



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/20/04	Bill No:	SB 1297
Tax:	Sales and Use	Author:	Brulte
Board Position:		Related Bills:	

BILL SUMMARY

This bill would exclude the California Redemption Value from the measure of sales and use tax.

Summary of Amendments

The April 20 amendments removed a specific reference to Public Resources Code Section 14560.5 and now generically refers to the Public Resources Code.

ANALYSIS

Current Law

Under existing law, the sales tax is imposed on the gross receipts from the sale of tangible personal property, unless specifically exempted by law. “Gross receipts” and “sales price” are terms defined in the law which include the total amount of the sale or lease or rental price, without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses related to the sale of the property. However, the following fees and taxes have specifically been excluded from the definition of “gross receipts” and “sales price”, thereby exempting these amounts from the computation of sales tax:

- Federal taxes (except most manufacturers’ or importers’ excise taxes).
- Local sales and use taxes when they are a stated percentage of the sales price.
- Certain state taxes or fees imposed on vehicles, mobilehomes or commercial coaches that have been added to, or are measured by, a stated percentage of the sales price.
- State-imposed diesel fuel tax.

Existing provisions of the Public Resources Code sets a redemption amount (California Redemption Value or “CRV”) on nonrefillable beverage containers. Wholesale distributors of beverages must pay the Department of Conservation the redemption amount on beverage containers sold to retailers. The distributors, however, in order to be reimbursed for the CRV, may request payment for the CRV from the retailer to whom the distributor sells. Thereafter, this cost is reflected in the price for beverages charged by the retailer to the ultimate consumer.

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.

Proposed Law

This bill would amend Sections 6011 and 6012 of the Sales and Use Tax Law to specify that “gross receipts” and “sales price” do not include the amount of any redemption payment imposed on beverage containers pursuant to specified provisions of the Public Resources Code, and identified for the consumer pursuant to that Code.

The bill would become operative on the first day of the first calendar quarter commencing more than 90 days after the bill is enacted.

Background

The California Beverage Container Recycling and Litter Reduction Act, enacted in 1986 by Assembly Bill 2020 (Ch. 1290), established a California redemption value on every nonrefillable beverage container sold in this state. Senate Bill 926 (Stats. 1989, Ch. 865) added a requirement that beverage retailers separately identify the amount of any CRV in their advertising, and, if possible, show this amount on the customers’ receipts. The purpose of this requirement was to increase consumer awareness of the redemption value and to encourage recycling. A consequence of this requirement, however, is that consumers have become aware of the sales tax imposed on the redemption payment.

The California Beverage Container Recycling and Litter Reduction Act was amended by Senate Bill 332 (Ch. 815, Stats. 1999) to modify the definition of beverage and soft drink containers subject to the CRV fee to include non-carbonated water and fruit juice containers. Prior to this amendment, all beverages sales subject to CRV were of a kind that would be subject to tax (carbonated beverages and alcoholic beverages). This amendment resulted in non-taxable beverages, such as bottled water, fruit juice, and sport drinks being subject to the CRV. Assembly Bill 28 (Ch. 753, Stats. 2003) increased the CRV from 2.5 cents to 4 cents per container for small containers (less than 24 ounces) and from 5 cents to 8 cents per container for large containers (24 ounces or greater). The increase became effective January 1, 2004.

Four measures to exclude the CRV from the computation of sales and use tax have previously been introduced. Senate Bill 1933 (Kopp), introduced in the 1990 Legislative Session, failed passage in the Senate Revenue and Taxation Committee. Assembly Bill 2501 (Pringle) was introduced in the 1994 Session and failed passage in the Assembly Natural Resources Committee. Senate Bill 2046 (Costa) was introduced in the 1998 Session and was held in the Senate Appropriations Committee. Assembly Bill 622 (Olberg), introduced in the 1999 Legislative Session, failed passage in the Assembly Appropriations Committee.

COMMENTS

- 1. Sponsor and Purpose.** The author is the sponsor of this measure. According to the author’s office, the purpose of this measure is to exclude from the definition of *gross receipts* and *sales price* the fees imposed by the Department of Conservation on beverage containers, as it is objectionable to apply a sales tax on a state-imposed fee.

2. **Summary of amendments.** The April 20 amendments removed a specific reference to Public Resources Code Section 14560.5 and now generically refers to the Public Resources Code. The March 22 amendments removed unrelated provisions pertaining to waste management and added the sales and use tax exclusion for CRV provisions.
3. **Tax on the CRV has caused confusion for retailers and consumers.** The 1989 legislation that added the requirement that beverage dealers separately identify the amount of any CRV in all advertising, and, if possible have it shown on the customers' receipts prompted, at that time, a considerable number of telephone calls and inquiries to the Board by concerned consumers and their elected officials regarding how sales tax is applied to this fee. Additional confusion arose as a result of the 1999 legislation that expanded the types of beverage containers subject to the CRV to include bottled water and fruit juice. Prior to this legislation, retailers and consumers had been conditioned to think the CRV is always taxable because all retail sales of beverages subject to the CRV were also of a kind subject to sales tax. With bottled water and fruit juice now subject to the CRV, but not subject to tax, many retailers and consumers were confused as to how to account for these transactions.
4. **Other fees are subject to tax.** While the state-imposed CRV is probably one of the most commonly noticed fees by consumers, other fees and taxes are included in the cost of many items which are also includable in the computation of sales or use tax. For example, the price of gasoline includes the 36.3¢ federal and state taxes which are subject to sales tax and the law actually requires retailers to post signs informing consumers of the various federal and state taxes included in the price. The price of alcohol and cigarettes also includes the excise taxes imposed on distributors that are also subject to sales tax.
5. **The proposed exclusion would not complicate the Board's administration of the law.** It could, however, require retailers to reprogram their cash registers to exclude the CRV portion charged to customers from the measure of tax.

COST ESTIMATE

Costs would be incurred in notifying affected retailers, answering inquiries, amending appropriate regulations and pamphlets, and revising returns. A detailed cost estimate is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Prior to January 1, 2000, the California Redemption Value (CRV) applied to containers containing beer and other malt beverages, wine and distilled spirit coolers, carbonated water, including soda and carbonated mineral water. On January 1, 2000, the CRV was applied to all beverage containers, except those containing wine, or wine from which alcohol has been removed, in whole or in part, whether or not sparkling or carbonated, milk, medical food, or infant formula, and 100 percent fruit juice in containers that are 46 ounces or more in volume.

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Under current law, the CRV that is subject to the sales and use tax includes those beverage containers containing beer and other malt beverages, wine and distilled spirit coolers, carbonated water, including soda and carbonated mineral water. The CRV applied to all other beverage containers is not subject to the sales and use tax: for example, beverage containers that contain bottled water, Ready-to-Drink (RTD) Tea, and fruit beverages because the product itself is not subject to the sales and use tax.

Soft drink industry statistics show the total gallonage for the beverage market as well as the segments consisting of bottled water, RTD Tea, and fruit beverages. According to those industry statistics for calendar 2001, bottled water, RTD Tea, and fruit beverages comprise 28 percent of the total beverage market. This percentage is consistent with the increase that was noted in the beverage containers sold that were subject to the CRV in 2000.

When the CRV for beverage containers other than beer and other malt beverages, wine and distilled spirit coolers, carbonated water, including soda and carbonated mineral water became effective, there was a significant increase in the number of beverage containers. The total number of beverage containers that was sold subject to the CRV in 1999 was 13.7 billion. The total number of beverage containers that was sold subject to the CRV in 2000 was 16.6 billion. The difference from 1999 to 2000 represents a 25.7 percent increase. However, the majority of the increase in the CRV collected was not subject to the sales and use tax. Because the percentage increase in beverage containers is consistent with the market share for bottle water, RTD Tea, and fruit beverages provided by industry statistics, we estimate that 28 percent of the CRV on beverage containers is already exempt from the sales and use tax because the product in those containers is exempt from the sales and use tax.

According to the Department of Conservation, the CRV for 2003-04 is projected to be \$669 million. The percentage of the market represented by bottled water, RTD Tea, and fruit beverages is estimated to be 28 percent. That 28 percent is not subject to the sales and use tax. Therefore the total expenditures that would qualify under this bill are estimated to be \$481.7 million (\$669 million x 72 percent).

Revenue Summary

The revenue impact from exempting \$481.7 million in CRV collected on beverage containers from the sales and use tax would be as follows:

	Revenue Effect
State loss (5.25%)	\$25.3 million
Local Loss (2.00%)	\$ 9.6 million
Special District Loss (0.67%)	\$ 3.2 million
Total	\$38.1 million

Analysis prepared by:	Bradley E. Miller	916-445-6662	4/28/04
Revenue estimate by:	Dave Hayes	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	
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