



June 16, 2021

Hon. Paul Sarlo, Chairman
New Jersey Senate Budget & Appropriations Committee
State House Annex
P.O. Box 068
Trenton, NJ 08625-0068

Dear Senator Sarlo,

This letter is submitted on behalf of the Distilled Spirits Council of the United States (DISCUS), a national trade association representing producers and marketers of distilled spirits sold in the United States, in support of SB 3452, sponsored by Senate President Stephen Sweeney. As you know, SB 3452, as amended, seeks to define low alcohol-by-volume (ABV) spirits and cider as products containing an alcohol content up to 9.9 percent and set the state excise tax rate for those products at \$0.12/gallon. The products that will primarily benefit from this legislation are ready-to-drink products or RTDs.

There has been tremendous innovation and transformation in the RTD category over the past several years originating from large and small beer, wine and spirits producers. In today's marketplace, consumers can choose from malt-based hard seltzers, wine-based flavored spritzers or canned/pre-mixed cocktails produced with a distilled spirits base.

In 2020, there were approximately 13 million cases of spirits-based RTDs sold in the United States. Based on the trajectory from other countries, the U.S. market is expected to grow to more than 200 million cases benefiting consumers and state coffers if there is fair and equitable taxation. The pandemic has accelerated the growth of these products as adult consumers look to recreate the cocktail experience at home with convenient, canned cocktails made with premium spirits, fresh ingredients and low ABV.

Unfortunately, spirits consumers are forced to pay much higher taxes for a spirits-based RTD product even if the product has the exact same or similar ABV as a malt- or wine-based RTD. This excessive tax burden is also a steep hurdle for any New Jersey small distiller that may want to enter this growing category. In fact, according to a recent survey of craft distillers, 62 percent of those not currently producing RTD products cited the higher tax rate as a barrier to entering the market.

New Jersey is only one of many states taking a closer look at the issues that prevent consumers from having equal access to spirits-based RTD products in the marketplace and working to ensure those products are being taxed fairly to support consumers and small businesses in their communities. Similarly, New Jersey is not the only state in which the beer industry has decried this type of consumer-friendly legislation and leveled myth-based criticisms at the spirits industry.

The attached document entitled *MYTH V. FACT: New Jersey RTD Taxation* expands on

some of these misrepresentations, which I will summarize here:

- 1) It is a myth that reducing taxes on spirits-based RTD products to the same level as beer-based RTD products with the same alcohol content will result in negative economic impacts for New Jersey.

It is a fact that based on projected sales, our economic analysis indicates that the New Jersey Treasury would realize more than \$34 million in new tax revenue from this category within 3 years based on the new excise tax and New Jersey's current sales tax rate. Equalizing the tax on low alcohol products will only increase jobs in New Jersey's spirits industry, which today supports more than 55,000 New Jersey jobs and \$1.5 billion in wages.

- 2) It is a myth that distilled spirits are "harder" than beer or wine. The current New Jersey Driving Manual, issued by the NJ Motor Vehicle Commission (MVC), states:

"It's important to remember that it does not matter what alcoholic beverage is consumed. There is just as much alcohol in the average beer as there is in the average drink of whiskey or wine. For example, 1 ½ ounce of 80-proof whiskey, 12 ounces of beer or 5 ounces of wine all contain the same amount of alcohol: about ½ ounce of alcohol per drink."

It is a fact that, in addition to the NJ MVC, the *Dietary Guidelines for Americans, 2020-2025*, which is the basis for federal nutrition policy in the United States, defines drink equivalents as follows: "One alcoholic drink equivalent is defined as containing 14 grams (0.6 fl oz) of pure alcohol. The following count as one alcoholic drink equivalent: 12 fluid ounces of regular beer (5% alcohol), 5 fluid ounces of wine (12% alcohol), or 1.5 fluid ounces of 80 proof distilled spirits (40% alcohol)." (See page 49, www.dietaryguidelines.gov)

Put simply, there is no beverage of moderation, only the practice of moderation.

- 3) It is a myth to suggest that an 8 percent or 9.9 percent ABV spirits-based RTD should not be treated as a "low-percentage alcohol" product.

It is a fact that one of the largest beer companies has launched a new 8 percent ABV malt-based RTD, stating on introduction that their strategy "...remains on giving our fans what they want...all with remaining competitive in the market." Additionally, a leader in the malt-based RTD category has launched an 8 percent ABV RTD product in a 16 ounce size, 33 percent larger than the more traditional 12 ounce size.

It is truly a fact that the real reason for beer's opposition is to maintain a competitive advantage in the marketplace by limiting consumer choice.

Hon. Paul Sarlo
June 16, 2021
Page three

The spirits industry has been leading alcohol beverage product innovation for nearly two decades. Today, it is a major contributor to the state of New Jersey, generating nearly \$4.7 billion in economic activity and \$600 million to local communities and the state in taxes. Adoption of SB 3452 will continue to support this growth and expand upon the thousands of industry jobs across the Garden State.

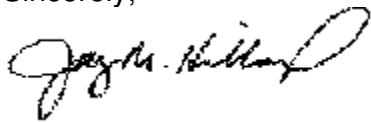
The last fact for Committee members to consider is that a 12 oz malt-based RTD with 9.9 percent ABV and a 12 oz spirits-based RTD with 9.9 percent ABV have the exact same alcohol content. To suggest by statement or policy that some forms of alcohol are “softer” than others sends a dangerous message when science has long recognized that standard servings of distilled spirits, beer and wine contain the same amount of alcohol. This is a critical aspect of responsible consumption.

Finally, for all the claims that the sky-will-fall made by the beer industry, should New Jersey adopt a fair and equal state tax rate, the state’s action will have no impact on the Federal Excise Tax rate currently imposed on low-alcohol spirits products, which will continue to be taxed at a rate nearly 400 percent higher than beer products of the same ABV. Beer will continue to enjoy a marketplace price advantage.

In addition to leveling the playing field in New Jersey, we believe this commonsense legislation will rectify the unfair tax and market access advantage that malt- and wine-based RTDs have compared to spirits-based RTDs with the same or similar alcohol content. We applaud Senator Sweeney’s sponsorship and support, and we urge the Committee’s support of SB 3452.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay M. Hibbard". The signature is fluid and cursive, written over a white background.

Jay M. Hibbard
Senior Vice President of State Public Policy

cc: Members of the New Jersey Budget & Appropriations Committee

MYTH V. FACT: New Jersey RTD Taxation



BACKGROUND

Legislation (SB 3452) is being considered by the New Jersey Legislature that would equalize the tax rate for spirits and beer products with 9.9 percent ABV or lower. This measure would put spirits-based and malt-/beer-based ready-to-drink (RTD) products on a level playing – benefitting New Jersey consumers and supporting local craft distilleries seeking to enter this rapidly growing market. The bill is sponsored by Senate President Steve Sweeney.

The facts below address inaccurate claims made by members of the beer industry, who seek to protect their competitive advantage in the marketplace and limit consumers access to spirits-based RTDs.

MYTH:

Reducing taxes on spirits-based RTD products in line with malt-/beer-based RTDs with the same alcohol content will result in negative economic impacts for New Jersey.

FACT:

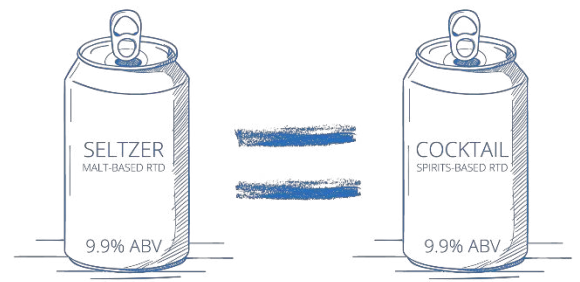
- According to a DISCUS economic analysis, under the proposed bill, New Jersey is projected to sell more than 6.7 million cases of spirits-based RTDs, worth nearly \$490 million at retail. Including the excise tax and sales tax, spirits-based RTD sales could generate more than \$34 million for the state treasury within 3 years.
- Reducing the tax on these products will boost New Jersey's spirits industry, which supports more than 55,000 jobs and \$1.5 billion in wages. The spirits industry is a major contributor to the state of New Jersey, generating nearly \$4.7 billion in economic activity and \$600 million to local communities and the state in taxes.

MYTH:

Distilled spirits are “harder” than beer or wine.

FACT:

A 12 oz malt-based RTD with 9.9 percent ABV and a 12 oz spirits-based RTD with 9.9 percent ABV have the exact same alcohol content.



- New Jersey's Driving Manual issued by the state government states:

“It’s important to remember that it does not matter what alcoholic beverage is consumed. There is just as much alcohol in the average beer as there is in the average drink of whiskey or wine. For example, 1 ½ ounce of 80-proof whiskey, 12 ounces of beer or 5 ounces of wine all contain the same amount of alcohol: about ½ ounce of alcohol per drink.”

- Additionally, the Dietary Guidelines for Americans, 2020-2025, which is the basis for federal nutrition policy in the United States, defines drink equivalents as follows: “One alcoholic drink equivalent is defined as containing 14 grams (0.6 fl oz) of pure alcohol. The following count as one alcoholic drink equivalent: 12 fluid ounces of regular beer (5% alcohol), 5 fluid ounces of wine (12% alcohol), or 1.5 fluid ounces of 80 proof distilled spirits (40% alcohol).” (See page 49, www.dietaryguidelines.gov.)
- Statements and policies that suggest spirits should be treated differently than beer and wine send a very dangerous message that some forms of alcohol are “softer” than others. Understanding that standard servings of distilled spirits, beer and wine contain the same amount of alcohol is a critical aspect of responsible consumption.
- Very simply, there is no beverage of moderation, only the practice of moderation.

MYTH:

The beer industry is concerned that an 8 percent ABV spirits-based RTD may be perceived as a “low-percentage alcohol” product.

FACT:

- One of the largest beer companies has launched a new 8 percent ABV malt-based RTD. In launching the product, the company’s VP of marketing stated, “Our strategy has and remains on giving our fans what they want and creating innovations that attract new drinkers...all with remaining competitive in the market.”
- A leader in the malt-based RTD category launched an 8 percent ABV RTD product that comes in 16 ounces, as well as the more traditional 12 ounce size.
- The real reason for beer’s opposition is to maintain a competitive advantage in the marketplace by limiting consumer choice.

CONCLUSION

The bottom line is there is no scientific, public safety or public policy basis to treat distilled spirits products differently than beer and wine – especially when the products, such as RTDs, have the exact same alcohol by volume. The government should not be in the business of picking winners and losers in the marketplace. Similar ABV products should have similar taxation. Period. The proposed legislation recognizes this fact and seeks to update New Jersey tax to treat products with similar ABV equally.