

Transcript of Business Taxes Committee of The California State Board of Equalization (BOE)

Sacramento, California, August 14, 2007

Statement by Betty Yee, Chairwoman, Business Taxes Committee



We've heard a great deal of comment from both sides of this issue and let me just say from the outset that I intend to support the proposed regulation as developed by staff because it is an important element that can make a difference in the human toll and suffering, particularly among our youth, for underage drinking.

I also want to acknowledge the advocacy movement that's been created around this issue involving our youth. Several of us on the Board have had the opportunity to meet with dozens of youth over the last several months to hear their perspectives and experiences among their peers around the consumption of flavored malt beverages...

The Board's action here today, if we decide to adopt the reg—any of the regulations before us calling for a change is really just the begin—beginning of the work to minimize access to and consumption of flavored malt beverages by underage drinkers...

And at the end of the day if we're going to do something here, I feel a great deal about how to make it work to make sure it does make a difference in the lives of our youth and their health...I want to just lay that out, we've had numerous meetings. I think many of us up on the dais have had numerous meetings with both sides, certainly with staff and this is not an easy task but I do think on balance we ought not lose sight of the overarching policy concern.

Statement by Judy Chu, BOE Member



I think it's really important to take this step. When flavored malt beverages were invented in the '90s they did not come under scrutiny. They remained in the gray area all these years. And yet they start with a fermented base of beer and then are infused with a distilled liquor flavoring.

And so, what is it? Is it beer or is it distilled liquor? Clarity is needed and this alternative says that these products are indeed distilled spirits.

It's critical for the BOE to provide accuracy on this issue and to issue a ruling so that there is a taxation ruling that—that reflects its true makeup as a beverage.

Now, the opposition says that we don't have the authority and says that—that we in the State must follow Federal law according to Government Code 32152, but I look at the Revenue and Taxation Code 32451, which says that the Board has the authority to promulgate regulations relating to the administration and enforcement of the Alcoholic Beverage Tax Law. And that while we have generally deferred to ABC regarding the classification of alcoholic beverages, the Board retains the ability to classify such beverages for purposes of taxation.

Now, we can choose, however, to diverge from the ABC classification system and we are not bound to follow Federal law in this regard. And that's what I think we should do, diverge from Federal law and diverge from the ABC. I wish the ABC would come along with us, but I think this is an important first step.

Now, let me say that this issue has come a long way. I am actually voting in a consistent

way to when the issue was brought up in the Assembly in the summer of 2005. I thought that it should have been classified as distilled liquor then. But it didn't go anywhere, and thank goodness the young people did not give up.

They brought the issue to the Board of Equalization in December 2006, and have followed through every step of the way in these nine months. Though the issue that is before us has to do with accurate taxation of flavored malt beverages, I believe that the ultimate effect of this taxation will be very positive. The ruling will send a signal to youth that these drinks are hard liquor because these drinks will have costs that are similar to hard liquor. It will make it harder for young people to access this drink, and that can only be helpful in reducing underage drinking.

Statement by John Chiang, State Controller



"Flavored malt beverages should be taxed as distilled spirits because they fall under the category of distilled spirits as written in California law.

"The Attorney General has found that beer is any alcoholic beverage obtained by fermentation while distilled spirits are beverages that contain any amount, mixture or dilution of distilled spirits.

"This is where the argument over whether alcopops should be treated as liquor or beer begins and ends. Specifically, alcopops include alcohol from a distillation process as opposed to being solely from fermentation. That puts these alcoholic beverages in the distilled spirit category rather than the beer category. Especially as the BOE regulations would use the basic .5 percent alcohol content threshold as the governing standard for classification.

"While today's vote," which I'm anticipating based on the comments—"While today's vote is about fair taxation, taxing flavored malt beverages as liquor will also help reduce their popularity with young people by simply pricing the product out of their reach.

Taxing alcopops as liquor doesn't address all the impacts or the treatment of underage drinking and there is more work to do.