

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: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

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

3

4 PART 14.5. CALIFORNIA SODA TAX

5

6 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7

8 33001. This part shall be known and may be cited as the
9 California Soda Tax Act.

10 33002. It is the intent of this part to diminish the human and
11 economic costs of obesity in the State of California. This part is
12 intended to discourage individuals, especially children, from
13 excessive consumption of soda due to its high caloric content and
14 minimal nutritional value, by increasing the price of soda and
15 creating a revenue source to fund programs designed to prevent
16 and treat obesity.

17 33003. For purposes of this part:

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

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

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

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

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



1 (f) “Natural vegetable juice” means the original liquid
2 resulting from the pressing of vegetables, or the liquid resulting
3 from the reconstitution of natural vegetable juice concentrate, or
4 the liquid resulting from the restoration of water to dehydrated
5 natural vegetable juice.

6 (g) “Nonalcoholic beverage” means and includes all
7 beverages not subject to tax under Part 14 (commencing with
8 Section 32001).

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

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

19 (j) “Retailer” or “retail dealer” means any person, other than
20 a manufacturer, distributor, or wholesales who receives, stores,
21 mixes, compounds, or manufactures any soft drink and sells or
22 otherwise dispenses the same to the ultimate consumer.

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

30 (l) “Simple syrup” means a mixture of sugar and water.

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

39 (n) “Syrup” means the liquid mixture of basic ingredients used
40 in making, mixing, compounding soft drinks by mixing the syrup



1 with water, simple syrup, ice, fruits, vegetables, fruit juice, or any
2 other product suitable to make a completed soft drink.

3 33004. There is hereby levied and there shall be collected an
4 excise tax upon every distributor, manufacturer, or wholesale
5 dealer, calculated as follows:

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

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

12 (c) Where a package or container or powder or other base
13 product, other than a syrup or simple syrup, is sold or offered for
14 sale in California, and the powder is for the purpose of producing
15 a liquid soft drink, then the tax on the sale of each package or
16 container shall be equal to twenty-one cents (\$0.21) for each
17 gallon of soft drink that may be produced from each package or
18 container by following the manufacturer's directions. This tax
19 applies when the sale of the powder or other base is sold to a retailer
20 for sale to the ultimate consumer after the liquid soft drink is
21 produced by the retailer.

22 33005. The taxes imposed by Section 33004 shall be imposed
23 on every soft drink in the possession or under the control of every
24 manufacturer, dealer, and distributor on and after 12:01 a.m. on
25 January 1, 2003, pursuant to rules promulgated by the State Board
26 of Equalization.

27 33006. There is hereby created a trust fund in the State
28 Treasury called the California Child Health and Achievement
29 Fund. The California Child Health and Achievement Fund shall
30 consist of moneys collected pursuant to the taxes imposed by
31 Section 33004. All costs to implement this part shall be paid from
32 moneys deposited in the California Child Health and Achievement
33 Fund. All revenue to the state derived from the tax on soft drinks
34 as per this part, shall be deposited into this fund.

35 33007. (a) All moneys deposited in the California Child
36 Health and Achievement Fund shall, upon appropriation by the
37 Legislature, be allocated as follows:

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



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

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

6 (b) All moneys raised pursuant to taxes imposed by Section
7 33004 shall, upon appropriation by the Legislature, be expended
8 only for the purposes expressed in this part, and shall be used only
9 to supplement existing levels of service and not fund existing
10 levels of service. No moneys in the California Child Health and
11 Achievement Fund may be used to supplant state or local General
12 Fund money for any purpose.

13 33008. The following items shall be exempt from the tax
14 levied by this part:

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

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

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

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

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

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

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



- 1 (h) Any powder or other base product that is intended by the
- 2 manufacturer to be sold and used for the purpose of domestically
- 3 mixing soft drinks by the ultimate consumer.
- 4 (i) Beverages sweetened with artificial sweeteners which do
- 5 not add calories to the beverage, including beverages commonly
- 6 known as diet sodas and diet soft drinks.
- 7 (j) Any product, whether sold in liquid or powder form, that is
- 8 intended by the manufacturer for use for weight reduction.
- 9 (k) Water, to which no natural sweeteners have been added.
- 10 (l) Any product containing milk or milk products.
- 11 SEC. 2. This act provides for a tax levy within the meaning of
- 12 Article IV of the Constitution and shall go into immediate effect.

