

AMENDED IN SENATE MAY 5, 2010
AMENDED IN SENATE APRIL 14, 2010

SENATE BILL

No. 1210

Introduced by Senator Florez
(Principal coauthor: Assembly Member Monning)
(Coauthors: Assembly Members Coto and Torlakson)

February 18, 2010

An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as amended, Florez. Taxation: sweetened beverage tax: Children's Health Promotion Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, ~~on and after January 1, 2011,~~ impose a tax *on every distributor, as defined,* at the rate of \$0.01 per teaspoon of *added* caloric sweetener in bottled sweetened ~~beverage beverages~~ or concentrate ~~upon every person who makes the first sale in this state of bottled sweetened beverage or concentrate and on every person who uses or consumes, or places into a vending machine or retail stock, untaxed bottled sweetened beverage or concentrate, as provided sold or offered for sale to a retailer in this state, or on a retailer who sells bottled sweetened beverages or concentrate in this state to consumers on which the tax has not been paid by a distributor.~~ This bill would exempt from the tax ~~the sale of bottled sweetened beverage that was made with tax-paid~~

~~concentrate, as provided, and any sale, use, or consumption which in this state of bottled sweetened beverages or concentrate that~~ the state is prohibited from taxing, as provided. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refund and administrative costs, in the Children’s Health Promotion Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Public Health for distribution of grants to eligible school districts for the purposes of statewide childhood obesity prevention activities and programs.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages, childhood obesity, and dental disease.

This bill would result in a change in state taxes for the purpose of increasing state 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.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy, *but its operative date would depend on its effective date.*

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

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

- 1 ~~SECTION 1. (a) The Legislature finds and declares that over~~
- 2 SECTION 1. *The Legislature finds and declares all of the*
- 3 *following:*
- 4 (a) *Over the past 30 years, there has been a substantial increase*
- 5 *in the prevalence of obesity among adults in the United States.*
- 6 *From the 1960s to the late 1970s, prevalence was relatively*

1 constant, with about 15 percent of the population classified as
2 obese. After the 1970s these rates began to climb. By 2006, 23.3
3 percent of Americans were considered obese. In California, obesity
4 rates have increased even more, rising from ~~only a low of~~ 8.9
5 percent in 1984 to 24.3 percent in 2008. Although no group has
6 escaped the epidemic, ethnic minorities and the poor are
7 disproportionately affected.

8 (b) ~~The Legislature further finds that the~~ rates of overweight
9 among children have also increased dramatically in recent decades.
10 After being relatively constant from the 1960s to the 1970s, the
11 prevalence of overweight has more than quadrupled among children
12 between 6 and 11 years of age and nearly tripled among those
13 between 12 and 19 years of age. Among California children in
14 grades 5, 7, and 9, 28 percent are overweight, including 34 percent
15 of boys and 22 percent of girls, with rates in some communities
16 much higher.

17 (c) ~~The Legislature further finds that the~~ obesity epidemic is of
18 particular concern because it increases the risk of diabetes, heart
19 disease, certain types of cancer, arthritis, asthma, and breathing
20 problems. Depending on their level of obesity, from 60 percent to
21 over 80 percent of obese adults have type 2 diabetes, high blood
22 cholesterol, high blood pressure, or other related conditions. It has
23 been reported that up to 60 percent of obese children ~~aged~~ 5 to 10
24 years of age have early signs of heart disease.

25 (d) ~~The Legislature further finds that type~~ *Type* 2 diabetes,
26 previously only seen among adults, is now increasing among
27 children. If the current obesity trends are not reversed, it is
28 predicted that one in three children and nearly one-half of Latino
29 and African American children born in the year 2000 will develop
30 type 2 diabetes in their lifetime. Research shows that overweight
31 children have a much greater chance of being obese as adults, with
32 all the health risks that entails.

33 (e) ~~The Legislature further finds that overweight~~ *Overweight*
34 and obesity account for \$147 billion in health care costs nationally,
35 or 9 percent of all medical spending, per year.

36 (f) ~~The Legislature further finds that in~~ *In* 2006 overweight and
37 obesity-related costs in California were estimated at almost \$21
38 billion.

39 (g) ~~The Legislature further finds that there~~ *There* is
40 overwhelming evidence of the link between obesity and

1 consumption of sweetened beverages such as soft drinks, energy
2 drinks, sweet teas, and sports drinks. California adults who drink
3 a soda or more per day are 27 percent more likely to be overweight
4 or obese, regardless of income or ethnicity.

5 (h) ~~The Legislature further finds that according~~ *According* to
6 nutritional experts, sweetened beverages such as soft drinks, energy
7 drinks, sweet teas, and sports drinks offer little or no nutritional
8 value but massive quantities of added sugars. For example, a
9 20-ounce bottle of soda contains the equivalent of approximately
10 17 teaspoons of sugar. Yet, the American Heart Association
11 recommends that Americans consume no more than five to nine
12 teaspoons of sugar per day.

13 (i) ~~The Legislature further finds that research~~ *Research* shows
14 that almost one-half of the extra calories Americans have been
15 consuming since the 1970s could come from soda, with the average
16 American drinking nearly 50 gallons of sweetened beverages a
17 year, the equivalent of 39 pounds of extra sugar every year.

18 (j) ~~The Legislature further finds that~~ Americans are drinking
19 more sweetened beverages than ever before. From 1977 to 2002,
20 Americans doubled the amount of sweetened beverages they
21 consumed. Currently, children and adult Americans consume 172
22 and 175 calories respectively from sweetened beverages a day.
23 Children and adolescents now consume 10 to 15 percent of their
24 daily caloric intake from sweetened beverages.

25 (k) ~~The Legislature further finds that research~~ *Research* shows
26 that 41 percent of California children 2 to 11 years of age and 62
27 percent of California teens 12 to 17 years of age drink soda daily
28 and for every additional serving of sweetened beverage that a child
29 consumes a day, the likelihood of the child becoming obese
30 increases by 60 percent.

31 (l) Dental caries (tooth decay) is the most common chronic
32 childhood disease, experienced by more than two-thirds of
33 California's children. Children who frequently or excessively
34 consume beverages high in sugar are at increased risk for dental
35 caries. Untreated dental caries can lead to pain, infection, tooth
36 loss and in severe cases, even death. It can slow normal growth
37 and development by restricting nutritional intake. Children who
38 are missing teeth may have chewing problems that limit their food
39 choices and result in nutritionally inadequate diets.

1 (m) It is the intent of the Legislature, by adopting the Sweetened
2 Beverage Tax Law and creating the Children’s Health Promotion
3 Fund, to diminish the human and economic costs of obesity and
4 dental disease. This act is intended to discourage excessive
5 consumption of sweetened beverages by increasing the price of
6 these products and by creating a dedicated revenue source for
7 programs designed to prevent and treat childhood obesity and
8 dental disease and reduce the burden of attendant health conditions.

9 SEC. 2. Part 14.5 (commencing with Section 32600) is added
10 to Division 2 of the Revenue and Taxation Code, to read:

11
12 PART 14.5. SWEETENED BEVERAGE TAX LAW
13

14 32600. This part shall be known and may be cited as the
15 Sweetened Beverage Tax Law.

16 32601. For purposes of this part:

17 (a) “Beverage container” means any closed or sealed glass,
18 metal, paper, plastic, or any other type of container regardless of
19 the size or shape of the container.

20 (b) “Bottled sweetened beverage” means a sweetened beverage
21 contained in a beverage container.

22 (c) “Caloric sweetener” means any caloric substance suitable
23 for human consumption that humans perceive as sweet and
24 includes, without limitation, sucrose, fructose, including high
25 fructose corn sweetener, glucose, other sugars, and fruit juice
26 concentrates. ~~For purposes of this subdivision, “caloric”~~ “*Caloric*
27 *sweetener*” *excludes noncaloric sweeteners.* “*Caloric*” means a
28 substance that adds calories to the diet of a person who consumes
29 that substance.

30 (d) “Concentrate” means a sweetened beverage syrup, simple
31 syrup, powder, or base product for mixing, compounding, or
32 making sweetened beverages.

33 ~~(e) “Concentrate manufacturer” means any person that~~
34 ~~manufactures concentrate for sale to distributors, dealers,~~
35 ~~consumers, or others in this state.~~

36 (e) “*Consumer*” means a person who purchases a bottled
37 sweetened beverage or concentrate for consumption and not for
38 resale.

39 (f) “*Distributor*” means any person, including a manufacturer
40 and wholesale dealer, who receives, stores, manufactures, bottles,

1 *or distributes bottled sweetened beverages or concentrate to*
 2 *retailers doing business in the state whether or not that person*
 3 *also sells these products to consumers.*

4 ~~(f)~~

5 (g) “Medical food” means medical food as defined in Section
 6 109971 of the Health and Safety Code.

7 ~~(g)~~

8 (h) “Milk” means natural liquid milk, regardless of animal
 9 source or butterfat content, natural milk concentrate, whether or
 10 not reconstituted, regardless of animal source or butterfat content,
 11 or dehydrated natural milk, whether or not reconstituted.

12 ~~(h)~~

13 (i) “Natural fruit juice” means the original liquid resulting from
 14 the pressing of fruit, the liquid resulting from the reconstitution of
 15 natural fruit juice concentrate, or the liquid resulting from the
 16 restoration of water to dehydrated natural fruit juice.

17 ~~(i)~~

18 (j) “Natural vegetable juice” means the original liquid resulting
 19 from the pressing of vegetables, the liquid resulting from the
 20 reconstitution of natural vegetable juice concentrate, or the liquid
 21 resulting from the restoration of water to dehydrated natural
 22 vegetable juice.

23 ~~(j)~~

24 (k) “Nonalcoholic beverage” means ~~all beverages~~ *any beverage*
 25 *not subject to tax under Part 14 (commencing with Section 32001).*

26 (l) “Noncaloric sweetener” means *any noncaloric substance*
 27 *suitable for human consumption that humans perceive as sweet*
 28 *and includes, without limitation, aspartame, saccharin, stevia, and*
 29 *sucralose. “Noncaloric” means a substance that does not add*
 30 *calories to the diet of a person who consumes the substance.*

31 (m) “Person” means *an individual, trust, firm, joint stock*
 32 *company, business concern, corporation, including, but not limited*
 33 *to, a government corporation, partnership, limited liability*
 34 *company, and association. “Person” also includes any city, county,*
 35 *city and county, district, commission, the state, or any department,*
 36 *agency, or political subdivision thereof, any interstate body, and*
 37 *the United States and its agencies and instrumentalities to the*
 38 *extent permitted by law.*

39 ~~(k)~~

1 (n) (1) “Powder” or “base product” means a mixture of
2 ingredients in other than liquid form, used in making, mixing, or
3 compounding sweetened beverages by mixing this product with
4 water, ice, syrup, or simple syrup, fruits, vegetables, fruit juice,
5 vegetable juice, or any other product suitable to make a sweetened
6 beverage.

7 (2) “Powder” or “base product” does not include any of the
8 following:

9 (A) Any product sold in powder or other nonliquid mixture form
10 that is solely used in preparing coffee or tea.

11 (B) Any product sold in powder form for consumption by infants
12 and which is commonly referred to as “infant formula.”

13 (C) Any product sold in powder form for use for weight
14 reduction.

15 (D) Any product containing milk or milk products *or plant*
16 *protein sources*.

17 (E) Any frozen concentrate or freeze-dried concentrate to which
18 only water is added to produce a sweetened beverage containing
19 more than 10 percent natural fruit juice or more than 10 percent
20 natural vegetable juice.

21 (F) Any powder or other base product that is sold and used for
22 the purpose of an individual consumer mixing a sweetened
23 beverage.

24 (G) *Medical food*.

25 (o) “Retailer” means any person who sells in this state bottled
26 sweetened beverages or concentrate to consumers whether or not
27 that person is also a distributor as defined in this section.

28 (~~t~~)

29 (p) “Sale” means the transfer of title or possession for
30 consideration in any manner or by any means whatever.

31 (~~m~~)

32 (q) “Simple syrup” means a mixture of sugar and water.

33 (~~n~~)

34 (r) (1) “Sweetened beverage” means any sweetened
35 nonalcoholic beverage sold for human consumption *that contains*
36 *any added caloric sweeteners*, including, but not limited to, the
37 following: soda water, ginger ale, root beer, all beverages
38 commonly referred to as cola, lime, lemon, lemon-lime, and other
39 flavored beverages, including any fruit or vegetable beverage
40 containing 10 percent or less natural fruit juice or natural vegetable

1 juice, and all other drinks and beverages commonly referred to as
2 “soda,” “soda pop,” and “soft drinks.”

3 (2) “Sweetened beverage” does not include any of the following:

4 (A) Any nonalcoholic beverage sweetened entirely with
5 sweeteners that do not add calories to the beverage. *noncaloric*
6 *sweetener*.

7 (B) Any product sold in liquid form for consumption by infants,
8 which is commonly referred to as “infant formula.”

9 (C) Any product sold in liquid form for use for weight reduction.

10 (D) Water, to which no caloric sweeteners have been added.

11 (E) Any product containing milk or milk products *or plant*
12 *protein sources*.

13 (F) Medical food.

14 ~~(o) “Sweetened beverage manufacturer” means any person who~~
15 ~~bottles, cans, or otherwise fills bottled sweetened beverages, or~~
16 ~~imports bottled sweetened beverages.~~

17 ~~(p)~~

18 (s) “Syrup” means the liquid mixture of ingredients used in
19 making, or mixing, compounding sweetened beverages by mixing
20 the syrup with water, simple syrup, ice, fruits, vegetables, fruit
21 juice, vegetable juice, or any other product suitable to make a
22 sweetened beverage.

23 ~~(q)~~

24 (t) “Teaspoon” means 4.2 grams.

25 ~~32602. (a) On and after January 1, 2011, a tax is hereby~~
26 ~~imposed at the rate of one cent (\$0.01) per teaspoon of caloric~~
27 ~~sweetener in a bottled sweetened beverage on every person who~~
28 ~~does the following:~~

29 ~~(1) Makes the first sale in this state of a bottled sweetened~~
30 ~~beverage.~~

31 ~~(2) Uses or consumes an untaxed bottled sweetened beverage~~
32 ~~in this state.~~

33 ~~(3) Places in this state an untaxed bottled sweetened beverage~~
34 ~~in a vending machine or in retail stock for the purpose of selling~~
35 ~~the bottled sweetened beverage to consumers.~~

36 ~~(b) On and after January 1, 2011, a tax is hereby imposed at the~~
37 ~~rate of one cent (\$0.01) per teaspoon of caloric sweetener in the~~
38 ~~concentrate on every person who does the following:~~

39 ~~(1) Makes the first sale in this state of concentrate.~~

40 ~~(2) Uses or consumes untaxed concentrate in this state.~~

1 ~~(3) Places in this state untaxed concentrate in a vending machine~~
2 ~~or retail stock for the purpose of selling a sweetened beverage to~~
3 ~~consumers.~~

4 ~~(e) There is exempt from the tax imposed under subdivision (a),~~
5 ~~the sale of bottled sweetened beverage, provided that the bottled~~
6 ~~sweetened beverage was made with concentrate on which the tax~~
7 ~~imposed under subdivision (b) was paid.~~

8 *32602. (a) There is hereby imposed a tax on every distributor*
9 *at the rate of one cent (\$0.01) per teaspoon of added caloric*
10 *sweetener in a bottled sweetened beverage or concentrate sold or*
11 *offered for sale to a retailer in this state.*

12 *(b) A retailer who sells bottled sweetened beverages or*
13 *concentrate in this state to a consumer, on which the tax imposed*
14 *by this section has not been paid by a distributor, is liable for the*
15 *tax imposed in subdivision (a) at the time of sale to a consumer.*

16 *(c) Every distributor subject to the tax imposed pursuant to*
17 *subdivision (a) shall separately state the amount of tax due to the*
18 *board by the distributor on the receipt, invoice, or other form of*
19 *accounting of the transaction given to the retailer.*

20 *32603. There is exempt from the tax imposed by this part, the*
21 *sale, use, or consumption in this state of bottled sweetened*
22 *beverages or concentrates where the state is prohibited from taxing*
23 *that sale, use, or consumption under the Constitution or laws of*
24 *the United States or under the Constitution of this state.*

25 *32604. (a) The board shall administer and collect the tax*
26 *imposed by this part pursuant to the Fee Collection Procedures*
27 *Law (Part 30 (commencing with Section 55001)). For purposes*
28 *of this part, the references in the Fee Collection Procedures Law*
29 *to “fee” shall include the tax imposed by this part and references*
30 *to “feepayer” shall include a person required to pay the tax imposed*
31 *by this part.*

32 *(b) (1) The board may prescribe, adopt, and enforce regulations*
33 *relating to the administration and enforcement of this part,*
34 *including, but not limited to, collections, reporting, refunds, and*
35 *appeals.*

36 *(2) The board may prescribe, adopt, and enforce any emergency*
37 *regulations as necessary to implement this part. Any emergency*
38 *regulation prescribed, adopted, or enforced pursuant to this section*
39 *shall be adopted in accordance with Chapter 3.5 (commencing*
40 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*

1 *Government Code, and, for purposes of that chapter, including*
2 *Section 11349.6 of the Government Code, the adoption of the*
3 *regulation is an emergency and shall be considered by the Office*
4 *of Administrative Law as necessary for the immediate preservation*
5 *of the public peace, health and safety, and general welfare.*

6 ~~32605. Each person required to pay the tax shall prepare and~~

7 32605. (a) *Each person required to pay the tax imposed under*
8 *this part shall register with the board. Every application for*
9 *registration shall be made upon a form prescribed by the board*
10 *and shall set forth the name under which the applicant transacts*
11 *or intends to transact business, the location of his or her place or*
12 *places of business, and any other information as the board may*
13 *require. An application for an account shall be authenticated in*
14 *a form or pursuant to a method as may be prescribed by the board.*

15 (b) *Each person required to pay the tax shall prepare and file*
16 *with the board a return using electronic media in the form*
17 *prescribed by the board containing information as the board deems*
18 *necessary or appropriate for the proper administration of this part.*
19 *The return shall be filed on or before the last day of the calendar*
20 *month following the calendar quarter to which it relates, together*
21 *with a remittance payable to the board for the amount of tax due*
22 *for that period. Returns shall be authenticated in a form or pursuant*
23 *to a method as may be prescribed by the State Board of*
24 *Equalization.*

25 32606. *The board may prescribe those forms and reporting*
26 *requirements as are necessary to implement the tax, including, but*
27 *not limited to, information regarding the total amount of caloric*
28 *sweetener, the total amount of bottled sweetened beverages and*
29 *concentrate sold, and the amount of tax due.*

30 ~~32607. Every payment on a delinquent tax owed pursuant to~~
31 ~~this part shall be applied as follows:~~

32 ~~(a) First, to any interest due on the tax.~~

33 ~~(b) Second, to any penalty imposed by this part.~~

34 ~~(c) Third, the balance, if any, to the tax due.~~

35 32608. *The board shall, upon appropriation, be reimbursed for*
36 *expenses incurred in the administration and collection of the tax*
37 *imposed by this part.*

38 32609. (a) *There is hereby created a trust fund in the State*
39 *Treasury called the Children's Health Promotion Fund. The*
40 *Children's Health Promotion Fund shall consist of all taxes,*

1 interest, penalties, and other amounts collected pursuant to this
2 part, less refunds and reimbursement to the board for expenses
3 incurred in the administration and collection of the tax.

4 (b) All moneys in the Children’s Health Promotion Fund shall,
5 upon appropriation by the Legislature, be allocated for the purposes
6 of statewide childhood obesity prevention activities and programs.

7 SEC. 3. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 ~~SEC. 4. This act provides for a tax levy within the meaning of~~
17 ~~Article IV of the Constitution and shall go into immediate effect.~~

18 *SEC. 4. This act provides for a tax levy within the meaning of*
19 *Article IV of the Constitution and shall go into immediate effect.*
20 *However, the provisions of this act shall become operative on the*
21 *first day of the first calendar quarter commencing more than 6*
22 *months after the effective date of this act.*