



DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

July 25, 2022

The Honorable Eric Tarr, Chairman
The Honorable Eric Householder, Chairman
Joint Standing Committee on Finance
1900 Kanawha Blvd., E
Charleston, WV 25305

Senator Tarr and Delegate Householder,

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, thank you for undertaking a study of the tax rates on spirits-based ready-to-drink (RTD) beverages.

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 distilled spirits.

In 2021, there were approximately 37 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 fairer, lower taxation. The pandemic accelerated the growth of these products as adult consumers look to recreate the cocktail experience at home with convenient, pre-mixed cocktails made with premium spirits, fresh ingredients and low alcohol content. Many of these are packaged in single-serve containers, such as a 12-ounce can, and others are packaged in larger containers for multiple serves.

Unfortunately, West Virginia 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 amount of alcohol as an RTD made with malt, sugar or wine. For example, at 6% alcohol by volume, the West Virginia tax rate on spirits-based RTDs is 35 times the tax rate on malt- and sugar-based beverages. The rate for malt- and sugar-based beverages is \$0.02 per 12-ounce can versus \$0.71 per 12-ounce can of a spirits-based beverage.

Currently, spirits-based RTDs are subject to the state spirits markup of 32% and handling and freight charges. We believe this pricing structure makes West Virginia less competitive in the region. Three neighboring states (Kentucky, and the fellow control states of Ohio and Virginia)

Distilled Spirits Council of the United States (DISCUS)

1250 Eye Street NW, Suite 400
Washington, DC 20005

already have reduced gallonage excise tax rates that apply to spirits-based RTDs. Spirits-based RTDs cost, on average, 15-20% more in West Virginia compared with all neighboring states except Pennsylvania. Pricing spirits-based RTDs according to market conditions would benefit consumers. Updating the taxation laws will allow consumers to enjoy these spirits-based RTDs at affordable prices and continue to generate great return for the state.

This excessive tax burden is also a steep hurdle for any West Virginia small distiller that may want to enter this growing category. In fact, according to a recent survey of craft distillers, 62% of those not currently producing RTD products cited the higher tax rate as a barrier to entering the market.

We applaud West Virginia for being one of many states taking a closer look at the issues that prevent consumers from having fairer 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 its communities. West Virginia could join the many other states which have enacted new laws in recent years to modernize taxation and regulations governing spirits-based RTDs, including several control states such as Iowa, Michigan, Mississippi, Virginia and most recently Vermont.

Some other segments in the beverage alcohol industry do not support greater access for spirits-based RTDs in the marketplace, or any reduction in the tax burden on these products. You may hear excuses of why a lower tax rate should not be granted to spirits-based RTD products, none of which hold up under scrutiny.

- 1) Reducing taxes on spirits-based RTD products to a lower, fairer rate, for example, the state's cider tax rate of \$0.226 per gallon, would have a positive economic impact for West Virginia. Our economic analysis indicates that the state of West Virginia would realize more than \$3 million in new tax revenue from this category within the next three to five years based on the new excise tax, coupled with the current sales tax rate, and by expanding retail access for the products. Adjusting the tax on low-alcohol products will increase jobs in West Virginia's spirits industry, which today supports more than 2,600 jobs and \$59 million in wages.
- 2) Distilled spirits are not "harder" than beer or wine. There is the same amount of alcohol in a standard beer as there is in the standard drink of wine or spirits. The West Virginia DMV Motorcycle Operator Manual states:

"A 12-ounce can of beer, a mixed drink with one shot of liquor and a 5-ounce glass of wine all contain the same amount of alcohol. It does not matter what beverage alcohol is consumed."

<https://transportation.wv.gov/DMV/DMVFormSearch/Motorcycle%20Operator%20Manual.pdf>

The West Virginia Governor's Highway Safety Program Impaired Driving Brochure states:

A can of beer, a glass of wine, or a wine cooler is just as intoxicating as a shot of liquor. They all contain approximately the same amount of alcohol."

<https://transportation.wv.gov/DMV/DMVFormSearch/Impaired-Brochure.pdf>

In addition to these West Virginia state publications, 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)."

www.dietaryguidelines.gov, page 49

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

The spirits industry has been leading beverage alcohol product innovation for nearly two decades. Today, the spirits industry is a major contributor to the state of West Virginia, generating nearly \$239 million in economic activity and \$48 million to local communities and the state in taxes. We urge you to consider legislation in the 2023 legislative session that will continue to support this growth and expand upon the thousands of industry jobs across the mountain state by lowering the tax rate for spirits-based ready-to-drink beverages.

We believe that modernizing laws related to spirits-based RTDs is a commonsense approach that would create a more level playing field for spirits-based RTDs with other RTDs made from other types of alcohol that have the same or similar alcohol content, which is good for consumers and producers alike.

As you prepare for the 2023 legislative session, DISCUS would be pleased to be a resource to you for any additional information regarding spirits-based RTDs or any other beverage alcohol policy. Thank you for your consideration.

Sincerely,

Andy Deloney
Vice President of State Public Policy