



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

DRAFT

Date:	04/15/13	Bill No:	Senate Bill 622
Tax Program:	Sweetened Beverage Tax	Author:	Monning
Sponsor:	California Center for Public Health Advocacy	Code Sections:	RTC Part 14.5 (commencing with Section 32600)
Related Bills:		Effective Date:	01/01/14 but operative 07/01/14

BILL SUMMARY

This bill imposes a one-cent per fluid ounce tax on bottled sweetened beverages and concentrate.

ANALYSIS

CURRENT LAW

Current law¹ imposes sales tax on the retail sale of tangible personal property (TPP) in this state. Current law² 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 enacts the Sweetened Beverage Tax (SBT) Law in Part 14.5 (commencing with Section 32600) of Division 2 of the Revenue and Taxation Code (RTC). The SBT Law imposes a tax upon every distributor for the privilege of distributing bottled sweetened beverages (beverages) and concentrate in this state. The bill calculates the tax at one cent (\$0.01) per fluid ounce of beverage distributed in this state. For concentrate-derived sweetened beverages, a one-cent (\$0.01) per fluid ounce tax is due on the largest volume of beverage derived from the amount of concentrate used according to any manufacturer’s instructions.

The bill requires a distributor to separately state the tax amount due on the retailer’s receipt, invoice, or other accounting transaction form (receipt). A distributor is required to include on each beverage and concentrate distribution receipt the following:

¹ Article 1 (commencing with Section 6051) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code.

² Article 1 (commencing with Section 6201) of Chapter 3 of Part 1 of Division 2 of the Revenue and Taxation Code.

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- 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 exempts 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; and
- 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 tax paid directly to the state or for tax 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 tax pursuant to the Fee Collection Procedures Law (FCPL).³ For purposes of the tax, the bill clarifies that, under the FCPL:

- “Fee” includes the CURES tax; and
 - “Feepayer” includes a person that must pay the SBT.

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.

Registration, Reporting, and Payment. The bill requires each person subject to the SBT to register with the BOE using a BOE-prescribed application, as described.

The taxes 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 tax return would be authenticated in a form or pursuant to a method as may be prescribed by the BOE.

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

³ RTC Part 30 (commencing with Section 55001).

Disposition of Proceeds. This bill would establish the Children's Health Promotion Fund (Fund) 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. Upon appropriation, all moneys in the Fund would be allocated for statewide childhood obesity prevention activities and program purposes, 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, 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"** 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 sweetened beverage"** means a sweetened beverage contained in a beverage container.
- **"Beverage dispensing machine"** means a device which mixes concentrate with any one or more other ingredients and dispenses the resulting mixture into an open container as a ready-to-drink beverage.
- **"Concentrate"** means a syrup, powder, or base product that is used for mixing, compounding, or making sweetened beverages in a beverage dispensing machine. 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) that is milk or a milk product; or (5) that is sold and is intended to be used for the purpose of an individual consumer mixing a sweetened beverage. Also excluded is any frozen concentrate or freeze-dried concentrate to which only water is added to produce a sweetened beverage containing more than 50% natural fruit or vegetable juice either separately or combined, medical food, and any product to which no caloric sweeteners have been added.
- **"Consumer"** means a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.
- **"Distribution"** includes:
 - The sale of bottled sweetened beverages or concentrate to a retailer.
 - The receipt of untaxed bottled sweetened beverages or concentrate in this state from an unregistered out-of-state distributor by a retailer.
 - The retail sale of untaxed bottled sweetened beverages, sweetened beverages, or concentrate in this state.
 - The use or consumption of untaxed bottled sweetened beverages or concentrate in this state by a distributor or retailer.
- **"Distributor"** means any person who makes a distribution of beverages or concentrate in the state, whether or not that person also sells these products to consumers.

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- **“Retailer”** means any person who sells sweetened beverages to a consumer in this state.
- **"Sale"** means the transfer of title or possession for consideration in any manner or by any means whatever.
- **"Sweetened beverage"** means any sweetened nonalcoholic beverage sold for human consumption that has caloric sweeteners and contains more than 25 calories per 12 ounces, including, but not 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 less than 50% natural fruit juice or natural vegetable juice separately or combined, and all other drinks and beverages commonly referred to as "soda," "soda pop," and "soft drinks," "sport drinks," "energy drinks," "juice drinks," "ice teas," and "vitamin fortified waters."

"Sweetened beverage" does not include: any product sold in liquid form for consumption by infants, which is commonly referred to as "infant formula," or any infant rehydration product; any product sold in liquid form for use for weight reduction; water, to which no caloric sweeteners have been added; milk or milk products; medical food; or any sweetened beverage containing 50 percent or more of natural juice or natural vegetable juice separately or combined.

The bill becomes effective January 1, 2014; however, the SBT provisions become operative July 1, 2014.

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.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Center for Public Health Advocacy. The bill intends to reduce consumption of sweetened beverages through higher prices, resulting in a decrease in the prevalence of obesity and dental disease. The added revenues would fund childhood obesity and dental disease prevention and treatment programs and reduce the burden of attendant health conditions, such as diabetes.

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- 2. Administrative start-up cost funding is essential.** This bill proposes a new sweetened beverage tax to be imposed beginning July 1, 2014. As a result, the BOE must begin to implement the bill in fiscal year 2013-14. However, the BOE's 2013-14 budget does not include funding to implement the 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 tax proceeds are deposited. However, this bill creates the Fund, which lacks funding to reimburse the BOE prior to collection of the tax. 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 taxes collected.

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

- 3. Product exclusions.** This bill excludes from the "concentrate" and "sweetened beverage" definitions any milk or milk products. Accordingly, the bill excludes chocolate, vanilla, and strawberry milk that contains caloric sweetener. However, the bill's reference to "milk product" is vague. For example, does the bill intend to include a product with a splash of milk within the definition of milk product? Or does the bill intend to include as a "milk product" those products that meet California's minimum standards to be considered a fluid? BOE staff suggests an amendment to clarify the author's intent.

In addition, this bill excludes from the "concentrate" definition any product used solely to prepare coffee or tea. As such, the bill excludes bag-in-box tea syrups and bulk specialty coffee powder from the SBT, even if those products contain added caloric sweetener.

The bill also excludes coffee and tea where a retailer combines it with caloric sweeteners, such as flavored caloric syrups, for sale to a consumer. For example, the SBT would not apply to sweet tea or specialty coffee drinks where a restaurant/coffee shop purchases unsweetened tea or coffee from a distributor and subsequently mixes those products with a caloric sweetener or caloric sweetened flavored syrup.

Furthermore, the bill excludes syrups and powders used by an individual consumer to mix a sweetened beverage. These products include chocolate milk powder and syrup, sweetened tea mixes, and sweetened punch and lemonade mixes that are generally available at grocery stores and general merchandise department stores.

- 4. SBT 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 SBT 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 SBT, a retailer would likely incorporate the SBT into the sales price of the beverage and concentrate sold to the consumer. The sales and use tax applies to the retail sales price of product, unless specifically exempt as a food product. The Revenue Estimate discusses the impact on state and local sales and use tax revenues.

5. **Technical correction.** BOE staff suggests a technical, non-substantive correction to page 11, line 2, of the April 16, 2013, version of the bill to read:

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

COST ESTIMATE

BOE administrative costs related to this bill are substantial. These costs include: taxpayer identification, notification and registration; regulation development; manual and publication revisions; tax 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 ESTIMATE (REVISED)

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Based on a news article from *Preventive Medicine Publication 52*, entitled Estimating the potential of taxes on sugar-sweetened beverages to reduce consumption and generate revenue, we estimate that in 2012 Californians consumed 174 billion ounces of sweetened beverages. We estimate that a \$0.01 per ounce tax in FY 2011-12 would have generated \$1.74 billion (174 billion x \$0.01) in estimated revenues.

This bill becomes operative on or after July 1, 2014. Using the same source, the *Preventive Medicine Publication 52*, we estimate sweetened beverage consumption will decrease to 166.8 billion ounces in 2014, and will decrease further in 2015 to 165.9 billion ounces. We estimate the impact of the proposed \$0.01 per ounce tax as follows:

Estimated \$0.01 Tax Revenue Increase
(In millions of dollars)

<u>REVENUE ESTIMATE</u>	FY 2014-15	FY 2015-16
Carbonated Soft Drinks \$0.01 per oz.	\$ 1,156	\$ 1,150
Other Sweetened Beverages \$.01 per oz.	\$ 512	\$ 509
Total Revenue	\$ 1,668	\$ 1,659

REVENUE SUMMARY

The proposed excise tax of \$0.01 per ounce of sweetened beverages and sweetened syrup to be produced from concentrate would generate the following estimated revenues:

FY 2014-15: \$1.668 billion.

FY 2015-16: \$1.659 billion.

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

Sales Tax Revenue

	Rate	2014-15 (millions)	2015-16 (millions)
State	4.19%	\$48.5	\$48.2
Fiscal Recovery Fund	0.25%	\$2.9	\$2.9
Local Revenue Fund 2011	1.06%	\$12.3	\$12.2
Local	2.00%	\$23.1	\$23.0
District	0.88%	\$10.2	\$10.1
Total		\$96.9	\$96.4

Qualifying Remark. This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law. A segment of the sweetened beverage data may contain beverages that are below the 50 percent threshold proposed.

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