



CALIFORNIA: BERKELEY'S NEW SODA TAX HAS NOT RAISED THE REVENUE LAWMAKERS HAD HOPED

Last year, we **wrote** about Berkeley, California's tax on soda and other sugary beverages, which was the first of its kind. The tax became effective March 2015.

Now, a Cornell University study, "The Incidence of Taxes on Sugar-Sweetened Beverages: The Case of Berkeley, California," reveals that Berkeley's sin tax is not as sweet as originally hoped. An overwhelming number of voters approved **Measure D**, which affixed a penny-per-ounce tax on sugar-sweetened beverages sold in Berkeley, including sodas (excluding diet soda), sports and energy drinks, juices with added sugar, and syrups added to drinks at cafes, such as Starbucks' Frappuccinos. The tax, aimed at discouraging consumption of added sugar, was imposed on distributors, not retailers or consumers. Even so, proponents expected it to raise retail prices enough to reduce purchases of sugary beverages, and ultimately curtail sugar intake.

According to the *Cornell Chronicle*, the study found that "consumers have been largely spared from higher prices." This is so because Measure D caused retailers to increase prices by less than half the amount expected. For example, Coke and Pepsi only passed on 22 percent of the tax to consumers.

Sin taxes on other unhealthy products, like cigarettes, achieved their desired effect. The *Cornell Chronicle* noted that smoking rates "have plummeted in the United States in recent decades partly due to federal, state, and local taxes that have driven up cigarette costs." One author of the study suggested that the lackluster result of the beverage tax could be related to the manner in which the tax is imposed. Because store owners worried that more expensive beverages would drive consumers to neighboring cities in search of lower prices, they did not directly pass the increase along to the consumer.

Other states' sin taxes on sugar-sweetened beverages

In March, we also **described** similar attempts in Connecticut, Illinois and Vermont. Here are the statuses of those bills.

- **Connecticut - Proposed Bill 5461** would impose a tax on sugary soft drinks and candies. On March 24, 2015, the House referred it to the Committee on Finance, Revenue and Bonding, where it remains. If passed, it will subject soft drinks, both carbonated and noncarbonated, that are high in calories and sugar, and candies that are high in calories and sugar, to a one cent per ounce tax. Its purpose is to raise and evenly distribute revenue for municipalities, the Governor's Scholarship program and to combat childhood obesity.

Before the bill was referred to the committee, *Confectionary News* reported that the tax on candy had been dropped.

- **Illinois** - The Healthy Eating Active Living (HEAL) Act, SB 1584, is pending, although it was scheduled to take effect July 1, 2015. The HEAL Act imposes a tax on distributors of bottled sugar-sweetened beverages, syrups, or powders at the rate of \$0.01 per ounce of bottled sugar-sweetened beverages sold or offered for sale to a retailer for sale to a consumer in Illinois.

Although the statewide effort is moving slowly, there is also a sugar tax movement afoot in Chicago. At the end of July, NBC Chicago reported that Alderman George Cardenas had submitted a one penny per ounce tax to the Chicago City Council. He argued that "the benefit would not only be to the health of Chicago residents, particularly children, but the tax could also generate \$134 million a year. I'd rather have this than the red light cameras that everybody hates to be honest with you."

- **Vermont** - Legislation is still pending as well. **H 24** establishes a tax of \$0.02 per ounce on sugar sweetened beverages, syrup, and powder sold there. As with the other schemes, only distributors are subject to the tax.

However, Vermont's sales and use tax on soft drinks became effective July 1, 2015. A Vermont Department of Taxes publication, updated in July 2015, explains that the sale of soft drinks is subject to the state's 6 percent sales and use tax. The publication provided guidelines and numerous examples of product types that qualify.

NORTH CAROLINA: SENATE APPROVES A CONSTITUTIONAL AMENDMENT LIMITING THE INCOME TAX RATE TO 5 PERCENT

The legislation

Under **Senate Bill 607**, the Taxpayer Protection Act, the North Carolina Senate approved legislation that would amend the state's constitution to cap the state income tax rate at 5 percent. The current constitutional cap on income tax is 10 percent. The 2015 income tax rate is a flat 5.75 percent, which is the result of tax reform that simplified the three-tiered

multistate tax update september 3 2015

schedule of 6, 7, and 7.75 percent rates that were in effect in 2013. During tax year 2014, the flat tax rate was 5.8 percent.

The legislation calls for other changes to the constitution which limit state fiscal spending growth to the average of the inflation rate of growth for the three prior calendar years, plus the average growth in population for the three prior fiscal years. SB 607 precludes modification of these spending limits unless a supermajority, or two-thirds of all of the members of each house, passes an act doing so.

Voters will decide on these measures in the statewide general election scheduled for Nov. 8, 2016.

The success

In October 2014, when the Tax Foundation published its 2015 State Business Tax Climate Index, the group recognized that the Tar Heel state had achieved the single largest rank jump in the publication's history, from number 44 to 16, and cheered North Carolina's reforms across corporate, individual and sales tax measures. The individual income tax component was the most improved area, made possible by the above-described restructure of the multi-tiered system.

Forbes is equally pleased, referring to SB 607 as "bold action" that builds on North Carolina's record of success. The "commonsense spending cap would...ensure that the size of North Carolina state government increases at a sustainable clip...[and] would also mitigate pressure to raise taxes in the future."

The magazine described the state as a "national leader in passing pro-growth, limited government-oriented policy reforms in recent years, enacting tax, regulatory, and unemployment insurance reforms that have stimulated economic growth and job creation." Pointing to the Tax Foundation's data tool analyzing state spending limits, Forbes observed that had the state fiscal spending limits contained in SB 607 been in place for the decade ending in 2009, North Carolina would have spent \$52 million less (adjusted for inflation).

North Carolina is not the only state to cap its income tax; Forbes mentioned others that have similar laws. For instance, last year in Georgia, voters approved a 6 percent state income tax cap, and Tennessee has a constitutional prohibition of income taxes on earned income. Florida also constitutionally prohibits a personal income tax and caps its corporate income tax rate at 5 percent.

Opponents contend that constraining future lawmakers does not make sense

Not everyone thinks the tax cap is a good idea. Quoting U.S. Sen. Thom Tillis, *The News & Observer* suggested that it ties "the hands of future legislatures to improve schools, universities and roads."

Besides this, the article explained the tax cap is unnecessary because North Carolina has a longstanding AAA bond rating; the state constitution requires a balanced budget; and North Carolina is the 45th fastest growing state government according to the Tax Foundation. SB 607 is just not the right tool to protect the state's financial health from politicians' "wild spending sprees." Adding insult to injury, the legislature did not hold any public hearings.

Ultimately, opponents prefer a common sense approach of letting elected lawmakers make decisions based on current circumstances.

COLORADO: CONSTITUTIONAL QUIRK TRIGGERS RETAIL MARIJUANA SALES TAX HOLIDAY

Under **House Bill 1367**, signed into law in early June, Gov. John Hickenlooper approved a ballot question that will go before the voters this fall seeking their permission to keep the pot taxes that have been collected this fiscal year.

According to the Colorado Department of Revenue's (CDOR) Retail Marijuana Tax Reduction Notice, about \$58 million is in play. Of this, \$27.7 million is a transfer from the Marijuana Tax Cash Fund, and \$30.3 million is from the General Fund.

If voters approve the ballot issue, HB 1367 apportions the refund for expenditure during fiscal year 2015-16 as follows:

- \$40 million to the Public School Capital Construction Assistance Fund, known as the BEST Fund
- \$12 million to the Marijuana Tax Cash Fund and appropriated for fiscal year 2015-16. Of this amount, \$1 million is allocated to the Department of Local Affairs for grants under the Local Government Retail Marijuana Impact Grant Program
- \$6 million to remain in the General Fund

If voters reject the ballot issue, the bill establishes mechanisms to refund the account to taxpayers in three different ways:

1. For tax year 2015, \$25 million will be refunded with the Taxpayer Bill of Rights surplus that the state expects to incur in fiscal year 2014-15.
2. An amount equal to the fiscal year 2014-15 marijuana excise tax revenue, currently estimated at \$19.7 million, will be refunded directly and automatically to marijuana cultivators, such that they will not need to apply for the refund.
3. The state will refund the rest, approximately \$13.3 million, by way of a temporary marijuana special sales tax rate reduction, from 10 percent to 0.1 percent, beginning Jan. 1, 2016. Thereafter, additional systems are in place to determine whether the required amount of revenue has been refunded.

Beyond this, beginning Jan. 1, 2016, each local government's share of marijuana special sales tax revenue is to be reduced by half, from 15 percent to 7.5 percent. The share will remain at 7.5 percent until the dollar amount by which the local share is reduced equals the share apportioned to the local government during fiscal year 2014-15. The aggregate amount of special sales tax revenue apportioned to all local governments for fiscal year 2014-15 is expected to be \$5.7 million.

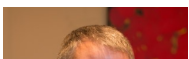
For each of the fiscal years 2015-16 through 2018-19, General Fund transfers of retail marijuana special sales tax revenue to the Marijuana Tax Cash Fund are reduced by \$6.06 million to partially repay the \$30.3 million deposited from the General Fund to the refund account.

Independent of whether voters approve the ballot issue, HB 1367 enacts a marijuana sales tax holiday on Sept. 16, 2015, and other tax benefits in subsequent years. Specifically, HB 1367:

- Lowers the retail marijuana excise and special sales tax rates to zero, effective Sept. 16, 2015, and raises them back to 15 percent and 10 percent, respectively, effective Sept. 17, 2015.
- Lowers the retail marijuana special sales tax rate from 10 percent to 8 percent beginning July 1, 2017.
- Repeals current law requiring the finance committees of the General Assembly to review tax rates by April 1, 2016.
- Transfers any marijuana excise tax revenue collected in excess of \$40 million during a single fiscal year to the Public School Fund rather than the Marijuana Tax Cash Fund.
- Broadens the purposes for which funds in the Marijuana Tax Cash Fund can be expended and requires the Marijuana Enforcement Division to report on its website how tax revenue is spent.
- Creates a Local Government Retail Marijuana Impact Grant Program in the Department of Local Affairs.

The constitutional quirk stems from the state's Taxpayer Bill of Rights, which obligates Colorado to refund taxes if the amount raised exceeds estimates, explained Westword. Gov. Hickenlooper referred to this as a "fiscal glitch," from which the state will lose approximately \$100,000 on Sept. 16.

For additional information regarding these subjects, or any other multistate tax issues, please contact one of the attorneys listed below.



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