



SB-1520 Schools: pupil nutrition: carbonated beverages. (2001-2002)

CALIFORNIA LEGISLATURE— 2001–2002 REGULAR SESSION

SENATE BILL

NO. 1520

Introduced by Senator Ortiz

February 20, 2002

An act to add Part 14.5 (commencing with Section 33001) to Division 2 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1520, as introduced, Ortiz. Taxation: soda tax.

The Sales and Use Tax Law imposes a sales and use tax on the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, tangible personal property based on a specified percentage of the gross receipts from the sale of, or the sales price of, that property.

This bill would impose a surtax 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 revenues collected from the surtax would be deposited in the California Child Health and Achievement Fund, which the bill would create, for appropriation by the Legislature to diminish the human and economic costs of obesity in this state.

By imposing a new tax, this bill would result in a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 14.5 (commencing with Section 33001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 14.5. CALIFORNIA SODA TAX
CHAPTER 1. General Provisions and Definitions

33001. This part shall be known and may be cited as the California Soda Tax Act.

33002. It is the intent of this part to diminish the human and economic costs of obesity in the State of California. This part is intended to discourage individuals, especially children, from excessive consumption of soda due to its high caloric content and minimal nutritional value, by increasing the price of soda and creating a revenue source to fund programs designed to prevent and treat obesity.

33003. For purposes of this part:

(a) "Bottle" means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of the container.

(b) "Bottled soft drink" means any complete, ready to consume, nonalcoholic drink, whether carbonated or not, commonly referred to as a soft drink, contained in any bottle.

(c) "Distributor, manufacturer, or wholesale dealer" means any person who receives, stores, manufactures, bottles, or sells bottled soft drinks, soft drink syrups, simple syrups, or powders, or base products for mixing, compounding, or making soft drinks for direct sale to retail dealers.

(d) "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted.

(e) "Natural fruit juice" means the original liquid resulting from the pressing of fruit, or the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice.

(f) "Natural vegetable juice" means the original liquid resulting from the pressing of vegetables, or the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice.

(g) "Nonalcoholic beverage" means and includes all beverages not subject to tax under Part 14 (commencing with Section 32001).

(h) "Place of business" means any place where soft drinks, syrups, simple syrups, powder, or base products are manufactured or any place where bottled soft drinks, soft drink syrup, simple syrup, soft drink powder, or other soft drink base product, or any other item taxed under this part is received.

(i) "Powder" or "other base" means a solid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing powder or other base with water, ice, syrup, or simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

(j) "Retailer" or "retail dealer" means any person, other than a manufacturer, distributor, or wholesaler who receives, stores, mixes, compounds, or manufactures any soft drink and sells or otherwise dispenses the same to the ultimate consumer.

(k) "Sale" means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished. If a retailer is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed by this part arises when the property is transferred to a retail store for sale to the ultimate consumer, as reflected by the records of the taxpayer.

(l) "Simple syrup" means a mixture of sugar and water.

(m) "Soft drink" means any nonalcoholic, sweetened (excluding artificially), beverage sold for human consumption including, but not limited to, the following: sweetened soda water, ginger ale, all drinks commonly referred to as cola, lime, lemon, lemon-lime, and other flavored drinks, including any fruit or vegetable drink containing 10 percent or less natural fruit or natural vegetable juice, and all other drinks and beverages commonly referred to as "soda," "soda pop," and "soft drinks."

(n) "Syrup" means the liquid mixture of basic ingredients used in making, mixing, compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, or any other product suitable to make a completed soft drink.

33004. There is hereby levied and there shall be collected an excise tax upon every distributor, manufacturer, or wholesale dealer, calculated as follows:

(a) Two dollars (\$2) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for direct sale in the State of California to retail dealers.

(b) Twenty-one cents (\$0.21) per gallon for each gallon of bottled soft drink sold or offered for direct sale in the State of California to retail dealers.

(c) Where a package or container or powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in California, 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 manufacturer's directions. This tax applies 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.

33005. The taxes imposed by Section 33004 shall be imposed on every soft drink in the possession or under the control of every manufacturer, dealer, and distributor on and after 12:01 a.m. on January 1, 2003, pursuant to rules promulgated by the State Board of Equalization.

33006. There is hereby created a trust fund in the State Treasury called the California Child Health and Achievement Fund. The California Child Health and Achievement Fund shall consist of moneys collected pursuant to the taxes imposed by Section 33004. All costs to implement this part shall be paid from moneys deposited in the California Child Health and Achievement Fund. All revenue to the state derived from the tax on soft drinks as per this part, shall be deposited into this fund.

33007. (a) All moneys deposited in the California Child Health and Achievement Fund shall, upon appropriation by the Legislature, be allocated as follows:

(1) Fifty percent to school districts that cease selling sold on school campuses.

(2) Twenty-five percent to the State Department of Health Services for public health programs that promote nutrition and physical activity.

(3) Twenty-five percent to hospitals, emergency and trauma care, and clinics.

(b) All moneys raised pursuant to taxes imposed by Section 33004 shall, upon appropriation by the Legislature, be expended only for the purposes expressed in this part, and shall be used only to supplement existing levels of service and not fund existing levels of service. No moneys in the California Child Health and Achievement Fund may be used to supplant state or local General Fund money for any purpose.

33008. The following items shall be exempt from the tax levied by this part:

(a) Syrups, simple syrups, powders, or base products, or soft drinks sold to the United States Government.

(b) Syrups, simple syrups, powders, or base products, or soft drinks exported from the state by a distributor, wholesaler, or manufacturer.

(c) Any powder or base product that is used in preparing coffee or tea.

(d) Any frozen concentrate or freeze-dried concentrate to which only water is added to produce a soft drink containing more than 10 percent natural fruit juice or natural vegetable juice.

(e) Any soft drink containing more than 10 percent natural fruit juice or natural vegetable juice.

(f) Syrups, simple syrups, powders, or base products, or soft drinks sold by one distributor, wholesaler, or manufacturer to another distributor, wholesaler, or manufacturer who holds a license issued by the director under the provisions of this part as a distributor, wholesaler, or manufacturer, provided that the license number of the distributor, wholesaler, or manufacturer to whom the soft drink is sold is clearly shown on the invoice for the sale that is claimed to be exempt. This exemption shall not apply to any sale to a retailer.

(g) Any product, whether sold in liquid or powder form, which is intended by the manufacturer for consumption by infants and which is commonly referred to as "infant formula."

(h) Any powder or other base product that is intended by the manufacturer to be sold and used for the purpose of domestically mixing soft drinks by the ultimate consumer.

(i) Beverages sweetened with artificial sweeteners which do not add calories to the beverage, including beverages

commonly known as diet sodas and diet soft drinks.

(j) Any product, whether sold in liquid or powder form, that is intended by the manufacturer for use for weight reduction.

(k) Water, to which no natural sweeteners have been added.

(l) Any product containing milk or milk products.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.