STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	**02/20/02**	Bill No:	**SB 1520**
Tax:	**Soda Tax**	Author:	**Ortiz**
Board Position:		Related Bills:	

BILL SUMMARY

This bill would impose 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.

ANALYSIS

Current Law

Under existing law, there is no excise tax on nonalcoholic beverages, beverage syrup and soft drink that may be produced from powder. Sales of such beverages and syrups, however, are subject to the sales and use tax.

Proposed Law

This bill would add Part 14.5 (commencing with Section 33001) to Division 2 of the Revenue and Taxation Code to impose, on and after January 1, 2003, an excise tax upon every distributor, manufacturer, or wholesale dealer, calculated as follows:

- Two dollars ($2) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for direct sale in this state to retail dealers.
- Twenty-one cents ($0.21) per gallon for each gallon of bottled soft drink sold or offered for direct sale in this state to retail dealers.
- Where a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in this state, and the powder is for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to twenty-one cents ($0.21) for each gallon of soft drink that may be produced from each package or container by following the manufacturers directions. This tax would apply when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer.

The taxes imposed by this bill would be imposed pursuant to rules promulgated to the State Board of Equalization.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

This bill would exempt from the excise tax items such as syrups, simple syrups, powders, or base products, or soft drinks sold to the United States Government, any soft drink containing more than 10 percent natural fruit or vegetable juice, infant formula, beverages sweetened with artificial sweeteners that do not add calories to the beverage, any product used for weight reduction, water, and any product containing milk or milk products.

This bill would also create a trust fund account in the State Treasury called the California Child Health and Achievement Fund. All costs to implement the California Soda Tax Act would be paid from moneys deposited into this fund. All revenue collected from the tax on soft drinks would be deposited into this fund and appropriated by the Legislature as follows:

- Fifty percent to school districts that cease selling soda on school campuses.
- Twenty-five percent to the State Department of Health Services for public health programs that promote nutrition and physical activity.
- Twenty-five percent to hospitals, emergency and trauma care, and clinics.

As a tax levy, the bill would become effective immediately upon enactment, but the tax would be imposed beginning January 1, 2003.

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.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to create programs that promote nutrition and physical activity in schools, prevention and treatment of obesity through health care, obesity and cancer research, and other oral health promotion programs.
2. **Suggested technical amendments.** This bill provides that the taxes imposed by this bill would be imposed pursuant to rules promulgated to the State Board of Equalization. However, in order for the Board to administer the proposed excise tax under provisions consistent with other Board-administered fees, it is suggested that the following section be added to this bill:

33004.5. For purposes of this chapter, the board may collect the excise 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 administration of the excise tax pursuant to this chapter, references in the Fee Collection Procedures Law to "feepayer" and "fee" shall include "taxpayer" and "tax".

In addition to the suggested administrative language, the bill should be amended to specify a due date for the fee and return, authorize the payment of refunds on overpayments of the fee, and authorize reimbursement for the Board's costs of administration. Board staff is willing to work with the author's office in drafting appropriate amendments.

3. **Similar taxes in other states and localities.** Eight states/localities impose an excise, or similar tax on soft drinks. They are as follows:

State/Locality	Year Enacted or Effective	Sales or Other Tax Specifically Applied; Representative Foods Taxed
Arkansas	1992	$0.21 per gallon of liquid soft drink; $2 per gallon of soft drink syrups
Chicago	1993	Distributors pay 3 percent on sales of containers, 9 percent on syrups
Missouri	1962	$0.003 per gallon of soft drinks reduced
Rhode Island	1984	$0.04 per case (24 12-oz cans) of soft drinks, soda water, mineral water, beer - paid by wholesaler
Tennessee	1963	1.9 percent of gross receipts from soft drinks and soft drink ingredients - paid by manufacturers and bottlers
Virginia	1977	Small excise tax on wholesalers and distributors based on total sales of soft drinks
Washington	1989	$1 per gallon of syrup
West Virginia	1951	$0.01 per half liter of carbonated and non-carbonated soft drinks, fruit drinks, and chocolate milk and $0.80 per gallon of syrups paid by manufacturers or wholesalers

4. **This bill would increase state and local sales and use tax revenues.** 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 excise 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 excise tax, distributors, manufacturers, or wholesale dealers may request payment for the excise tax from the retailer to whom the distributor, manufacturer or wholesale dealer sells. Thereafter, this cost would be reflected in the retail sales price of beverages sold to the ultimate consumer, and would be subject to the sales and use tax. The impact on state and local sales and use tax revenues is discussed in the Revenue Estimate.

5. **This bill should contain a specific appropriation to the Board.** This bill proposes an excise tax to be imposed on or after January 1, 2003, which is in the middle of the state's fiscal year. In order to begin to develop the taxpayer base, reporting forms, 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 2002-03 budget.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new excise tax. These costs would include registering taxpayers, developing computer programs, mailing and processing returns and excise tax payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

According to industry sources, the total sales of soft drinks in the US for 2000 amounted to 17.2 billion gallons. Sales of diet soft drinks, water, fruit juices, and dairy products would be exempted in this bill from the excise tax. Total sales in the US of these types of soft drinks are estimated to be 5.1 billion gallons. Therefore, non-diet soft drinks comprise 12.1 billion gallons.

California comprises 12 percent of the total population in the US. Total consumption of soft drinks in California that qualify under this proposal is estimated to be 1.5 billion gallons (12.1 billion gallons x 0.12). It is further estimated that of the 1.5 billion gallons consumed, 1.4 billion gallons comprises the carbonated soft drink (CSD) segment of the market. This market is further divided into two subsegments: bottled product and syrup. Of the 1.4 billion gallons of the CSD segment, 1.2 billion gallons (1.4 billion gallons x 0.85) comprises the bottled portion of the market while 200 million gallons (1.4 billion gallons x 0.15) comprises total soft drink sales from syrup. Since one gallon of syrup

constitutes 5.8 gallons of soft drink, the total gallonage of soft drink syrup is estimated to be 34.5 million gallons (200.0 million gallons / 5.8 gallons).

The remaining soft drink market comprises 100.0 million gallons of product and includes non-carbonated soft drinks, for example, energy drinks and sports drinks. Combined with the bottled CSD market, the total bottled segment of the market in California is estimated to be 1.3 billion gallons (1.2 billion gallons of CSD + 100 billion gallons of NCSD).

In addition to the revenue generated by the excise tax, it is also assumed that this tax would be subject to the sales and use tax and would result in an estimated revenue increase of $27.1 million ($342 million x 0.0792).

Revenue Summary

The revenue gain from imposing a $2.00 per gallon excise tax soft drink syrup and a $0.21 per gallon excise tax on bottled soft drinks is estimated to be:

Type of Product	Total Gallonage	Tax Per Gallon	Total
Soft Drink Syrup	34.5 million	$2.00	$ 69 million
Bottled	1.3 billion	$0.21	$ 273 million
Total			$ 342 million

The revenue gain from an additional $342 million subject to the sales and use tax is estimated to be:

	Revenue
State Gain (5.00%)	$ 17.1 million
Local Gain (2.25%)	$ 7.7 million
Special District Gain (0.67%)	$ 2.3 million
Total Sales Tax Gain	$ 27.1 million

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