



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	03/25/10	Bill No:	AB 2100
Tax:	Sweetened Beverage Tax	Author:	Coto
Related Bills:	SB 1210 (Florez)		

This analysis only addresses the provisions that impact the Board of Equalization (Board).

BILL SUMMARY

This bill would impose a tax of one cent (\$0.01) per teaspoon of added sweetener in a bottled sweetened beverage or in a sweetened concentrate.

ANALYSIS

CURRENT LAW

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state 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 10.25 percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on nonalcoholic sweetened beverages.

PROPOSED LAW

This bill would add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code to enact the Sweetened Beverage Tax Law, which, beginning January 1, 2011, would impose a tax at the rate of one cent (\$0.01) per teaspoon of added sweetener in a bottled sweetened beverage or concentrate upon every person who does the following:

- Makes the first sale in this state of a bottled sweetened beverage or concentrate;
- Uses or consumes an untaxed bottled sweetened beverage or concentrate in this state; or
- Places in this state an untaxed bottled sweetened beverage or concentrate in a vending machine or in retail stock for the purposes of selling the bottled sweetened beverage or a sweetened beverage to consumers.

Exemptions. This bill would exempt from the tax the sale of untaxed concentrate to a sweetened beverage manufacturer whose sale of the concentrate or the bottled sweetened concentrate would be subject to the proposed sweetened beverage tax. Also exempt would be the sale, use, or consumption in this state of bottled sweetened beverage 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.

Administration. The Board would be required to administer and collect the proposed tax 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 the

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Sweetened Beverage Tax Law, the references in the Fee Collection Procedures Law to “fee” would include the tax imposed by this bill and references to “feepayer” would include a person 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 Board. 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, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The Board would, upon appropriation, be reimbursed for expenses incurred in the administration and collection of the sweetened beverage tax.

Reporting and Payment. Each person required to pay the tax would be required to prepare and file a return in the form prescribed by the Board containing information as the Board deems necessary or appropriate for the proper administration of the tax. The return would be due on or before the last day of the calendar month following the calendar quarter to which it relates, together with a remittance payable to the Board for the amount of tax due.

The Board would be authorized to prescribe forms and reporting requirements as are necessary, including, but not limited to, information regarding the total amount of added sweetener, the total amount of bottled sweetened beverage drinks sold, and the amount of tax due.

The bill also specifies how payments on delinquent tax payments would be applied, which is as follows:

- First, to any interest due on the tax.
- Second, to any penalty imposed.
- Third, the balance, if any, to the tax due.

Disposition of Proceeds. This bill would establish the Pediatric Obesity Fund (Fund), which this bill would create in the State Treasury. The Fund would consist of all taxes, interest, penalties, and other amounts collected, less refunds and reimbursement to the Board for expenses incurred in the administration and collection of the tax. All moneys in the Fund would, upon appropriation by the Legislature, be allocated to the Department of Education for distribution of grants to eligible school districts for the purpose of employing a school nurse or health educator and creating a healthful diet and lifestyle plan for the school.

Definitions. This bill includes several definitions for key terms, including, but not limited to, the following:

- "**Added sweetener**" would mean any additive that enhances the sweetness of a beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice that is a component of the beverage.

- **"Beverage container"** would mean any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of the container.
- **"Bottled sweetened beverage"** would mean a sweetened beverage contained in a beverage container.
- **"Concentrate"** would mean a sweetened beverage syrup, simple syrup, powder, or base product for mixing, compounding, or making sweetened beverages.
- **"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 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 nonalcoholic beverage sweetened entirely with artificial sweeteners that do not add calories to the beverage; 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 natural sweeteners have been added; and any product containing milk or milk products.

- **"Teaspoon"** would mean 4.2 grams.

Operative Date. The bill would become effective immediately as a tax levy; however, the provisions of the act would become operative January 1, 2011.

BACKGROUND

In 1983, Assembly Bill 105 (Moore) would have imposed an excise tax on the distribution of nonalcoholic carbonated beverages, except carbonated water and carbonated fruit juice, at the rate of seven cents (\$0.07) per gallon. The provisions of that bill also included an excise tax on the distribution of nonalcoholic carbonated beverage syrup at the rate of fifty cents (\$0.50) per gallon of liquid syrup. That bill died in the Assembly Revenue and Taxation Committee.

In 2002, Senator Ortiz introduced Senate Bill 1520, which would have 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 and \$0.21 per gallon of bottled soft drinks, and \$0.21 per gallon of soft drink that may be produced from powder, that is sold in this state. The soda tax provisions were removed from the April 29, 2002, version of the bill.

COMMENTS

1. **Sponsor and Intent.** This bill is sponsored by the author and is intended to impose a tax based upon the amount of added sweetener placed into bottled beverages or equivalent amount of concentrate to fund eligible school districts to help combat childhood obesity and diabetes.
2. **This bill should contain a specific appropriation to the Board.** This bill proposes a new tax to be imposed as of January 1, 2011, which is in the middle of the state's fiscal year. In order to begin to notify and register taxpayers, develop reporting forms and computer programs, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2010-11 budget.
3. **The Board requires a six month lead time to implement a new tax program.** To effectively implement this bill, it would be necessary for the Board to notify and register taxpayers, develop computer programs, hire and train key staff, create necessary forms and schedules, and answer taxpayer inquiries. These functions should take place before the tax becomes operative. Board staff estimates that it would take a minimum of six months to implement the new tax program proposed by this bill.

In order to provide the Board with the 6-month lead-time necessary to implement the proposed tax program, this bill would have to be signed into law on or before July 1, 2010. If the bill is signed into law after that date, it is suggested that the bill be amended to provide for a delayed operative date to the first day of the first calendar quarter commencing more than six months after the bill is enacted. This would provide the Board with sufficient lead-time to successfully implement the bill and would be consistent with the quarterly reporting basis proposed by this measure.

4. **A clearer line of responsibility for the tax is needed.** In its current form, the bill does not clearly specify the taxpayer, nor does it provide a mechanism to notify customers that the tax has been paid. The taxpayer under this measure could be a beverage or concentrate manufacturer, distributor, wholesaler, retailer, or consumer. The imposition language is virtually identical to the imposition of excise tax on cigarettes and tobacco products, but lacks a single taxpayer, which would complicate administration of the proposed tax. In addition, it is possible for the tax to be imposed more than once as a beverage or concentrate moves through the distribution chain. For example, a beverage could be manufactured in California, sold to a wholesaler, and then sold to another wholesaler who sells the product to a retail store. If it is unclear to the distributor, wholesaler, or retailer whether or not the tax has been paid, they may report and pay the tax on their purchased products upon which the tax has already been paid.

The Board is working with the author's office to draft appropriate language to address these issues so that the proposed tax can be effectively and efficiently administered and collected.

5. **Proposed tax would be subject to the Sales and Use Tax.** Under current Sales and Use Tax Law, the total amount of the 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.

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In order to be reimbursed for the excise tax, persons subject to the tax pursuant to this measure may request payment from their customers. Ultimately, this cost would be reflected in the retail sales price of 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. The impact on state and local sales and use tax revenues is discussed in the Revenue Estimate.

6. **Application of delinquent payments.** This bill specifies the application of delinquent tax payments to first be applied to the interest due on the tax and second to any penalty imposed. Only then would remaining amounts of the payment be applied to the balance of the tax itself. Currently, Board-administered programs that apply delinquent payments in this order include the insurance tax and motor vehicle fuel tax (both collected by the Controller). In all the other tax and fee programs administered by the Board, the application of payments on delinquent tax liabilities is uniform: payments are applied first against the tax, then against penalties, and lastly against interest.

It should be noted that applying delinquent tax payments in the order proposed by this bill would not reduce the tax liability where partial payments only cover interest and penalty amounts. Under such circumstances, interest would continue to accrue on the full amount of tax due to which future payments would again first be applied, thus making it difficult for taxpayers to reduce their tax liability.

7. **Examples of tax rates on different beverages.** A cursory review of soda manufacturer websites found that a typical 12-ounce soda contains approximately 30 to 40 grams of “sugars.” The tax proposed by this measure would be about 7 to 10 cents for such products. A 64-ounce (half gallon) container of berry punch (with less than 10 percent fruit juice) contains approximately 250 grams of sugar, which would relate to about a 60-cent sweetened beverage tax. A frozen concentrate of that same product contains 30 grams of sugar, which equates to a 7-cent tax. Sports drinks contain about 14 grams of “sugars” for a serving of 8 ounces, which this bill translates into a 13-cent tax on a 32 ounce bottle. And a container of lemonade mix that makes 8 quarts of lemonade has 16 grams of sugar per serving with 32 servings in the container, resulting in a tax liability of \$1.22 per container.
8. **Suggested technical amendments.** Board staff also suggests the following amendments to allow the Board to more productively administer the proposed tax program:

- **Electronic registration and filing.** All new programs administered by the Board should comport with the Board’s electronic services projects and activities, which includes, in part, internet registration and the transition to e-filing, pursuant to the following.

32605. (a) Every person required to pay the tax imposed under this part shall register with the board. Every application for registration shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the board may require. An application for an account shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Each person required to pay the tax shall prepare and file with the board a return using electronic media, in the form prescribed by the board containing information as the board deems necessary or appropriate for the proper administration of this part. The return shall be filed on or before the last day of the calendar month following the calendar quarter to which it relates, together with a remittance payable to the board for the amount of tax due for that period. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

- **Regulations.** This bill should authorize the Board to prescribe, adopt, and enforce rules and regulations relating to the administration and collection of the Sweetened Beverage Tax Law. In addition, the bill should also include authorization for the Board to adopt emergency regulations as necessary to implement the proposed severance tax program.
- **Section 32601, Subdivision (o).** The definition of “syrup” appears to either be missing a word or words or has one or two words too many and should be revised as appropriate.

9. **Related legislation.** SB 1210 (Flores) would impose a tax upon every sweetened beverage manufacturer, concentrate manufacturer, or other person who makes the first sale in this state of a sweetened beverage or concentrate of a rate of \$0.01 per teaspoon of sugar placed into the sweetened beverage or equivalent amount of concentrate.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new tax program. Costs could be related to identifying and registering new taxpayers, developing related computer programs, processing returns, payments, and claims for refunds, and carrying out compliance and audit efforts to ensure proper reporting, along with developing regulations, training staff, and answering inquiries from the public. These estimated costs are pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Sweetened Beverage Tax. Based on 2007 figures,¹ sales of sweetened beverages are as follows:

A penny per tsp (using midpoint of range for each category)		Beverage categories by sugar content	Sugar Concentration g/oz.	Estimated percentage of market volume	Estimated volume sold in CA in 2007 (gallons)	Fee per gallon	Estimated Revenues
tsp/1 2 oz	tsp/gal						
10.7	114.3	> 45 g sugars per 12 oz.	3.75	20%	300,000,000	\$1.14	\$ 342,857,143
9.5	101.6	35 - 45 g sugars per 12 oz.	2.9 - 3.75	54%	810,000,000	\$1.02	\$ 822,857,143
6.0	63.5	15 - 35 g sugars per 12 oz.	1.25 - 2.9	25%	375,000,000	\$0.63	\$ 238,095,238
3.0	31.7	10 - 15 g. sugars per 12 oz.	0.83 - 1.25	1%	15,000,000	\$0.32	\$ 4,761,905
1.2	12.7	< 10 g sugars per 12 oz.	Under 0.83	0.1%	1,500,000	\$0.13	\$ 190,476
Sub totals				100%	1,500,000,000	Ave. = \$0.21	\$ 1,408,761,905
syrup volumes sold in California					44,800,000	\$2.00	\$ 89,600,000
Totals							\$ 1,498,361,905

^{1/} Source; Example of a Sugar-Sweetened Beverage Regulatory Fee Justification Study in California, December 2009

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Thus, as the table indicates, a one-cent per teaspoon tax in 2007 would have generated \$1.5 billion in estimated revenues. The Department of Finance's (DOF) current revenue forecast assumes that taxable sales will decrease by an overall total of 11.6 percent between 2007 and 2011, reflecting the depth of the current recession. Assuming that sales of sweetened beverages follow a pattern similar to the DOF's forecast of overall taxable sales, revenue from this measure would fall to \$1.325 billion in calendar year 2011. The DOF further projects that overall taxable sales will increase 7.8 percent in 2012, which would increase the revenues from this bill to a total of \$1.429 billion. Converting to a fiscal year basis (and assuming a half-year effect for 2010-11), revenues would be \$636 million in 2010-11 and \$1.377 billion in 2011-12.

Sales and Use Tax Impacts. A one cent per teaspoon of added sweetener per bottle of sweetened beverage or concentrate tax would generate an estimated \$636 million in 2010-11 and \$1.4 billion in 2011-12. Of the estimated excise tax revenue, sixty percent of the sweetened beverages are from carbonated soft drinks which are subject to sales tax; therefore, the impact on sales and use tax revenue from the sale of carbonated soft drinks would be as follows:

		2010-11		2011-12	
	%	(millions)	%	(millions)	
State Gain*	6.00%	\$ 22.9	5.00%	\$ 41.3	
Fiscal					
Recovery Fund	0.25%	\$ 1.0	0.25%	\$ 2.1	
Local Loss	2.00%	\$ 7.6	2.00%	\$ 16.5	
District Loss	0.85%	\$ 3.2	0.85%	\$ 7.0	
Total		\$ 34.7		\$ 66.9	

*Note: Statewide sales tax rate decreases by 1% beginning July 1, 2011.

REVENUE SUMMARY

It is estimated that this bill would generate about \$636 million in fiscal year 2010-11 and \$1.377 billion in fiscal year 2011-12 for the Pediatric Obesity Fund. In addition, this tax would generate \$34.7 million in fiscal year 2010 and \$66.9 in fiscal year 2011-12 in State and Local sales and use tax.

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