



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

DRAFT

Date Amended:	<b>04/27/11</b>	Bill No:	<a href="#"><u>Senate Bill 653</u></a>
Tax Program:	<b>Transactions and Use Tax Local Alcoholic Beverage Local Cigarette &amp; Tobacco Products Local Oil Severance Local Sweetened Beverage</b>	Author:	<b>Steinberg</b>
Sponsor:	<b>Author</b>	Code Sections:	<b>See below</b>
Related Bills:	<b>AB 686 (Huffman) AB 1086 (Wieckowski)</b>	Effective Date:	<b>01/01/12</b>

*This analysis only addresses the provisions that impact the BOE.*

**BILL SUMMARY**

As it relates to the Board of Equalization (BOE), this bill would authorize the governing board of any county or city and county and any school district, subject to specified voter approval requirements, to levy, increase, or extend the following taxes:

- A transactions and use tax, which would be excluded from the 2 percent combined rate limitation.
- Excise taxes, including, but not limited to, an alcoholic beverage tax, cigarette and tobacco products tax, oil severance tax, and sweetened beverage tax.

This bill would require the BOE to perform various functions related to the administration and collection of a local tax if the county or city and county or school district contracts with the state agency to perform those functions.

**Summary of Amendments**

Since the previous analysis, this bill was amended to (1) authorize a school district, subject to specified voter approval requirements, to also levy, increase, or extend the specified local taxes, (2) require those entities to reimburse the state for any losses incurred by the state General Fund due to any deductions allowed under the Personal Income Tax Law and the Corporation Tax Law for any of these local taxes and (3) require the FTB, with the assistance of the BOE, to estimate those losses.

**ANALYSIS**

**Transactions and Use Tax**  
*Chapter 3.53 (commencing with Section 7289)*

**CURRENT LAW**

The BOE administers local sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law, which are included in Division 2 of the Revenue and Taxation Code. Cities and counties are required to contract with the BOE to perform all functions in the administration and operation of the ordinances imposing these local sales and use taxes.

*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 BOE's formal position.*

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5 (commencing with Section 7200)) (Bradley Burns Law) authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. However, beginning July 1, 2004, and continuing through the “revenue exchange period” (also known as the “Triple Flip”), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203 and, instead, provides that the applicable rate is the following: (1) in the case of a county, 1 percent; and (2) in the case of a city, 0.75 percent or less. “Revenue exchange period” means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the BOE, pursuant to Government Code Section 99006, that the \$15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenue to satisfy the state’s bond obligations.

Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may be used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. All local jurisdictions impose the Bradley-Burns local taxes at the uniform rate of 1 percent.

The **Transactions and Use Tax Law** (Part 1.6 (commencing with Section 7251)) and Chapter 2 (commencing with Section 7285) and Chapter 2.3 (commencing with Section 7285.9) of the Additional Local Taxes Law (Part 1.7 (commencing with Section 7280)) authorize cities and counties to impose transactions and use taxes (hereinafter referred to as district taxes) under specified conditions. **Section 7285** authorizes a county to impose a district tax for general purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. **Section 7285.5** authorizes a county to impose a district tax for special purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

For purposes of funding libraries, **Section 7286.59** authorizes a county to impose a district tax at a rate of either 0.125 or 0.25 percent for a period not to exceed 16 years, if the ordinance proposing the tax is approved by the board of supervisors and a two-thirds vote of the qualified voters of the county. The revenues are to be used exclusively for funding public library construction, acquisition, programs, and operations within the county.

Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code (PUC). Various statutes under the PUC authorize a county board of supervisors to create an authority within the county or designate a transportation-planning agency to impose a district tax, subject to the applicable voter approval requirement. District taxes imposed under the PUC must conform to the administrative provisions contained in the Transactions and Use Tax Law, including the requirement to contract with the BOE to perform all functions related to the administration and operation of the ordinance.

Currently, all district tax ordinances administered by the BOE have boundaries coterminous with city or county lines.

The combined rate of all district taxes imposed in any county cannot exceed 2 percent.

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**PROPOSED LAW**

Among its provisions, this bill would add Chapter 3.53 (commencing with Section 7289) to the Additional Local Taxes Law to authorize the governing board of any county or city and county and any school district, subject to the limitations of the California Constitution, to levy, increase, or extend a transactions and use tax. The transactions and use tax must be adopted in accordance with the Transactions and Use Tax Law, notwithstanding any rate limitations specified in that law for a county or city and county or a school district.

This provision would become effective on January 1, 2012.

**IN GENERAL – DISTRICT TAXES**

Voters in many of California cities and counties have approved new district taxes in their areas. These district taxes are levied exclusively within the borders of either a county or an incorporated city (with the exception of one district, Bay Area Rapid Transit District, which is comprised of the three counties Alameda, Contra Costa, and San Francisco). Cities and counties that levy a district tax within their borders are referred to as “districts.”

District sales taxes are imposed on the sale of tangible personal property in a district. If a retailer’s business is located in a district, his or her sales are generally subject to district sales tax, either when the purchaser picks up the property at the retailer’s place of business or when the retailer delivers the property to the purchaser in the district. Retailers in districts selling property, which they deliver outside the district, are generally not liable for district sales tax in their district. If a retailer’s business is not located in a district, his or her sales are generally not subject to district sales tax.

District use tax is imposed on the storage, use, or other consumption of tangible personal property in a district. Retailers may be responsible for reporting district use tax if they are “engaged in business” within a district. Retailers are considered “engaged in business” in a district if one of the following conditions applies:

- Maintains, occupies, or uses, any type of office, sales room, warehouse, or other place of business in the district, even if it is used temporarily, indirectly, or through an agent.
- Has any kind of representative operating in the district for the purposes of making sales or deliveries, installing or assembling tangible personal property, or taking orders.
- Receives rentals from a lease of tangible personal property located in the district.
- Sells or leases vehicles or undocumented vessels which will be registered in a district.

A retailer “engaged in business” in a district is generally required to collect and report district use tax on a sale. The following example illustrates when retailers should collect and report district use tax:

A retailer in Sacramento County makes a taxable sale of property, which is delivered to and used by the purchaser in Contra Costa County. Even though it is subject to the general sales tax, the sale would be exempt from Sacramento County district taxes because the property was delivered outside the county. However, use of the property in Contra Costa County makes the sale subject to the district use tax in Contra Costa County. If the retailer is “engaged in business” in Contra Costa County and delivers the property to the Contra Costa County location, he or she is responsible for collecting and

reporting district use tax. Conversely, if the retailer is not engaged in business in Contra Costa County, the retailer is not responsible for collecting the district use tax. However, the purchaser would be responsible for reporting and paying the district use tax.

#### **DISTRICT TAXES CURRENTLY ADMINISTERED BY THE BOE**

As of April 1, 2011, there are 132 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 132 jurisdictions, 40 are county-imposed taxes and 92 are city-imposed taxes.

As stated previously, the combined rate of all district taxes imposed in any county shall not exceed 2 percent. District taxes increase the tax rate within a city or county by adding the district tax rate to the combined state and local (Bradley-Burns local tax) tax rate of 8.25 percent.<sup>1</sup>

Generally, district tax rates are imposed at a rate of 0.25 percent or in 0.25 percent increments up to the 2 percent limit. Currently, the district tax rates vary from 0.10<sup>2</sup> percent to 1 percent. The combined state, local, and district tax rates range from 8.375 percent to 10.25 percent, with the exception of the cities of South Gate and Pico Rivera (10.75%) in Los Angeles County.<sup>3</sup>

Some cities and counties have more than one district tax in effect, while others have none. A listing of the district taxes, rates, and effective dates is available on the BOE's website: [www.boe.ca.gov/sutax/pdf/districtratelist.pdf](http://www.boe.ca.gov/sutax/pdf/districtratelist.pdf).

#### **COMMENTS**

1. **Sponsor and Purpose.** The author is sponsoring this bill in an effort to provide counties and school districts the tools to raise additional revenues if their voters agree that revenues should be part of the local budget solution. According to the author's office, counties are geographical and political subdivisions of the state and administer state and federal laws governing public safety, public health, child welfare services, and other programs. If state tax extensions ultimately are not approved, state budget cuts will burden counties with new program costs that could jeopardize public health and safety. According to the author, SB 653 would allow the counties and school districts to decide on the level of services in their county and school district by choosing whether or not to tax themselves.

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<sup>1</sup>Effective April 1, 2009, ABx3 3 (Chapter 18 of the Third Extraordinary Session, signed by Governor Schwarzenegger on February 20, 2009) temporarily increased the state sales and use tax rate by 1 percent. The combined state and local (Bradley-Burns local tax) tax rate, effective April 1, 2009, increased from 7.25 percent to 8.25 percent. The 1 percent tax rate increase will expire on either July 1, 2011.

<sup>2</sup>Some cities and counties are authorized by special legislation to impose a district tax at a rate other than a 0.25 percent. For example, the Fresno County Zoo Authority imposes a district tax at a rate of 0.10 percent.

<sup>3</sup>In 2003, SB 314 (Ch. 785, Murray) authorized the Los Angeles County Metropolitan Transportation Authority to impose a 0.50 district tax for specific transportation projects, and excluded that 0.50 percent tax from the 2 percent limitation. In 2009, voters within Los Angeles County approved an additional 0.50 percent effective July 1, 2009. The 0.50 percent tax increase in Los Angeles County raised the tax rate in the cities of South Gate and Pico Rivera from 10.25 to 10.75 percent.

2. **The April 27, 2011 amendments** (1) authorize the governing board of any school district, subject to specified voter approval requirements, to also levy, increase, or extend the specified local taxes, (2) require those entities to reimburse the state for any losses incurred by the state General Fund due to any deductions allowed under the Personal Income Tax Law and the Corporation Tax Law for any local taxes levied, increased, or extended pursuant to this authorization, (3) require the FTB, with the assistance of the BOE, to estimate those losses, and (4) provide that the governing body of any county or school district may levy a local tax, if the ordinance *or resolution* proposing that tax is approved by the voters (the prior version of the bill required that the voters approve a tax by adoption of an ordinance only).
3. **This bill allows counties and school districts to levy a district tax that would not be subject to the 2 percent rate limitation in Section 7251.1 of the Transactions and Use Tax Law.** As previously stated, under existing law, the combined rate of all districts taxes imposed in any county cannot exceed 2 percent. However, this bill contains a provision that excludes a district tax levied under the authority in this bill from the 2 percent cap.

Currently, there are 27 counties (Alameda, Amador, Contra Costa, Fresno, Imperial, Inyo, Los Angeles, Madera, Marin, Mariposa, Napa, Nevada, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, and Tulare) in which one or more transactions and use taxes are being imposed countywide. Also, there are 15 counties (Colusa, El Dorado, Humboldt, Kern, Lake, Mendocino, Merced, Mono, Monterey, San Benito, San Luis Obispo, Tuolumne, Ventura, Yolo, and Yuba) in which no countywide transactions and use tax is being imposed, but where one or more cities in the county are imposing a transactions and use tax.

As stated above, counties and cities may impose district taxes as long as the combined rate in the county does not exceed 2 percent. The city district taxes count against the 2 percent limit. Currently, there are three counties that are prohibited from enacting a new district tax because of certain cities in those counties that have pushed them to the 2 percent limit (Alameda, Contra Costa, and Los Angeles).

4. **School districts imposing a tax along a partial county and one or more city boundaries would create significant problems.** Currently, the BOE administers 132 district taxes for which all have boundaries equal to their respective city and county lines. Without a defined city or county boundary within which the tax is imposed, administration and collection of the tax is extremely difficult and costly. In processing returns, audits, and payments, the BOE assigns a specific code in order to properly identify accounts within a district. As long as a tax is imposed within defined city or county boundaries, the BOE can electronically identify accounts within such areas. However, because this bill would allow for the imposition of a tax along partial city (may include all or part of multiple cities) and/or county lines, the BOE would have to manually identify accounts and addresses falling within the boundaries of the school district.

In addition, with a school district covering a portion of the county and part of a city, or a portion of the county and whole or partial cities, retailers who are engaged in business in these school districts and required to collect the tax would experience enormous difficulty in determining who is inside and outside this school district. Because the retailers do not have the resources to identify those consumers/customers located in the school district, they will experience the greatest difficulty in collecting and reporting this tax.

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5. **How many school districts are there in California?** There are 58 counties and approximately 1,000 school districts in California. The typical district grade configurations are elementary (K-8), high (9-12), and unified (K-12). Most counties have several school districts within their borders, with the County of Los Angeles having the highest number of school districts—approximately 80 districts. School districts may also cover portions of the same geographic area. By giving school districts the same authority to levy district taxes as cities and counties, this could result in multiple district taxes being levied on a product.
6. **This bill may set a precedent for all special districts to impose a district tax.** As previously stated, the BOE currently administers 132 district taxes that impose a tax, but the boundaries of these districts are coterminous with the boundaries of the cities and counties in which the tax is collected.

There are approximately 12,000 special districts (includes cities, redevelopment agencies, school districts, and other special districts) in California. These districts were formed for various purposes, such as air pollution, airports, fire, flood, hospitals, libraries, mosquito abatement, park, public safety, school districts, sewer, and water. Some of these districts have boundaries that include multiple cities and counties. Furthermore, these districts sometime include portions of cities and counties.

Due to the budget cuts experienced by local governments, many special districts are concerned that these cuts will affect the services they provide. The varying tax rates and varying districts with uneven boundaries would create an enormous burden on taxpayers.

7. **Other administrative and technical concerns.** BOE staff is available to work with the author's office to address the following technical concerns as the bill progresses through the Legislature.
- Current law, under Chapter 2 (commencing with Section 7285) of Part 1.7, provides authorization for counties to levy, increase, or extend a district tax for general or specific purposes at a rate of 0.25 or in 0.25 increments up to the 2 percent cap. Since this bill would provide a new authorization specific to counties and school districts, we recommend placing this new statute where the other county enabling statutes are located.
  - The proposed statute should clarify that this tax is in addition to other authority to impose district taxes contained in various sections of the Transactions and Use Tax Law (e.g., counties authority to levy a district tax for library purposes). BOE staff will work with the author's office to draft amendments to address this issue.
8. **Related legislation.** Two bills have been introduced this session that would give local governments additional authority to impose transactions and use taxes. AB 686 (Huffman) decreases the rate at which cities and counties may levy, increase, or extend a transactions and use tax to 0.125% (currently 0.25%), or a multiple thereof, for general or specific purposes. AB 1086 (Wieckowski) would authorize the County of Alameda to impose a transactions and use tax in excess of the combined 2 percent rate limitation on transactions and use taxes imposed within any county to support countywide transportation programs, as specified.

**Excise Taxes***Chapter 3.55 (commencing with Section 7289.20)**Chapter 3.56 (commencing with Section 7289.30)**Chapter 3.57 (commencing with Section 7289.40)**Chapter 3.58 (commencing with Section 7289.50)***CURRENT LAW**

**Alcoholic Beverage Tax.** Under current law, Sections 32151, 32201, and 32220 of the Alcoholic Beverage Tax Law (Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code) imposes the following taxes and surcharges on beer, wine, and distilled spirits:

	<u>Tax</u>	<u>Per Gallon Surcharge</u>	<u>Total</u>
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 (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), the Bradley-Burns Law, or the Transactions and Use Tax Law.

**Cigarette and Tobacco Products Tax.** The current excise tax on cigarettes is 87 cents per package of 20 (43½ mills per cigarette). The different components of the cigarette taxes and the disposition of the revenues are as follows:

- 10 cents per pack (5 mills per cigarette) is allocated to the General Fund (Sections 30101 and 30462 of the Revenue and Taxation Code);
- 2 cents per pack (1 mil per cigarette) is allocated to the Breast Cancer Fund (Sections 30101 and 30461.6);
- 25 cents per pack (12½ mills per cigarette) is allocated to the Cigarette and Tobacco Products Surtax Fund (Sections 30122 and 30123); and
- 50 cents per pack (25 mills per cigarette) is allocated to the California Children and Families (CCF) Trust Fund (Sections 30131.2 and 30131.3).

For other tobacco products (which are defined in Sections 30121 and 30131.1 to include cigars, smoking tobacco, chewing tobacco, snuff, and other products containing at least 50 percent tobacco), Section 30123 (Proposition 99) imposes a tax on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the combined rate of tax imposed on cigarettes. In addition, Section 30131.2 (Proposition

10) imposes an additional tax on tobacco products based on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the 50-cent per pack tax on cigarettes also imposed by Section 30131.2. The tobacco products tax rate is determined annually by the BOE based on the March 1 wholesale cost of cigarettes. Currently, the surcharge rate for fiscal year 2010 - 2011 is 33.02 percent.

The other tobacco products surtax imposed under Section 30123 (Proposition 99) is deposited into the Cigarette and Tobacco Products Surtax Fund (including any revenues that result from an indirect increase in the other tobacco products tax triggered by a cigarette tax increase), while the surtax imposed under Section 30131.2 (Proposition 10) is deposited into the CCF Trust Fund.

**Oil Severance Tax.** Under current law, the following taxes, fees, and assessments relating to oil are imposed:

- **Regulatory Assessment.** The Division of Oil, Gas, and Geothermal Resources of the Department of Conservation (DOC) imposes a fee on each barrel of oil. Producers of oil are required to pay the fee, which is currently set at a rate of \$0.1062988 per barrel. The fee is assessed for purposes of financing the regulatory work of that division. (Article 7 (commencing with Section 3400) of Chapter 1 of Division 3 of the Public Resources Code.)
- **Property Tax.** Under Property Tax Law, with respect to oil in the ground, “proved reserves” are subject to property tax assessment by county assessors ([Property Tax Rule 468](#)). In this respect, for property tax purposes, PRC Section 3234 gives both county assessors and the BOE access to monthly production reports related to the regulatory assessment filed with the DOC by oil well owners pursuant to PRC Section 3227.
- **Oil Spill Prevention and Administration Fee.** Existing law also imposes an Oil Spill Prevention and Administration Fee of \$0.05 per barrel, pursuant to Government Code Section 8670.40, upon persons owning crude oil when it is received at a marine terminal within the state, which is collected by the marine terminal operator. The fee is also imposed on operators of pipelines transporting oil in the state across, under, or through marine waters. This BOE-administered fee is deposited into the Oil Spill Prevention and Administration Fund. (Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.)
- **Oil Spill Response Fee.** The BOE also collects an oil spill response fee as required by Government Code Section 8670.48. A uniform oil spill response fee is paid by specified marine terminal operators, pipeline operators, and refiners in an amount not to exceed \$0.25 per barrel of petroleum product or crude oil. The BOE collects the fees and deposits all proceeds into the Oil Spill Response Trust Fund, but only until a maximum of \$50 million is available to react to a spill. No fees are currently being collected since the Oil Spill Response Trust Fund is at its maximum.
- **Sales and Use Tax.** Currently, the Sales and Use Tax Law imposes a sales or use tax on the gross receipts from the sale of, or the storage, use, or other consumption of, tangible personal property, unless specifically exempted by statute. Under existing law, sales of gasoline and diesel fuel are generally subject to a 2.25 percent and 8.25 percent statewide state and local sales or use tax, respectively. In addition to the state portion of the sales and use tax rate, local taxes are imposed by cities and/or counties and are administered by the BOE.

Commencing July 1, 2011, the statewide state and local sales and tax rate for diesel fuel will increase from 8.25 percent to 9.12 percent (an additional 1.87 percent, less the expiring 1 percent temporary increase), and thereafter change annually to a rate specified in existing law through the 2014/15 fiscal year.

- **Excise Taxes.** Under the Motor Vehicle Fuel Tax Law, the state currently imposes an excise tax of \$0.353 per gallon (\$0.18 excise tax and \$0.173 surtax) on the removal of gasoline (except for aviation gasoline) at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person. This surtax tax is subject to an annual adjustment, as specified, that seeks to balance the revenues from the additional excise taxes on gasoline against the state General Fund sales and tax exemption on gasoline. The BOE set the excise tax rate on motor vehicle fuel at \$0.357 per gallon for the period of July 1, 2011, to June 30, 2012.

The Diesel Fuel Tax Law also imposes an excise tax of \$0.18 per gallon in a similar manner as the Motor Vehicle Fuel Tax Law. The diesel fuel tax rate will decrease to 13 cents per gallon as of July 1, 2011.

Federal law imposes an additional per gallon tax on gasoline and diesel fuel of 18.4 cents and 24.4 cents, respectively.

**Sweetened Beverage Tax.** Under existing law, state and local sales and use taxes are imposed on the sale or use of tangible personal property in this state unless specifically exempted in the law. Section 6359, for example, provides an exemption for the sale of, and the storage, use, or other consumption in this state of, food products for human consumption, unless otherwise specified. Food products include, in part, all fruit juices, vegetable juices, and other beverages, including bottled water, but exclude carbonated beverages.

Currently, the total combined sales and use tax rate is between 8.25 and 10.75 percent, depending on the location in which the merchandise is sold. The BOE does not collect any additional taxes or fees on nonalcoholic sweetened beverages.

#### PROPOSED LAW

**LOCAL ALCOHOLIC BEVERAGE TAX.** This bill would amend Revenue and Taxation Code Section 32010 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 sales and use taxes imposed under Parts 1, 1.5, and 1.6 and a local ordinance imposing a local cigarette and tobacco products tax, which this bill would authorize.

This bill would also add Chapter 3.55 (commencing with Section 7289.20) to the Additional Local Taxes Law (Part 1.7) to authorize the governing board of a county or city and county and a school district, by ordinance or resolution, to impose a tax on the privilege of selling beer, wine, or distilled spirits at retail in the county or the school district. The board of supervisors would be authorized to impose this tax within an incorporated city within the county or city and county.

The provision would prohibit the local alcoholic beverage tax from exceeding the following:

- On beer, five cents (\$0.05) per 12 ounces and at a proportionate rate for any other quantity.
- On wine, five cents (\$0.05) per 5 ounces and at a proportionate rate for any other quantity.

- On distilled spirits, five cents (\$0.05) per 1.5 ounces and at a proportionate rate for any other quantity.

Any tax imposed would not be regulatory within the meaning of Section 22 of Article XX of the State Constitution, which pertains to the regulation of the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the state.

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 or resolution adopted pursuant to Chapter 3.55 would become operative on the first day of a calendar quarter that commences more than 90 days after the adoption of the ordinance.

The Sales and Use Tax Law would, as specified, govern determinations, collection of tax, overpayments, and refunds, and administration of all taxes imposed under Chapter 3.55. Returns and payments of the tax imposed pursuant to these provisions would be due and payable to the BOE on the same day as the seller's sales and use tax return, provided the seller is located within a county or school district that has elected to contract with the BOE for the purpose of administering the proposed tax. If the county or school district elects to administer the proposed tax on its own behalf, the return and payment of the proposed tax would be due and payable as prescribed in the ordinance or resolution adopted by the county.

The imposition of a local alcoholic beverage tax pursuant to this bill would not prohibit the concurrent application of the taxes imposed under the Sales and Use Tax Law, Bradley-Burns Law, or the Transaction and Use Tax Law on the sale of or the storage, use or other consumption of beer, wine, or distilled spirits.

Any ordinance or resolution levying a tax authorized by this bill shall provide that the tax shall conform to the Transactions and Use Tax Law, except as otherwise provided in this chapter.

**LOCAL CIGARETTE AND TOBACCO PRODUCTS TAX.** This bill would amend Revenue and Taxation Code Section 30111 to provide that the Cigarette and Tobacco Products Tax is imposed in lieu of all county, municipal and district taxes on the privilege of distributing cigarettes or tobacco products, with the exception of, among others, sales and use taxes imposed under Parts 1, 1.5, and 1.6 and a local ordinance imposing a local alcoholic beverage tax, which this bill would authorize.

This bill would also add Chapter 3.56 (commencing with Section 7289.30) to the Additional Local Taxes Law (Part 1.7) to authorize the governing board of a county or city and county and a school district, by ordinance or resolution, to impose a tax on the privilege of distributing cigarettes and tobacco products in the county, as authorized. The board of supervisors would be authorized to impose this tax within an incorporated city within the county or city and county.

The provision would prohibit the local cigarette and tobacco products tax from exceeding the following:

- On cigarettes, five cents (\$0.05) per cigarette.
- On tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the BOE, which is equivalent to five cents (\$0.05) per cigarette.

Any tax imposed would be assessed and collected in the same manner as the taxes imposed by the Cigarette and Tobacco Products Tax Law (Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code).

Any ordinance or resolution adopted pursuant this provision would become operative on the first day of a calendar quarter that commences more than 110 days after the adoption of the ordinance or resolution.

The Cigarette and Tobacco Products Tax Law would, as specified, govern determinations, collection of tax, overpayments, and refunds, and administration of all taxes imposed under Chapter 3.56. If the county or school district elects to administer the proposed tax on its own behalf, the return and payment of the proposed tax would be due and payable as prescribed in the ordinance or resolution adopted by the county or school district.

**LOCAL OIL SEVERANCE TAX (severance tax).** Chapter 3.57 (commencing with Section 7289.40) would be added to the Additional Local Taxes Law (Part 1.7) to authorize the governing board of a county or city and county and a school district, by ordinance or resolution, to impose a tax upon a producer for the privilege of severing oil from the earth or water in the county or the district for sale, transport, consumption, storage, profit, or use, as authorized. The board of supervisors would be authorized to impose this tax within an incorporated city within the county or city and county.

This provision would prohibit the tax from exceeding 10 percent of the gross value of the product.

Except as provided, the severance tax would be imposed upon the entire production in the county or city and county or the school district, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the county or city and county or the school district.

The severance tax would be in addition to any ad valorem taxes imposed by the state, or any of its political subdivisions, or any local business license taxes that may be incurred as a privilege of severing oil from the earth or water or doing business in that locality.

- **Exemptions.** This provision would exempt from the severance tax oil produced by a stripper well in which the average value of oil as of January 1 of the prior year is less than thirty dollars (\$30) per barrel price of California oil. The DOC would provide notification of all wells that have been certified as a stripper well. A stripper well would be defined to mean a well that has been certified, as described, by the DOC as an oil well incapable of producing an average of more than 10 barrels of oil per day during the entire taxable month.

Also exempted from the tax would be all oil owned or produced by the state and any political subdivision's (including any local public entity, as defined by Section 900.4 of the Government Code) proprietary share of oil produced under any unit, cooperative, or other pooling agreement.

No exemption is provided from payment of an ad valorem tax related to equipment, material, or other property by reason of the payment of the gross severance tax pursuant to this chapter.

And lastly, the imposition of tax would be reduced to zero for a period of 10 years for oil produced in this state from a well that qualifies under Section 3251 of the Public Resources Code ("hazardous well" or "idle-deserted well") or which has been

inactive for a period of at least the preceding five consecutive years. The DOC would be required to determine which wells qualify under these provisions.

- **Returns and Payment of Tax.** For a producer within a jurisdiction of a county or city and county or school district that elects to contract with the BOE to administer the local severance tax, the return and payment would be due and payable to the BOE quarterly on or before the last day of the month next succeeding each calendar quarter. Each producer would be required to prepare and file a return in the form prescribed by the BOE containing information as the BOE deems necessary or appropriate for the proper administration of the severance tax.

The BOE would be authorized to prescribe those forms and reporting requirements as are necessary to implement the tax. This includes, but is not limited to, information regarding the location of the well by county or city and county or district, the gross amount of oil produced, the quantity sold and the selling price, the prevailing market price of oil, and the amount of tax due.

- **Administration.** The BOE would administer and collect the severance tax, to the extent practicable, pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of this provision, the references in the Fee Collection Procedures Law to "fee" would include the tax imposed according to this chapter and references to "feepayer" would include a producer required to pay that tax.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby reducing the number of sections within the bill required to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The BOE would also be authorized to prescribe, adopt, and enforce emergency regulations relating to the administration and enforcement of this chapter.

- **Definitions.** This bill would include the following definitions within Chapter 3.57, which pertain to the BOE:

"Barrel of oil" would mean 42 United States gallons of 231 cubic inches per gallon computed at a temperature of 60 degrees Fahrenheit.

"Gross value" would mean the sale price at the mouth of the well, including any bonus, premium, or other thing of value, paid for the oil. If there is no sale at the time of severance, "gross value" means the sale price when the oil is sold, including any bonus, premium, or other thing of value paid for the oil. If oil is exchanged for something other than cash, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the board shall determine the value of the oil subject to the tax based on the cash price paid to producers for like quality oil in the vicinity of the well.

"Oil" would mean petroleum, or other crude oil, condensate, casing head gasoline, or other mineral oil that is mined, produced, or withdrawn from below the surface of the soil or water in this county or city and county or the district.

"Producer" would mean any person that takes oil from the earth or water in the county or city and county or the district in any manner; any person that owns, controls, manages, or leases any oil well in the earth or water of the county or city and county or the district; any person that produces or extracts in any manner any oil by taking it from the earth or water in the county or city and county or the district; any person that acquires the severed oil from a person or agency exempt from property taxation under the United States Constitution or other laws of the United States or under the California Constitution or other laws of the State of California; and any person that owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on the person's behalf by lease, contract, or other arrangement.

"Production" would mean the total gross amount of oil produced, including the gross amount attributable to a royalty or other interest.

"Severed" or "severing" would mean the extraction or withdrawing from below the surface of the earth or water of any oil, regardless of whether the extraction or withdrawal shall be by natural flow, mechanical flow, forced flow, pumping, or any other means employed to get the oil from below the surface of the earth or water, and shall include the extraction or withdrawal by any means whatsoever of oil upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface.

If the county or city and county or the school district has not contracted with the BOE prior to the operative of the ordinance, the operative date would be delayed until the first day of the first calendar quarter following the execution of the contract. If the county or the school district elects to administer the proposed tax on its own behalf, the determinations, collection of tax, overpayments, and refunds, and administration of the proposed tax would be as prescribed in the ordinance or resolution adopted by the county or the school district.

**LOCAL SWEETENED BEVERAGE TAX.** This bill would add Chapter 3.58 (commencing with Section 7289.50) to the Additional Local Taxes Law (Part 1.7) to authorize the governing board of a county or city and county and a school district, by ordinance or resolution, to impose a tax upon a distributor for the privilege of distributing bottled sweetened beverages and concentrate in the county or city and county or the school district, as authorized. The board of supervisors would be authorized to impose this tax within an incorporated city within the county or city and county.

The tax imposed would be calculated as follows:

1. **Bottled.** The tax on bottled sweetened beverages distributed in the county or city and county would be imposed per fluid ounce, not to exceed one cent (\$0.01) per fluid ounce.
  2. **Concentrate.** The tax on concentrate distributed in the county or city and county or the school district, either as concentrate or as a sweetened beverage derived from that concentrate, would be imposed per fluid ounce of sweetened beverage produced from that concentrate, not to exceed one cent (\$0.01) per fluid ounce. For purposes of calculating the tax for concentrate, the volume of sweetened beverage to be produced from concentrate would be the largest volume resulting from use of the concentrate according to any manufacturer's instructions.
- **Exemptions.** This provision would exempt from the tax the sale, use, or consumption in this state of beverages or concentrate where the county or city and county or the school district is prohibited from taxing that sale, use, or consumption

*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 BOE's formal position.*

under the Constitution or laws of the United States or under the Constitution of this state. Also exempt would be 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.** A distributor who has paid the tax, either directly to the state or to another registered distributor, and who makes a subsequent distribution of the beverages or concentrate would be allowed to claim a credit on its return for the period in which the subsequent sale or distribution occurs.
- **Administration.** The BOE would be required to administer and collect the tax pursuant to the Fee Collection Procedures Law. For purposes of the County Sweetened Beverage Tax Law, the references in the Fee Collection Procedures Law to “fee” would include the tax imposed according to this chapter and references to “feepayer” would include a producer required to pay that tax.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The BOE would be authorized to prescribe, adopt, and enforce emergency regulations relating to the administration and enforcement of the County Sweetened Beverage Tax Law.

- **Registration, Reporting, and Payment.** If the county or city and county elects to contract with the BOE, every distributor required to pay the sweetened beverage tax would be required to register with the BOE, as described.

The taxes imposed would be due and payable to the BOE quarterly on or before the last day of the month next succeeding each calendar quarter. In addition, each distributor would be required to prepare and file with the BOE a return as prescribed by the BOE containing specified information. The return would be required to be filed on or before the last day of the calendar month following the calendar quarter to which it relates, together with a remittance for the amount of tax due for that period.

The BOE would be authorized to prescribe forms and reporting requirements as are necessary, including, but not limited to, information regarding the total amount of beverages and concentrate sold and the amount of tax due.

- **Definitions.** This bill includes several definitions of key terms, including, but not limited to, the following:
  - "Caloric sweetener" would mean 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" would mean 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" would mean a sweetened beverage contained in a beverage container.
- "Beverage dispensing machine" would mean 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" would mean 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) containing milk, milk products, or plant protein sources; or (5) that is sold and is intended to be used for the purpose of an individual consumer mixing a sweetened beverage. Also excluded would be any frozen concentrate or freeze-dried concentrate to which only water is added to produce a sweetened beverage containing more than 10 percent natural fruit juice, medical food, and any product to which no caloric sweeteners have been added.
- "Consumer" would mean a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.
- "Distribution" would include:
  - 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.
- "Distributor" would mean any person who makes a distribution of beverages or concentrate in the state, whether or not that person also sells these products to consumers.
- "Retailer" would mean any person who sells in this state beverages to a consumer.
- "Sale" would mean the transfer of title or possession for consideration in any manner or by any means whatever.
- "Sweetened beverage" would mean any sweetened nonalcoholic beverage sold for human consumption that contains any added caloric sweeteners, 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 10 percent or less natural fruit juice or natural vegetable juice, and all other drinks and beverages commonly referred to as "soda," "soda pop," and "soft drinks."
- "Sweetened beverage" would not include: any product sold in liquid form for consumption by infants, which is commonly referred to as "infant formula"; any product sold in liquid form for use for weight reduction; water, to which no caloric sweeteners have been added; any product containing milk or milk products or plant protein sources; medical food; or coffee or tea.

If the county or city and county or the school district has not contracted with the BOE prior to the operative of the ordinance or resolution, the operative date would be delayed until the first day of the first calendar quarter following the execution of the contract. If the county or the school district elects to administer the proposed tax on its own behalf, the determinations, collection of tax, overpayments, and refunds, and administration of the proposed tax would be as prescribed in the ordinance or resolution adopted by the county or the school district.

**In General.** The local excise tax provisions would require any county or school district adopting an ordinance or resolution to impose an excise tax proposed by this bill either to notify the BOE, in writing, that the county or the school district will be administering the tax on its own behalf or to contract with the BOE for the purpose of administering the tax proposed in the ordinance or resolution. If the county or school district elects to contract with the BOE for the administration of the proposed tax, the county or the school district would be required to reimburse the BOE for its costs in preparing to administer and operate the tax imposed pursuant to the ordinance or resolution, up to a maximum amount of \$175,000. The county or the school district would also be required to reimburse the BOE for its ongoing administration costs, as determined by the BOE with the concurrence of the Department of Finance.

Revenues collected by the BOE would be distributed as follows:

- First, for reimbursement to the BOE, to cover reasonable costs of administering and enforcing the ordinance on behalf of the county or the school district.
- Second, to each county or school district that has contracted with the BOE pursuant to the provisions in this bill, in proportion to the amount of revenues derived from each county's or school districts respective tax.

These provisions would become effective on January 1, 2012.

#### **BACKGROUND**

Four bills introduced during the last four Legislative Sessions would have authorized a county to impose a tax on the retail sale of a specified product:

- Senate Bill 656 (Romero, 2005-06) and Senate Bill 726 (Romero, 2003-04) were identical to this bill, but both died in Senate Revenue and Taxation Committee.
- Assembly Bill 1040 (Leno, 2003-04) 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.
- Senate Bill 297 (Romero, 2007-08) would have authorized 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. SB 297 died in Senate Governmental Organization Committee without being heard.

#### **GENERAL COMMENTS**

- 1. Counties and school districts could elect to administer the proposed tax themselves or to contract with the BOE for administration.** This bill would authorize a county or city and county or a school district, with voter approval, to impose tax on the retail sale of beer, wine and distilled spirits, distribution of cigarettes and tobacco products, severance of oil from the earth or water, and distribution of sweetened beverages.

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The Transactions and Use Tax Law requires entities that levy sales and use taxes to contract with the BOE to administer the tax so that the entity may levy a tax at a low rate and take advantage of the functions performed by the BOE in administering the sales and use tax system as a whole. If a county or school district were to levy a local excise tax authorized by this bill and then elect to administer the tax itself, the county or school district would not have access to taxpayer information necessary for it to administer the proposed tax. It is likely that the costs to the county or school district to acquire the information for itself would exceed the potential revenue the proposed tax may generate. However, the benefits of levying a local tax that allows the BOE to collect such locally-imposed taxes in a uniform manner, consistent with the statewide taxes administered and collected by the BOE, would only pertain to the Local Cigarette and Tobacco Products Tax since the BOE does not administer a statewide tax on the retail sale of alcohol, the severance of oil, or the distribution of sweetened beverages.

**2. Costs may exceed revenues.** This bill does not increase administrative costs to the BOE because it only authorizes a county or school district to impose a tax. However, if the county or school district passes an ordinance or resolution and elects to contract with the BOE to perform functions related to the ordinance or resolution, the BOE would incur fixed costs related to the start-up of a new tax program, in addition to ongoing costs for the BOE's services in actually administering the ordinance or resolution. These start-up costs would be the same, regardless of whether one county or all 58 counties or school districts adopt an ordinance or resolution to impose the new tax. In addition, if the rate is set too low and/or only a few counties or school districts impose the tax or elect to contract with the BOE 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 BOE's preparatory and administrative costs. If the costs were to exceed the revenues, more than likely the General Fund would need to make up the difference.

**3. How many possible locally imposed excise taxes?** This measure would authorize a county and school districts to impose an excise tax upon cigarettes and tobacco products, alcoholic beverages, oil severance, and sweetened beverages. There are 58 counties and approximately 1,000 school districts in California. Each county has several school districts with Los Angeles County having the most at 80 school districts. School districts may also cover the same geographical area in cases where there is both an elementary and a high school district within the same boundaries. Authorizing every county and every school district to impose a local excise tax could result in as many as three local entities—e.g., the county, an elementary school district, and a high school district—levying excise taxes on the same product or activity within their overlapping boundaries, if the voters approve such ordinances or resolutions. Administering such a local excise tax program would be difficult, if not impossible, to accomplish.

To begin, school districts generally do not have defined boundaries that coincide with city or county boundaries in which to impose the tax, thereby making administration and collection of the tax extremely difficult. In processing returns, audits, and payments, the BOE assigns a specific code in order to properly identify accounts within a district. As long as a tax is imposed within city or county limits, the BOE can electronically identify accounts within such areas. However, because this bill would allow for the imposition of a tax in a school district, the tax may be

imposed in a partial city or multiple cities, and the BOE would have to manually identify accounts and addresses falling within the boundaries of the school district.

In addition, with a school district covering a portion of the county and part of a city, or a portion of the county and whole or partial cities, retailers who are engaged in business in these districts and required to collect the tax would experience enormous difficulty in determining who is inside and outside this district. Because the retailers do not have the resources to identify those consumers/customers located in the district, they will experience the greatest difficulty in collecting and reporting this tax.

4. **Preparatory costs.** In each of the county or school district excise tax provisions, the amount of reimbursement for all preparatory costs that would be paid to the BOE by, apparently, each county or school district that contracts with the BOE would be prohibited from exceeding one hundred seventy-five thousand dollars (\$175,000). In addition, the county or school district would be required to reimburse the BOE for the cost of its services in administering the local excise tax.

With respect to each of these local taxes, it appears to BOE staff that there are three different costs for each of the proposed county and school district taxes: (1) fixed costs related to the start-up of a new local excise tax program, which includes extensive modifications to the BOE's computer system; (2) preparatory costs for subsequent counties adopting a local excise tax ordinance; and (3) on-going administrative costs.

It appears this bill covers the BOE's preparatory costs, which are specified to include developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for BOE staff and taxpayers, and any other necessary preparatory costs. However, it is unknown at this time if the amount specified would sufficiently cover the BOE's actual costs to perform these tasks. It also appears the local excise tax provisions adequately cover the BOE's on-going costs to administer the local excise tax.

This bill does not, however, address how the BOE would be reimbursed for its one-time fixed start-up costs to implement any new local excise tax program. The bill should be amended to specifically address these start-up costs and reimbursement to the BOE by the adopting county or school district. The BOE's administrative start-up costs would far exceed the \$175,000 cap on reimbursement under the preparatory cost reimbursement provisions. In addition, the author may wish to consider an amendment to require a county or school district subsequently adopting an excise tax ordinance to reimburse the county or school district that first adopted a local excise tax ordinance or resolution and incurred the initial fixed start-up costs.

5. **Operative dates.** The local excise tax provisions contain the following operative dates:
  - **Alcoholic Beverage Tax:** An ordinance or resolution adopted would be operative on the first day of a calendar quarter commencing more than 90 days after the adoption of the ordinance or resolution.
  - **Cigarette and Tobacco Products Tax.** An ordinance or resolution adopted would be operative on the first day of a calendar quarter commencing more than 110 days after the adoption of the ordinance or resolution.
  - **Severance Tax.** If the county has not contracted with the BOE prior to the operative date of the ordinance or resolution, but will contract, the operative date

would be delayed until the first day of the first calendar quarter following the execution of the contract.

- **Sweetened Beverage Tax.** If the county has not contracted with the BOE prior to the operative date of the ordinance or resolution, but will contract, the operative date would be delayed until the first day of the first calendar quarter following the execution of the contract.

While the operative dates for the local alcoholic beverage tax and local cigarette and tobacco products tax may be workable once an excise tax program has been implemented, the 90 and 110-day timeframes would not provide the BOE sufficient time to effectively implement the initial local excise tax program after the first county or school district adopts the ordinance imposing the tax. BOE staff estimates that it would take a minimum of six months to implement any of the new local excise tax programs proposed by this bill. In order to provide the BOE with the necessary 6-month lead-time for the first local excise tax program adopted for the alcoholic beverage tax and the cigarette and tobacco products tax, it is suggested that the bill be amended to provide for these local excise tax programs a delayed operative date to the first day of the first calendar quarter commencing more than six months after the first ordinance or resolution is adopted. This would provide the BOE with sufficient lead-time to successfully implement the initial local excise tax program for these taxes.

In addition, with respect to the initial severance tax and sweetened beverage tax program, similar language should be included where the county or school district has not contracted with the BOE prior to the operative date of the ordinance or resolution. It should also be noted that it is not clear when the local severance tax and sweetened beverage tax programs would become operative if the county or school district contracts with the BOE prior to the operative date of the ordinance or resolution. Clarifying language should be incorporated into the bill and should also provide the BOE with a delayed operative date for initial implementation to the first day of the first calendar quarter commencing more than six months after the first ordinance or resolution is adopted and for ordinances or resolutions that are subsequently adopted.

6. **Is the BOE required to contract with counties and school districts?** Under the local excise tax provisions, a county or city and county or school district has the option either to notify the BOE that it will be responsible for administering the tax authorized pursuant to this bill or to contract with the BOE to perform all functions incident to the administration and operation of the ordinance or resolution. However, there does not appear to be language requiring the BOE to contract with a county or city and county or school district.
7. **Proposed taxes would be subject to the Sales and Use Tax.** Under current Sales and Use Tax Law, the total amount of the retail sale is subject to sales or use tax unless specifically exempted or excluded by law. Because the new tax imposed pursuant to this measure is not specifically exempted or excluded, it would be included in the total amount of the sale and, therefore, subject to sales or use tax.

In order to be reimbursed for the local excise tax, persons subject to the tax pursuant to this measure may pass on the cost to their customers. Ultimately, this cost would be reflected in the retail sales price of cigarettes and tobacco products, oil products, and bottled sweetened beverages and concentrates sold to the

consumer and would be subject to the sales and use tax, unless specifically exempt as a food product.

However, it is not clear if the local alcoholic beverage tax would be subject to the sales and use tax since the taxpayer and point of imposition are not clearly identified.

- 8. General Fund reimbursement.** This bill would require, pursuant to Section 7289.1, each county and school district to reimburse the state for any losses incurred by the General Fund due to any deductions allowed under the state Personal Income Tax Law and Corporation Tax Law for any local taxes levied, increased, or extended. The bill also requires the BOE to assist the Franchise Tax Board with an estimate of such losses. Since the estimated losses would pertain only to FTB administered taxes, it is unclear what assistance the BOE would be able to provide in making the estimate.

With respect to backfill calculations, the BOE determines annually the cigarette and tobacco products tax revenue reductions to programs and funds that are a direct result of the additional taxes imposed by Proposition 10's additional cigarette and tobacco products taxes, and annually backfills these amounts from the tax revenues received from Proposition 10. Should this bill also include backfill/reimbursement provisions for any General Fund revenue losses as a result of a local excise tax? Under existing law as it relates to BOE-administered taxes, a portion of the cigarette tax (10 cents per pack of 20 cigarettes), all of the alcoholic beverage tax, and 6 percent (5 percent as of July 1, 2011) of the sales tax, is deposited into the General Fund, which would likely be impacted if a local excise tax is imposed as proposed by this bill.

- 9. Language in certain provisions of the bill are problematic.** BOE staff is available to work with the author's office to draft appropriate amendments to address the following concerns:

- **Alcoholic Beverage Tax.** Chapter 3.55 would authorize the imposition of a tax on the privilege of selling beer, wine, or distilled spirits at retail in the county or the district. The imposition language is not clear with respect to the taxpayer or the point of imposition of the local tax. For example, would the local tax be imposed upon the retailer at the time of sale at retail? Or would the tax be imposed upon consumers, but required to be collected by the retailer at the time of sale? These provisions should be amended, in part, to clearly identify the taxpayer, the imposition of tax, administrative provisions, return and payment due dates and to authorize the payment of refunds.

In addition, 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.

And lastly, Section 32010, which this bill would amend intending to authorize a local alcoholic beverage tax, incorrectly references the proposed local cigarette and tobacco products tax. As such, this section should be amended to correctly reference the local alcoholic beverage tax imposed pursuant to Chapter 3.55 (commencing with Section 7289.20).

- **Cigarette and Tobacco Products Tax.** Section 30111, which this bill would amend intending to authorize a local cigarette and tobacco products tax, incorrectly references the proposed local alcoholic beverage tax. As such, this section should be amended to correctly reference the local cigarette and tobacco products tax imposed pursuant to Chapter 3.56 (commencing with Section 7289.30).
- **Severance Tax.** Section 7289.40(f) provides a stripper well exemption if the average value of oil as of January 1 of the prior year is less than thirty dollars (\$30) per barrel price of California Oil. This provision should include a date by which this determination must be made by the BOE and when the exemption would become effective if the criteria are met. Also, is it the author's intent that January 1 be the basis of the exemption, or a period of time (such as a fiscal year)?

In addition, the provisions of the local severance tax should also clarify that the DOC shall notify the BOE of its findings with respect to stripper well certification and wells that qualify under Public Resources Code Section 3251 or which have been inactive, as described.

Also, Section 7289.44 contains duplicative language with respect to the due date for the severance tax return and payment.

And lastly, a definition should be added for the term "in this state" and the definition for the term "producer" revised to more clearly identify the taxpayer. In its current form, it appears there could be more than one taxpayer, which may cause confusion and result in reporting errors and duplicate reporting.

- **Sweetened Beverage Tax.** Chapter 3.58 (county sweetened beverage tax) should be amended to incorporate clear and concise language related to the due date of the return and payment of tax and language that would add a mechanism for a distributor (who is also a retailer) to report and pay the tax on beverages and concentrate purchased ex-tax under an exemption certificate in cases where the beverage is consumed by the distributor or sold at retail.

The language should also add distributor invoicing provisions, such as requiring a distributor to separately state the amount of tax due to the BOE from the distributor on the receipt, invoice, or other form of accounting of the transaction given to the retailer and to include on each receipt, invoice, or other form of accounting for the distribution of beverages and concentrate, the following: (1) the name and address of the distributor; (2) the name and address of the purchaser; (3) the date of sale and invoice number; and (4) the kind, quantity, size, and capacity of packages of beverages sold.

And lastly, on page 24, line 9, "producer" should be replaced with "distributor."

- **General.** Section 7289.27 appears to conflict with Section 7273, *Charges for administering the taxes*, in the Transaction and Use Tax Law. Does Section 7289.27 (d) override Section 7273 so that, if the county contracts with the BOE, the BOE can recover its full administrative costs? It appears that the BOE would be able to recover all of its costs, but the language is not clear.

**COMMENTS*****Alcoholic Beverage and Cigarette and Tobacco Products Tax***

**1. Why not increase the existing excise tax on alcoholic beverages or cigarettes and tobacco products?** As noted previously, it may not be cost effective for the BOE to administer the tax proposed in this bill, depending on the tax rate and the number of counties and school districts that adopt an ordinance or resolution to impose the tax and elect to have the BOE administer the tax. It may be more cost effective to increase the existing excise tax administered by the BOE that is imposed on alcoholic beverages or cigarettes and tobacco products and allocate the additional revenue to the counties or school districts.

**2. Provision should reference the Fee Collections Procedures Law.** The provisions that would authorize a local alcoholic beverage tax should be amended to require the BOE to administer any local alcohol beverage tax in accordance with the Fee Collections Procedures Law. Administering a local alcoholic beverage tax imposed at the retail level is not compatible with the Alcoholic Beverage Tax Law, which imposes the tax much higher in the distribution chain.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

This provision should also be amended to specify a due date for the tax and return and to authorize the payment of refunds on overpayments of the tax.

**3. Cigarette tax stamps.** Under existing Cigarette and Tobacco Products Tax Law, the cigarette tax is paid through the use of stamps or meter impressions. An appropriate stamp is affixed to, or an appropriate meter impression is made on, each package of cigarettes prior to the distribution of the cigarettes. In addition, the BOE, by regulation, could authorize the payment of the cigarette tax without the use of a stamp.

This bill would require that any locally imposed cigarette tax be assessed and collected in the same manner as the taxes imposed under the Cigarette and Tobacco Products Tax Law. As such, the local cigarette tax could be paid through the use of a stamp or through the use of a return (similar to tobacco products).

With respect to the tax stamp, it is not clear to staff how local cigarette taxes would impact the BOE's current cigarette tax stamp contract. Furthermore, if counties or school districts impose a tax, at different rates, the existing single stamp would not be workable, thereby requiring a second county/school district stamp or multiple state stamps (designating the county or school district by color or appearance). Having separate state and county/school district tax stamps would be problematic. How would they be affixed so that they do not overlap on the pack? Would the current stamping machines accommodate a double stamp? Would cartons have to run through the stamp machine twice to affix both stamps? Would hand-applied

county/school district stamps be required to avoid overlapping stamps, incompatible equipment, and multiple stamp machine runs?

Collecting the local cigarette tax without a stamp through the use of a return (similar to tobacco products) would result in problems similar to tobacco products, whereby the payment of tax can't simply be verified by the stamp. Instead, tax payment would have to be verified through purchase invoices.

If a stamping option is pursued, the Cigarette and Tobacco Products Tax Law also provides that stamps and meter impression settings shall be sold at their denominated values less 0.85 percent to licensed distributors. The discount is intended to help defray the cost (equipment/labor cost) to the distributor for affixing the stamps. This discount would also apply to any locally imposed cigarette taxes.

- 4. Cigarette and tobacco products tax evasion.** Tax evasion is one of the major areas that can reduce state revenues generated from cigarettes and other tobacco products taxes. BOE staff recently estimated that cigarette tax evasion in California was running at a rate of approximately \$182 million, plus \$94 million in tax on other tobacco products.<sup>4</sup>

During the mid-1990's, the BOE's cigarette tax evasion estimates changed little since there was little change to cigarette prices and excise taxes during that time. However, two major events that occurred after November 1998 dramatically increased California excise taxes as well as cigarette prices (excluding taxes): Proposition 10; and the Tobacco Master Settlement Agreement between states and tobacco manufacturers (tobacco settlement). Together, these two developments, when coupled with typical wholesaler and retailer distribution margins, coincided with an increase in the average prices of cigarettes to California consumers by about 50 percent in relation to early November 1998 prices. It is estimated that the impacts of Proposition 10 and the tobacco settlement more than doubled the dollar amount of cigarette tax evasion in California.

Since the 1998 experience, many new measures have been implemented to reduce cigarette and other tobacco products tax evasion. These include the Cigarette and Tobacco Products Licensing Act, an encrypted cigarette tax stamp, and various Internet restrictions (such as the delivery seller requirements imposed by the federal Jenkins Act).

This measure would authorize a county or school district to increase the cigarette tax up to five cents per cigarette or one dollar per pack of 20 cigarettes, which would result in an increase in the retail price, to the extent that the tax increase is passed along to consumers. Based on previous experience related to Proposition 10 and the tobacco settlement, along with research on experiences in other states, BOE staff believes the proposed local cigarette tax and resulting increase in the other tobacco products tax could result in both a decrease in actual consumption and an increase in cigarette and other tobacco products tax evasion.

- 5. Cigarette and tobacco products tax enforcement.** In 2003, Assembly Bill 71 (J. Horton, Ch. 890) enacted the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act),<sup>5</sup> which established a statewide licensure program administered by the BOE to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. The Licensing Act, which generates an

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<sup>4</sup> <http://www.boe.ca.gov/pdf/cig-evasion-07.pdf>

<sup>5</sup> Division 8.6 (commencing with Section 22970) of the Business and Professions Code.

estimated \$153 million annually in additional sales and use and excise taxes, requires the licensure of all persons engaging in the sale of cigarettes and tobacco products.

The Licensing Act is funded through the imposition of licensing fees. However, the Licensing Act enforcement costs exceed the amount of revenues from the licensing fees with the shortfall made up by the various cigarette and tobacco products tax funds (comprised of payments made to the state for the excise taxes on the distribution of cigarettes and tobacco products).

Since this measure would authorize a local cigarette and tobacco products tax, which would be enforced, in part, pursuant to the Licensing Act, BOE staff suggests that the Local Cigarette and Tobacco Products Tax provisions be amended to also require the county or school district to reimburse the BOE for the enforcement services it performs under the Licensing Act.

- 6. Difficulties for retailers in administering the local alcoholic beverage tax.** The proposed tax would only be imposed on the privilege of selling beer, wine, or distilled spirits at retail in the county or the school district. Alcoholic beverage retailers may encounter difficulty in collecting the tax on the sale of alcoholic beverages, particularly when combined with the sale of nonalcoholic beverages or food items. Retailers would have to program their cash registers to ring up all the items (e.g., two cheeseburgers, one soda, and one beer), compute the sales tax, and then compute the alcohol tax on the beer, inclusive of the sales tax. The following illustrates how the alcoholic beverage tax would be computed:

<b><u>Hamburger Joe's</u></b>	
Cheeseburgers - 2 @ \$7.50 each	\$15.00
Diet coke	1.50
Coors light beer (12 oz)	<u>4.00</u>
Subtotal	20.50
Sales tax (\$20.50 X 7.25%)	1.49
Total (includes sales tax)	\$21.99
County alcoholic beverage tax (\$0.05 per 12 ounces)	<u>0.05</u>
Total (includes sales tax and county alcoholic beverage tax)	<u>\$22.04</u>

This would complicate the retailer's recordkeeping and more than likely would lead to errors in collecting and reporting the proposed tax.

In addition, if the counties or school districts were to administer the alcoholic beverage tax, the retailer may have to report different gross sales amounts to the county or school district for alcoholic beverage tax purposes and then to the BOE for sales tax purposes.

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

## COMMENT

### ***Sweetened Beverage Tax***

*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 BOE's formal position.*

- **Sweetened beverage tax product exclusions.** This bill excludes from the definition of “concentrate” any product containing milk or milk products and any product that is solely used in preparing coffee or tea. As such, this would exclude powdered coffee, tea, or chocolate milk mix from the tax, even if those products contain added caloric sweetener. The definition of “sweetened beverage” also excludes any product containing milk or milk products and coffee and tea, thereby excluding products such as chocolate or strawberry milk, smoothie beverages, and bottled coffee beverages that have added caloric sweetener.

Also excluded would be syrups and powders that are intended to be used for the purpose of an individual consumer mixing a sweetened beverage. This would include, for example, products such as chocolate milk power and syrup, sweetened tea mixes, and sweetened punch and lemonade mixes which are generally available at places such as grocery stores and general merchandise department stores for a consumer to purchase and mix beverages at home.

## COMMENTS

### *Oil Severance Tax*

1. **Would the tax apply to oil acquired from a political subdivision?** Section 7289.40(h) exempts all “oil owned or produced by the state or any political subdivision’s proprietary share of oil produced under any unit, cooperative, or other pooling agreement.” This exemption seems to imply that oil produced by any political subdivision, as defined, would be permanently exempt from the tax as the oil changes ownership.

However, subdivision (d) of that same section includes as a producer any person who acquires the severed oil from a person or agency exempt from property taxation under the United States Constitution or other laws of the United States or under the California Constitution or laws of the State of California. The severance tax would be imposed upon all producers at a determined rate of the gross value of each barrel of oil severed. Since land owned by the political subdivision, as defined, is exempt from property tax, is this measure intended to impose the severance tax upon any person that acquires the severed oil from the political subdivision as a “producer”?

This measure should clarify whether the definition of “producer” would apply in this situation or whether oil severed from these lands would be permanently exempt from the severance tax as it changes ownership. And lastly, Section 7289.44 should be amended to remove the redundant language pertaining to the return and payment due date.

2. **Property Tax Exemptions.** Although the definition of “producer” references persons or agencies exempt from property tax, an exemption from property tax applies to the property itself, not to the persons or entities that own the property. Presumably, this provision means that, if the oil is severed from land exempt from property tax based on ownership, then the first purchaser would pay the assessment. Property exempt from property tax includes property owned by the federal government or a federal instrumentality, property owned by the state, and property owned by a local government which is located within its boundaries. (If the property is located outside its boundaries, then the property is taxable pursuant to Article XIII, Section 11, if it was taxable when acquired by the local government.)

The following table summarizes the possible assessment treatment of oil severed from land under different ownership as well as the person responsible for the assessment.

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Oil Land Ownership	Land Exempt From Property Tax	Who Pays Tax
Private Lands	No	Producer
Federal Lands	Yes	First Purchaser
State Lands	Yes	Requires Clarification As Noted in Comment #1
Political Subdivisions of the State (County, City, Other)	Yes	Requires Clarification As Noted in Comment #1
State Offshore (Coast to 3 nautical miles)	Yes	Requires Clarification As Noted in Comment #1
Federal Offshore (Between 3 and 12 nautical miles)	Not Subject To Property Tax	Not Subject To Tax
Outside 12 nautical miles	Not Subject To Property Tax	Not Subject To Tax

- 3. How would the severance tax be imposed on and reported by a person who owns an interest, including a royalty interest, in oil but does not produce the oil?** This provision defines “producer” to include “any person that owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on the person’s behalf by lease, contract, or other arrangement.” Further, this provision imposes the oil severance tax “on any producer” at a rate to be determined of the gross value of the product and requires that each producer prepare and file a return with the BOE and pay the tax imposed quarterly. Is there a possibility that, if the person who owns the interest does **not** produce the oil him or herself, the tax may be paid both by this producer **and** by the producer who does produce the oil? In other words, could the tax be paid twice (or more, if there is more than one person who owns an interest) on the same oil? In addition, is there a means by which a person who owns an interest but does not produce the oil would have access to the gross amount produced, price paid, market price, and other data that would enable that person to accurately calculate, report, and pay the tax due?

If these concerns are valid, the author may want to amend the definition of “producer” and/or otherwise amend the bill to address them.

**COST ESTIMATE****TRANSACTIONS AND USE TAX:**

This bill does not increase administrative costs to the BOE because it only authorizes a county or city and county or school district to impose a tax. However, if a county or city and county or school district adopted an ordinance, they would be required to contract with and pay the BOE for all the BOE's preparation and actual administration costs associated with the new tax.

**Preparatory costs.** Based on the BOE's experience with city and county imposed taxes, the one-time preparatory costs typically can range from \$12,000 to \$138,000. Preparatory costs are the actual costs to update publications and returns, perform programming for data processing, develop instructions for both BOE staff and taxpayers, notify taxpayers, and other necessary costs which include costs from other state agencies (e.g., California Department of Motor Vehicles costs to train staff and program computers). In addition, various factors can have an impact on the BOE's preparatory costs. For example, the BOE mails a special notice to taxpayers in the affected city or county, including adjacent areas. If a city, county, or school district borders jurisdictions with a large number of seller's permits, the BOE's mailing costs could be substantially higher.

In addition, because of certain fixed costs, the preparatory costs can vary depending on the number of new district taxes being implemented at the same time. For example, the cost of updating a publication and return to add four new taxes is similar to the cost to add one new tax. Moreover, those costs would be shared among four new districts versus one district. Thus, depending on the number of district taxes being implemented at the same time, the preparatory costs can vary.

Furthermore, the BOE anticipates one-time programming costs to make extensive modifications to the BOE's computer system to identify and track a district tax for school districts.

**On-going administrative costs.** As a point of perspective, the BOE's estimated 2008-09 administrative costs assessed to the existing county special taxing jurisdictions range from \$19,000 to \$2,695,000, with the exception of Los Angeles County (that county has a substantially higher number of seller's permits and, consequently, their administrative costs are higher than other jurisdictions).

The estimated assessments were determined based on the current costing model.

**LOCAL EXCISE TAXES:**

The local excise tax provisions do not increase administrative costs to the BOE because they only authorize a county to impose a tax. However, if the county passes an ordinance and elects to contract with the BOE to perform functions related to the ordinance, the county would be required to reimburse the BOE for its preparation costs to administer the ordinance as well as the ongoing costs for the BOE's services in actually administering the ordinance.

As previously mentioned, this bill should be amended to address the BOE's reimbursement of the fixed start-up costs attributable to any new local excise tax program.

**REVENUE ESTIMATE****TRANSACTIONS AND USE TAX:**

This measure would authorize a county and school district to levy, increase, or extend a transactions and use tax but does not specify an amount or the range of that tax. Accordingly, a revenue estimate could not be prepared.

**LOCAL EXCISE TAXES:**

This measure would authorize a county and school district to adopt an ordinance to impose local excise taxes, which include a county or school district alcoholic beverage tax, cigarette and tobacco products tax, severance tax, and sweetened beverage tax. Since there are several unknown variables related to these proposed local excise taxes, such as information related to sales, distribution, or severance, as applicable, by county or school district, and the specific rates that may be adopted by each jurisdiction, a revenue estimate could not be prepared at this time.

Analysis prepared by:	Debra Waltz	916-324-1890	05/13/11
	Cindy Wilson	916-445-6036	
Contact:	Margaret S. Shedd	916-322-2376	
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