



Special Notice

CALIFORNIA STATE
BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CA 95814

Special Notice to Wine Growers and Importers

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www.boe.ca.gov

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800-400-7115
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800-735-2929



The Board of Equalization (BOE) approved regulations necessary to clarify the definition of "distilled spirits" under the Alcoholic Beverage Tax Law. The regulations were approved by the Office of Administrative Law (OAL) and became fully operative on October 1, 2008.

The regulations create a rebuttable presumption that all alcoholic beverages, except wine, as defined by Business and Professions Code section 23007, contain 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products and are "distilled spirits." The regulations also prescribe a procedure for rebutting this presumption.

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

Please carefully review the statutory definition of wine and the new Alcoholic Beverage Tax Regulations. In the event you determine that the alcoholic beverages you produce and/or import may not meet the definition of wine, you should consider whether a report to rebut the presumption (BOE-505) should be filed.

For your convenience, the definition of wine is provided below, along with a summary of the new Alcoholic Beverage Tax Regulations 2558, 2559, 2559.1, 2559.3, and 2559.5. For the full text of the regulations, visit www.boe.ca.gov/sptaxprog/sptaxregs.htm.

Business and Professions Code section 23007. "Wine"

"Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine.

Nothing contained in this section affects or limits the power, authority, or duty of the State Department of Health Services in the enforcement of the laws directed toward preventing the manufacture, production, sale, or transportation of adulterated, misbranded, or mislabeled alcoholic beverages, and the definition of "wine" contained in this section is limited strictly to the purposes of this division and does not extend to, or repeal by implication, any adulterated, misbranded, or mislabeled alcoholic beverages.

Regulation 2558. Distilled Spirits

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

Regulation 2559. Presumption - Distilled Spirits

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

Regulation 2559.1. Rebuttable Presumption - Distilled Spirits

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

Regulation 2559.3. Internet List

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

Regulation 2559.5. Correct Classification

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

If you have any questions regarding this notice, please call our Taxpayer Information Section at 800-400-7115 (TDD/TTY: 800-735-2929). Or you may contact the Excise Taxes Division directly at 916-327-4208. Staff are available weekdays from 8:00 a.m. to 5:00 p.m., Pacific time, except state holidays.