AMENDED IN ASSEMBLY APRIL 7, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 669

Introduced by Assembly Member Monning
(Coauthor: Assembly Member Ammiano)

February 17, 2011

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

LEGISLATIVE COUNSEL’S DIGEST

AB 669, as amended, Monning. 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 July 1, 2012, impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, sweetened beverages, at a rate of $0.01 per fluid ounce and for the privilege of distributing concentrate in this state, either as concentrate or as sweetened beverages derived from that concentrate, at the rate of $0.01 per fluid ounce on bottled sweetened beverages and sweetened beverages distributed in this state, or at the rate of $0.01 per fluid ounce of sweetened beverage to be produced from concentrate distributed in this state. 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. This bill would exempt from the tax, among other things, the distribution in this state of bottled sweetened beverages, sweetened
beverages, or concentrate made by a distributor to another distributor registered with the board and supported by an exemption certificate that consists of a statement signed under penalty of perjury.

By expanding the definition of the existing crime of perjury and by expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill imposes a state-mandated local program.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds 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 and Superintendent of Public Instruction, as specified, for the purposes of statewide childhood obesity prevention activities and programs. This bill would also authorize the Director of the State Department of Public Health and the Superintendent of Public Instruction to make rules and regulations, and provide procedural measures, to bring into effect those purposes.

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

This bill would include a change in state statute that would result in a taxpayer paying a higher tax 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.

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. The Legislature finds and declares all of the following:
2. (a) The prevalence of obesity in the United States has increased dramatically over the past 30 years. From the 1960s to the late 1970s, prevalence was relatively constant, with about 15 percent
of the population classified as obese. After the 1970s, these rates began to climb. By 2006, 23.3 percent of Americans were considered obese. In California, obesity rates have increased even more, rising from 8.9 percent in 1984 to 25.5 percent in 2010. Although no group has escaped the epidemic, ethnic minorities and the poor are disproportionately affected.

(b) The rate of children who are overweight has also increased dramatically in recent decades. After being relatively constant from the 1960s to the 1970s, the prevalence of overweight children has more than quadrupled among children between 6 and 11 years of age and nearly tripled among those between 12 and 19 years of age.

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

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

(e) Overweight and obesity account for $147 billion in health care costs nationally, or 9 percent of all medical spending—with half these costs paid publicly through the Medicare and Medicaid programs.

(f) In 2006, overweight and obesity-related costs in California were estimated at almost $21 billion.

(g) There is overwhelming evidence of the link between obesity and consumption of sweetened beverages such as soft drinks, energy drinks, sweet teas, and sports drinks. California adults who drink a soda or more per day are 27 percent more likely to be overweight or obese, regardless of income or ethnicity.

(h) According to nutritional experts, sweetened beverages such as soft drinks, energy drinks, sweet teas, and sport drinks offer
little or no nutritional value, but massive quantities of added sugars. For example, a 20-ounce bottle of soda contains the equivalent of approximately 17 teaspoons of sugar. Yet, the American Heart Association recommends that Americans consume no more than five to nine teaspoons of sugar per day.

(i) Research shows that almost one-half of the extra calories Americans have been consuming since the 1970s could come from soda, with the average American drinking nearly 50 gallons of sweetened beverages a year, the equivalent of 39 pounds of extra sugar every year.

(j) Americans are drinking more sweetened beverages than ever before. From 1977 to 2002, Americans doubled the amount of sweetened beverages they consumed. Currently, children and adult Americans consume 172 and 175 calories respectively from sweetened beverages a day. Children and adolescents now consume 10 to 15 percent of their daily caloric intake from sweetened beverages.

(k) Research shows that 41 percent of California children 2 to 11 years of age and 62 percent of California teens 12 to 17 years of age drink soda daily, and for every additional serving of sweetened beverage that a child consumes a day, the likelihood of the child becoming obese increases by 60 percent.

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

(m) It is the intent of the Legislature, by adopting the Sweetened Beverage Tax Law and creating the Children’s Health Promotion Fund, to diminish the human and economic costs of obesity and dental disease in California. This act is intended to discourage excessive consumption of sweetened beverages by increasing the price of these products and by creating a dedicated revenue source for health programs designed to prevent and treat childhood obesity and dental disease and reduce the burden of attendant health conditions.
SEC. 2. Part 14.5 (commencing with Section 32600) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 14.5. SWEETENED BEVERAGE TAX LAW

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

32601. For purposes of this part:

(a) “Beverage container” means any closed or sealed container regardless of size or shape, including, without limitation, those made of glass, metal, paper, plastic, or any other material or combination of materials.

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

(c) “Beverage dispensing machine” means a device which mixes concentrate with any one or more other ingredients and dispenses the resulting mixture into an open container as a ready-to-drink beverage.

(d) “Caloric sweetener” means any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, including high fructose corn sweetener, glucose, other sugars, and fruit juice concentrates. “Caloric” means a substance that adds calories to the diet of a person who consumes that substance.

(e) “Concentrate” means a syrup, simple syrup, powder, or base product containing caloric sweetener that is used for mixing, compounding, or making sweetened beverages in a beverage dispensing machine. For purposes of this part, “concentrate” does not include any of the following:

(1) Any product that is solely used in preparing coffee or tea.

(2) Any product for consumption by infants and which is commonly referred to as “infant formula.”

(3) Any product for use for weight reduction.

(4) Any product containing milk or milk products or plant proteins sources.

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

(6) Any product that is sold and is intended to be used for the purpose of an individual consumer mixing a sweetened beverage.

(7) Medical food.

(8) Any product to which no caloric sweeteners have been added.

(f) “Consumer” means a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.

(g) “Distribution” includes:

(1) The sale in this state of bottled sweetened beverages, sweetened beverages, or concentrate to a person who will make a subsequent retail sale.

(2) The receipt in this state of untaxed bottled sweetened beverages, sweetened beverages, or concentrate by a retailer who will make a subsequent retail sale.

(3) The sale in this state of untaxed bottled sweetened beverages, sweetened beverage, or concentrate by a retailer to a consumer.

(4) The storage, use, or other consumption in this state of untaxed bottled sweetened beverages, sweetened beverages, or concentrate by a person.

(1) The sale of bottled sweetened beverages or concentrate to a retailer.

(2) The receipt of untaxed bottled sweetened beverages or concentrate in this state from an unregistered out-of-state distributor by a retailer.

(h) “Distributor” means any person who makes a distribution of bottled sweetened beverages, sweetened beverages, or concentrate in the state, whether or not that person also sells these products to consumers.

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

(j) “Milk” means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not
reconstituted, regardless of animal source, plant source, or butterfat
content, or dehydrated natural milk, whether or not reconstituted
and regardless of animal source or butter fat content.

(k) “Natural fruit juice” means the original liquid resulting from
the pressing of fruit, 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.

(l) “Natural vegetable juice” means the original liquid resulting
from the pressing of vegetables, 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.

(m) “Nonalcoholic beverage” means any beverage not subject
to tax under Part 14 (commencing with Section 32001).

(n) “Person” means an individual, trust, firm, joint stock
company, business concern, business trust, receiver, trustee,
syndicate, social club, fraternal organization, estate, corporation,
including, but not limited to, a government corporation, partnership,
limited liability company, and association or any other group or
combination acting as a unit. “Person” also includes any city,
county, county and county, district, commission, the state, or any
department, agency, or political subdivision thereof, any interstate
body, and the United States and its agencies and instrumentalities
to the extent permitted by law.

(o) “Powder” or “base product” means a solid mixture of
ingredients used in making, mixing, or compounding sweetened
beverages by mixing the powder or base product with any one or
more other ingredients, including, without limitation, water, ice,
syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice,
or carbonation or other gas.

(p) “Retail sale” means the sale of bottled sweetened beverages
or sweetened beverages to a consumer.
(q) “Retailer” means any person who sells in this state bottled sweetened beverages or sweetened beverages to a consumer, whether or not that person is also a distributor as defined in this section.

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

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

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

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

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

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

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

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

(E) Medical food.

(F) Coffee or tea.

(u) “Syrup” means the liquid mixture of ingredients used in making, mixing, or compounding sweetened beverages using one or more other ingredients including, without limitation, water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

32602. (a) There is hereby imposed an excise tax on every distributor for the privilege of distributing bottled sweetened beverages, sweetened beverages, and concentrate in the state, calculated as follows:
(a) The tax on bottled sweetened beverages and sweetened beverages distributed in this state shall be one cent ($0.01) per fluid ounce.

(2)

(b) The tax on concentrate distributed in this state either as concentrate or as a sweetened beverage derived from that concentrate, shall be equal to one cent ($0.01) per fluid ounce of sweetened beverage to be produced from that concentrate. For purposes of calculating the tax for concentrate, the volume of sweetened beverage to be produced from concentrate shall be the largest volume resulting from use of the concentrate according to any manufacturer’s instructions.

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

32603. Each distributor shall include the following information on each receipt, invoice, or other form of accounting for the distribution of bottled sweetened beverages, sweetened beverages, or concentrate:

(a) The name and address of the distributor.

(b) The name and address of the purchaser.

(c) The date of sale and invoice number.

(d) The kind, quantity, size, and capacity of packages of bottled sweetened beverages, sweetened beverages, or concentrate sold.

(e) The amount of excise taxes due to the board from the distributor on the sale of the bottled sweetened beverages, sweetened beverages, or concentrate.

(f) Any other information as required by the board.

32604. There is exempt from the taxes imposed by this part the distribution of bottled sweetened beverages, sweetened beverages, or concentrate distributed by a distributor to:

(a) A distributor registered with the board under this part when supported by a properly completed exemption certificate.

(b) To a person when, pursuant to the contract of sale, the bottled sweetened beverages, sweetened beverages or concentrates are required to shipped and are shipped to a point outside of this state by the distributor by means of any of the following:

(1) Facilities operated by the distributor.
(2) Delivery by the distributor to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point.

c) To a person where the state is prohibited from taxing that sale, use, or consumption under the Constitution or laws of the United States or under the Constitution of this state.

32605. The exemption certificate to be provided by a distributor to another distributor as required by subdivision (a) of Section 32604 shall consist of a statement that is signed under penalty of perjury by a person with authority to bind the distributor. The certificate shall be dated and include the distributor’s name and account number. A new certificate shall be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale or distribution.

32606. A distributor who has paid a tax, either directly to the state or to another distributor registered under this part, and makes a subsequent distribution of bottled sweetened beverages, sweetened beverages, or concentrate may claim a credit on its return for the period in which the subsequent sale or distribution occurs.

32607. The board shall administer and collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to “fee” shall include the tax imposed by this part and references to “feepayer” shall include a person required to pay the tax imposed by this part.

32608. The board may prescribe, adopt, and enforce any regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(a) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office
of Administrative Law as necessary for the immediate preservation
of the public peace, health and safety, and general welfare.

32609. The taxes imposed by this part are due and payable to
the board quarterly on or before the last day of the month next
succeeding each quarterly period.

32610. (a) On or before the last day of the month following
each quarterly period of three months, a return for the preceding
quarterly period shall be filed using electronic media with the
board.
(b) The board may prescribe those forms and reporting
requirements as are necessary to implement the tax, including, but
not limited to, information regarding the total amount of bottled
sweetened beverages, sweetened beverages, and concentrate sold
and the amount of tax due.

(c) Returns shall be authenticated in a form or pursuant to
methods as may be prescribed by the board.

32610.5. Every person required to pay the tax imposed under
this part shall register with the board. Every application for
registration shall be made upon a form prescribed by the board
and shall set forth the name under which the applicant transacts
or intends to transact business, the location of his or her place or
places of business, and such other information as the board may
require. An application for an account shall be authenticated in
a form or pursuant to methods as may be prescribed by the board.

32611. (a) There is hereby created a trust fund in the State
Treasury called the Children’s Health Promotion Fund. The
Children’s Health Promotion Fund shall consist of all taxes,
interest, penalties, and other amounts collected pursuant to this
part, less refunds and reimbursement to the board for expenses
incurred in the administration and collection of the tax.
(b) All moneys in the Children’s Health Promotion Fund shall,
upon appropriation by the Legislature, be allocated for the purposes
of statewide childhood obesity prevention activities and programs
as follows:
(1) Twenty percent to the State Department of Public Health to
coordinate statewide childhood obesity prevention activities and
to fund state-level childhood obesity prevention and children’s
dental programs. This funding shall support programs that use
educational, environmental, policy, and other public health
approaches that achieve the following goals: improve access to
and consumption of healthy, safe, and affordable foods and beverages; reduce access to and consumption of calorie-dense, nutrient-poor foods; encourage physical activity; decrease sedentary behavior; and raise awareness about the importance of nutrition and physical activity to childhood obesity prevention.

(2) Thirty-five percent for community-based childhood obesity prevention programs. This funding shall support programs that use educational, environmental, policy, and other public health approaches that achieve the following goals: improve access to and consumption of healthy, safe, and affordable foods and beverages; reduce access to and consumption of calorie-dense, nutrient-poor foods; encourage physical activity; decrease sedentary behavior; and raise awareness about the importance of nutrition and physical activity to childhood obesity prevention. The State Department of Public Health shall be responsible for the distribution of these funds to community-based organizations and to local health departments, with priority given to counties that have established childhood obesity prevention coalitions to build political support for programs.

(3) Ten percent to evidence-based prevention, early recognition, monitoring, and weight management intervention activities in the medical setting. The State Department of Public Health shall be responsible for identifying activities and allocating these funds.

(4) Thirty-five percent to elementary and secondary schools for educational, environmental, policy and other public health approaches that promote nutrition and physical activity. The approaches funded pursuant to this paragraph can include improving or building school recreational facilities that are used for recess and physical education; providing continuing education training for physical education teachers; hiring qualified physical education teachers; implementing Safe Routes to Schools programs; improving the quality and nutrition of school breakfasts, lunches, and snacks; ensuring free, clean drinking water access throughout the schoolday; and incorporating practical nutrition education into the curriculum. The Superintendent of Public Instruction is responsible for the allocation and distribution of these funds.

(c) All moneys in the Children’s Health Promotion Fund shall be expended only for the purposes expressed in this chapter, and shall be used only to supplement existing levels of service and not
to supplant current federal, state, or local funding for existing levels of service.

(d) The Director of the State Department of Public Health and the Superintendent of Public Instruction are hereby authorized to make such rules and regulations, and provide such procedural measures, as shall bring into effect the purposes of this section. The rules and regulations may provide for specific programs to be funded consistent with the allocation of funds set forth above.

32612. This part shall become operative on July 1, 2012.

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