

AMENDED IN ASSEMBLY SEPTEMBER 10, 2015

AMENDED IN ASSEMBLY SEPTEMBER 9, 2015

CALIFORNIA LEGISLATURE—2015–16 SECOND EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 18

Introduced by Assembly Member Bonilla
(Principal coauthor: Assembly Member Thurmond)
(Coauthors: Assembly Members Eggman, Frazier, Cristina Garcia,
***Gonzalez, Mark Stone, and Wood*)**

August 31, 2015

An act to add Section 6012.4 to, and 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

AB 18, as amended, Bonilla. Taxation: distilled spirits: Cocktails for Healthy Outcomes Act.

(1) The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill, on and after January 1, 2017, would impose a surtax on every individual for each purchase of a cocktail from an on-sale licensee for consumption or other use on the licensed, in-state premises of that on-sale licensee at the rate of \$0.05 per cocktail, as defined. This bill would require the surtax rate to be adjusted annually, as specified. This bill would require an on-sale licensee to separately state and collect the surtax from an individual, as specified.

This bill would require the State Board of Equalization to administer and collect the surtax in accordance with the Fee Collection Procedures

Law. By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program. The bill would require an on-sale licensee to register with the board, to prepare and file with the board returns using electronic media in the form prescribed by the board, containing specified information, and to remit the fee quarterly. The bill would require that all revenues, less refunds, be remitted to the board and deposited in the Healthy California Special Fund for the funding of, among other things, developmental disability services, upon appropriation by 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.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption of tangible personal property purchased from a retailer for the storage, use, or other consumption in this state measured by sales price. That law defines the terms “gross receipts” and “sales price.”

This bill would exclude from “gross receipts” subject to tax the amount of surtax imposed by this bill.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse any local agencies for sales and use tax revenues lost by them pursuant to this bill.

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.

This bill would take effect immediately as a tax levy.

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:

SECTION 1. Section 6012.4 is added to the Revenue and Taxation Code, to read:

6012.4. Notwithstanding Section 6012, “gross receipts” shall not include the surtax imposed pursuant to Part 14.5 (commencing with Section 33001).

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

PART 14.5. COCKTAILS FOR HEALTHY OUTCOMES ACT

33001. This part is known, and may be cited, as the “Cocktails for Healthy Outcomes Act.”

33002. (a) On and after January 1, 2017, there is hereby imposed a surtax on every individual for each purchase of a cocktail from an on-sale licensee for consumption or other use on the licensed, in-state premises of that on-sale licensee at the rate of five cents (\$0.05) per cocktail.

(b) ~~For each calendar year beginning on and after January 1, 2018, the board shall recompute~~ *Beginning January 1, 2018, and on or before each January 1 of each year thereafter, the board shall recompute, to the nearest whole cent, the rate in subdivision (a) in accordance with the percentage change in the California Consumer Price Index, from June to June, inclusive, and that recomputed rate shall apply for that calendar year, except that the rate shall not be less than five cents (\$0.05). The board shall recompute before January 1, 2018, and before each January 1 thereafter.*

33003. (a) Every on-sale licensee making sales of cocktails for consumption or other use on the licensed, in-state premises of the licensee shall, at the time of making such a sale to an individual, collect the surtax as a charge separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

1 (b) The on-sale licensee shall collect the surtax from the
2 individual purchasing cocktails on the licensee's premises and
3 ~~give to the purchaser a receipt therefore in the manner and form~~
4 ~~prescribed by the board.~~ *shall separately state the surtax imposed*
5 *pursuant to Section 33002 on the receipt or invoice given to the*
6 *purchaser at the time of sale.*

7 (c) The board shall administer and collect the surtax imposed
8 by this part pursuant to the Fee Collection Procedures Law (Part
9 30 (commencing with Section 55001)). *For the purposes of this*
10 *section, the reference to "fee" shall include the surtax imposed*
11 *by this part, and references to "feepayer" shall include a person*
12 *required to pay the surtax imposed by this part.*

13 (d) (1) The surtax is required to be collected by an on-sale
14 licensee and any amount unreturned to the purchaser who paid an
15 amount in excess of the surtax, but was collected from the
16 purchaser under the representation by the licensee that it was owed
17 as a surtax, constitutes debts owed by the licensee to this state.

18 (2) An individual is liable for the surtax until it has been paid
19 to the state, except that payment to the on-sale licensee relieves
20 the purchaser from further liability for the surtax. Any surtax
21 collected from a purchaser that has not been remitted to the board
22 shall be a debt owed to the state by the licensee required to collect
23 and remit the surtax.

24 (e) (1) The board may prescribe, adopt, and enforce regulations
25 relating to the administration and enforcement of this part,
26 including, but not limited to, collections, reporting, refunds, and
27 appeals.

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

38 (3) *The board may, by regulation, promulgate other rules with*
39 *respect to uncollected or worthless accounts as it shall deem*
40 *necessary to the fair and efficient administration of this part.*

1 (f) (1) The surtax imposed by this part is due and payable to
2 the board quarterly on or before the last day of the month next
3 succeeding each quarterly period.

4 (2) On or before the last day of the month following each
5 quarterly period, a return for the preceding quarterly period shall
6 be filed with the board using electronic media, in the form
7 prescribed by the board. Returns shall be authenticated in a form
8 or pursuant to methods, as prescribed by the board.

9 33004. (a) An on-sale licensee required to collect the surtax
10 imposed under this part shall register with the board. Every
11 application for registration shall be made in a form prescribed by
12 the board and shall set forth the name under which the applicant
13 transacts or intends to transact business, the location of the
14 licensee's place or places of business, and any other information
15 that the board may require. An application for registration shall
16 be authenticated in a form or pursuant to methods as may be
17 prescribed by the board.

18 (b) An application for registration filed pursuant to this section
19 may be filed using electronic media as prescribed by the board.
20 Electronic media includes, but is not limited to, computer modem,
21 magnetic media, optical disc, facsimile machine, or telephone.

22 33004.5. *Unless an on-sale licensee is expressly exempted*
23 *under the act adding this part, all on-sale licensees shall be subject*
24 *to the tax established under this part. The board shall establish*
25 *procedures to be utilized by a licensee to document that alcohol*
26 *consumed or otherwise used on the licensee's premises are not a*
27 *purchase for the purposes of the tax imposed by this part.*

28 33005. The taxes imposed by this part are in addition to any
29 other tax imposed under the Alcoholic Beverage Tax Law (Part
30 14 (commencing with Section 32001)), the Sales and Use Tax Law
31 (Part 1 (Commencing with Section 6001)), or the Bradley-Burns
32 Uniform Sales and Use Tax law (Part 1.5 (commencing with
33 Section 7200)), or in accordance with the Transactions and Use
34 Tax Law (Part 1.6 (commencing with Section 7251)).

35 33006. For purposes of this part, the following definitions shall
36 apply:

37 (a) "Board" means the State Board of Equalization.

38 (b) "Cocktail" means any beverage that is, or contains, distilled
39 spirits.

(c) “Distilled spirits” has the same meaning as that term is defined by Section 23005 of the Business and Professions Code, as in effect January 1, 2016.

(d) (1) “On-sale licensee” means an on-sale licensee under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code) that exercises the privileges described in Section 23396 of the Business and Professions Code, as in effect January 1, 2016.

(2) “On-sale licensee” does not include a licensee with any of the following:

(A) An On-sale General for Train license.

(B) An On-sale General for Boat license.

(C) An On-sale General for Airplane license.

(D) A Daily On-sale General license.

(E) A Veterans’ Club license.

33007. The Healthy California Special Fund is hereby established in the State Treasury. All revenues, less refunds, collected pursuant to this part shall be made in remittances to the board and shall be deposited in the Healthy California Special Fund. Upon appropriation by the Legislature, all moneys in the fund shall be expended for the following purposes:

(a) Developmental disability services, among other health programs.

(b) Reimbursement to the board for expenses incurred in the implementation, administration, and collection of the taxes imposed by this chapter.

33008. *Funds for the tax implementation required pursuant to this part shall be advanced as a General Fund or special fund loan to the board no later than six months after the effective date of the act adding this part and shall be repaid by the board from the initial proceeds from taxes collected pursuant to this part.*

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

5 SEC. 5. This act provides for a tax levy within the meaning of
6 Article IV of the Constitution and shall go into immediate effect.

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