

ST 25-0039-GIL 07/17/2025 LIQUOR TAX

This letter discusses the taxability of saké under Article 8 of the Liquor Control Act.
235 ILCS 5/8-1. (This is a GIL.)

July 17, 2025

NAME
COMPANY
EMAIL

Dear NAME:

This letter is in response to your email dated May 15, 2025, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at <https://tax.illinois.gov/> to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your emails you have stated, in relevant part, and made inquiry as follows:

May 15, 2025 Email from COMPANY:

COMPANY is requesting a letter ruling regarding the taxation of new products being sold. The attached emails have been sent to our contacts at IDOR and their recommendation is to have a letter ruling as we believe these products should be classified as wine under.

NAME1, the founder of COMPANY1 products, is copied in this email just in case there are any further questions about the products.

Please let me know if any other information is needed or questions arise.
Thank you!!

April 15/2025 Email from COMPANY1:

I'm happy to help figure this out. To get started here, the Illinois regulations define Spirits and Wine in the following two definitions:

Sec. 1-3.02. "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

Sec. 1-3.03. "Wine" means any alcoholic beverage obtained by the fermentation of the natural contents of fruits, vegetables, or honey, containing sugar, including mead and such beverages when fortified by the addition of alcohol or spirits, as above defined.

As a starting point, the entire COMPANY1/PRODUCT portfolio is federally classified as Wine. Every product has a TTB COLA that clearly states the Wine classification. Every product is imported and taxed federally as a Wine. If necessary, we can provide customs documentation to show this.

Looking at the Illinois regulation, let's start with Wines. Wines are defined as any beverage "obtained by fermentation" of the natural contents of fruit, vegetables or honey, containing sugar (Note: Rice wine, or sake, is obtained by fermentation of rice, which by definition is a fruit), including mead and such beverages when fortified by the addition of alcohol or spirits (Note: this "fortified by" inclusion precisely allows wine "obtained by fermentation" to be fortified with things that are listed in the Spirits definition such as rum, whiskey and other spirituous liquors, which includes vodka and tequila). On the contrary, Spirits are defined as any beverage which contains alcohol "obtained by distillation". I believe that whoever looked at the Spirits definition did not properly understand the rationale behind wording in the two definitions - it's admittedly a bit confusing. The Wine definition clearly allows for Wine to be fortified with the addition of Spirits. As a matter of fact, all ports, sherries, vermouths and other fortified wines are made in this exact manner. And while the label does not say it, all orange wines, agave wines and grape wines with spirits added are made in this exact manner. All are Wines that are fortified with Spirits. But they are still classified exactly as Wine. If Wine was not permitted to be fortified, it certainly would not call out "fortified by" in its very definition.

To remove any doubt about the difference between "obtained by fermentation" and "obtained by distillation", I'd like to get technical.

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Distillation is the process of purifying an already fermented liquid by heating and cooling (in other words, you cannot distill any liquid; that liquid must first be fermented). When heated, the liquid is converted into vapor and then cooled back into a liquid again. When this is done over and over again, the resulting distillate becomes highly condensed and much higher ABV (eg, [sic] in the case of vodka, this can be up to 96% ABV). The resulting liquid from distillation of a fermented liquid is a distilled spirit, which Illinois would call a Spirit. When a Spirit is said to be "obtained by distillation", this is the process described. If a liquid starts out as a Spirit and is mixed with natural flavors and water (e.g., PRODUCT1), it is still a Spirit.

Fermentation is defined as the chemical breakdown of a substance by microorganisms (such as yeast). When that substance is fruit (or perhaps rice), yeast converts the sugars into alcohol and carbon dioxide. The resulting liquid is called Wine. WWhen [sic] a Wine is said to be "obtained by fermentation", this is the process described. ine [sic] obtained by fermentation maxes out around 14-15% ABV. When a Wine is said to be obtained by fermentation with the addition of spirits, this is called fortification. Fortification does not change the process described. Fortification also does not change the classification of products from Wines to Spirits. By themselves, distilled spirits are not fortified; rather, they are what is used to fortify. Nothing else can be used to fortify Wine but distilled spirits. Wine with the addition of distilled spirits is still Wine.

I hope this firmly clarifies that PRODUCT is, by Illinois definition, Wine. This is not the first time that I have helped state regulators on this "obtained by" matter. In fact, I have had some variation of this conversation with state regulators in different states all around the country, ranging from the Pacific Northwest (e.g., Oregon) Midwest (e.g., Arkansas), Mid Atlantic (e.g., North Carolina) and South (e.g., Texas). Many states use the same "obtained by" language and are confused or misinterpret the meaning of the language. Once it is understood that there is a meaningful difference between "obtained by fermentation" and "obtained by distillation", things become clear. I'm more than happy to help clarify this so we can proceed as a Wine in Illinois.

Please let me know if someone would like to talk to me and learn more. I am more than happy to help get this sorted out. Please excuse any typos above as I'm traveling and out of the country at the moment with family.

Sec. 1-3.03. "Wine" means any alcoholic beverage obtained by the fermentation of the natural contents of fruits, vegetables, or honey, containing sugar, including mead and such beverages when fortified by the

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addition of alcohol or spirits, as above defined.
(Source: P.A. 102-442, eff. 8-20-21.)

April 8, 2025 Email from COMPANY:

Below is how the IDOR legal department wants to classify the COMPANY1 items. IDOR wants to classify them as a spirit, meaning the items would be taxed at \$8.55/gallon, not at the Sake level of \$0.231/gallon. Can you guys please reach out to the supplier and find out if they had any documentation from the previous distributor about the classification?? Or how they were reporting taxes to the state?? I sent IDOR the attached documents which state they Sake based, but that's not how they are interpreting it.

We might need to bubble this up but wanted to start with you guys first. Please see what you can find out, would like to have these products correct before too many sales are recorded.

DEPARTMENT'S RESPONSE:

The Illinois Liquor Control Act of 1934 (Act) regulates the sale and distribution of alcoholic liquors in Illinois. 235 ILCS 5. Article VIII of the Act provides for the taxation of alcoholic liquors. Except for the duties imposed on the Department of Revenue pursuant to Article VIII, the Illinois Liquor Control Commission is responsible for administering and enforcing the Act.

A gallonage tax is imposed upon the privilege of engaging in business as a manufacturer or importing distributor of alcoholic liquor (235 ILCS 5/8-1). The Act contains four classifications of alcoholic liquor for tax purposes: beer, cider, wine, and spirits. Beer is taxed at the rate of \$0.231 per gallon. Cider containing not less than 0.5% alcohol by volume (ABV) nor more than 7% ABV is taxed at the rate of \$0.231 per gallon. Wine, other than cider containing less than 7% ABV, is taxed at the rate of \$1.39 per gallon. Alcohol and spirits are taxed at the rate of \$8.55 per gallon.

The Act contains definitions, in relevant part, for alcoholic liquor, beer, cider, wine, and spirits:

"Alcoholic liquor" includes alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being. "Alcoholic liquor" also includes alcohol-infused products. (235 ILCS 5/1-3.05)

"Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes synthetic ethyl alcohol. It does not include denatured alcohol or wood alcohol. (235 ILCS 5/1-3.01)

"Beer" means a beverage obtained by the alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter and the like. (235 ILCS 5/1-3.04)

"Cider" means any alcoholic beverage obtained by the alcohol fermentation of the juice of apples or pears including, but not limited to, flavored, sparkling, or carbonated cider. (235 ILCS 5/8-1)

"Wine" means any alcoholic beverage obtained by the fermentation of the natural contents of fruits, or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits, as above defined. (235 ILCS 5/1-3.03)

"Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances. (235 ILCS 5/1-3.02)

The Department, when faced with the question of the proper classification of a new product, must review the nature of the product and the intent of the Act. The Department must rely on the information provided by the person requesting the ruling. Generally, the ingredients and the manufacturing process for a beverage are proprietary, confidential, and unavailable to the Department. Based on the information provided, the Department must place the product in one of the four classifications for tax purposes.

In *Federated Distributors*, the court was faced with the question whether "new products" containing alcohol should be classified as wine or spirits for the purpose of taxation under the Act. The parties had stipulated that the new products were "produced from any combination of water, flavoring, fruit juices, vegetable juices, sugar, sugar syrup, preservatives and artificial carbonation, and are fortified by the addition of spirits." *Federated Distributors*, 125 Ill.2d at 6. The court also noted wine coolers and the new products were not "produced" by fermentation or distillation but were manufactured by adding wine or spirits to fruit juices. *Id.* at 20.

The court reviewed the new products and compared them to wine coolers, which were already being sold and taxed as wine. The court approached the issue as one of uniformity. The court held "that, while the majority of the Liquor Control Act is regulatory in nature, article VIII of the Act is a tax for revenue purposes and is therefore subject to the uniformity clause of the Illinois Constitution of 1970." *Federated Distributors*, 125 Ill.2d at 8-9. "The validity of a tax classification under the uniformity clause is to be determined based on the 'real and substantial differences' test and on whether the classification bears some reasonable relationship to the object of the legislation or to public policy." *Id.* at 15.

The court noted that alcohol content alone is not necessarily the sole basis for classifying an alcoholic beverage for taxation purposes.

It is well settled that the legislature has broad powers in the area of establishing classifications to define the subjects of taxation. (*Klein v. Hulman* (1966, 34 Ill.2d 343) Those broad powers, however, are limited in Illinois by the constitutional mandate of the uniformity clause. Uniformity need not necessarily dictate, however, that merely because two products have the same alcoholic content that they must be taxed at the same rate, i.e., a 6% alcohol by volume beer and a 6% alcohol by volume wine cooler. A determination of real and substantial differences is not confined or limited to a review of only one aspect of a product, and in reaching our decision today we have not so limited our review to an examination of only the alcoholic level of the beverage, but have also looked to the overall similarity of the products. To return to appellants argument, beer and wine coolers are, as our prior discussion indicates, very different products: one is made from grains and hops, the other begins with fruits and/or vegetables. Although both contain alcohol formed through the process of fermentation, beer must begin with the grain malted and is thereafter heated in the brewing process. Wine coolers contain fruit juices with some wine added to achieve a lower alcoholic content than is possible from wine alone. The products are very different. *Id.*, at 20-21.

The court determined that the only real difference between the two products was that the new products were essentially fruit juices fortified with the addition of spirits obtained through distillation and wine coolers were fruit juices fortified with the addition of wine obtained through fermentation. *Id.* at 6 and 15. The court concluded there was no real and substantial difference between the new products and wine coolers to justify taxing the new products at a different rate than wine coolers, and the new products should be taxed as wine containing less than 14% alcohol by volume. *Id.* Following *Federated Distributors*, Public Act 91-0038, effective June 15, 1999, removed the variable tax rate for wine based on percentage of ABV at or above 14%. As a result, all wine is subject to the same rate of tax, regardless of the ABV, and cider is the only beverage designated by percentage of ABV.

Saké falls within the definition of "beer" contained in the Internal Revenue Code (IRC). 26 U.S.C. 5052. The IRC definition of "beer" is consistent with the definition of "beer" in the Act. 235 ILCS 5/1-3.04. Saké products also fall within the definition of "malt beverage" established by the Alcohol and Tobacco Tax and Trade Bureau (TTB). 27 C.F.R. 7.10. The TTB definition of "beer" is also consistent with the definition of "beer" in the Act. Of note, for purposes of the Federal Alcohol Administration Act, saké is labeled as a wine. 27 USC § 211. Although the federal definitions are not controlling, they do provide important guidance to the Department. When saké has had "brewer's alcohol or distilled spirits added during any stage of manufacturing", the TTB, tax it at the distilled spirits rate at \$13.50 per gallon.¹

The definition of "spirits" under the Act, "means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances." 235 ILCS 5/1-3.02. Not all components of the beverage must be "obtained by distillation" to be considered a "spirit" as long as an ingredient of the beverage "contains alcohol obtained by distillation" and is "blended, or otherwise mixed with alcohol or other substances." For example, a pre-mixed, canned cocktail containing tequila, vodka, and saké would be considered a spirit even though saké is not obtained by distillation.

Generally, when a beverage includes the addition of a spirit, as defined above, such beverage will be classified as a "spirit" and taxed accordingly. One noted exception is fortified wines. While the Act does not include a specific definition of "fortified wine", Merriam Webster defines it as "a wine (such as sherry) to which alcohol usually in the form of grape brandy has been added during or after fermentation." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/fortified%20wine>. Accessed 15 July, 2025. Fortified wines usually have a higher ABV than do regular wines. The addition of alcohol or spirits to any alcoholic liquor does not in itself make it "fortified".

Only the addition of spirits to wine will remain taxable as wine. Fortification is not merely blending or mixing of spirits with wine. In fact, there is much more to the process of making a fortified wine. "Fortified wines are characterized by a high alcohol content resulting from the addition of distilled spirits, usually a neutral grape spirit, and produced under oxidative conditions which determine the fortified wines' typical flavor and aroma profile."² Fortification of wine occurs during or after fermentation, but the underlying

¹ See <https://www.ttb.gov/regulated-commodities/beverage-alcohol/sake/standard-of-fill>.

² Abreu T, Perestrelo R, Bordiga M, Locatelli M, Daniel Coisson J, Câmara JS. The Flavor Chemistry of Fortified Wines-A Comprehensive Approach. Foods. 2021, May 29; 10(6): 1239. doi: 10.3390/foods10061239. PMID: 34072391; PMCID: PMC8229606. available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC8229606/>.

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product remains wine. The United States Code dictates the proper cellar treatment of natural wine:

The addition to natural wine, or to concentrated or unconcentrated juice or must, from one kind of fruit, of wine spirits (whether or not taxpaid) distilled in the United States from the same kind of fruit; except that (A) the wine, juice, or concentrate shall not have an alcoholic content in excess of 24 percent by volume after the addition of wine spirits, and (B) in the case of still wines, wine spirits may be added in any State only to natural wines, produced by fermentation in bonded wine cellars located within the same State. 26 U.S.C. 5382(b)(2).

However, the Act does not provide an exception from the definition of "spirit" for the addition of alcohol or spirits to a beer like it does for wine. As such, saké when combined with other alcohol or spirits will be treated as a spirit for purposes of the Act. Further, the Department has determined that products containing alcohol obtained by distillation as an ingredient be classified as spirits and taxed accordingly.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

Kimberly Rossini
Associate Counsel

KAR:slc