DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

January 17, 2023

Hon. Craig Headland, Chair
Hon. Jared Hagert, Vice Chair
North Dakota House Finance and Taxation Committee
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representatives Headland and Hagert:

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 HB 1303 entitled "Relating to alcoholic beverage tax on diluted beverages." HB 1303 seeks to establish a lower tax rate on "diluted beverages," also known as "ready-to-drink" (RTD) spirits products, containing less than 12.5% alcohol-by-volume (ABV). Currently, these products are taxed at the spirits tax rate of $2.50 per gallon, and HB 1303 would tax them at $0.60 per gallon, which is the current excise tax rate for wine containing 17-24% ABV.

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 fair and equitable 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 ABV options.

Unfortunately, North Dakota consumers are forced to pay much higher taxes for a spirits-based RTD products even if the product has the exact same or similar ABV as a malt-, sugar- or wine-based RTD. For example, at 5% ABV, the North Dakota tax rate on spirits-based RTDs is more than 15 times the malt- and sugar-based RTD state tax rate. The accompanying graphic starkly illustrates this contrast in the tax rates.

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

During the course of your debate, you may hear “reasons” why a lower tax rate should not be granted to spirits-based RTD products, none of which hold up under scrutiny.

1) It is a myth that providing a fairer tax rate for spirits-based RTD products will result in negative economic impacts for North Dakota.

   It is a fact that based on projected sales, our economic analysis indicates that the North Dakota Treasury would realize between $1.1 and $2.1 million over the next 3-5 years based on the new excise tax and North Dakota’s current sales tax rate. Equalizing the tax on low alcohol products will only increase jobs in North Dakota’s spirits industry, which today supports more than 3,300 jobs and $79 million in wages.

2) It is a myth that distilled spirits are “harder” than beer or wine.

   It is important to recognize that alcohol is alcohol. Drinking responsibly and in moderation depends on how much you drink, not whether that drink is made of beer (malt), sugar, wine or spirits. A malt-based RTD with 5% ABV has the exact same alcohol content as a spirits RTD with 5% ABV. There is no difference.

   Research shows the effects of ethanol, the pure alcohol that is in all beverage alcohol, on the body are the same regardless of its source. There is no scientific, public safety or public policy basis to differentiate between malt-based, sugar-based, wine-based and spirits-based RTDs each containing similar ABVs.

   <u>Put very simply, there is no beverage of moderation, only the practice of moderation.</u> 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 alcohol is alcohol.

The spirits industry has been leading beverage product innovation for nearly two decades. Today, it is a major contributor to the state of North Dakota, generating nearly $306 million in economic activity and $50 million to the state in tax revenue. Adoption of HB 1303 will continue to support this growth and expand upon the thousands of jobs across the Peace Garden State. It is good, commonsense legislation and it supports consumers and producers alike.

In closing, we believe that HB 1303 is good tax policy. In fact, 25 other states already have a lower tax rate for lower alcohol content products and states such as Vermont, Michigan and Nebraska have enacted similar tax fairness measures in the last two years. Modernizing North Dakota’s laws to provide fair tax treatment for spirits RTDs will boost small businesses, raise state tax revenue and support consumer choice. We urge the committee's support of the proposal.

Thank you for the opportunity to submit these comments.

Sincerely,

Adam Smith
Vice President State Public Policy

cc: Members of the North Dakota House Finance and Taxation Committee

Encl: RTD Tax Rate Graphic