 ingredients there was absolutely exclusive, that it
6 really can only be -- in fact, it's funny, if I recall
7 California is one of the states that puts the comma
8 between barley and malt, which is funny because malting
9 is a processing that you do to a grain and generally
10 malted barley is what is used, but I think the drafters
11 of a lot of state codes back in the '30s didn't quite
12 get that.
13 But again if you -- so, if you leave aside
14 that sort of that of particular complication, because
15 you can't sort of have -- I don't know what malt as
16 opposed to malted barley is -- but assume we say, well,
17 they meant malted barley, hops, water, if that is read
18 exclusively, there are a heck of a lot of other things
19 that are in virtually every beer.
20 In fact, the federal government cooperates
21 with the trade association, now the Beer Institute, on
22 something called the adjunct reference manual, which is
23 sort of a self-affirmed grass -- if you know FDA law,
24 grass is what it says is safe to be used in a beverage.
25 And it's a three-ring binder that thick (indicating).
26 So, there's a lot of stuff that goes into
27 beer -- various enzymes and other things that, frankly,
28 hadn't been considered when the code was drafted.

1 Now, on the other hand, I think you can
2 read -- I seem to remember the ABC in its brief when
3 they were unsuccessfully sued by, I think, some of the
4 same folks who are here, on their classification of
5 flavored beers, I believe their petition -- and I think
6 it's probably the correct one -- that beer ought to be
7 interpreted broadly because it says, I believe, any
8 beverage made with and so it's not exclusive, it is
9 inclusive, which means the California definition is
10 broad enough and flexible to encompass other things,
11 which is why I think it also encompasses flavors. And
12 that flavors can't be considered -- can't be considered
13 distilled spirits, they should be considered a
14 legitimate ingredient added to these products.
15 Any other questions? I think --
16 MIKE HALE: First of all, I'd like to mention
17 that that question was posed by Tom Hudson.
18 Alan, I think you wanted to --
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1 ALAN LoFASO: Yeah, Alan LoFaso -- is this on?
2 LYNN BARTOLO: Yes.
3 ALAN LoFASO: Okay, I can't hear it.
4 MARC SORINI: I can hear you fine.
5 ALAN LoFASO: Perfect. Alan LoFaso from Board
6 Member Yee's office.
7 I'm just going to sort of start my question
8 off with the same platform that Tom, which is we don't
9 have some information that perhaps would make this a
10 little easier, but take a different direction, which is
11 to say I'm -- I get the argument that it starts with a
12 beer base. I'll accept for face value, because I've
13 been told it, that the alcohol from the beer base is 51
14 percent or more of the alcohol content of the drink.
15 MARC SORINI: Sure.
16 So that gets me down to that other stuff --
17 MARC SORINI: Yeah.
18 ALAN LoFASO: -- which you've indicated isn't
19 distilled spirits because it's not for beverage use.
20 MARC SORINI: That's right.
21 ALAN LoFASO: And it's alcohol -- and I -- I
22 guess I don't know a lot about where alcohol comes from,
23 but what I'm confused by is it's a beverage, I've drunk
24 the stuff myself. It wasn't consumable as a beverage.
25 MARC SORINI: True.
26 ALAN LoFASO: How do I know its not for
27 beverage use?
28 MARC SORINI: Well, that's -- that's a great

1 question. Now -- now, recognize that these same
2 non-beverage flavors are added to most soft drinks, many
3 non-carbonated drinks. They're added to many wines. I
4 mean, they have a lot of uses beyond flavored malt
5 beverages.
6 And the test is, is it unfit for beverage
7 purposes on its own? Of course when you're making a
8 flavor, an extract, a syrup, which is this category of
9 products, and there's a specific California code that
10 says these are not beverage products, they're outside of
11 the purview of the ABC -- of course these products are
12 definitely designed to be put in food. I mean, why else
13 do you make a flavor? It's not for industrial use.
14 It's not for disinfecting hospitals like some of those
15 other categories of alcohol.
16 But it's unfit for beverage purposes standing
17 on its own. However, the -- the definition of distilled
18 spirits, and again let's get back to the definition,
19 it's an alcoholic beverage. And I know the argument
20 that's been made unsuccessfully, for example, in the
21 California Court of Appeals, was, well, but this is a
22 dilution in mixture. No, it's a dilution and mixture
23 thereof.
24 In other words, if I start with rum and I
25 dilute it, I mix it up, it's still a distilled spirit.
26 Right?
27 But if I take vanilla extract and I mix it
28 up -- in fact, we all mix up vanilla extract and make it

1 into something that we eat. It doesn't make the final
2 product a distilled spirit.
3 Does that make sense? I mean, I know that's
4 kind of a home spun explanation, but that's what I'm --
5 I'm trying to get across from you.
6 If you start with an unfit-for-beverage
7 purposes flavor -- Angostura bitters, there's a tax
8 annotation on Angostura bitters. Well, we all know
9 Angostura bitters is made -- it's designed for being
10 used in mixed drinks, and yet the BOE relatively
11 recently, I think within the last ten or so years, said,
12 no, that is not a distilled spirit even though, of
13 course, Angostura bitters, its whole point is to be used
14 in mixed drinks.
15 So that's the difference. So, I think -- I
16 think that if you look at all the law, if you look at
17 the statutes, it's very consistent.
18 In fact, I think it compels the result. It
19 says, "A product that is a beer base or a wine base,"
20 because there's lots of wines that have flavors like
21 this, too, "that has added non-beverage flavors doesn't
22 lose its character as a beer or a wine."
23 ALAN LoFASO: Just -- well, you said a lot of
24 things so I guess I got a couple of follow -- questions
25 in followup.
26 Did you say that some of those flavorings are
27 put in soft drinks?
28 MARC SORINI: Absolutely.

1 ALAN LoFASO: They use alcohol in Coke?
2 I'm confused about that.
3 MARC SORINI: Absolutely. I mean, if --
4 ALAN LoFASO: -- soft drinks such an
5 infinitesimal amount that nobody --
6 MARC SORINI: In soft drinks it gets watered
7 down more so it falls below the threshold for being
8 something that's going to be intoxicating, but
9 absolutely. If you look at -- if you look at flavors
10 that are used throughout the food industry, virtually
11 all of them will have a -- a distilled alcohol base
12 carrier.
13 I mean, distilled alcohol has a lot of great
14 properties. It's a natural preservative. It's an
15 extractive, so it helps extract the flavorings,
16 whatever you want.
17 ALAN LoFASO: Distilled alcohol but not for a
18 beverage purpose.
19 MARC SORINI: That's right.
20 ALAN LoFASO: But we're still distilled.
21 MARC SORINI: Every -- yeah, you're talking
22 neutral spirits. It's something that -- it's the same
23 stuff that they're using to disinfect in hospitals, the
24 same stuff they're putting into ethanol.
25 I mean, it's got a lot of uses that have
26 nothing to do with being a distilled alcohol -- a
27 distilled spirit.
28 And, again, go back to the statute. Don't

1 take my word for it.
2 ALAN LoFASO: Did you just say that distilled
3 spirits are used to disinfect hospitals?
4 MARC SORINI: Distilled alcohol is, not
5 distilled spirits.
6 ALAN LoFASO: I thought I heard you say
7 spirits. That's why I asked.
8 MARC SORINI: Okay.
9 LYNN BARTOLO: Are there any other questions
10 for this speaker?
11 MIKE HALE: We have another question.
12 LYNN BARTOLO: We do have one more question
13 for you.
14 JIM KOOLER: I had a question for you, sir.
15 MARC SORINI: Sure.
16 JIM KOOLER: Dr. Jim Kooler with the
17 California Friday Night Live partnership, Doctor of
18 Public Health, and I want to compliment you on the
19 ability to take a look at issues from a different
20 perspective.
21 The first of those is that you talked about
22 distilled spirits and the "yuck" factor. Your test is
23 ideal for the world of alcohol and the world of young
24 people.
25 The flavored malt beverages do exactly what
26 they're intended to do, which is make a product which
27 tastes yucky, taste better. Something that young people
28 generally wouldn't like the taste of is now modified

1 such that they would.
2 And the fact that they start with a distilled
3 spirit, which I understand would be ethyl alcohol, ETOH,
4 is only used as a beverage. I don't think that when I
5 go to the hospital and they disinfect me, it's not ETOH.
6 MARC SORINI: Oh, it is. No, it is.
7 JIM KOOLER: It's isopropyl alcohol --
8 MARC SORINI: No, no.
9 JIM KOOLER: -- not ethyl alcohol.
10 MARC SORINI: No, you're wrong. No,
11 because -- that I'm very convinced of. You don't need
12 to -- I have clients that that's their business.
13 JIM KOOLER: I go to Long's Drug Store and I
14 buy alcohol for rubbing.
15 MARC SORINI: Oh, that's a different -- no,
16 that's a different thing. But people use ETOH for many
17 uses that have nothing to do with consumption. In fact,
18 I think the TTB rulemaking itself says that the majority
19 of the distilled alcohol used in this country, ETOH, is
20 used for non-beverage purposes. It's got a lot of other
21 uses.
22 It's used in flavors. It's used in medicines.
23 It's used in a lot of things.
24 JIM KOOLER: Well, I would suggest your
25 reading of 23005 would be then inaccurate as a distilled
26 spirit. Starting as a distilled spirit, whether it is
27 still a rum or otherwise, it's still an ETOH. And as an
28 ETOH would fall into the beverage market because all of

1 a sudden it is now consumable.
2 MARC SORINI: Well, you know --
3 JIM KOOLER: So if it's a drinkable product
4 and it started with ETOH, and it got there through a
5 distilled spirit process, I don't see any other way to
6 classify it than as a distilled spirit.
7 MARC SORINI: You know, that's very consistent
8 with the position, for example, taken by the Petitioners
9 in the -- the lawsuit against the ABC that was
10 dismissed. And -- and in fact, I was -- I thought about
11 reading that to you.
12 If you -- if you accept that position, then
13 you're going to have to start regulating as distilled
14 spirits and as distilled spirit plants, i.e. licensed
15 manufacturers, virtually every soft drink bottling
16 house, lots of -- lots of different medicine
17 manufacturers.
18 I mean, there's a tremendous amount of
19 products that have ETOH, that have ethyl alcohol, not
20 wood alcohol, that are used for non-beverage purposes.
21 And, again, the Code is clear. You don't have
22 to take my word for it. The Code is absolutely clear
23 that when it has -- when it is not for beverage
24 purposes, when it's unfit for beverage use, the exact
25 same standard that the Federal government uses and the
26 Federal government tests it, then it is not regulated as
27 a distilled spirit.
28 Now, you can make that argument.

1 JIM KOOLER: So are you suggesting then that
2 if it's --
3 MARC SORINI: But if you do, you would have
4 enormous consequences.
5 JIM KOOLER: -- not fit for consumption you're
6 poisoning our young people?
7 MARC SORINI: What was that?
8 JIM KOOLER: If you suggest it's unfit for
9 consumption, why would we put it into a beverage that is
10 consumed by masses and particularly to young people who
11 are trying not to get into the yuck factor?
12 MARC SORINI: I -- I guess -- you know, and I
13 think I've made myself clear. Unfit for beverage
14 purposes doesn't mean that it's dangerous or
15 non-potable. Indeed, a flavor by definition is
16 something you're making for food or beverage purposes.
17 What it means is it's not consumable as a
18 beverage on its own. And, again, don't take my word for
19 it, there's a very good explanation for that in the TTB
20 rulemaking, and I'm happy to provide it to you.
21 LYNN BARTOLO: Okay. All right.
22 JIM KOOLER: I'll see by your yuck test.
23 It doesn't taste good enough to consume but it
24 would be safe to consume.
25 MARC SORINI: That's right, it doesn't taste
26 good enough to consume on its own. And if you -- again,
27 getting back to the definition of distilled spirits, if
28 you have something that's not a distilled spirit, it is

1 not a beverage from the start, then its addition to a
2 beer or wine cannot as a matter of law convert that into
3 a distilled spirit product. I think it's straight
4 statutory interpretation.
5 MIKE HALE: Thank you, Marc. I think we're
6 both clear on that issue there. Randy.
7 RANDY FERRIS: Randy Ferris from the Board's
8 Legal Department. Just a followup on an earlier
9 question which I don't think you completely answered.
10 MARC SORINI: I'm sorry about that.
11 RANDY FERRIS: Are you able to give an
12 estimate as to, for lack of a better expression,
13 traditional beer products, what we typically think of as
14 beer.
15 What -- in your estimate, what percentage of
16 traditional beer products would have an alcohol based
17 flavoring added to them?
18 MARC SORINI: You know, it is hard to know
19 because that is highly proprietary. I will say this,
20 first of all, from a flavored beer standpoint, that --
21 the category that the advocates are talking about here,
22 and again I think there's -- these are important issues
23 and they -- they need to be discussed, but this isn't
24 the forum or the appropriate mechanism to do it.
25 But the products that are being particularly
26 targeted, like that can of energy drink that -- that one
27 of the -- one of the earlier speakers stood up, that's
28 probably a relatively -- that's one slice of beer that

1 we know has flavors. The other slice are things that
2 microbrewers -- in fact, my last appearance here I
3 brought a Pete's Wicked Strawberry Blonde Ale and there
4 are products that you don't think of as flavored malt
5 beverages, but they're flavored beer and they have
6 flavors. And if I were guessing, the flavors probably
7 are alcohol based. I can't promise that. But they
8 almost certainly are.
9 In addition, you have hop extracts. Hop
10 extracts, it's very hard to know because hop extracts
11 don't even -- I mean, I can tell that Pete's Strawberry
12 Blonde has a flavor and not strawberries in it because
13 they have to say it in the statement of composition per
14 Federal law.
15 Hop extracts are considered the equivalent of
16 hops. You know, hops start out as kind of a -- a plant
17 that looks like -- it looks like a little kind of spice.
18 But obviously it's hard to use. So the first sort of
19 bringing it down, they crushed it up and they made it
20 into pellets. They look like gerbil pellets.
21 Well, the next step in trying to make that
22 handleable when you're making large quantities of beer,
23 is to extract it down. And what do you use an extract?
24 Well, as I hope you all understand now, extracts --
25 vanilla extract, lemon extract generally has alcohol.
26 And so, you have these hop extracts, they have
27 alcohol -- I'm not sure if every single one of them
28 does. Again, I don't know, this is all highly

1 proprietary. What brewers are using hop extracts and to
2 what extent I just couldn't tell you.
3 RANDY FERRIS: Since we do anticipate that you
4 will be providing with us -- to us written comments
5 after this meeting, and since you are a representative
6 of this coalition that I assume has relationships
7 with -- with traditional beer makers, as well, if you
8 could in your written comments provide to us an estimate
9 of --
10 MARC SORINI: Yeah, I don't think that's going
11 to be possible. I cannot imagine that any -- any brewer
12 is going to want to reveal exactly what their formula
13 is.
14 RANDY FERRIS: We're not asking for any -- I'm
15 not asking for any specific proprietary information.
16 I'm just asking what percentage of the traditional beer
17 market uses things like hop extracts in -- in their
18 process.
19 MARC SORINI: Yeah.
20 RANDY FERRIS: I think that's an important
21 piece of information for us.
22 MARC SORINI: We -- we can ask. We -- we can
23 ask. I don't know if anybody is going to --
24 RANDY FERRIS: I'm not asking for any
25 propriety information.
26 MARC SORINI: I -- I understand that.
27 RANDY FERRIS: You are representing that hop
28 extracts may be used in traditional beers that would not

1 be considered --

2 MARC SORINI: That actually --

3 RANDY FERRIS: -- flavored beers. Just

4 traditional beers that we would buy thinking this is

5 just beer, it doesn't have a flavor added to it, and yet

6 you're representing that maybe a hops extract has been

7 added to it.

8 MARC SORINI: Well, it --

9 RANDY FERRIS: It would be important for us to

10 know what percentage of the traditional beer market

11 would fall into that type of category.

12 MARC SORINI: Let me say this, as far as

13 whether hop extracts contain alcohol and can be added to

14 beer, that's actually in the -- that's public record,

15 that's in the Federal rulemaking on flavored -- on

16 flavored malt beverages.

17 As to what percentage, I think you're asking

18 me for something I -- there is no way I could provide to

19 you. I -- you know, my -- my -- I don't think I'm going

20 to get -- get -- and again I understand what you're

21 saying, we're not asking for the exact -- we're not

22 asking for the exact formula. But -- but I think any of

23 those things are going to be -- I mean, just think about

24 it. If one brewer is using it and one brewer is not,

25 this becomes a competitive issue.

26 So, I -- I don't think we're going to be able

27 to get that information to you.

28 MIKE HALE: Don't go away, Marc.

1 CHRIS SCHUTZ: This is Chris Schutz.
2 MIKE HALE: We -- our next -- we have someone
3 in line here. Chris Schultz, I believe.
4 CHRIS SCHUTZ: Yes. This is a Chris Schutz
5 from Board Member Yee's office. And just a -- just for
6 a distinction clarification, I guess, you say that --
7 that extracts are added to beverages, sodas, but they
8 don't -- those don't increase the alcohol content versus
9 flavored malt beverages, the -- the flavoring, doesn't
10 that increase the alcohol content by a significant
11 portion?
12 MARC SORINI: Well, no, if you look at the
13 overall strength of a flavored beer, it's the same as a
14 regular beer. I mean, Budweiser's 5 percent alcohol by
15 volume and I think the leading flavored malt beverages
16 are about that.
17 Now, obviously, both of us could find more
18 obscure products, both conventional beers and flavored
19 beers that probably are higher. But, I mean, if you
20 look at the leading products, they're about the same
21 strength.
22 CHRIS SCHUTZ: So, the flavoring doesn't
23 increase the alcoholic content?
24 MARC SORINI: Well, of course it -- I mean, of
25 course it contributes something. But it's got to be
26 less than 50 percent. And for stronger products the
27 limit's even greater. It's 1.5 percent per Federal law
28 And -- and, again, the bottom line here is

1 that these products are about the same strength. Now,
2 exact percentages, again that's proprietary. Nobody is
3 going to reveal that -- what the exact percentages
4 are.
5 CHRIS SCHUTZ: But it's significantly higher
6 than something like distilled spirit that's put into
7 like Coke or Pepsi or something like that, just for
8 flavoring?
9 MARC SORINI: It's significantly -- I don't
10 know. I don't know. I don't know Coke's formula and I
11 don't know the formula for -- I mean, this is all
12 proprietary information.
13 LYNN BARTOLO: Okay.
14 LAURIE LEIBER: I'm just so curious, since
15 it's been asserted and no one has disputed that the
16 products with the same packaging and names sold in
17 Europe do not start with beer. I wonder if you could
18 explain why it is that the alcopops sold here use a
19 different formula and start with beer, whereas the ones
20 sold in Europe do not.
21 MARC SORINI: You know, I'm a U. S. lawyer so,
22 you know, I don't know anything about the formulation
23 or -- of things overseas. I don't know.
24 LAURIE LEIBER: Okay.
25 MIKE HALE: That was Laurie Leiber, correct?
26 LAURIE LEIBER: Yes, thank you.
27 ---oOo---
28

1 BRUCE LIVINGSTON

2 ---oOo---

3 BRUCE LIVINGSTON: Hi, Bruce Livingston from
4 the Marin Institute. And I think Laurie's point there
5 was that you intentionally start with beer, and whatever
6 you do afterwards, the reason that you start with beer
7 is simply because the State law here requires that you
8 start with beer. And the end product is the same as
9 what you market in Europe, which is just to hook the
10 kids.

11 Now, I have to think that what you are really
12 doing here today is passing the laugh test because it's
13 so confusing. And it really is an interesting dodge
14 that you're saying that it's the alcohol content of the
15 flavoring that should excuse you from -- from being
16 regulated as a distilled spirit.

17 MARC SORINI: By the way, I don't make this,
18 so, try to please depersonalize it.

19 Thank you.

20 BRUCE LIVINGSTON: I am talking about "you"
21 the institute or whatever you are representing these
22 manufacturers.

23 And I think you're getting us into a fog of
24 looking at regulating flavoring. That's not what the
25 Board of Equalization is looking at. We're trying -- I
26 think the Board is trying to look at whether this should
27 be classified as -- the drink itself -- as a distilled
28 spirit, not whether the flavorings are distilled spirit.

1 And, you know, if you have to maintain that
2 it's 51 percent of the alcohol content is coming from
3 beer because the federal law requires that you do that,
4 that's fine, we'll never find that out for sure because
5 it's proprietary information. We'll stipulate that it's
6 going to be proprietary information for the next nine
7 months of discussion. That's really not up for grabs.
8 We all know that it's always going to be kept from our
9 view and we'll have to take your word on it.
10 But the question is, in the -- at the end of
11 day, is distilled spirits what we're drinking and what
12 is the beverage that we're trying -- that the Board of
13 Equalization is trying to tax at the correct rate?
14 So, I'd rather -- if that's the best you've
15 got is to get us lost in the fog of discovering the
16 exact alcohol content from beer versus the exact alcohol
17 content from flavoring and you will never tell us where
18 it comes from and when it's put in the process, then it
19 is always going be a dodge. If that's the best you've
20 got, it's not going to work because the question is, is
21 this is a distilled spirit that folks are drink and that
22 we want to tax correctly or not?
23 So --
24 MIKE HALE: Thank you.
25 BRUCE LIVINGSTON: I hope to hear more in the
26 future.
27 MIKE HALE: I think we're clear.
28 Marc, did you want to briefly respond, before

1 we move on?

2 MARC SORINI: I don't think that was a

3 question.

4 MIKE HALE: All right, thank you very much to

5 all of the speakers.

6 At this time I would like to -- we have the

7 Special Counsel for the Alcoholic Beverage Control

8 Department that handled the F. M. B. lawsuit.

9 And I was wondering if he would come down and

10 share with us their experience and what the -- maybe hit

11 on some of what the issues were you had to address.

12 Thanks, Matt.

13 ---o0o---

14 MATTHEW BOTTING

15 ---o0o---

16 MATTHEW BOTTING: Well, I was not anticipating

17 speaking this morning, so, I will probably shouldn't

18 have turned up if I really didn't want to come up here.

19 As Mike said, my name is Matthew Botting, I am

20 a Special Counsel for the Trade Enforcement Unit of the

21 Alcoholic Beverage Control. I was the lead counsel on

22 the Department's response to the litigation -- petition

23 for writ of mandate filed in the Court of Appeal at the

24 beginning of last year.

25 Let me first of all say that the ABC agrees

26 with everyone and disagrees with everyone to a certain

27 extent. We -- we are greatly respectful of the

28 petitioners, both before the Board and in the litigation

1 that we handled and in the litigation that the Board is
2 dealing with. We worked very closely with a lot of
3 these organizations. We take very seriously the access
4 of alcohol by underage youth. And we worked very hard
5 to enforce the underage drinking laws in California.
6 We also work hard to insure that the
7 manufacturers of the products are abiding by California
8 law. Mr. Sorini's presentation, it was -- in my
9 estimation it was largely accurate.
10 I think we disagree on one fine point, that
11 California law in the definitions is not absolutely
12 clear. And that was really one of our positions in our
13 litigation. It was that these definitions were written
14 back in the 1930s. At that time no one contemplated
15 these types of products.
16 As Marc said, at the federal level you've
17 actually got, I think, four classifications. You've got
18 beer, distilled spirits, wine and malt beverages.
19 California just has beer, spirits and wine.
20 So, we don't have those classifications that these types
21 of products neatly fit into. So, we are kind of -- I
22 mean, I absolutely agree that, you know, they -- if you
23 look at it from one angle, they could be beer; if you
24 look at it from a different angle, they could be
25 distilled spirits. I don't think they neatly fit into
26 either category. But they do exist or they do fit into
27 this general classification that they are an alcoholic
28 beverage.

1 That being said, how do we address the
2 confusion there? We were -- we were accused, for want
3 of a better word, of merely deferring to the federal
4 government in this respect. We do not and did not then
5 defer to the federal government, but because of the
6 inherent ambiguity under the definitions, we looked to
7 various sources, one of which was the federal rulemaking
8 process and -- to aid us in defining these products.
9 Because I mean they draw a line in the sand.
10 They said if -- if a malt beverage derives up to 49
11 percent of its alcohol content from flavorings or other
12 other additives, I can't remember the exact terminology
13 in there, then they will be a beer product, a malt
14 beverage product. So that that presumes that maybe
15 there are some products out there that derive in excess
16 of 49 percent of their alcohol content from added
17 flavorings.
18 And under the federal regs, that would then
19 mean that they are probably distilled spirits -- and
20 Marc can correct me on that if I am wrong. But if they
21 exceed 49 percent of their alcohol content from added --
22 added flavorings or other products, then they will be
23 distilled spirits.
24 And, likewise, we in California, from the ABC
25 perspective, would consider them to be distilled
26 spirits.
27 Because part of the challenge here is we have
28 no mechanism to figure out what these products are.

1 We -- we can't test them. We have no facility or
2 resources to test these products. i have been informed
3 but I'm not certain that even if we could test them --
4 that there is no test available to determine what the
5 source of the alcohol is.
6 It can tell you -- the test can tell you
7 there's alcohol in a product, but it can't tell you
8 where it came from. Likewise, we do not have the legal
9 authority, in our estimation, to require manufacturers
10 to submit their formulas to us. So, we can't look at
11 them and say, "Okay, this one has additives to it, this
12 one doesn't."
13 That can of Rock Star 21 that was shown
14 before, it will say on it that it's got alcohol in it,
15 it probably says it's 6 percent alcohol by volume, but
16 it doesn't tell you the source of the alcohol. For all
17 we know, that product has zero percent of its alcohol
18 derived from added flavorings. What do know, since it's
19 treated as a malt beverage at the federal level is that
20 it has no more than 49 percent of its alcohol from
21 flavorings.
22 One of challenges we had in our litigation was
23 many of the same arguments we're hearing today. This is
24 about the marketing and the packaging of these products.
25 We don't have the authority at our level to -- then the
26 First Amendment is a pesky little thing as well -- to
27 tell people how to design their labels. We have very
28 limited authority under California's labeling laws for

1 beer to even look at their labels. And the information
2 that we regulate on those labels is extremely narrow.
3 It doesn't authorize us to say, "We don't like your
4 label. We think it looks too much like Monster."
5 You know, we have had some successes with
6 working with manufacturers to encourage them to design
7 their labels appropriately and to market these products
8 in what we consider to be an appropriate fashion, but we
9 can't compel them.
10 And one of the other things is in the -- as
11 you read the federal rulemaking package, you know, a lot
12 of the major manufacturers presented testimony or
13 evidence there. And some of them said that they had
14 already reformulated their products. They had none of
15 the flavorings coming from a distilled source. Others
16 said, you know, they couldn't or wouldn't, whatever.
17 But the fact of the matter is, again, that Rock Star 21
18 is a good example. If it has zero alcohol from a
19 distilled source, then classifying this broad category
20 of flavored malt beverages as distilled spirits wouldn't
21 help. Because that product would still be outside it
22 and you would still be stuck with the same issues.
23 So, those are kind of the -- some of the
24 issues that we were grappling with and we have provided
25 you with copies of all the briefings and that in our
26 litigation, which I think sort of spells out our
27 position.
28 And I think that Marc Sorini again did

1 encapsulate the legal framework that we were addressing
2 with some, you know, minor differences of opinion.
3 But from the public policy perspective, we do
4 absolutely agree with the petitioners here that these --
5 these products we are concerned about. We do not
6 condone them or endorse them in any respect. We're
7 looking at this just strictly from what is our authority
8 to regulate?
9 LYNN BARTOLO: I think we'll take a couple of
10 questions. I do want to get to the speakers that have
11 signed up, but go ahead, Al.
12 AL LO FASO: I was just wondering if you could
13 shed light on that distinct question I asked about, if
14 the alcohol is not consumable in its pure form, called,
15 if I got it right, the yuck test, then it's not an
16 alcohol -- excuse me, it's not a distilled spirit
17 because it is not an alcohol for beverage purpose?
18 I thought I heard an argument that said that
19 if it's any of that quality of alcohol, regardless of
20 its percentage, and I know I'm in a State statutory
21 context, can you -- but, on the other hand, Dr. Kooler
22 suggests that it's the same chemical as the rum,
23 therefore, what's the difference?
24 Can you shed light on that?
25 MATTHEW BOTTING: I will try, I am not sure
26 that I can, but I will try.
27 From our perspective, you know, again a
28 company -- you will look at the definitions and in the

1 discussion paper I noticed there were definitions of
2 beer and definitions of distilled spirit and there is
3 another definition as well that might be useful to
4 consider and that is what is the definition of an
5 alcoholic beverage? And that does talk about, you know,
6 in excess of one-half of 1 percent of alcohol by volume
7 and fit for beverage purposes with a -- by itself,
8 diluted, mixed or -- I don't remember off the top of my
9 head, but that's kind of the gist of it.
10 But at the end of the day, you know, we do not
11 license or regulate the manufacture or distribution of
12 flavorings, despite the fact that they have significant
13 amounts of ETOH, I think it was, I guess, distilled
14 alcohol in them. You know, vanilla extract was used and
15 that's one of the examples I use as well, that has
16 35 percent alcohol by volume in it. And we do not
17 regulate the manufacture or sale of that product because
18 it's not fit for beverage purposes.
19 Can you make it fit for beverage purposes? I
20 don't know whether this would survive the yuck factor,
21 but I presume that if you add a chunk of, you know,
22 vanilla extract to a glass of Coke such that that glass
23 of Coke now exceeds one-half of 1 percent alcohol by
24 volume, you could probably drink it and you'd probably
25 call it Vanilla Coke. I don't know.
26 But -- but that's the challenge. I mean, we
27 don't -- we do not regulate what's in your kitchen
28 cabinet, unless it's beer, wine or spirits.

1 MIKE HALE: Thanks a lot, Matt.
2 I know you weren't ready to speak today, but
3 one more question?
4 MATTHEW BOTTING: Depends what it is.
5 JOHN LATIMER: Matt, John Latimer, outside
6 consultant on behalf of Diego.
7 Quick question, maybe a yes or no question,
8 there seems to be a lot of concerns about whether or not
9 any of this information, which seems proprietary and no
10 one sees it, do you know whether companies submit their
11 recipe for their flavored malt beverages or their beer
12 or their spirits to the TTB?
13 MATTHEW BOTTING: You know, I am not an expert
14 on federal law, I have dabbled in it a little bit and,
15 quite honestly, you know, the people I know in this
16 room, Marc's probably the best person to speak to that
17 because I know he practices in the federal arena.
18 My understanding is that they are required to
19 submit their recipes and a statement of process so that
20 the feds can make that determination as to what the
21 classification is.
22 JOHN LATIMER: It's sort of loaded since I
23 have the answer and the answer was yes, they do, of
24 course.
25 And the second part of the question, Matt, is
26 if a -- would a distilled spirit be allowed to be added
27 to a flavored malt beverage, either under federal law or
28 California law, and still qualify as a beer?

1 MATTHEW BOTTING: I presume by that you mean
2 taking like a shot of vodka and dropping it in the --
3 JOHN LATIMER: In a distilled spirit?
4 MATTHEW BOTTING: Yeah, presuming that you can
5 do it legally, as Marc pointed out, we would treat that
6 as a distilled spirit.
7 Let me also say that there's a ton of
8 pre-mixed cocktails out there in the marketplace that
9 have far greater alcohol in them by volume than these
10 products. They are packaged very similarly to many of
11 these products. They are distilled spirits. We treat
12 them as distilled spirits. They are taxed as distilled
13 spirits.
14 One thing that we don't do with them is that
15 we have -- we don't even see their labels before they
16 end up in the marketplace.
17 The only label process that we have is with
18 beer products. So, if they were -- if they're distilled
19 spirits products, we don't even see their labels until
20 they're are out.
21 JOHN LATIMER: Thanks.
22 MIKE HALE: Tom Hudson has the last question
23 for you, Matt.
24 TOM HUDSON: Hi, Tom Hudson, I'm a Tax Counsel
25 for Bill Leonard here at the Board of Equalization.
26 The question I had for you, you may not have
27 an answer, but I am asking in case there is a position,
28 I want to know what the position is.

1 If the Board of Equalization were to change
2 the -- our traditional definition of beer for tax
3 purposes, my understanding is that wouldn't have any
4 effect on ABC's definition of beer for licensing
5 purposes, you could continue to license according to
6 your definition beer and we would be licensed -- we
7 would be taxing according to our definition of beer, so,
8 we would have two definitions of beer under State law,
9 both of us cite the same code section as the source of
10 the definition, but treating it differently.
11 Is it -- so, that's the setup and then the
12 actual question then is, if we were to change our
13 traditional definition of beer for tax purposes, would
14 ABC follow up change their definition for licensing
15 purposes?
16 MATTHEW BOTTING: I don't know. We would have
17 to see -- being honest with you, I mean, whether or not
18 we would change anything would probably ultimately
19 depend on what you do and how you do it.
20 So, to answer that in advance, I mean, I can't
21 really say. But, you know, I kind of take the position
22 that we can't tell you what to do and you can't tell us
23 what to do, as kind of like a baseline, but, you know,
24 it probably depends on exactly what you do, how you do
25 it, and what the impact is.
26 Because if it does make sense, then maybe
27 that's something we could look at. I don't know.
28 It's -- we're not there yet. I don't want to

1 pre judge anything.

2 MIKE HALE: Great, thank you very much, Matt,

3 I appreciate that.

4 ---o0o---

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1 MIKE HALE: Our next three speakers I'd like tocall
2 up are Scott Varner, Jaime Rojas and Melinda Avery. .
3 Following these speakers we have two more,
4 and depending on how long we -- we would go here, we may
5 just get all our speakers in and wrap this up, rather
6 than breaking for lunch.
7 The -- following these three speakers, the two
8 speakers would be Heidi Barsuglia -- thank you, and
9 Beverly Swanson, who did make it here on the train.
10 Thank you. Go ahead.
11 ---oOo---
12 JAIME ROJAS
13 JAIME ROJAS: Good morning, everyone. My name
14 is Jaime Rojas, Presidency of the California Latino
15 Association of Business Owners. We're the largest
16 Latino based organization in the nation. We represent
17 over half a million Latino business owners in the State
18 of California, and over 50 Hispanic Chambers throughout
19 the State, as well.
20 I had a very eloquent little speech I wanted
21 to say, but I'm going to look at it this way, and I
22 threw that out and wrote some notes right now.
23 One, I want to commend the youth that came up
24 here, Friday Night Live, California Youth Council, the
25 Girl Scouts, and I'm sure more the coalition. I'm going
26 to take this and look at it from the perspective as --
27 one, as a business owner myself owning a restaurant down
28 in Orange County, as well as a parent.

1 The issues here are distinctly different. And
2 Marc had brought it up. The issues here clearly state
3 in -- in the State Code what distilled spirits and
4 malt -- malt beverages is, and we should look at it that
5 way and not -- and classify this issue as what -- one
6 from the other.
7 The issue here is completely different in --
8 in public policy. I'm a public policy wonk, my Master's
9 in Public Administration. The issue here isn't about
10 taxation. We're putting the burden on small business
11 owners of small grocery stores, markets, restaurants,
12 who now have to be competitive with small margins and
13 try and raise taxation on a public policy issue which is
14 better parenting. Bottom line, these kids -- again I
15 commend you for coming up here, taking the day off from
16 school, which maybe you might like, but bottom line, you
17 have leadership.
18 We as parents, we as business owners, have to
19 take this leadership ourselves and stop putting the
20 burden on the small business owner that represents 90
21 percent of the economic driving power of the State of
22 California. 90 percent.
23 I as a business owner of a restaurant have to
24 follow ABC law and last time I checked, I can't serve
25 to -- to minors under 21. We as my organization, myself
26 as a business owner, myself as a parent, have a
27 responsibility to our local communities, to State law,
28 to Federal law, to follow that.

1 Let's not put the burden of parenting, let's
2 not put the burden of being a business owner, on
3 taxation.
4 When I hear the stories earlier today of
5 saying, well, it looks similar to packaging and, you
6 know, a clerk comes by, you know, that responsibility,
7 take one minute, take a look at it. A beer is a beer.
8 We don't serve it to anyone under 21 years old last time
9 I checked.
10 The issue here is clear, malt beverage is not
11 a distilled alcohol. The law says it. Let's put our
12 time, our efforts, into investing into youth programs.
13 Let's do our efforts -- my organization is
14 doing it -- educating our grocers, our small markets,
15 our restaurant owners into not selling to minors.
16 That's the issue here.
17 It's not about taxation. When I see a parent
18 says, "Well, you know, I threw Monster and this and that
19 I really don't look it," you know what, the problem with
20 our society today is as parents, take five seconds.
21 Take a look at what your child is drinking. Take a look
22 at the kids they hang around with. Take a look at --
23 they shouldn't be outside in the park drinking after a
24 certain amount of time.
25 When a Board of Supervisor comes here from a
26 local county or a City Manager, Finance Director, or
27 City Counsel tells me, "You know, the issue here is
28 about taxation," kids are kids.

1 I was a college student and I might not want
2 to admit it, but I found ways to find alcohol. It's a
3 reality of life.
4 But the responsibility bears on our community.
5 We are adults. For God sakes, we have laws that protect
6 our children, laws that protect our community, and
7 that's the reality here.
8 These kids came here, sacrificed their time.
9 I don't know how they got here, for the most part, but I
10 commend them because we have to invest in them. What
11 good is it for us to -- well, you know, tomato, tomato.
12 It doesn't matter.
13 This is our youth and our future leadership.
14 And again I apologize for taking this as a (inaudible)
15 pulpit, but as a parent and of a future teenager, kids
16 are smart. As much as a good parent, you have to be on
17 top of them.
18 That's our responsibility here, Ladies and
19 Gentlemen. It's not about taxation. Kids will find a
20 way to buy alcohol. Take a look at one another as
21 parents, as adults, as responsible business owners, and
22 say, you know what, enough is enough about blaming the
23 other person.
24 Look at ourselves. That is the reality we
25 face here. Let's spend our time on -- if it's $40
26 million of more taxation I'm sure our Legislators out
27 there, there's other laws that can find that money.
28 And if you want me to write a white paper on

1 it, I'll be more than glad to.
2 Thank you.
3 LYNN BARTOLO: Thank you.
4 MIKE HALE: Thank you very much.
5 ---oOo---
6 MELINDA AVEY
7 MELINDA AVEY: Hi. Good morning. My name is
8 Melinda Avey and I'm representing Progress House.
9 Progress House is a treatment facility for women and
10 children. It's an alcohol and drug treatment facility.
11 And we are in strong support of the young people that
12 brought this petition forward today and we support that
13 petition.
14 Thank you
15 MIKE HALE: Thank you.
16 ---oOo---
17 HEIDI BARSUGLIA
18 HEIDI BARSUGLIA: Heidi Barsuglia on behalf of
19 the California Retailers Association. The California
20 Retailers Association is opposed to the petition
21 regarding flavored malt beverages. Our members support
22 the current classification of the flavored malt beverage
23 as beer. Having said that, currently it is illegal for
24 us to sell alcoholic beverages of any classification to
25 minors, and we certainly support the enforcement of the
26 current law.
27 MR. HALE: Thank you very much. Is Scott
28 Varner here?

1 And Beverly Swanson.

2 ---oOo---

3 BEVERLY SWANSON

4 BEVERLY SWANSON: Good morning. My name is
5 Beverly Swanson -- I might need this -- and I represent
6 the California Licensed Beverage Association, which is
7 an organization of small mom-and-pop restaurants, some
8 small hotels, a lot of taverns. And I, again, as I said
9 last time, do applaud the effort -- the efforts of the
10 youth. But I'm afraid I concur wholly with the
11 gentleman who just spoke, because they are very
12 misinformed and very misguided.
13 If it looks like a duck, if it walks like a
14 duck, if it talks like a duck, it's a duck. A flavored
15 malt beverage is brewed, it is not distilled. It has
16 the same alcohol content as beer, which was already
17 pointed out.
18 But another thing I want to point out about
19 these beverages is that you don't walk into an
20 establishment like mine and ask for a Smirnoff Ice with
21 orange juice; you ask for the Zima or the Smirnoff Ice.
22 You do not ask for the Mike's Hard Lemonade with Coke;
23 you ask for a Jack and Coke. These beverages are served
24 like beer. You traditionally ask for a Heinekin, you
25 get a Heinekin.
26 And I know from my own experience, because in
27 our neighborhood bar, after about 10 o'clock at night it
28 is filled -- filled with college kids. And we I.D.,

1 I.D., I.D. I can't believe how many times I walk in
2 there, "Did you check that one?" "Did you check" --
3 they look younger and younger as I get older. But a lot
4 of them just turned 21. And I have an 18-year-old
5 daughter myself. I'm a mom. I'm telling you, they're
6 not drinking flavored malt beverages. The young people,
7 they drink more extravently -- extravagantly than I do.
8 It's -- it's Jack and Rockstar. Or it's Jack and Coke.
9 Or it's a Heinekin. They're not drinking Old Milwaukee.
10 I don't know where they're getting their
11 budget, but I can tell you what they're drinking.
12 And as a mom, I want to digress to something
13 else. It always seems to come down to we retailers.
14 But I will tell you right now, my daughters used to
15 come home from Junior High and I pulled them out of the
16 surveys because they said, "Mom, they did a survey today
17 in school, and they asked us how often we drank, when we
18 drank, when we had our first drink," and they and their
19 friends outside, they -- and friends they knew had never
20 had a drop to drink would say, "Oh, yeah, I told them I
21 had my first drink three years ago and that I drink
22 every weekend and that I" -- and so, when somebody says
23 "studies show," I couldn't have gotten away with that
24 phrase in high school debate.
25 I want to know what study. When? Who did it?
26 Under what circumstances? Because they say, "We
27 surveyed the kids." And I'm not saying young kids
28 aren't honest, but we said kids are kids. But they

1 think it's funny. And then it comes back on retailers.
2 So, in order not to reiterate a lot of other
3 things that have been said up here, the only thing I
4 want -- I want to say in closing, and I said it last
5 time, which is why I concur with the gentleman from the
6 retailers, as well, is when I said in the beginning how
7 misguided this is.
8 We can argue all day whether it's a muffin or
9 a cupcake. And if the issue indeed is youth access to
10 alcohol, let's work together and you would have the
11 beverage alcohol industry, Discus Century Council,
12 everybody I could think of, behind you and we happen to
13 be the -- the hospitality industry, the largest private
14 industry in the United States.
15 So, yes, if that indeed is your intent, we're
16 with you 159,000 percent. And let's stiffen the
17 penalties for adults who purchase for minors.
18 I don't think this is a funny issue. I
19 am being very serious. And we -- we would be able to
20 attack this problem.
21 Let's stiffen those penalties, as well. Let's
22 stiffen the penalties for the few licensees who do sell
23 to minors. And we don't have to be taking up all your
24 time and all the ABC time and all your time if we would
25 work together as industries and communities.
26 And I thank you so much for your time.
27 MIKE HALE: Thank you very much.
28 That's the last of our speakers that have

1 signed up. Is there anyone else that would like to make
2 a presentation, before we wrap that up?
3 Tom.
4 ---oOo---
5 TOM HUDSON
6 TOM HUDSON: Tom Hudson again with Board
7 Member Bill Leonard's office. I didn't come here to
8 raise this issue, but I was hoping that some of the
9 people that have called my office would actually come
10 forward and explain this because they know more about it
11 than I do. But since I didn't hear it today, I want to
12 make sure it gets into the record, so I'm speaking on
13 behalf of folks who called me and talked with Bill
14 Leonard but I haven't heard from today.
15 What the concern is, and this is hypothetical
16 from my end, but I was interested in what other people
17 may have to say, is because we are told repeatedly that
18 underage drinkers are very price sensitive, so
19 increasing the -- the cost of a product by raising the
20 State tax by 1,550 percent will cause a lot of people to
21 not drink it. That's kind of the whole point of the
22 petition, is to discourage drinking.
23 The fear then is to the extent we tax a 3.8 or
24 5 or 4 percent alcoholic product the same as we're
25 taxing a 40 or 50 percent alcohol product, it seems
26 we're making the much more alcoholic product
27 artificially cheaper. So we're using tax policy to make
28 hard liquor cheap for teenagers compared with flavored

1 malt beverages that are maybe 4 percent alcohol.
2 And to the extent that people are price
3 sensitive and they say, well, gee, the cost per high or
4 cost per buzz, or whatever you want to call it, the cost
5 per beverage, becomes much cheaper for the price
6 sensitive teenager if they can buy rum and Coke or rum
7 and Cherry Coke if they want a sweet flavor, and mix it
8 that way, that becomes much cheaper than buying an
9 equivalent flavored malt beverage.
10 But then you have young people without
11 experience with mixing alcohols and mixes and measuring
12 and of course this presumably isn't happening at a bar
13 where you have a bartender that is familiar with these
14 things, this is happening at a, you know, teenager's
15 house or something where you have people who are then
16 mixing the rum and Coke themselves and maybe the
17 ultimate product that they produce for themselves,
18 instead of being, you know, 3.8 percent alcohol is now
19 42 percent alcohol or 20 percent alcohol or something
20 dramatically more dangerous for them.
21 So, a concern that's been raised to us is that
22 this petition, while the -- the clear goal is to cut
23 down on deaths and injuries and -- and other horrible
24 social problems that are the result of underage
25 drinking, that may be the clear goal; the effect may be
26 exactly the opposite. What we may be doing is driving
27 people towards higher alcohol products. Using the cost
28 mechanism as a way to push them into much more dangerous

1 products for them and leading to higher rates of alcohol
2 problems, alcohol intoxication and drunk driving and all
3 the other associated problems that we're concerned
4 about.
5 So, I'm definitely not an expert on that
6 issue. I came here to be educated. I've been contacted
7 by a lot of folks who raise this concern and I would
8 sure like to hear what some of the experts have to say
9 about that.
10 MR. HALE: Thank you, Tom. Any other
11 comments?
12 Well, I will --
13 Yes, Marc.
14 MARC SORINI: Just -- just to answer that
15 question. Certainly, if you're looking at the --
16 LYNN BARTOLO: We need a mike.
17 MIKE HALE: Yeah, we'll get you the mike.
18 MARC SORINI: Yeah, certainly if you're
19 looking at the price -- at the price per -- per unit
20 alcohol, flavored beer is not exactly the bargain at the
21 moment. Obviously there are many what would be called
22 popular priced beers that are much cheaper. And -- and
23 there are cheap wine products, I think four to five
24 wines that we probably can name, you know, and -- and as
25 well as spirits.
26 But the one resource there might be, and I
27 hate to advocate this, but I'm -- I'm told there is a
28 website out there that was set up I think by college

1 students, that's called like, I don't know,
2 cheapbuzz.com or something, that -- that might actually
3 have some -- some specific figures.
4 But certainly from -- you know, from a price
5 standpoint one thing to -- to recognize is that even at
6 current pricing flavored beers are generally positioned
7 at the -- the high end of the beer market. Say akin to
8 say a Heinekin pricing versus, say, a very cheap -- a
9 very cheap inexpensive beer.
10 MIKE HALE: Great. Thank you very much.
11 Any last comments?
12 All right. Well, I want to thank all -- all
13 the speakers. Clearly there's a couple sides here. We
14 value your input. We encourage you to follow this up
15 with written -- a written response. It's very important
16 to us.
17 Again, any resources, technical language, what
18 not you can supply us would -- would be a big help. At
19 the front door out there we have copies of the sign-up
20 sheet, if any of you would like to pick one of those up.
21 And we also have available the -- the interested parties
22 submissions to date and the -- the initial discussion
23 paper and today's agenda.
24 I'd remind you the critical date coming up on
25 your written submissions is March 16th. That's when we
26 ask you to have your responses to this meeting and the
27 initial discussion paper to us, and from that staff will
28 develop the second issue paper, which will be mailed on

1 May 4th. Then our second interested parties meeting
2 will be on May 17th.
3 So, again, thank you very much and we greatly
4 appreciate your input.
5 ---oOo---
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1 REPORTER'SCERTIFICATE

2

3 State of California)

4) ss.

5 County of Sacramento)

6

7 I, JULI PRICE JACKSON Hearing Reporter for the

8 California State Board of Equalization certify that on

9 February 22, 2007 I recorded verbatim, in shorthand, to

10 the best of my ability, the proceedings in the

11 above-entitled hearing; that I transcribed the shorthand

12 writing into typewriting; and that the preceding pages 1

13 through 11, 17 through 23, 30 through 44 and 59 through

14 71 constitute a complete and accurate transcription of

15 the shorthand writing.

16

17 Dated: March 4, 2007.

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21 _____

22 JULI PRICE JACKSON

23 Hearing Reporter

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1 REPORTER'S CERTIFICATE

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3 State of California)

4) ss.

5 County of Sacramento)

6

7 I, BEVERLY D. TOMS, Hearing Reporter for the

8 California State Board of Equalization certify that on

9 February 22, 2007 I recorded verbatim, in shorthand, to

10 the best of my ability, the proceedings in the

11 above-entitled hearing; that I transcribed the shorthand

12 writing into typewriting; and that the preceding pages,

13 page 12 through 16, 24 through 29, 45 through 58 and 72

14 through 85 constitute a complete and accurate

15 transcription of the shorthand writing.

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17 Dated: March 5, 2007.

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22 _____

23 BEVERLY D. TOMS

24 Hearing Reporter

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