STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	**02/22/05**	Bill No:	**SB 656**
Tax:	**Local Alcohol**	Author:	**Romero**
Related Bills:			

BILL SUMMARY

This bill 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.

ANALYSIS

Current Law

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including beer, wine and distilled spirits. Under existing law, a base state and local sales and use tax rate of 7.25 percent is imposed as follows:

- 5 percent state tax allocated to the state's General Fund (Section 6051, 6051.3, 6201 and 6201.3).
- 0.25 percent state tax allocated to the Fiscal Recovery Fund which is dedicated to the repayment of the Economic Recovery Bonds(Section 6051.5, 6201.5)
- 0.50 percent state tax allocated to the Local Revenue Fund which is dedicated to local governments for program realignment (Section 6051.2 and 6201.2).
- 0.50 percent state tax allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Sec. 35 of Article XIII of the California Constitution).
- 1 percent Bradley-Burns Uniform Local Sales and Use Tax which is allocated to cities and counties (Part 1.5, commencing with Section 7200).

In addition, the law authorizes various rates under the Transactions and Use Tax which are allocated to special taxing jurisdictions in various counties and cities within the state (Part 1.6, commencing with Section 7252).

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law.

Under the Bradley-Burns Law, the 0.25 percent tax rate is earmarked for county transportation purposes, and 0.75 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 0.75 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1 percent.

The 1 percent tax is collected by the Board, primarily from remittances by retailers. The Board currently allocates the tax to cities and counties primarily based on the retailer's place of business.

Under current law, Sections 32151, 32201, and 32220 of the Alcoholic Beverage Tax Law imposes the following taxes and surcharges on 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.

Current Section 32010 of the Alcoholic Beverage Tax Law states that these excise taxes are in lieu of any county, city, or special district taxes on the sale of beer, wine, or distilled spirits, but does not prohibit the imposition of any sales and use taxes imposed under the Sales and Use Tax Law, Bradley-Burns Local Tax Law, or the Transactions and Use Tax Law.

Proposed Law

This bill would amend Section 32010 of the Revenue and Taxation Code to provide that the Alcoholic Beverage Tax is imposed in lieu of all county, municipal and district taxes on the sale of beer, wine and distilled spirits, with the exception of the County Alcoholic Beverage Tax, which this bill would authorize.

This bill would add Chapter 3.58 (commencing with Section 7289.20) to Part 1.7 of Division 2 of the Revenue and Taxation Code to authorize a county to impose a tax on the retail sale of beer, wine and distilled spirits sold for consumption on the premises of the seller within the counties jurisdiction.

This bill would require that the ordinance proposing the tax meet the following requirements:

- In the case of a general tax, an ordinance shall be approved by a two-thirds majority vote of all of the members of the county board of supervisors and by a majority vote of the qualified voters.

- In the case of a special tax, an ordinance shall be approved by a majority vote of all of the members of the county board of supervisors and by a two-thirds majority vote of the qualified voters.
- The ordinance shall state the rate of the tax and the length of time for which the tax is to be imposed.
- The tax shall be imposed at a rate of at least 1/8 percent, but not to exceed 5 percent, at increments of 1/8 percent.

Any ordinance levying a tax authorized by this bill shall provide that the tax shall conform to the Transactions and Use Tax Law (commencing with Section 7251), except as otherwise provided in this bill.

The terms "beer, wine and distilled spirits" would have the same meaning as provided in Sections 23006, 23007 and 23005 of Business and Professions Code.

Any ordinance adopted pursuant to the provisions in this bill shall become operative on the first day of a calendar quarter that commences more than 110 days after the adoption of the ordinance.

This bill would require that any county adopting an ordinance to impose a tax proposed by this bill to notify the Board, in writing, that the county will be administering the tax on their own behalf, or to contract with the Board for the purpose of administering the tax proposed in the ordinance. If the county elects to contract with the Board for the administration of the proposed tax, the county would be required to pay to the Board its costs of preparation to administer and operate the tax imposed pursuant to the ordinance, with a maximum amount due of $175,000. The county would also be required to pay amounts charged by the Board for ongoing administration costs.

Revenues collected by the Board would be distributed as follows:

- First, for reimbursement to the Board, to cover reasonable costs of administering and enforcing the ordinance on behalf of the county.
- Second, to each county that has an operative ordinance enacted pursuant to the provisions in this bill, in an amount corresponding to the amount of revenues derived with that jurisdiction from a tax levied by that ordinance.

Returns and payments of the tax imposed pursuant to the provisions in this bill would be due and payable to the Board on the same day as the seller's sales and use tax return, provided the seller is located within a county that has elected to contract with the Board for the purpose of administering the proposed tax. If the county elects to administer the proposed tax on their own behalf, the return and payment of the proposed tax would be as prescribed in the ordinance adopted by the county.

Background

Two bills introduced during the 2003-04 Legislative Session would have authorized a county to impose a tax on the retail sale of a specified product. Senate Bill 726 (Romero) is identical to this bill but was never heard in a policy committee. Assembly Bill 1040 (Leno) would have authorized a county to adopt an ordinance imposing a tax on the retail sale of cigarettes and tobacco products. AB 1040 failed passage in Assembly Governmental Organization Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the County of Los Angeles. The County notes that the weakened condition of the California economy has increased the demand for local governmental services beyond the capacity of current revenues. The inability of local government to adequately provide essential services, including emergency and trauma care, is a matter of statewide concern and requires immediate response. This potential revenue source will help counties to meet local needs and to preserve local services.

2. **Counties could elect to administer the proposed tax themselves, or to contract with the Board for administration.** The provisions in this bill would authorize a county, with voter approval, to impose tax on the retail sale of beer, wine and distilled spirits.

   The Transactions and Use Tax Law requires entities levying such taxes to contract with the Board to administer the tax so that the entity may levy a tax at a low rate in order to take advantage of the functions performed by the Board in administering the sales and use tax system as a whole. If a county were to levy the proposed tax and then elect to administer the tax themselves, the county would not have access to taxpayer information necessary for it to administer the proposed tax. It is likely that the costs to the county to acquire the information for itself would exceed the potential revenue the proposed tax may generate. In addition a county may lack the ability to audit an out-of-county retailer.

3. **Costs may exceed revenues.** This bill does not increase administrative costs to the Board because it only authorizes a county to impose a tax. However, if the county passed an ordinance and elected to contract with the Board to perform functions related to the ordinance, the Board would incur fixed costs related to the start up of a new tax program in addition to ongoing costs for the Board's services in actually administering the ordinance. If the rate is set too low and/or few counties impose the tax or elect to contract with the Board to administer the tax, fixed preparatory costs would be paid from a smaller revenue base. Under these circumstances, it is possible that the revenues generated by the proposed tax may not be sufficient to cover the Board's preparatory and administrative costs. If the costs were to exceed the revenues, the General Fund would need to make up the difference.

4. **Why not increase the existing excise tax on alcoholic beverages?** As noted previously, it may not be cost effective for the Board to administer the tax proposed in this bill, depending on the tax rate and the number of counties that adopt the ordinance and elect to have the Board administer the tax. It may be more cost effective to increase the existing excise tax administered by the Board imposed on alcoholic beverages and allocate the additional revenue to the counties.

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.

5. **Difficulties for retailers in administering this tax.** The proposed tax would only be imposed on the retail sale of beer, wine and distilled spirits sold for consumption on the premises of the retailer. This is most likely to affect restaurants, bars, sports stadiums and arenas. Some of these retailers may encounter difficulty in collecting the tax on the sale of alcoholic beverages, but not on the sale of nonalcoholic beverages or food items. Retailers would have to program their cash registers to ring up all the items (i.e., two cheeseburgers, one diet coke, and one beer), compute the sales tax, then compute the alcohol tax on the beer. This may lead to errors in collecting and reporting the proposed tax.

   Also, due to the possibility that this bill may authorize a tax that would not be administered by the Board, there may be a lack of uniformity in administration of the tax between counties. This could result in retailers subject to different rules and requirements from county to county, which could lead to increased administrative burdens and costs for such retailers.

6. **Language in certain provisions of the bill are problematic.** Section 7289.23 states that this tax shall conform to Part 1.6 of the Transactions and Use Tax Law. However, the second sentence of this section, states that a tax imposed pursuant to this part is not a sales tax, or a transactions and use tax. What is a tax on the privilege of selling if not a sales tax? The language is contradictory.

   Also, Section 7289.27 appears to conflict with Section 7273, *Charges for administering the taxes.* Does Section 7289.27 (d) override Section 7273 so that if the county contracts with the Board, the Board can recover its full administrative costs and is not subject to the cap in Section 7273? It appears that the Board would be able to recover all of its costs, but the language is not clear. Clarifying language should be added to state that the costs under this section are not subject to the cap amounts under Section 7273. Board staff is willing to work with the author's office to draft amendments.

COST ESTIMATE

This bill does not increase administrative costs to the Board because it only authorizes a county to impose a tax. However, if the county passed an ordinance and elected to contract with the Board to perform functions related to the ordinance, the county would be required to reimburse the Board for its preparation costs to administer the ordinance as well as the ongoing costs for the Board's services in actually administering the ordinance. A detailed cost estimate of the workload impact is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Under this bill, the board of supervisors of a county may, impose a countywide tax on the privilege of consuming beer, wine, and distilled spirits purchased in a retail sale for consumption on the premises of the seller of the beer, wine, or distilled spirits. In order to impose this tax, the following conditions must be met: The tax shall be proposed in an ordinance that is submitted to the voters for approval that specifies the rate of the tax, the purpose for which the tax revenues are to be expended, and the manner of remittance and collection of the tax.

Additionally, the tax imposed shall be in increments of not less than one-eighth of 1 percent, but not to exceed 5 percent of the sales price.

It is estimated that, in California, total expenditures on alcoholic beverages for consumption on premises of a seller of beer, wine, or distilled spirits are estimated to be $4,221 million.

Revenue Summary

If every county in California imposed a tax on the consumption of alcoholic beverages sold on the premises, the revenue effect from imposing such a tax would be as follows:

Percentage	Revenue Gain
1 percent	$ 42.2 million
2 percent	$ 84.4 million
3 percent	$ 126.6 million
4 percent	$ 168.8 million
5 percent	$ 211.1 million

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