STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**04/08/03**	Bill No:	**SB 5X**
Tax:	**Alcoholic Beverage**	Author:	**Romero**
Board Position:		Related Bills:	**SB 108 (Romero)** **SB 726 Romero)** **AB 216 (Chan)**

BILL SUMMARY

This bill would impose a five-cent ($0.05) per drink fee on any wholesaler in this state of beer, wine, and distilled spirits.

ANALYSIS

Current Law

Under current law, Sections 32151, 32201, and 32220 of the Alcoholic Beverage Tax Law imposes the following taxes and surcharges on the sale of beer, wine, and distilled spirits:

	Tax	Per Gallon Surcharge	Total
Beer	$0.04	$0.16	$0.20
Wine (not more than 14 percent alcohol)	$0.01	$0.19	$0.20
Wine (more than 14 percent alcohol)	$0.02	$0.18	$0.20
Sparkling wine	$0.30	$0.00	$0.30
Hard cider	$0.02	$0.18	$0.20
Distilled spirits (100 proof)	$2.00	$1.30	$3.30
Distilled spirits (100+ proof)	$4.00	$2.60	$6.60

The proceeds from these taxes and surcharges are deposited in the General Fund.

Proposed Law

This bill would add Section 23335 to the Business and Professions Code to impose a fee of five-cents per drink on any wholesaler located in this state who distributes alcoholic beverages to retailers for consumption in this state.

This bill provides that the Board would be responsible for collection of the proposed fee and the revenue collected would be deposited in the Alcohol-Related Emergency Services Reimbursement Trust Fund, which this bill would create. This bill provides that the Board may implement the collection and administration of the proposed fee in a

manner consistent with current operations, to the extent possible, to allow for administrative efficiency.

This bill provides that the fee would be based on 1.50 ounces of distilled spirits, 12 ounces of beer, and 5 ounces of wine. Based on these beverage sizes, a fee of five cents per drink would equal a per gallon fee of $0.53 for beer, $1.28 for wine and $4.27 for distilled spirits. The tax, surtax rate and proposed fee would be as follows:

	Tax	Per Gallon Surcharge	Proposed Fee	Total
Beer	$0.04	$0.16	$0.53	$ 0.73
Wine (not more than 14 percent alcohol)	$0.01	$0.19	$1.28	$ 1.48
Wine (more than 14 percent alcohol)	$0.02	$0.18	$1.28	$ 1.48
Sparkling wine	$0.30	$0.00	$1.28	$ 1.58
Hard cider	$0.02	$0.18	$1.28	$ 1.48
Distilled spirits (100 proof)	$2.00	$1.30	$4.27	$ 7.57
Distilled spirits (100+ proof)	$4.00	$2.60	$4.27	$10.87

This bill would require that the proposed fees collected be used solely for the administration of the proposed fee and the administration of the Alcohol-Related Emergency Services Reimbursement Fund (Fund). The State Department of Health Services would be responsible for administration of the Fund. Money in the Fund would be allocated to the following:

- local emergency service providers for reimbursement of expenses incurred in providing services for alcohol-related emergencies,
- Board of Equalization to cover costs associated with collecting the proposed fee, and
- State Department of Health Services to cover costs associated with administering the Fund.

After payment of all claims to local emergency service providers and administration costs to the Board and the Department of Health Services, any remaining money would be refunded equitably to all wholesalers who paid the proposed fee.

This bill would also require that two years after implementation, the Department of Health Services, in consultation with the Board and governmental entities with information about the status of the alcohol industry, would evaluate the economic impact of this bill on the alcohol industry and submit the findings in a report to the Legislature upon its completion.

Background

In order to bridge the gap between revenues and expenses in the 1991-92 state budget, a surtax was added to the existing excise tax on alcoholic beverages. Assembly Bill 30 (Chapter 86, 1991) added the alcoholic beverage surtax under current Section 32220, effective July 15, 1991. Before the tax increase, excise taxes on most alcoholic beverages had remained the same since the 1950's, with the exception of an increase in the excise tax on distilled spirits in 1967.

Senate Bill 248 (Romero) and Senate Bill 928 (Romero), introduced during the 2001-02 Legislative Session, would have imposed a five-cent per drink fee on any wholesaler located within the state who distributes alcoholic beverages to retailers for consumption in the state. The fee would be based on 1.5 ounces of distilled spirits and 12 ounces of beer. Both bills would have required the proposed fee be administered by the Department of Alcoholic Beverage Control. Both SB 248 and SB 928 failed passage in the Assembly Health Committee.

Assembly Bill 2744 (Thomson and Chan), introduced during the 2002 Legislative Session, would have increased the alcoholic beverage surtax for all alcoholic beverages in this state. AB 2744 failed to passage in the Assembly Health Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California Medical Association. The purpose of this bill is to provide necessary funding for local emergency service providers in providing medical services due to alcohol related emergencies.
2. **Key amendments.** The introduced version of this bill contained the provisions that would impose a five cent per drink fee on alcoholic beverages in this state, which was to be administered by the Department of Alcoholic Beverage Control. **March 10th** amendments made technical changes to the provisions covering the disbursement of the fund. **March 12th** amendments made additional technical changes to the provisions covering the disbursement of the fund. **April 8th** amendments removed the Department of Alcoholic Beverage Control from the bill and inserted the Board as the agency responsible for administration of the proposed fee. Additional amendments allow the Board to implement the proposed fee in a manner consistent with current operations to allow for administrative efficiency and other technical changes to the provisions covering the disbursement of the fund.
3. **This bill does not contain floor stock tax provisions.** The proposed fee would be imposed at the wholesaler level. At the time the proposed fee were to become effective, any product in retail inventory would escape the fee since this bill does not contain floor stock tax provisions. A floor stock tax serves to equalize the fee paid by a wholesaler or retailer on alcoholic beverage inventory and those gallons purchased after the effective date of a new fee. Having a large alcoholic beverage inventory before a fee increase takes effect can bring a small windfall to a seller. The selling price of alcoholic beverages can be raised and attributed to the new fee, but the additional funds collected are profit and not a fee paid to the state. A floor stock tax mitigates this windfall.

4. **Proposed fee could be imposed multiple times on the same product.** This bill provides that the Board shall collect a five-cent per drink fee from any wholesaler located within this state who distributes alcoholic beverages to retailers for consumption in the state. As currently written, any wholesaler who sells to retailers would be subject to the proposed fee on all sales, even sales to other wholesalers. This could result in the fee being imposed more than once on the same product when sold between multiple wholesalers. Since this is not the intent of the bill, it is recommended that the bill be amended to address this concern.

5. **Definition of wholesaler.** This bill would impose a fee on any wholesaler of beer, wine and distilled spirits. This bill does not define the term "wholesaler," but the term is defined in Section 23021 of the Business and Professions Code. Section 23021 defines the term "wholesaler" to mean every person other than a manufacturer, winegrower or rectifier who is engage in the business as a jobber or wholesale merchant, dealing in alcoholic beverages, in an area within the United States other than a territory or possession of the United States, or within a foreign country having common boundaries with any state of the United States. This definition would not include importers, manufacturers, rectifiers, or other persons who may sell beer, wine or distilled spirits to retailers. Limiting the imposition of the fee on wholesalers could create a loophole allowing the sale of beer, wine and distilled spirits to avoid the fee. For the purpose of closing this potential loophole, and to allow the Board to more efficiently administer the proposed fee and to make the collection and reporting of the fee easier for feepayers, it is recommended that the proposed fee be imposed at the same instance as the current alcoholic beverage tax and surcharge. Board staff is willing to work with the author's office in drafting appropriate amendments.

6. **Excess fees collected.** This bill provides that the proposed fees collected shall be used solely to cover the administrative costs of the proposed fee and the payment of claims to local emergency service providers. This bill specifically provides that the Board may not collect fees in excess of the amount needed to fully cover the administrative costs and amounts necessary to cover claims. It is unclear how the Board would know the amounts necessary to cover all potential claim amounts so as to not collect an excess amount. It is also unclear what would happen if the amount to be collected would exceed amounts necessary to cover administrative costs and claims as there are no provisions in the bill to allow the Board to adjust the amount of the fee.

7. **Refund of excess fees.** This bill would require that after the payment of administrative costs and claims to emergency service providers, any excess funds would be refunded by the Department of Health Services equitably to all wholesalers who complied with payment of the fee. It is assumed that the Department of Health Services would require assistance from the Board in determining to whom to make refunds and in what amount.

8. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2004, which is in the middle of the state's fiscal year. Although this bill provides that the Board would be reimbursed for administration of the proposed fee from the fee revenues, in order to begin to develop the fee payer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2003-04 budget.
9. **Funds would be deposited in the Alcohol-Related Emergency Services Reimbursement Trust Fund.** The proposed fee would be deposited into the Alcohol-Related Emergency Services Reimbursement Trust Fund which would be managed by the Department of Health Services. Revenue deposited into the fund would be appropriated to cover administrative costs of the Board and the Department of Health Services and also to pay claims by local emergency service providers for reimbursement of expenses incurred in providing services for alcohol-related emergencies.
10. **Related legislation.** Senate Bill 108 (Romero) contains the same provisions as this bill. Assembly Bill 216 (Chan) would require the Board to collect a fee from beer and distilled spirits manufacturers and importers whose products are consumed by underage youth. Senate Bill 726 (Romero) would authorize a county to impose a tax on the retail sale of beer, wine or distilled spirits sold for consumption on the premises of the seller.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include identifying and registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. This bill does, however, allow the Board to implement the proposed fee in a manner consistent with current operations to allow for administrative efficiency. This would allow the Board, to a certain extent, to utilize existing administrative functions of the current Alcoholic Beverage Tax in administering the proposed fee. A cost estimate of this workload is pending.

REVENUE ESTIMATE

This bill would require the Board to collect a $0.05 per drink fee from any wholesaler located within the state who distributes alcoholic beverages to retailers for consumption in the state. The fee would be calculated and applied in the following way: $0.05 per 1.5 ounces of distilled spirits equates to $4.27 per gallon; $0.05 per 12 ounces of beer equates to $0.53 per gallon; $0.05 per 5 ounces of wine equates to $1.28 per gallon. The fees collected would then be deposited to the Alcohol-Related Emergency Services Reimbursement Trust Fund. The following chart shows the estimated gallonage for fiscal year 2003-04 in each alcoholic beverage category and the estimated revenue increase based upon the proposed fee increase.

	Alcoholic Beverage Increase		
	Per Gallon Rate	Estimated 2003-04 Gallons (in 000's)	Estimated Increased Revenue (in 000's)
Beer	$ 0.53	665.9 million	$ 352.9 million
Wine	$ 1.28	110.3 million	$ 141.2 million
Distilled Spirits	$ 4.27	42.9 million	$ 183.2 million
Total			$ 677.3 million

The proposed fee would probably be passed on to the consumer and would result in an increase in sales and use tax of $53.6 million.

Revenue Summary

The revenue impact from implementing the alcoholic beverage fee of $0.05 per drink is an estimated increase of $677.3 million. Since the proposed fee would probably be passed on to the consumer, the sales and use tax would result in an additional $53.6 million.

	2003-04
Alcoholic Beverage Fee	$ 677.3 million
State Sales and Use Tax (5%)	$ 33.9 million
Total State	$ 711.2 million
Local Sales and Use Tax (2.25%)	$ 15.2 million
Transit Tax (0.67%)	$ 4.5 million
TOTAL	$ 730.9 million

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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 Board's formal position