

[Assembly Bill 2782](#) (Bloom)

Date: 03/30/16

Program: Health Impact Fee

Sponsor: American Diabetes Association  
American Heart Association

Health and Safety Code Section 104895.56

Effective: Immediately

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**Summary:** Imposes a \$0.02 per fluid ounce fee on bottled sweetened beverages and concentrate.

**Purpose:** According to the author, the purpose of this bill is “to fund programs which educate communities on the dangers of over-consumption of sugar-sweetened beverages and provide tools and resources for healthy alternatives.”

**Fiscal Impact Summary:** Total combined fee and sales tax revenue of \$4.094 billion in fiscal year 2017-18.

**Existing Law:** Current law<sup>1</sup> imposes sales tax on the retail sale of tangible personal property (TPP) in this state. Current law<sup>2</sup> also imposes use tax on the storage, use, or other consumption in this state of TPP purchased from any retailer. The sales or use tax is computed on the retailer’s gross receipts or sales price, respectively, unless the law provides a specific exemption or exclusion. For example, Section 6359 generally provides an exemption for the sale of, and the storage, use, or other consumption of, food products for human consumption. Food products include, in part, all fruit juices, vegetable juices, and other beverages, including bottled water, but do not include carbonated beverages.

The total combined sales and use tax rates range from 7.5% to 10% based on the location of the sale. No other Board of Equalization (BOE)-administered program imposes a tax or fee on nonalcoholic sweetened beverages.

**Proposed Law:** This bill creates the Healthy California Fund<sup>3</sup> which includes a two-cent (\$0.02) per fluid ounce of beverage distributed health impact fee imposed upon every distributor for the privilege of distributing bottled sweetened beverages (beverages) and concentrate in this state. For concentrate-derived sweetened beverages, a two-cent (\$0.02) per fluid ounce fee is due on the largest volume of beverage derived from the amount of concentrate used according to any manufacturer’s instructions.

A distributor must state the fee amount due on its receipt, invoice, or other accounting transaction form (receipt). A distributor is required to include on each beverage and concentrate distribution receipt the following:

- 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.
- Any other information, as required by the BOE.

**Exemptions.** This bill exempts from the fee:

- 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; and

<sup>1</sup> Article 1 (commencing with Section 6051) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code (RTC).

<sup>2</sup> Article 1 (commencing with Section 6201) of Chapter 3 of Part 1 of Division 2 of the RTC.

<sup>3</sup> Chapter 5 (commencing with Section 104895.50) of Part 3 of Division 103 of the Health and Safety Code (HSC)

- 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.** Distributors may claim a credit for fees paid directly to the state or for fees paid to another registered distributor, if they make a subsequent distribution of the beverages or concentrate. They may claim the credit on their return for the period in which the subsequent sale or distribution occurs.

**Administration.** This bill requires the BOE to administer and collect the fee pursuant to the Fee Collection Procedures Law (FCPL).<sup>4</sup>

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement. The bill also specifically authorizes the BOE to prescribe, and adopt tax administration and enforcement regulations, including emergency regulations. BOE administrative costs would be capped at 3% of revenues.

**Registration, Reporting, and Payment.** Every distributor required to pay the fee must register with the BOE using a BOE-prescribed application, as described.

The fees imposed would be due and payable to the BOE on or before the last day of the month following each calendar quarter. In addition, a return for the preceding calendar quarter would need to be filed with the BOE using electronic media. The return would be due on or before the last day of the calendar month following each quarterly period.

Both the application and the return would be authenticated in a form or pursuant to a method as may be prescribed by the BOE.

The BOE may prescribe forms and reporting requirements as necessary. Necessary information includes, but is not limited to, the total amount of beverages and concentrate sold and the amount due.

**Disposition of Proceeds.** This bill would establish the Healthy California Fund (Fund) in the State Treasury. The Fund would consist of all fees, interest, penalties, and other amounts collected, less refunds and reimbursement to the BOE for expenses incurred in the administration and collection of the fee. Upon appropriation, all moneys in the Fund would be allocated with the purpose of diminishing the human and economic costs of diabetes, obesity, heart disease, and dental disease, as detailed in the bill.

**Definitions.** This bill defines several key terms, including, but not limited to, the following:

- "Caloric sweetener" means any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, other sugars, and fruit juice concentrates. "Caloric" means a substance that adds calories to the diet of a person who consumes that substance.
- "Bottle" means 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 sugar-sweetened beverage" means any sugar-sweetened beverage contained in a bottle that is ready for consumption without further processing, such as dilution or carbonation.
- "Consumer" means a person who purchases a sugar-sweetened beverage for consumption and not for sale to another.
- "Distributor" means any person, including a manufacturer or wholesale dealer, who receives, stores, manufactures, bottles, or distributes bottled sugar-sweetened beverages, syrups, or powders for sale to retailers doing business in the state, or any combination of these activities, whether or not that person also sells those products to consumers.

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<sup>4</sup>RTC Part 30 (commencing with Section 55001).

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- “Retailer” means any person who sells or otherwise dispenses in this state a sugar-sweetened beverage to a consumer whether or not that person is also a distributor.
- “Sale” means the transfer of title or possession for valuable consideration, regardless of the manner by which the transfer is completed.
- “Sugar-sweetened beverage” means any nonalcoholic beverage, carbonated or noncarbonated, that is intended for human consumption and contains added caloric sweetener. A “nonalcoholic beverage” means any beverage that contains less than one-half of one percent alcohol per volume. “Sugar-sweetened beverage” does not include: bottled sugar-sweetened beverages, syrups, and powders sold to the United States government and American Indian tribal governments; bottle sugar-sweetened beverages, syrups, and powders sold by a distributor to another distributor that is registered under the Program, if the sales invoice clearly indicates that the sale is exempt, as provided; beverages sweetened solely with non-caloric sweeteners; beverages consisting of 100 percent natural fruit or vegetable juice, with no added caloric sweetener; beverages in which milk, or soy, rice, or similar milk substitute, is the primary ingredient or the first listed ingredient on the label of the beverage; beverages with fewer than five grams of added sugar or other caloric sweeteners per 12 ounces; coffee or tea without added caloric sweetener; infant formula; beverages for medical use; water without any caloric sweetener.

**Effective date.** As a tax levy, this bill is effective immediately.<sup>5</sup>

**Legislative History:** In 1983, Assembly Bill 105 (Moore) imposed a \$0.07 per gallon excise tax on the distribution of nonalcoholic carbonated beverages, except carbonated water and carbonated fruit juice. The bill’s provisions also included a \$0.50 per gallon excise tax on the distribution of nonalcoholic carbonated beverage syrup. That bill died in the Assembly Revenue and Taxation Committee (AR&T).

In 2002, Senator Ortiz introduced Senate Bill 1520, which 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, \$0.21 per gallon of bottled soft drinks, and \$0.21 per gallon of soft drinks that may be produced from powder sold in this state. The soda tax provisions were removed from the April 29, 2002, version of the bill.

Two bills were introduced in 2010. AB 2100 (Coto) proposed a tax of one cent per teaspoon of added sweetener in a beverage or in a sweetened concentrate. Assembly Bill 2100 was held under submission in the AR&T. SB 1210 (Florez) was substantially similar to AB 2100 and was placed on suspense in the Senate Committee on Revenue and Taxation with no further action.

In 2013, Senator Monning introduced Senate Bill 622 to impose a one-cent per fluid ounce tax on bottled sweetened beverages and concentrate. That bill was held under submission in the Assembly Appropriations Committee.

Assemblyman Bloom introduced a similar bill last year, AB 1357, which failed passage in Assembly Health Committee.

### **Commentary:**

1. **Administrative start-up cost funding is essential.** The proposed new health impact fee is imposed upon enactment. As a result, the BOE must begin to implement the bill in fiscal year 2016-17. However, the BOE would not expect the 2016-17 Budget to include any funding to implement this bill. Consequently, the BOE requires an adequate appropriation to cover administrative implementation costs.

Typically, the BOE seeks administrative cost reimbursement from the account or fund into which fee proceeds are deposited. However, this bill creates the Fund, which lacks funding to reimburse the BOE prior to collection of the fee. **Upfront BOE implementation cost reimbursement is essential.** Thus, BOE staff suggests the bill authorize a loan from the General Fund or other eligible fund to the Fund. The loan would be repaid from fees collected.

<sup>5</sup> California Constitution, Article IV, Section 8(c)(3).

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Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed fee. Without an appropriation, it may be necessary for the BOE to divert General Fund (GF) dollars to implement the proposed fee program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.

2. **Delayed operative date necessary.** To effectively implement this bill, the BOE must notify and register fee payers, develop computer programs, hire and train key staff, create necessary forms and returns, and answer fee payer inquiries. These functions must take place before the fee becomes operative.

As a tax levy, the health impact fee becomes effective immediately. Accordingly, **the bill provides the BOE no lead time** to effectively or successfully implement the proposed fee program. In addition, the bill provides no lead time for distributors to prepare for and implement the health impact fee and allows no time for the BOE to properly notify and register distributors.

BOE staff estimates it needs a minimum of six months to implement the new program proposed by this bill. To provide the BOE with the necessary 6-month leadtime, BOE staff suggests an amendment to delay the operative date to the first day of the first calendar quarter commencing more than six months after the bill is enacted.

3. **Product exclusions.** This bill excludes from the “sugar-sweetened beverage” definition beverages in which milk, or soy, rice, or similar milk substitute, is the primary ingredient or the first listed ingredient on the beverage label. Accordingly, the bill excludes chocolate, vanilla, and strawberry milk that contains caloric sweetener.
4. **Fee subject to Sales and Use Tax.** The total retail sales price of TPP is subject to the sales or use tax, unless specifically exempted or excluded by law. Since the proposed health impact fee imposed pursuant to this measure is not specifically exempted or excluded, it would be included in the total amount of the sales price and, therefore, subject to sales or use tax.

To be reimbursed for the fee, a retailer would likely incorporate the fee into the sales price of the beverage and concentrate sold to the consumer. The sales and use tax applies to the product’s retail sales price, unless specifically exempt as a food product. The revenue estimate discusses the impact on state and local sales and use tax revenues.

5. **Suggested amendments.** The bill is missing definitions for the key terms “concentrate” and “distribution.” In addition, BOE staff suggests clarification to the “distributor” and “retailer” definitions so that they conform, and are workable, with the bill’s provisions.

BOE staff are available to work with the author’s office to draft amendments.

**Administrative Costs:** BOE administrative costs related to this bill are substantial. These costs include: fee payer identification, notification and registration; regulation development; manual and publication revisions; fee return design; computer programming; return, payment, and refund claim processing; audit and collection tasks; staff training; and public inquiry responses.

A detailed cost estimate is pending.

**Revenue Impact:**

**Background, Methodology, and Assumptions.** Since this is a tax levy and effective immediately, the effective date is unknown. For purposes of this revenue estimate, staff will assume a start date of October 1, 2016.

The table shows data staff tabulated from the Beverage Marketing Corporation, along with staff calculations.

	U.S. Percent of Total Nonalcoholic Liquid Refreshment Beverages in 2014	Millions of Gallons	Taxable Gallons 1/	California Estimates (Millions of Ounces) 2/
Carbonated Soft Drinks	41.4%	12,775	9,211	115,846
Bottled Water	35.1%	10,845	0	0
Fruit Beverages	10.3%	3,165	1,582	19,902
Ready-to-Drink Tea	5.1%	1,582	1,582	19,902
Sports Beverages	4.6%	1,428	1,428	17,961
Energy Drinks	1.9%	579	579	7,281
Value-Added Water	1.4%	425	425	5,340
Ready-to-Drink Coffee	0.3%	77	77	971
<b>Total</b>	<b>100.0%</b>	<b>30,876</b>	<b>14,884</b>	<b>187,203</b>

Sources: *Beverage Marketing Corporation*  
<http://www.beveragemarketing.com/news-detail.asp?id=335>  
<http://www.beveragemarketing.com/docs/Packaging-Conference-2015.pdf>

Staff also made the following assumptions:

- California consumption of nonalcoholic liquid refreshment beverages is in proportion to its share of U.S. population.
- Diet beverages (27.9% of volume) would not be subject to the tax.
- No bottled water would be subject to the tax.
- Fifty percent of fruit juices would be subject to the tax.
- Liquid refreshment beverage volume grows 1.1% per year, its five-year average.<sup>6</sup>
- Prices of liquid refreshment beverages average \$0.06 per ounce for all categories and all distribution channels (packaged products from all retail stores and fountain drinks from restaurants and convenience stores).<sup>7</sup>
- Average prices for liquid refreshment beverages increase 0.5% per year, based on a published report.<sup>8</sup>
- Price elasticity of demand is -0.7, based on an academic study.<sup>9</sup>
- The entire amount of the fee is passed on to consumers in higher prices.

<sup>6</sup> Press Release: "The U.S. Liquid Refreshment Beverage Marketing Enlarged in 2014, Reports Beverage Marketing Corporation," 3/26/2015.

<sup>7</sup> "Sugar-Sweetened Beverage Prices: Estimates from a National Sample of Food Outlets," January 2014.

<sup>8</sup> "H.235 Revenue Estimates," March 9, 2015, Kavet, Rockler & Associates, LLC, [http://www.leg.state.vt.us/jfo/fiscal\\_notes/2015\\_H\\_235%20Sugar%20Sweetened%20Beverages.pdf](http://www.leg.state.vt.us/jfo/fiscal_notes/2015_H_235%20Sugar%20Sweetened%20Beverages.pdf)

<sup>9</sup> "Partial versus General Equilibrium Calorie and Revenue Effects Associated with a Sugar-Sweetened Beverage Tax," Senarath Dharmasena, George C. Davis, and Oral Capps, Jr., *Journal of Agricultural and Resource Economics* 39(2).

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- Eighty percent of energy drinks are subject to the tax.<sup>10</sup>

Using the price and volume data, we applied the arc price elasticity formula for the tax increase.<sup>11</sup> Results indicated an 18% decrease in consumption is associated with a 33% increase in the average price of sweetened beverages ( $\$0.02 / \$0.06 = 0.33$ ). This implies California consumption of 187.203 billion ounces of sweetened beverage in 2014.

We estimate the impact of the proposed \$0.02 per ounce fee on 191.292 billion ounces for FY 2016-17 and 193.370 billion ounces for the FY 2017-18 as follows:

**Estimated \$0.02 Fee Revenue Increase**  
(In billions of dollars)

Beverage	FY 2016-17	FY 2017-18
Carbonated Soft Drinks \$0.02 per oz.	\$ 1.781	\$ 2.412
Other Sweetened Beverages \$0.02 per oz.	\$ 1.092	\$ 1.478
<b>Total Revenue</b>	<b>\$ 2.873<sup>12</sup></b>	<b>\$ 3.890</b>

In addition to fee, there would be additional estimated sales tax revenues based on taxable sales as follows:

		FY 2016-17 (Partial Year)	FY 2017-18
	Rates	(Millions of Dollars)	
State General Fund	3.94%	73.0	98.4
Proposition 30 (Half-year impact in FY 2016-17)	0.125%	4.6	0.0
Local Revenue 2011	1.06%	19.7	26.6
Local Revenue 1991	0.50%	9.3	12.5
Public Safety Fund	0.50%	9.3	12.5
Bradley Burns	1.25%	23.2	31.2
Special Districts	0.92%	17.1	23.0
<b>Statewide Average Rate</b>	<b>8.30%</b>	<b>156.2</b>	<b>204.2</b>

**Revenue Summary.** The carbonated soft drinks account for approximately 62% of the total sweetened beverages subject to the fee. The revenues were based on total estimated fiscal year consumption of 191.292 billion ounces for FY 2016-17 and 193.370 billion ounces for the FY 2017-18. The proposed \$0.02 per ounce fee of sweetened beverages, as defined, would generate a combined excise tax and sales tax estimated revenues as follows:

FY 2016-17: \$3.029 billion.

FY 2017-18: \$4.094 billion.

**Qualifying Remarks.** We have no detailed data for volumes of sweetened beverages or prices for California, so we relied on national averages. California data could differ from national averages. There is a wide range of published price elasticity of demand estimates. The one we assumed was from a recent study in an academic journal, and it was lower than most of the previous studies. Other price elasticity estimates would change the revenue estimates.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

<sup>10</sup> "Soda Sales Are Slipping, But Energy Drinks Are Still Buzzing," Rick Aristotle Munarriz, March 4, 2014, <http://www.dailyfinance.com/on/energy-drink-sales-rising-soda-sales-slipping>

<sup>11</sup> The general price elasticity of demand formula is:  $e_p = (Q1 - Q2) / ((Q1 + Q2) / 2) / (P1 - P2) / ((P1 + P2) / 2)$ , where P = price and Q = sales.

<sup>12</sup> Partial year impact, starting October 1, 2016.

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