



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Introduced:	02/17/11	Bill No:	<u>Assembly Bill 669</u>
Tax Program:	Sweetened Beverage Tax	Author:	Monning
Sponsor:	California Center for Public Health Advocacy	Code Sections:	Part 14.5 (commencing with Section 32600) of Division 2 of the RTC
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

This bill would impose a tax on every distributor of bottled sweetened beverages, sweetened beverages, and concentrate at a rate of one cent (\$0.01) per fluid ounce of bottled sweetened beverages, sweetened beverages, and sweetened beverage to be produced from concentrate.

ANALYSIS

CURRENT LAW

Under existing law, state and local sales and use taxes are imposed on the sale or use of tangible personal property in this state unless specifically exempted in the law. Section 6359, for example, provides an exemption for the sale of, and the storage, use, or other consumption in this state of, food products for human consumption, unless otherwise specified. Food products include, in part, all fruit juices, vegetable juices, and other beverages, including bottled water, but exclude carbonated beverages.

Currently, the total combined sales and use tax rate is between 8.25 and 10.75 percent, depending on the location in which the merchandise is sold. The Board of Equalization (BOE) does not collect any additional taxes or fees on nonalcoholic sweetened beverages.

PROPOSED LAW

This bill would add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code to enact the Sweetened Beverage Tax Law, which would impose a tax on every distributor at the rate of one cent (\$0.01) per fluid ounce of bottled sweetened beverage and sweetened beverages (beverages) distributed in this state, and a tax of one cent (\$0.01) per fluid ounce of sweetened beverage to be produced from concentrate distributed in this state, based on the largest volume resulting from use of the concentrate according to any manufacturer’s instructions.

A distributor would be required to separately state the amount of tax due to the BOE from the distributor on the receipt, invoice, or other form of accounting of the transaction given to the retailer. A distributor would also be required to include on each receipt, invoice, or other form of accounting for the distribution of beverages and concentrate, the following:

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

- The name and address of the distributor.
- The name and address of the purchaser.
- The date of sale and invoice number.
- The kind, quantity, size, and capacity of packages of beverages sold.

Exemptions. This bill would exempt from the tax the sale, use, or consumption in this state of beverages or concentrate where the state is prohibited from taxing that sale, use, or consumption under the Constitution or laws of the United States or under the Constitution of this state. Also exempt would be the sale of beverages or concentrate distributed by a distributor to: (1) a registered distributor when supported by a properly completed exemption certificate, as specified, and (2) a person when the beverages or concentrate are required to be shipped and are shipped to a point outside of this state, as specified.

Credits. A distributor who has paid the tax, either directly to the state or to another registered distributor, and who makes a subsequent distribution of the beverages or concentrate would be allowed to claim a credit on its return for the period in which the subsequent sale or distribution occurs.

Administration. The BOE would be required to administer and collect the tax pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of the Sweetened Beverage Tax Law, the references in the Fee Collection Procedures Law to “fee” would include the tax imposed by this bill and references to “feepayer” would include a person required to pay that tax.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The BOE would be authorized to prescribe, adopt, and enforce emergency regulations as necessary to implement the Sweetened Beverage Tax Law.

Registration, Reporting, and Payment. The taxes imposed would be due and payable to the BOE quarterly on or before the last day of the month next succeeding each quarterly period, which must be remitted together with a return for that same period.

The BOE would be authorized to prescribe forms and reporting requirements as are necessary, including, but not limited to, information regarding the total amount of beverages and concentrate sold and the amount of tax due.

Disposition of Proceeds. This bill would establish the Children’s Health Promotion Fund (Fund), which would be created in the State Treasury. The Fund would consist of all taxes, interest, penalties, and other amounts collected, less refunds and reimbursement to the BOE for expenses incurred in the administration and collection of the tax. All moneys in the Fund would, upon appropriation by the Legislature, be

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

allocated for purposes of statewide childhood obesity prevention activities and programs, as detailed in the bill.

Definitions. This bill includes several definitions of key terms, including, but not limited to, the following:

- **"Caloric sweetener"** would mean any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, including high fructose corn sweetener, glucose, other sugars, and fruit juice concentrates. "Caloric" means a substance that adds calories to the diet of a person who consumes that substance.
- **"Beverage container"** would mean any closed or sealed container regardless of the size or shape, including without limitation, those made of glass, metal, paper, plastic, or any other material or combination of materials.
- **"Bottled sweetened beverage"** would mean a sweetened beverage contained in a beverage container.
- **"Concentrate"** would mean a syrup, simple syrup, powder, or base product containing caloric sweetener that is used for mixing, compounding, or making sweetened beverages. The definition also specifically excludes any product: (1) used in preparing coffee or tea; (2) consumed by infants and referred to as "infant formula"; (3) used for weight reduction; (4) containing milk, milk products, or plant protein sources; or (5) that is sold and is intended to be used for the purpose of an individual consumer mixing a sweetened beverage. Also excluded would be any frozen concentrate or freeze-dried concentrate to which only water is added to produce a sweetened beverage containing more than 10 percent natural fruit juice, medical food, and any product to which no caloric sweeteners have been added.
- **"Consumer"** would mean a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.
- **"Distribution"** would include:
 - The sale in this state of bottled sweetened beverages, sweetened beverages, or concentrate to a person who will make a subsequent retail sale.
 - The receipt in this state of untaxed bottled sweetened beverages, sweetened beverages, or concentrate by a retailer who will make a subsequent retail sale.
 - The sale in this state of untaxed bottled sweetened beverages, sweetened beverage, or concentrate by a retailer to a consumer.
 - The storage, use, or other consumption in this state of untaxed bottled sweetened beverages, sweetened beverages, or concentrate by a person.
- **"Distributor"** would mean any person who makes a distribution of beverages or concentrate in the state, whether or not that person also sells these products to consumers.
- **"Retailer"** would mean any person who sells in this state beverages to a consumer.
- **"Sale"** would mean the transfer of title or possession for consideration in any manner or by any means whatever.
- **"Sweetened beverage"** would mean any sweetened nonalcoholic beverage sold for human consumption that contains any added caloric sweeteners, including, but not

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

limited to, the following: soda water, ginger ale, root beer, all beverages commonly referred to as cola, lime, lemon, lemon-lime, and other flavored beverages, including any fruit or vegetable beverage containing 10 percent or less natural fruit juice or natural vegetable juice, and all other drinks and beverages commonly referred to as "soda," "soda pop," and "soft drinks."

"Sweetened beverage" would not include: any product sold in liquid form for consumption by infants, which is commonly referred to as "infant formula"; any product sold in liquid form for use for weight reduction; water, to which no caloric sweeteners have been added; any product containing milk or milk products or plant protein sources; medical food; or coffee or tea.

The bill would become effective January 1, 2012.

BACKGROUND

In 1983, Assembly Bill 105 (Moore) would have imposed an excise tax on the distribution of nonalcoholic carbonated beverages, except carbonated water and carbonated fruit juice, at the rate of seven cents (\$0.07) per gallon. The provisions of that bill also included an excise tax on the distribution of nonalcoholic carbonated beverage syrup at the rate of fifty cents (\$0.50) per gallon of liquid syrup. That bill died in the Assembly Revenue and Taxation Committee.

In 2002, Senator Ortiz introduced Senate Bill 1520, which would have imposed an excise tax upon every distributor, manufacturer, or wholesale dealer at a rate of \$2 per gallon of soft drink syrup or simple syrup and \$0.21 per gallon of bottled soft drinks, and \$0.21 per gallon of soft drink that may be produced from powder, that is sold in this state. The soda tax provisions were removed from the April 29, 2002, version of the bill.

In 2010, AB 2100 (Coto) was introduced to impose a tax of one cent (\$0.01) per teaspoon of added sweetener in a bottled sweetened beverage or in a sweetened concentrate. Assembly Bill 2100 was held under submission in the Assembly Committee on Revenue and Taxation. Also introduced in 2010 was SB 1210 (Flores), which was substantially similar to AB 2100. That bill was placed on the Senate Committee on Revenue and Taxation suspense file with no further action.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Center for Public Health Advocacy. The stated need for the bill is as follows:

Obesity in America now rivals smoking as the largest cause of preventable death and disease. In California, obesity related costs were estimated to be \$21 billion in 2006.

AB 669 will provide a dedicated funding source for comprehensive childhood obesity prevention, similar to how California's tax on cigarettes funds important tobacco abatement efforts. With the money collected from the sweetened beverage tax, we will provide increased opportunities for physical activity in our schools and healthier school lunches. By moderately increasing the cost of sweetened beverages, we will decrease consumption of a product clearly linked to adverse health impacts that result in significant costs to the individual and the public.

2. **Delayed operative date necessary.** To effectively implement this bill, it would be necessary for the BOE to notify and register taxpayers, develop computer programs, hire and train key staff, create necessary forms and schedules, and answer taxpayer inquiries. These functions should take place before the tax becomes operative.

BOE staff estimates that it would take a minimum of six months to implement the new program proposed by this bill. In order to provide the BOE with the necessary 6-month lead-time, it is suggested that the bill be amended to provide for a delayed operative date to the first day of the first calendar quarter commencing more than six months after the bill is enacted. This would provide the BOE with sufficient lead-time to successfully implement the bill and would be consistent with the quarterly reporting basis proposed by this measure.

3. **Funding necessary for administrative start-up costs.** This bill proposes a new sweetened beverage tax to be imposed beginning January 1, 2012. In order to notify and register distributors, develop computer programs and reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the BOE's administrative costs that would not already be identified in the BOE's 2011-12 budget.

Typically, the BOE would seek payment from the Fund for administrative start-up costs through the budget change proposal (BCP) process. However, the Fund would not have a balance to reimburse the BOE's administrative start-up costs prior to the collection of the tax. To address this funding issue, this bill should be amended to add language authorizing a loan from the General Fund, or other eligible fund, to the Fund, to be repaid from taxes collected and deposited into the fund.

The constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the sweetened beverage tax program. Without an appropriation for administrative start-up costs, the BOE would have to divert General Fund dollars to the proposed tax program, which would have a negative impact on the revenues of State and local government.

4. **Product exclusions.** This bill excludes from the definition of "concentrate" any product containing milk or milk products, and any product that is solely used in preparing coffee or tea. As such, this would exclude powdered coffee, tea, or chocolate milk mix from the tax, even if those products contain added caloric sweetener. The definition of "sweetened beverage" also excludes any product containing milk or milk products, and coffee and tea, thereby excluding products such as chocolate or strawberry milk, smoothie beverages, and bottled coffee beverages that have added caloric sweetener.

Also excluded would be syrups and powders that are intended to be used for the purpose of an individual consumer mixing a sweetened beverage. This would include, for example, products such as chocolate milk power and syrup, sweetened tea mixes, and sweetened punch and lemonade mixes which are generally available at places such as grocery stores and general merchandise department stores for a consumer to purchase and mix beverages at home.

5. **Proposed tax would be subject to the Sales and Use Tax.** Under current Sales and Use Tax Law, the total amount of the retail sale is subject to sales or use tax unless specifically exempted or excluded by law. Because the new tax imposed

pursuant to this measure is not specifically exempted or excluded, it would be included in the total amount of the sale and, therefore, subject to sales or use tax.

In order to be reimbursed for the excise tax, persons subject to the tax pursuant to this measure may request payment from their customers. Ultimately, this cost would be reflected in the retail sales price of bottled sweetened beverages and concentrates sold to the consumer and would be subject to the sales and use tax, unless specifically exempt as a food product. The impact on state and local sales and use tax revenues is discussed in the Revenue Estimate.

6. **Floor stock (inventory) tax provisions.** In general, a floor stock tax is a one-time inventory tax placed on a commodity undergoing a tax increase. The floor stock tax rate is the difference between the old tax rate and the new tax rate and is intended to equalize the tax paid on inventory to the new tax imposed on products purchased after the effective date of a tax increase.

Having a large inventory on a commodity subject to a tax increase before a tax rate increase takes effect can result in a windfall profit to a seller. The selling price of the commodity purchased before the increase, but sold after, can be raised and attributed to the rate increase. These additional funds would represent a windfall profit rather than taxes paid to the state. A floor stock tax mitigates this windfall profit.

For purposes of the sweetened beverage tax, a floor stock tax would be imposed upon a retailer's inventory of beverages and concentrate; however, this bill does not contain language specifically imposing such a tax. On the other hand, the bill does impose the tax on every distributor for beverages and concentrate distributed in this state. The term "distributor" is defined to mean any person who makes a distribution of beverages or concentrate in this state, whether or not that person also sells these products to consumers. And "distribution" is defined to mean, in part, the sale in this state of untaxed beverages by a retailer to a consumer. Since a retailer's inventory on the effective date of the sweetened beverage tax would be "untaxed," it appears that a retailer would be considered a distributor making a taxable distribution of that inventory at the time of sale of the beverages to the consumer.

Capturing the proposed tax on a retailer's inventory that was purchased before the effective date of the tax in this manner would be costly and administratively burdensome for retailers. Retailers would have to register with the BOE as a distributor and separately track their sales of taxed and untaxed beverages so that they may properly report and pay the tax due on those untaxed beverages purchased prior to the effective date of the tax increase.

To minimize the burden on retailers, it is suggested to add specific floor stock provisions to the bill if the author wishes to capture the tax on a retailer's inventory purchased prior to the effective date of the tax increase.

7. **Suggested technical amendments.** BOE staff is working with the author's office to draft amendments that would allow the effective and efficient administration of the proposed tax program and to address complexities with respect to the application of tax to certain concentrates. Other suggested amendments are as follows:
 - **Taxing consumers.** In its current form, the bill could be read to impose the tax on individual consumers, which would complicate administration and collection.

Accordingly, it is suggested that the bill clarify that the tax is not imposed on individual consumers that purchase an untaxed beverage.

- **Redundant language.** Section 32602(b) requires a distributor to separately state the amount of tax due on the receipt of invoice provided to the retailer. That same requirement can also be found in Section 32603, which also requires other information to be included on the receipt. As such, it is suggested that Section 32602(b) be deleted.
- **Electronic registration and filing.** All new programs administered by the BOE should comport with the BOE's electronic services projects and activities, which include, in part, internet registration and the transition to e-filing, pursuant to the following.

32610. (a) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed using electronic media with the board.

(b) The board may prescribe those forms and reporting requirements as are necessary to implement the tax, including, but not limited to, information regarding the total amount of bottled sweetened beverages, sweetened beverages, and concentrate sold and the amount of tax due.

(c) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

32610.5. Every person required to pay the tax imposed under this part shall register with the board. Every application for registration shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the board may require. An application for an account shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

- **Regulations.** This bill should authorize the BOE to prescribe, adopt, and enforce rules and regulations relating to the administration and collection of the Sweetened Beverage Tax Law.

COST ESTIMATE

The BOE would incur non-absorbable costs to adequately develop and administer a new tax program. Costs could be related to identifying and registering new taxpayers, developing related computer programs, processing returns, payments, and claims for refunds, and carrying out compliance and audit efforts to ensure proper reporting, along with developing regulations, training staff, and answering inquiries from the public. An estimate of these costs is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Based on *Beverage Digest* 2009 data of carbonated soft drinks sold, potential revenues from the tax proposed by this measure are as follows:

Estimated \$0.01 Tax Revenue Increase

(In millions of dollars)

<u>REVENUE ESTIMATE</u>	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Sweetened Bottled CSD \$0.01 per oz.	\$ 1,291	\$ 1,343	\$ 1,381	\$ 1,416	\$ 1,461
Sweetened Syrup CSD \$.01 per oz. ¹	\$ 228	\$ 237	\$ 244	\$ 250	\$ 258
Total Revenue	\$ 1,519	\$ 1,580	\$ 1,625	\$ 1,666	\$ 1,719

Thus, as the table indicates, a one-cent per ounce tax in FY 2009-10 would have generated \$1.519 billion in estimated revenues. Using the most recent forecast of consumption of food and beverages from IHS Global Insight, a national economic forecasting firm, we estimate that sweetened beverages will increase by 4 percent for the FY 2010-11. Additionally, Global Insight forecasts an increase of 2.8 percent for FY 2011-12, 2.6 percent for FY 2012-13, and 3.1 percent for FY 2013-14.

REVENUE SUMMARY

The one cent per ounce of sweetened beverage tax proposed by this measure is estimated to generate \$812.5 million in FY 2011-12 (1/2 year impact), \$1.666 billion in FY 2012-13, and \$1.719 billion in FY 2013-14.

Furthermore, the bill would impose a tax on a retailer's sweetened beverage inventory that was purchased prior to January 1, 2012 (the effective date of this bill). This tax would not be imposed as a floor stock tax, but rather at the time of retail sale of the untaxed sweetened beverages. The estimated revenues from these untaxed retail sales would be \$31 million.

¹ Based on fluid ounces of sweetened beverage to be produced from the syrup.

In addition to excise tax there would be additional estimated sales tax revenues as follows:

<u>Sales Tax Revenue</u>		2011-12	2012-13	2013-14
		(millions)	(millions)	(millions)
State	5.00%	\$40.6	\$83.3	\$85.9
Fiscal Recovery				
Fund	0.25%	\$2.0	\$4.2	\$4.3
Local	2.00%	\$16.3	\$33.3	\$34.4
District	0.86%	\$7.0	\$14.3	\$14.8
Total		\$65.9	\$135.1	\$139.4

Analysis prepared by:	Cindy Wilson	916-445-6036	04/04/11
Revenue estimate by:	Lisa Buchanan	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	
ls			0669ab021711cw.doc

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.