STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/15/07**	Bill No:	**SB 297**
Tax:	**Local Alcoholic Beverage**	Author:	**Romero**
Related Bills:			

BILL SUMMARY

This bill would authorize a county to impose a tax on the retail sale of beer, wine or distilled spirits sold for consumption on the premises of the seller.

ANALYSIS

CURRENT LAW

Sales and Use Tax Law

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

Rate	Jurisdiction	Purpose/Authority
4.75 %	State (General Fund)	Dedicated for state general purposes (Sections 6051 and 6201 of the Revenue and Taxation Code)
0.25 %	State (General Fund)	Dedicated for state general purposes (Sections 6051.3 and 6201.3)
0.25 %	State (Fiscal Recovery Fund)	Dedicated to the repayment of the Economic Recovery Bonds (Sections 6051.5 and 6201.5
0.50 %	State (Local Revenue Fund)	Dedicated to local governments to fund health and welfare programs (Sections 6051.2 and 6201.2)
0.50 %	State (Local Public Safety Fund)	Dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution)
1.00 %	Local (City/County) 0.75% City and County 0.25% County	Dedicated to city and county general operations; Dedicated to county transportation purposes (Section 7203.1, operative 7/1/04)
7.25 %	Total State and Local Sales and Use Tax Rate	

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The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties and cities 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 Board, pursuant to Section 99006 of the Government Code, that the $15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenues to satisfy the state's bond obligations.

Under the Bradley-Burns Uniform Local Sales and Use Tax Law (Bradley-Burns Law), counties are authorized to impose a local sales and use tax at a rate of up to 1 percent. Cities are also authorized to impose a local sales and use tax at a rate of up to 0.75 percent that is credited against the county rate so that the combined local sales and use tax rate under the Bradley-Burns Law does not exceed 1 percent. 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.

In addition to the state and Bradley-Burns local taxes described above, the law authorizes various rates under the **Transactions and Use Tax Law** (commencing with Section 7251). The Transactions and Use Tax Law authorizes cities and counties to impose district taxes for general and specific purposes. Cities and counties can impose the taxes directly or establish a special purpose entity. As of April 1, 2007, there are 87 cities and counties imposing a district tax for general or specific purposes. Of the 87 district taxes, 36 are county-imposed taxes and 51 are city-imposed taxes.

The combined rate of all district taxes imposed within a county cannot exceed 2 percent. Currently, the district tax rates vary from 0.10 percent to 1 percent. The combined state, local, and district tax rates range from 7.375 percent to 8.75 percent.

The Board performs functions in the administration and operations of the ordinances imposing the Bradley-Burns Law and the Transactions and Use Tax Law.

Alcoholic Beverage Tax Law

Under current law, Sections 32151, 32201, and 32220 of the Alcoholic Beverage Tax Law imposes the following taxes and surcharges on beer, wine, and distilled spirits:

	Tax	Per Gallon Surcharge	Total
Beer	$0.04	$0.16	$0.20
Wine (not more than 14 percent alcohol)	$0.01	$0.19	$0.20
Wine (more than 14 percent alcohol)	$0.02	$0.18	$0.20
Sparkling wine	$0.30	$0.00	$0.30
Hard cider	$0.02	$0.18	$0.20
Distilled spirits (100 proof)	$2.00	$1.30	$3.30
Distilled spirits (100+ proof)	$4.00	$2.60	$6.60

The proceeds from these taxes and surcharges are deposited in the General Fund.

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

PROPOSED LAW

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

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

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

- In the case of a general tax, an ordinance shall be approved by a two-thirds majority vote of all of the members of the county board of supervisors and by a majority vote of the qualified voters.
- In the case of a special tax, an ordinance shall be approved by a majority vote of all of the members of the county board of supervisors and by a two-thirds majority vote of the qualified voters.
- The ordinance shall state the rate of the tax and the length of time for which the tax is to be imposed.

- The tax shall be imposed at a rate of at least 1/8 percent, but not to exceed 5 percent, at increments of 1/8 percent, of the underlying sale price, inclusive of other charges, taxes, or levies.

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

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

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

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

Revenues collected by the Board would be distributed as follows:

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

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

BACKGROUND

Three bills introduced during the last two 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.

COMMENTS

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

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

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

3. **Costs may exceed revenues.** This bill does not increase administrative costs to the Board because it only authorizes a county to impose a tax. However, if the county passed an ordinance and elected to contract with the Board to perform functions related to the ordinance, the Board would incur fixed costs related to the start up of a new tax program in addition to ongoing costs for the Board's services in actually administering the ordinance. These start up costs would be the same regardless if one county or all 58 counties adopt an ordinance to impose the new tax. In addition, if the rate is set too low and/or few counties impose the tax or elect to contract with the Board to administer the tax, fixed preparatory costs would be paid from a smaller revenue base. Under these circumstances, it is possible that the revenues generated by the proposed tax may not be sufficient to cover the Board's preparatory and administrative costs. If the costs were to exceed the revenues, more than likely the General Fund would need to make up the difference.

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

5. **Difficulties for retailers in administering this tax.** The proposed tax would only be imposed on the retail sale of beer, wine and distilled spirits sold for consumption on the premises of the retailer. This is most likely to affect restaurants, bars, and delis. Some of these retailers may encounter difficulty in collecting the tax on the sale of alcoholic beverages, but not on the sale of nonalcoholic beverages or food

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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:

Hamburger Joe's	
Cheeseburgers - 2 @ $7.50 each	$15.00
Diet coke	1.50
Coors light beer	4.00
Subtotal	20.50
Sales tax ($20.50 X 7.25%)	1.49
Total (includes sales tax)	$21.99
Alcoholic beverage tax ($4.29[1] X 1%[2])	0.05
($4.00 X 7.25%)[1]	
Alcoholic beverage tax at a rate of 1%[2]	
Total (includes sales tax and alcoholic beverage tax)	$22.04

Retailers would have to program their cash registers to ring up all the items, compute the sales tax on all the items, compute the sales tax on the drink price of the alcoholic beverage, and then compute the alcoholic beverage tax on the drink price including the sales tax. 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 were to administer the alcoholic beverage tax, the retailer may have to report different gross sales amounts to the county for alcoholic beverage tax purposes and then to the Board for sales tax purposes.

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

6. **In general, bars sell drinks at a tax-included price, and, for cash sales, bars do not give customers a receipt.** This bill provides that a retailer, at the time of making a sale of beer, wine, or distilled spirits to be consumed on the retailer's premises, must collect the tax and give the consumer a receipt. Would the retailer be required to give a receipt showing a separately stated amount for both the drink and the alcoholic beverage tax? Or, would the receipt show one price for the drink, including both sales tax and the alcoholic beverage tax? This needs to be clarified.

   It is an overwhelming custom of the bar industry to sell alcoholic beverages for a tax-included price. Civil Code Section 1656.1 provides that retailers can be reimbursed for sales tax under certain conditions. Most bars comply with Section 1656.1 by posting a sign within their premises, in a location visible to purchasers, stating that all drinks include sales tax reimbursement. With respect to bars providing a receipt to the customer, for cash sales, most bars do not give a receipt. For credit sales, a receipt is given; however, the receipt does not show a separately stated amount for sales tax.

Board staff is willing to work with the author's office to address these issues.

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

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

COST ESTIMATE

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

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

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

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

The American Medical Association (AMA), in a report titled *Alcohol Industry 101 – Its Structure & Organization*, detailed 2002 U.S alcohol on-premise and off-premise retail sales. The following provides on-premise sales of alcohol for 2002:

U.S Alcohol 2002 On-Premise Sales (in billions)

Beer	$35.9
Wine	$9.2
Liquor	$23.6
Total	$68.7

The Adams Business Group, a research firm engaged in research services for the alcohol industry, provided the following estimates for on-premise California sales for 2006:

California Alcohol 2006 On-Premise Sales Estimates (in billions)

Beer	$4.3
Wine	$2.3
Distilled	$3.8
Total	$10.4

It is estimated that, in California, total expenditures on alcoholic beverages for consumption on premises of a seller of beer, wine, or distilled spirits are estimated to be $10.4 billion.

REVENUE SUMMARY

If every county in California, subject to voter approval, imposed a tax on the consumption of alcoholic beverages sold on the premises, the revenue effect from imposing such a tax on $10.4 billion in alcoholic beverages sold on the premises would be as follows:

Percentage	Revenue Gain
1/8 percent	$ 13 million
1/2 percent	$ 52 million
3/4 percent	$ 78 million
1 percent	$ 104 million
2 percent	$ 208 million
3 percent	$ 312 million
4 percent	$ 416 million
5 percent	$ 520 million

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