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Chief, Regulations and Procedures Division
Tax and Trade Bureau
PO Box 50221
Washington, D.C. 20031-0221

RE: TTB Notice #4, Flavored Malt Beverages and Related Proposals (2001 R-1 36P)
Dear Sir or Madam:

Eldos supports the proposed regulations for products marketed as flavored malt beverages (FMBs), as set forth by the Tax and Trade Bureau (TTB) in TTB Notice No. 4 of March 2003. It is appropriate that the limit of alcohol in a "beer" derived from distilled spirits be limited to 0.5% alcohol by volume. The 0.5% alcohol by volume limit is the standard for determining the tax status of beer, wine and fruit flavor concentrates, as well as juices and sodas that contain small amounts of alcohol. The 0.5% standard is fair across the board for all beverages, and should apply to FMBs with added flavors as well.

The perception of the general public is that beer is a beverage with malt flavor and hop bitterness, flavor and aroma. Many small brewers currently produce flavored malt beverages that have these characteristics. The products currently classified as FMBs and recently analyzed by TTB display none of these characteristics, and should not be considered or taxed as beer. The manner of FMB production described in Notice No. 4 avoids many of the costs associated with the volume demands of beer production and storage, and enjoys an unfair competitive advantage over traditional and craft brewers, based on the regulations. I commend the TTB on recognizing the imbalance and the need to propose regulations. The TTB proposal asks for comment on alternative standards, such as whether the standard should be less than 50 percent of the final alcohol derived from spirits addition. This alternative limit would create a huge disruption to state governments who currently have regulations mirroring the federal standards. TTB has correctly analyzed state laws and regulations, and the 0.5% standard appears to eliminate the need for changes in a majority of states.

The beer industry has undergone a major revitalization in the past twenty-five years, with smaller brewers and brewpubs found in every state, every major metropolitan area, and many small towns. These small businesses employ tens of thousands of people. This is a sector of the alcoholic beverage industry that the federal government should foster and protect. The smaller players often rely on the goodwill and patronage of a single community or smaller geographic area. These businesses encourage responsible enjoyment of the unique attributes of beer, often with meals to complement a particular beer style.

The proposed regulations return fairness to the alcohol industry that has been compromised by recent entries in the FMB category. The number of microbreweries closing since the arrival of FMBs has exceeded the number of microbreweries opening, reversing the trend and weakening the industry. In summary, our company supports the proposed "0.5% standard" for FMBs for reasons of fairness and to protect the image of what the general public considers beer.

Sincerely,

Joseph P. Agrillo
Brewmaster
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