

AGENDA — August 14, 2007, Business Taxes Committee Meeting
Flavored Malt Beverages (FMB)

Action Item	Regulatory Language Prepared by Staff at the Direction of the Board
<p>Action 1 — Issue Paper Alternative 1</p>	<p><u>Regulation 2558. DISTILLED SPIRITS.</u></p> <p><u>Effective July 1, 2008, any alcoholic beverage, except wine as defined by Business and Professions Code section 23007, which contains 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products, is a distilled spirit.</u></p> <p><u>Regulation 2559. PRESUMPTION - DISTILLED SPIRITS.</u></p> <p><u>Effective July 1, 2008, unless the contrary is established, any alcoholic beverage, except wine as defined by Business and Professions Code section 23007, is presumed to contain 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of agricultural products.</u></p> <p><u>Regulation 2559.1. REBUTTABLE PRESUMPTION - DISTILLED SPIRITS.</u></p> <p><u>The presumption in Regulation 2559 may be rebutted by the manufacturer of the alcoholic beverage filing a report, under penalty of perjury, with the Board stating that the alcoholic beverage contains less than 0.5 percent alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of agricultural products and specifying the sources of the alcohol content of the alcoholic beverage, including the alcohol by volume derived from flavors or other ingredients containing alcohol obtained by distillation. Additionally, the Board may require a copy of the manufacturer's "Statement of Process" or "Formula" filed with the Alcohol and Tobacco Tax Trade Bureau, its predecessor agency or successor agency.</u></p> <p><u>Regulation 2559.3. INTERNET LIST.</u></p> <p><u>Not later than July 1, 2008, and updated on a quarterly basis thereafter, the Board shall develop, publish and maintain on its Internet site a listing of all alcoholic beverages that have been found, in the Board's discretion, to have successfully rebutted the presumption set forth in Regulation 2559.</u></p> <p><u>Regulation 2559.5. CORRECT CLASSIFICATION.</u></p> <p><u>A taxpayer will be deemed to have correctly classified an alcoholic beverage for purposes of tax reporting if at the time taxes were incurred, the alcoholic beverage was included on the Board's list pursuant to Regulation 2559.3.</u></p>

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Action Item	Regulatory Language Proposed by Petitioners in County of Santa Clara, et al. v. State Board of Equalization (San Francisco Superior Court Case No. 06-506789)
Action 1 — Issue Paper Alternative 2	<p><u>Regulation 2500. RECORDS.</u></p> <p>A taxpayer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901. <u>In addition to the records described therein, commencing July 1, 2004, a taxpayer that manufactures any alcoholic beverage shall annually submit a statement for each of the taxpayer's alcoholic beverage products indicating whether that beverage product contains alcohol produced through distillation, and if so, stating the percentage of such product's total alcohol content derived from distilled spirits. The taxpayer shall make this statement under penalty of perjury.</u></p>

Action Item	Make No Change to Regulatory Language
Action 1 — Issue Paper Alternative 3	Make no change and continue to tax FMB as beer.