

Changes expected in definition of wine products

By Jerome E. Horton

The California Board of Equalization this week approved the Alcoholic Beverage Tax Regulation 2558.1 and authorized its publication, beginning the formal rule making process. The next step is a 45-day comment period which will lead to a public hearing in front of the board in May.

This new regulation clarifies the definition of wine products and the application of tax on wine-based products that contain distilled alcohol. To allow the industry a transition period, the regulation will be effective Jan. 1, 2012, upon approval by the Office of Administrative Law.

The proposed regulation will provide clear direction to the wine industry regarding the circumstances under which a wine-based product will be classified as a distilled spirit for state tax purposes. This proposed regulation follows the same approach as the Distilled Spirits Regulations that went into effect on Oct. 1, 2008, which the board adopted primarily to address the proper taxation of Flavored Malt Beverages (FMBs). This proposed regulation clarifies the definition of wine, specifying that any wine-based product that contains substantial amounts of distilled alcohol, from sources other than the agricultural product from which the wine is produced, will be taxed as a distilled spirit, not as a wine.

E.&J. Gallo Winery representative Richard Grey spoke before the Board in support of the proposed regulation change. "This clarification of existing regulations will be helpful for the wine industry," he said.

The BOE will distribute notices to all alcoholic beverage tax program registrants prior to the regulation's effective date.

At the Nov. 17, 2010, meeting the board authorized an internal rule-making process that allowed staff to begin talking to interested parties about the proposed regulations. Initially the industry was split on how to define wine and which products should be taxed at the higher rate.

The resulting language of the regulation focuses on the type and amount of distilled alcohol added to the wine and follows the same approach taken in drafting the Distilled Spirits Regulations to properly classify alcoholic beverages like FMBs.

The excise tax on beer and wine is generally paid by manufacturers, wine growers, and importers. Sellers of beer and wine must pay the excise tax if the tax was not paid by the manufacturers, winegrowers, or importers. In general, the excise tax on distilled spirits is collected from retailers, by distilled spirits wholesalers, at the time of sale to the retailer. Between fiscal years 2007-08 through 2009-10, excise tax collections from beer and wine averaged \$157.9 million, and collections from distilled spirits averaged \$165.5 million.

Jerome E. Horton is the Fourth District member of the California State Board of Equalization, representing more than 8.5 million residents in Los Angeles County.