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County Lawsuit Having an Impact on Issue of Flavored Malt Beverage Classification

Board of Equalization Opening Door to Review Alcopops Classification, Tax Rate

SAN JOSE, CALIF.— On Nov. 15, the County of Santa Clara filed suit against the California State Board of Equalization (BOE) for the mischaracterization of alcopops alcoholic beverages as malt beverages instead of distilled spirits. The BOE has now decided to begin public hearings to discuss the classification and appropriate tax rate for flavored malt beverages known as “alcopops.” The current classification of alcopops as beer or malt beverages results in a lower excise tax, cheaper retail prices, and easier access for minors.

On Tuesday, high school students from Friday Night Live, a statewide program that promotes healthy lifestyles free of alcohol, tobacco, or other substance abuse among youth, petitioned members of the BOE urging them to properly tax alcopops as distilled spirits instead of as beer in order to reduce accessibility of this product to minors. The students' petition seeks the same relief as the lawsuit filed last month by the County.

“The students’ stance on this matter is very compelling,” said Santa Clara County Counsel Ann Miller Ravel. “We support them in the effort to restrict minors’ access to these distilled spirits.”

Counsel for the County, the firm of Renne, Sloan, Holtzman & Sakai, also addressed the BOE during Tuesday's meeting to educate members on the proper interpretation of the law and the financial impact related to its failure to properly tax the alcopops as distilled spirits. Initially, during the tense meeting, the BOE voted 2-2 effectively denying the students’ petition. BOE Chairman John Chiang was not present for the vote. The following morning, the BOE reconsidered. With Chiang weighing in, it voted 3-2 to accept the petition and initiate the rule-making process. The new vote opens the door for the BOE to hold a series of public meetings to discuss tax rates and product classification.

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“We are hopeful that the state Board of Equalization will do the right thing,” Ravel said. “We will be monitoring their progress toward taxing these beverages appropriately.”

The County has agreed to temporarily suspend prosecution of the lawsuit to allow the BOE to complete the rule making process with the hope that it will take appropriate action for reclassification, as well as begin collecting the \$40 million the State is continuing to lose annually.

BACKGROUND

In *Santa Clara County v. Board of Equalization*, the County stated that alcopops contain distilled spirits and should be classified accordingly. Beer is taxed at a rate of \$.20 per gallon while distilled spirits are taxed at a rate of \$3.30 per gallon. The improper characterization has caused a significant loss in excise tax revenue to the State and to the County. The mischaracterization hits the community two fold—loss in tax revenue, and lower prices and more locations for minors to access alcopops beverages.

In the lawsuit, the County is seeking: 1) The Board of Equalization to immediately classify and tax flavored malt beverages as distilled spirits, and to seek past taxes due on sales of flavored malt beverages from manufacturers, distributors, wholesalers and retailers; 2) The Board of Equalization to issue a declaration stating that flavored malt beverages containing any measurable amount of distilled spirits are distilled spirits under the Alcoholic Beverage Control Act and the Alcoholic Beverage Tax Law; and 3) Stop the Board of Equalization from continuing its practice of classifying and taxing flavored malt beverages containing distilled spirits as beer.

If characterized as distilled spirits, alcopops could not be sold by retailers with only beer-and-wine licenses, such as convenience stores, and would be taxed at a much higher rate making it more expensive to purchase. The cost would increase as much as \$2 per six pack.

Because alcopops are taxed as beer instead of distilled spirits, they are sold at a significantly lower price, making them more appealing and more accessible to minors. Labeled as “entry-level” beverages by the alcohol industry, they are popular among teenagers, particularly young teenage girls. Marketing strategies encourage youth consumption. According to the Center on Alcohol Marketing and Youth (CAMY), alcopops are promoted in media programming and Internet sets popular with underage youth.

Alcopops, known as Flavored Alcoholic Beverages (FABs), can be found under brand names such as Smirnoff Ice, Bacardi Silver, Mike’s Hard Lemonade, and Skyy Blue. FABs are also called “alcopops” because of their similarity to soda pop in flavor and sweetness – soda pop laced with hard liquor. The alcohol taste in FABs is concealed by sweet, fruity flavors that serve as a bridge between nonalcoholic beverages such as soft drinks and the harsher tastes of traditional alcohol products.

According to the National Institute on Drug Abuse, FABs are popular with junior and senior high school students: in a 2005 survey, 12.9 percent of 8th graders, 23.1 percent of 10th graders, and 30.5 percent of 12th graders report consuming alcopops within the last 30 days. Girls are much more likely to consume FABs than boys. According to the American Medical Association, more than 60 percent of teen girls who have seen TV, print or in-store ads have also tried alcopops. And more than one in six teen girls drink alcopops every six months or more often.