

AMENDED IN SENATE APRIL 17, 2002

AMENDED IN SENATE APRIL 4, 2002

SENATE BILL

No. 1520

Introduced by Senator Ortiz
(Coauthors: Senators Kuehl and Torlakson)
(Coauthors: Assembly Members Aroner, Jackson, and Koretz)

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, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1520, as amended, 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 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: no. 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 Childhood Obesity Act.

10 33002. The Legislature finds and declares as follows:

11 (a) In the past two decades obesity has doubled in children, and
12 tripled in adolescents. On average, 30 percent of California’s
13 children are overweight, and in some school districts, anywhere
14 from 40 to 50 percent of California’s students are overweight.
15 Only 2 percent of California’s youth, ages 12 through 17 years,
16 have eating habits that meet national dietary recommendations.
17 Only 23 percent of students in grades 5, 7, and 9 are physically fit.
18 Almost half of the children and adolescents now diagnosed with
19 diabetes have the Type 2 form of the disease, which is strongly
20 linked to obesity and lack of exercise. One in four obese children
21 have early signs of Type 2 diabetes.

22 (b) Overweight and physical inactivity costs California an
23 estimated \$24.6 billion annually, approximately seven hundred
24 fifty dollars (\$750) per person—a cost that is expected to rise by
25 another 32 percent by the year 2005. Poor nutrition and physical
26 inactivity account for more preventable deaths (28 percent) than
27 anything other than tobacco—more than AIDS, violence, car
28 crashes, alcohol, and drugs combined. The long-term impact of
29 childhood obesity on California’s economy, and on our children’s
30 increased risk of death from heart disease, cancer, stroke, and
31 diabetes will be staggering. Approximately 300,000 deaths in the



1 United States per year are currently associated with obesity and
2 overweight; the total direct and indirect costs attributed to
3 overweight and obesity amounted to \$117 billion in the year 2000.
4 Obesity is linked to a larger increase of chronic health conditions
5 and accounts for a significantly higher amount of health
6 expenditures than those associated with smoking, heavy drinking,
7 or poverty.

8 (c) Every additional daily serving of sugar-sweetened soda
9 increases a child's risk for obesity by 60 percent. Twenty years ago,
10 boys consumed more than twice as much milk as soft drinks, and
11 girls consumed 50 percent more milk than soft drinks. By 1996,
12 both boys and girls consumed twice as many sodas as milk. Soft
13 drinks now comprise the leading source of added sugar in a child's
14 diet. Teenage boys consume twice the recommended amount of
15 sugar each day, almost one-half of which (44 percent) comes from
16 soft drinks. Teenage girls consume almost three times the
17 recommended amount of sugar, 40 percent of which comes from
18 soft drinks.

19 (d) A study of 9th and 10th grade girls found that those who
20 drank colas were five times more likely to develop bone fractures,
21 and girls who drank other carbonated beverages were three times
22 more likely to suffer bone fractures than nonconsumers of
23 carbonated beverages. Decreased milk consumption means that
24 children are no longer getting required amounts of calcium in their
25 diets. The average teenage girl now consumes 40 percent less
26 calcium than she needs, putting her at high risk of osteoporosis in
27 her later years.

28 (e) Lack of adequate funding has left schools to rely on soda
29 contracts and the sale of soda and other unhealthy foods to fund
30 vital afterschool and extracurricular activities, and to balance
31 limited school cafeteria and school physical education budgets.
32 Unlike virtually all other products, sweetened beverages have both
33 high calories and little or no nutritional value. In 1992 the
34 California electorate approved Proposition 163 repealing the
35 snack tax, a sales tax imposed on certain snack foods containing
36 sugar products, without repealing the existing sales tax imposed on
37 soda. Seven other states levy a tax on the sale of soda, many of
38 which use the revenue to pay for vital health-related programs.

39 33003. For purposes of this part:



- 1 (a) “Bottle” means any closed or sealed glass, metal, paper,
2 plastic, or any other type of container regardless of the size or
3 shape of the container.
- 4 (b) “Bottled soft drink” means any complete, ready to
5 consume, nonalcoholic drink, whether carbonated or not,
6 commonly referred to as a soft drink, contained in any bottle.
- 7 (c) “Distributor, manufacturer, or wholesale dealer” means
8 any person who receives, stores, manufactures, bottles, or sells
9 bottled soft drinks, soft drink syrups, simple syrups, or powders,
10 or base products for mixing, compounding, or making soft drinks
11 for direct sale to retail dealers.
- 12 (d) “Milk” means natural liquid milk, regardless of animal
13 source or butterfat content, natural milk concentrate, whether or
14 not reconstituted, regardless of animal source or butterfat content,
15 or dehydrated natural milk, whether or not reconstituted.
- 16 (e) “Natural fruit juice” means the original liquid resulting
17 from the pressing of fruit, or the liquid resulting from the
18 reconstitution of natural fruit juice concentrate, or the liquid
19 resulting from the restoration of water to dehydrated natural fruit
20 juice.
- 21 (f) “Natural vegetable juice” means the original liquid
22 resulting from the pressing of vegetables, or the liquid resulting
23 from the reconstitution of natural vegetable juice concentrate, or
24 the liquid resulting from the restoration of water to dehydrated
25 natural vegetable juice.
- 26 (g) “Nonalcoholic beverage” means and includes all
27 beverages not subject to tax under Part 14 (commencing with
28 Section 32001).
- 29 (h) “Place of business” means any place where soft drinks,
30 syrups, simple syrups, powder, or base products are manufactured
31 or any place where bottled soft drinks, soft drink syrup, simple
32 syrup, soft drink powder, or other soft drink base product, or any
33 other item taxed under this part is received.
- 34 (i) “Powder” or “other base” means a solid mixture of basic
35 ingredients used in making, mixing, or compounding soft drinks
36 by mixing powder or other base with water, ice, syrup, or simple
37 syrup, fruits, vegetables, fruit juice, vegetable juice, or any other
38 product suitable to make a complete soft drink.
- 39 (j) “Retailer” or “retail dealer” means any person, other than
40 a manufacturer, distributor, or wholesales who receives, stores,



1 mixes, compounds, or manufactures any soft drink and sells or
2 otherwise dispenses the same to the ultimate consumer.

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

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

11 (m) “Soft drink” means any nonalcoholic, sweetened
12 (excluding artificially), beverage sold for human consumption
13 including, but not limited to, the following: sweetened soda water,
14 ginger ale, all drinks commonly referred to as cola, lime, lemon,
15 lemon-lime, and other flavored drinks, including any fruit or
16 vegetable drink containing 50 percent or less natural fruit or
17 natural vegetable juice, and all other drinks and beverages
18 commonly referred to as “soda,” “soda pop,” and “soft drinks.”

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

23 33004. There is hereby levied and there shall be collected an
24 excise tax upon every distributor, manufacturer, or wholesale
25 dealer, calculated as follows:

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

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

32 (c) Where a package or container or powder or other base
33 product, other than a syrup or simple syrup, is sold or offered for
34 sale in California, and the powder is for the purpose of producing
35 a liquid soft drink, then the tax on the sale of each package or
36 container shall be equal to twenty-one cents (\$0.21) for each
37 gallon of soft drink that may be produced from each package or
38 container by following the manufacturer’s directions. This tax
39 applies when the sale of the powder or other base is sold to a retailer



1 for sale to the ultimate consumer after the liquid soft drink is
2 produced by the retailer.

3 33005. The taxes imposed by Section 33004 shall be imposed
4 on every soft drink in the possession or under the control of every
5 manufacturer, dealer, and distributor on and after 12:01 a.m. on
6 July 1, 2003, pursuant to rules promulgated by the State Board of
7 Equalization.

8 33006. There is hereby created a trust fund in the State
9 Treasury called the California Child Health and Achievement
10 Fund. The California Child Health and Achievement Fund shall
11 consist of moneys collected pursuant to the taxes imposed by
12 Section 33004. All costs to implement this part shall be paid from
13 moneys deposited in the California Child Health and Achievement
14 Fund. All revenue to the state derived from the tax on soft drinks
15 as per this part, shall be deposited into this fund.

16 33007. (a) All moneys deposited in the California Child
17 Health and Achievement Fund shall, upon appropriation by the
18 Legislature, be transferred to the Department of Health Services
19 which shall allocate the funds as follows:

20 (1) Twenty-five percent to school districts for the promotion of
21 nutrition and physical activity in elementary schools in order to
22 advance healthy eating and physical activity as part of a
23 comprehensive school health *program, with priority given to*
24 *school districts with the highest percentage of students eligible for*
25 *the lunch program.*

26 (2) Thirty percent for the funding of grants to school districts
27 for middle and high schools that opt to comply with the nutritional
28 standards established by the Pupil Nutrition, Health, and
29 Achievement Act of 2001 under Article 2.5 (commencing with
30 Section 49430) of Chapter 9 of Part 27 of the Education ~~Code~~
31 *Code, with priority given to school districts with the highest*
32 *percentage of students eligible for the lunch program.* Schools are
33 encouraged to use the funds for afterschool programs and other
34 activities currently funded through the sale of soda and other
35 high-fat and high-calorie foods on school campuses. Any funds
36 remaining unallocated in any given fiscal year from this section
37 shall be allocated to elementary schools as per paragraph (1).

38 (3) Fifteen percent for state and local, community-based
39 obesity prevention programs, and other programs and scientific
40 research related to chronic disease, including ~~earner~~ *cancer, with*



1 *priority given to low-income communities.* This funding shall
2 support programs that use educational, environmental and policy
3 approaches to reduce the consumption of low-nutrient,
4 high-calorie foods; increase the consumption of nutritious,
5 lower-calorie foods, especially fruits and vegetables; increase
6 daily physical activity; decrease physical inactivity; and promote
7 breastfeeding.

8 (4) Fifteen percent for public health programs that promote
9 oral health, including, but not limited to, grants for dental disease
10 prevention programs, assessment of oral health needs and
11 resources, capital equipment and operations and maintenance
12 costs for local community water projects, and development and
13 expansion of community dental ~~clinics~~ *clinics, with priority given*
14 *to programs in low-income communities.*

15 (5) Fifteen percent for the Healthy Families Program for
16 purposes of, but not limited to, childhood obesity prevention and
17 treatment.

18 (b) All moneys raised pursuant to taxes imposed by Section
19 33004 shall, upon appropriation by the Legislature, be expended
20 only for the purposes expressed in this part, and shall be used only
21 to supplement existing levels of service and not fund existing
22 levels of service. No moneys in the California Child Health and
23 Achievement Fund may be used to supplant state or local General
24 Fund money for any purpose.

25 33008. The following items shall be exempt from the tax
26 levied by this part:

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

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

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

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

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

39 (f) Syrups, simple syrups, powders, or base products, or soft
40 drinks sold by one distributor, wholesaler, or manufacturer to



1 another distributor, wholesaler, or manufacturer who holds a
2 license issued by the director under the provisions of this part as
3 a distributor, wholesaler, or manufacturer, provided that the
4 license number of the distributor, wholesaler, or manufacturer to
5 whom the soft drink is sold is clearly shown on the invoice for the
6 sale that is claimed to be exempt. This exemption shall not apply
7 to any sale to a retailer.

8 (g) Any product, whether sold in liquid or powder form, ~~which~~
9 *that* is intended by the manufacturer for consumption by infants
10 and ~~which~~ *that* is commonly referred to as “infant formula.”

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

14 (i) Beverages sweetened with artificial sweeteners ~~which~~ *that*
15 do not add calories to the beverage, including beverages
16 commonly known as diet sodas and diet soft drinks.

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

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

20 (l) Any product containing milk or milk products.

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

