



Special Notice

New Regulations Will Cause Certain Non-Wine Alcoholic Beverages To Be Taxed As Distilled Spirits

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On April 8, 2008, 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 are effective, in part, in July 2008, and fully operative on October 1, 2008.

The regulations approved by the OAL clarify the definition of "distilled spirits," create a rebuttable presumption that non-wine alcoholic beverages, including flavored malt beverages, are "distilled spirits," not "beer," and prescribe a procedure for rebutting the presumption.

Currently, "beer" is taxed at 20 cents per gallon and "distilled spirits" are taxed at \$3.30 per gallon. Effective October 1, 2008, *unless the presumption is rebutted*, all non-wine alcoholic beverages will be taxed at the "distilled spirits" tax rate of \$3.30 per gallon.

These regulations are for tax purposes only and do not impact the Alcoholic Beverage Control Board's licensing of alcoholic beverages.

Summary of the Alcoholic Beverage Tax Law regulations adopted by the Board and approved by the Office of Administrative Law:

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. Clarity is necessary because certain alcoholic beverages like flavored malt beverages potentially fall under both the definition of "beer" and "distilled spirits."

Regulation 2559. *Presumption - Distilled Spirits*

Effective October 1, 2008, this regulation establishes 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."

Please note: Even traditional beer products are subject to the rebuttable presumption.

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. Such a rebuttal and verification process is necessary to ensure that the correct amount of tax is being reported and paid.

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. An Internet list was selected because it is the most efficient step to provide taxpayers with the most current information for reporting purposes under the Alcoholic Beverage Tax Law.

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.

For the full text of the regulations or for additional information, visit www.boe.ca.gov.

Manufacturers of non-wine alcoholic beverage products are encouraged to review this material and file the alcoholic beverage product rebuttal form if the non-wine alcoholic beverages you manufacture contain less than 0.5 percent alcohol by volume from flavors or ingredients containing alcohol obtained from the distillation of fermented agricultural products.

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.