



# Sugar-Sweetened Beverage Tax Legislation

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**PHLP works to improve community health by supporting public health leaders.**

**PHLP does this by providing sophisticated legal and policy tools for use in everyday practice.**



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*The primary purpose of this presentation is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation. PHLP incorporates objective non-partisan analysis, study, and research in all our work.*

# The Power to Tax

- States have broad authority
- Rationale for the tax?



# Overview

- Crafting SSB tax legislation
  - Defining beverages and syrups
  - What type of tax, at what point of intervention, to facilitate price increase?
  - Earmarking the proceeds
- Industry Response
- Alternative Pricing Strategies



NATIONAL POLICY & LEGAL ANALYSIS NETWORK  
TO PREVENT CHILDHOOD OBESITY



## **Model Sugar-Sweetened Beverage Tax Legislation**

Developed by the National Policy & Legal Analysis Network  
to Prevent Childhood Obesity (NPLAN), a project of  
Public Health Law & Policy (PHLP)

[www.nplan.org](http://www.nplan.org) | [www.phlpnet.org](http://www.phlpnet.org)

# Defining beverages to tax

Beverages with **added caloric sweeteners** are associated with increased weight and obesity





# Defining beverages to tax

Beverages with **added caloric sweeteners** are associated with increased weight and obesity

- *How to handle juices?*
- *Other policy decisions?*



# Include syrups/powders?



Should include all syrups with added caloric sweetener

What about non-fountain syrups and powders?



# Higher price = less consumption

- A 10% price increase for SSBs may reduce consumption from 8% ~ 11.5%

*NEJM Health Policy Report: Brownell, et al. The Public Health and Economic Benefits of Taxing Sugar Sweetened Beverages*

- USDA study:

A 20% price increase for SSBs could reduce net calorie intake from beverages by 37 calories/day for adults, 43 calories/day for children

Daily calorie reductions would result in an average reduction of 3.8 lbs/year for adults and 4.5 lbs/year for children

*Study available at: <http://www.ers.usda.gov/Publications/err100/err100.pdf>*

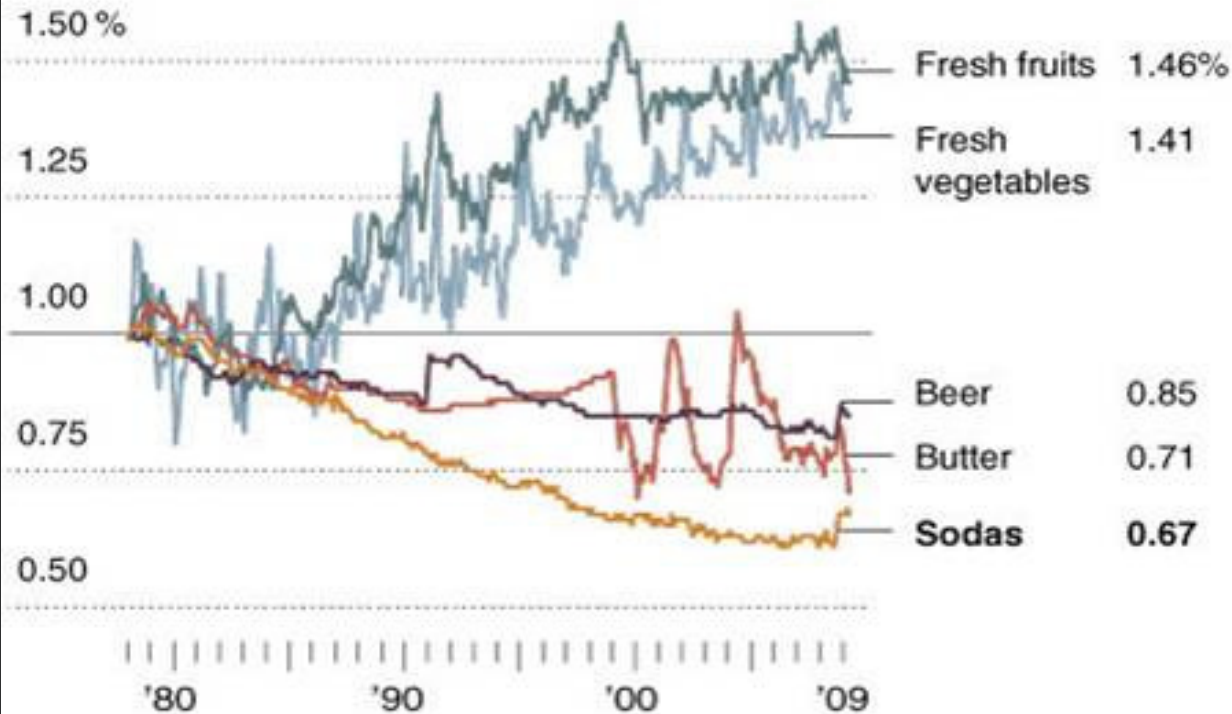


## The Cost of Healthy Eating

The cost of many unhealthful foods, like soda, butter and beer, has fallen in the last three decades, while the cost of fruits and vegetables has risen substantially.

CHANGE IN MONTHLY FOOD PRICES

MARCH 2009



Lines show change in price of items since 1978, relative to overall inflation as measured by the Consumer Price Index. The price of vegetables, for example, has risen 40 percent faster than the overall index.

Source: Bureau of Labor Statistics, via Haver

## The Cost of Healthy Eating

# Taxes to increase the shelf price

If the tax increases the price, it can reduce consumption

*How to ensure that the price will increase?*

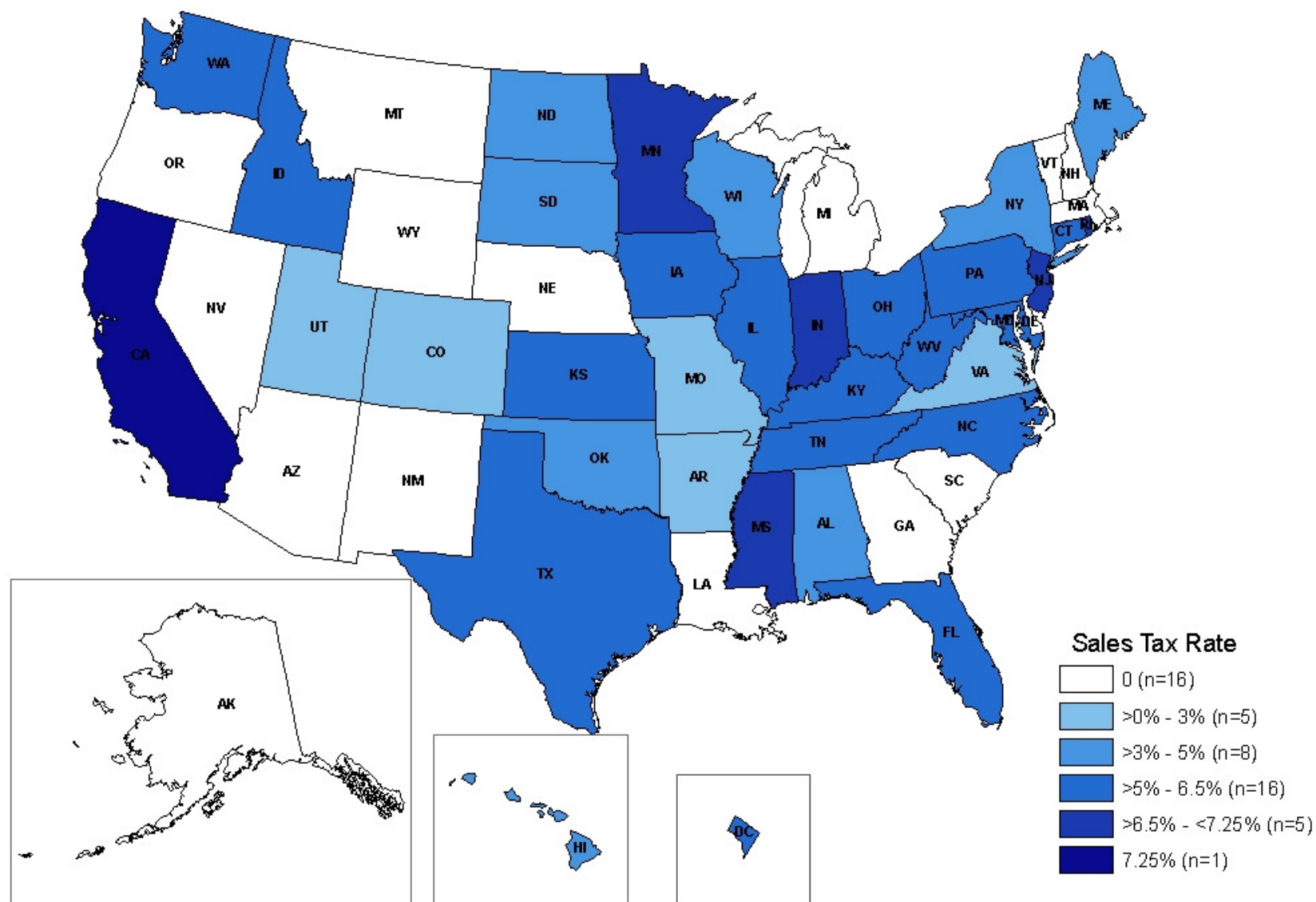
# Sales Taxes



- Imposed on consumers who purchase goods at retail
- Usually measured as a percentage of the overall sales price
- Easiest option to raise general revenue-amend existing law



# State Regular, Sugar-Sweetened Soda Sales Tax Rates (as of January 1, 2011)



Note: Does not include 3 states with mandatory, statewide local tax rate (CA-1%, UT-1.25%, VA-1%)

Data Source: Bridging the Gap Program, University of Illinois at Chicago, 2011



An **Excise Tax** is imposed on the performance of some act, and is often imposed on the act or business of selling a particular tangible good

More points of intervention

Often causes visible price increase

Common product-specific tax (tobacco, alcohol, gasoline...)



# Cigarette Pricing

Costs of Production	}	(\$5.00)
+ Producer's Profit		
+ Federal Excise Tax (\$1.01)		
+ State Excise Tax (avg. \$1.20)		
+ Local Excise Tax		

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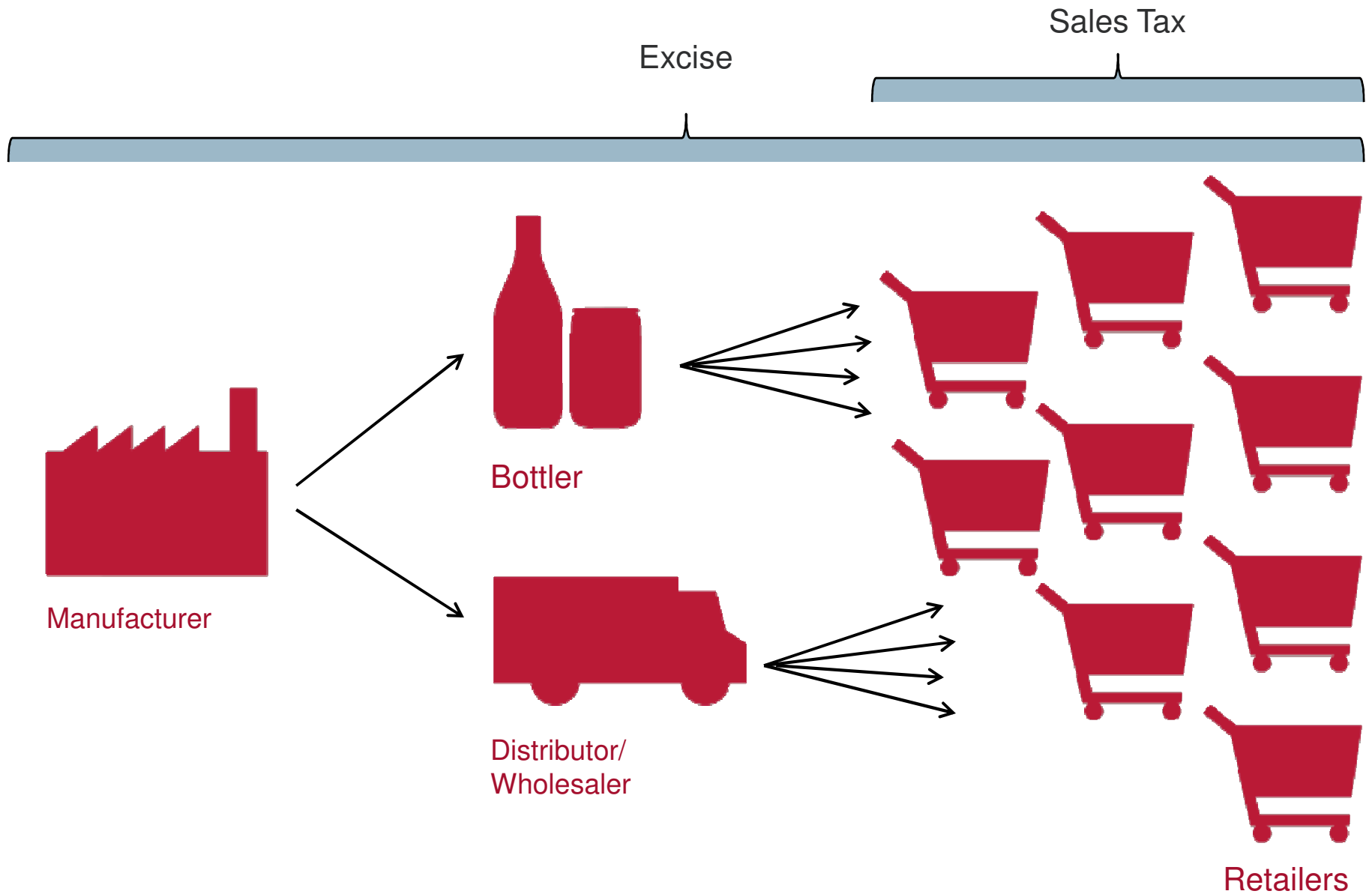
+ Counter Price (\$7.21)
+ General Sales Tax (8.25%)

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= Final Price to Consumer (\$7.80)



# Points of Intervention



# Existing soda-specific excise taxes

<b>AL</b>	License taxes and fees
<b>ARK</b>	Excise tax of \$0.21/gallon
<b>RI</b>	Excise tax of \$0.04/case
<b>TN</b>	Privilege tax of 1.9% of gross receipts
<b>VA</b>	Range of excise taxes
<b>WA</b>	Excise tax of \$1/gallon of syrup
<b>WV</b>	Range of excise taxes for bottles and syrups
<b>Chicago</b>	3% excise tax

# Mandatory pass-through language

## Sometimes used in tobacco tax laws:

### New York

"It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any agent or dealer who shall pay the tax to the tax commission shall collect the tax from the purchaser or consumer."

### Tennessee

"The tobacco tax is declared to be a levy on the consumer, and the consumer shall be liable for the tax.

The distributors shall add the amount of tobacco taxes levied to the price of cigarettes or other tobacco products, and the distributor may state the amount of the taxes separately from the price of such cigarettes or other tobacco products on all price display signs, sales or delivery slips, bills and statements that advertise or indicate the price of such cigarettes or tobacco products."



# Tax by volume, or based on amount of sugar?

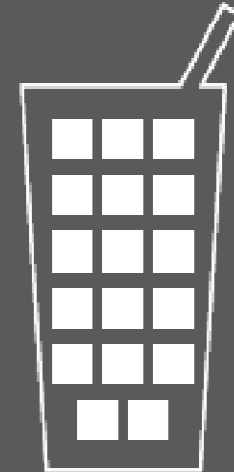
*“1 cent per ounce”*

*or*

*“1 cent per teaspoon of added caloric sweetener”*

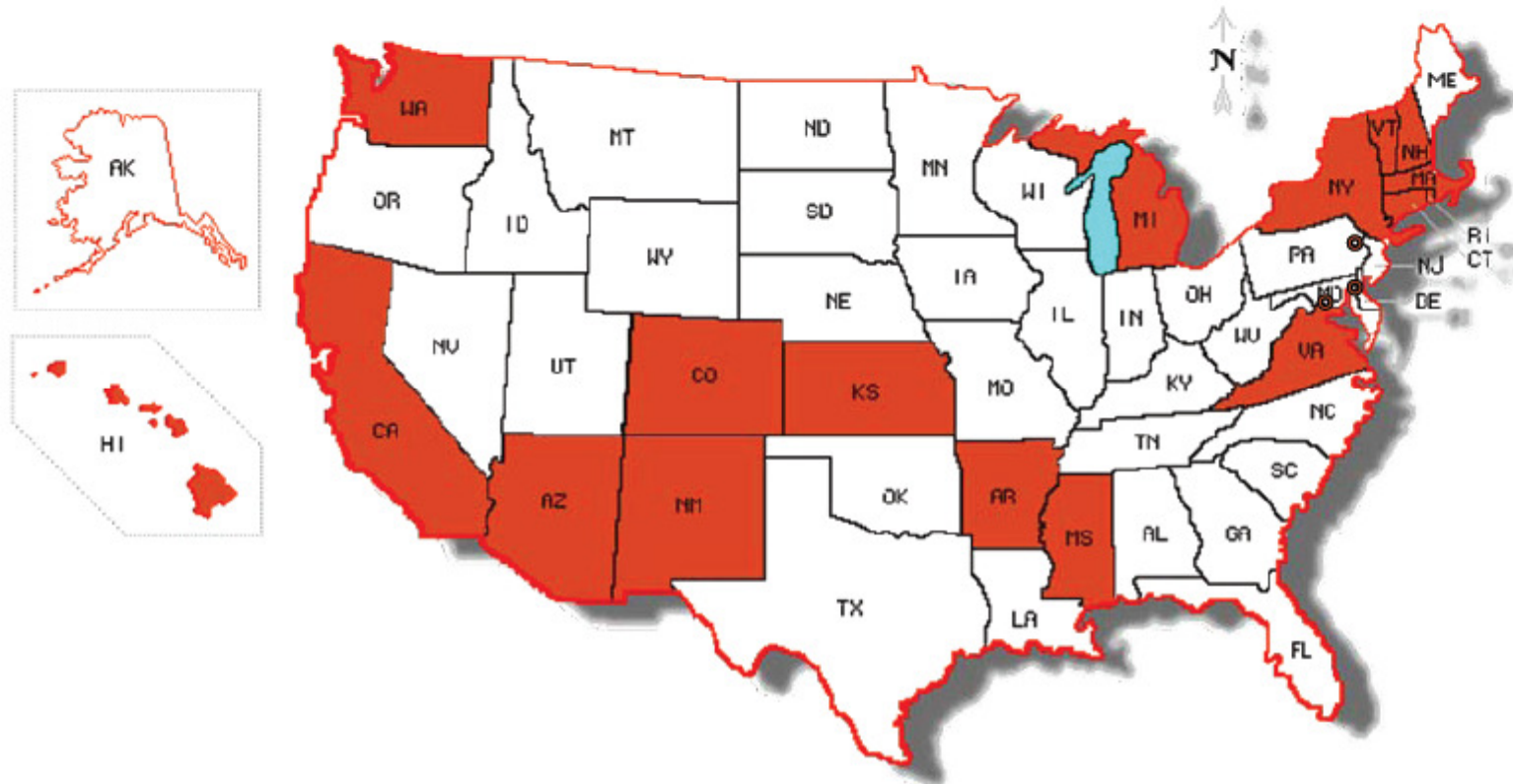


Portion sizes have continued to increase over the years



Equivalent of 17 cubes of sugar in every 20 oz soda (average portion size in 1996)

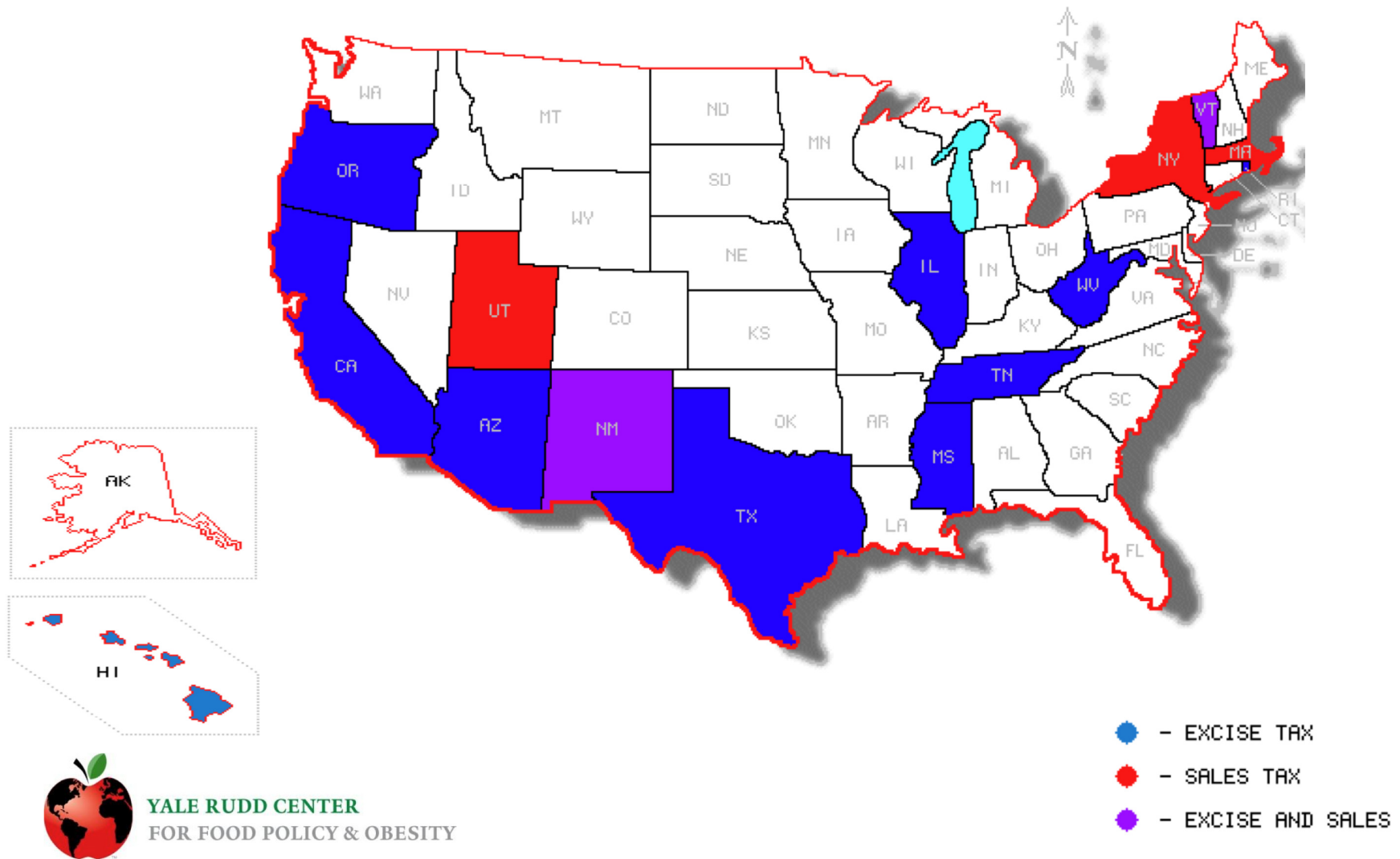
# Soft Drink Tax Legislation Filed 2009-2010

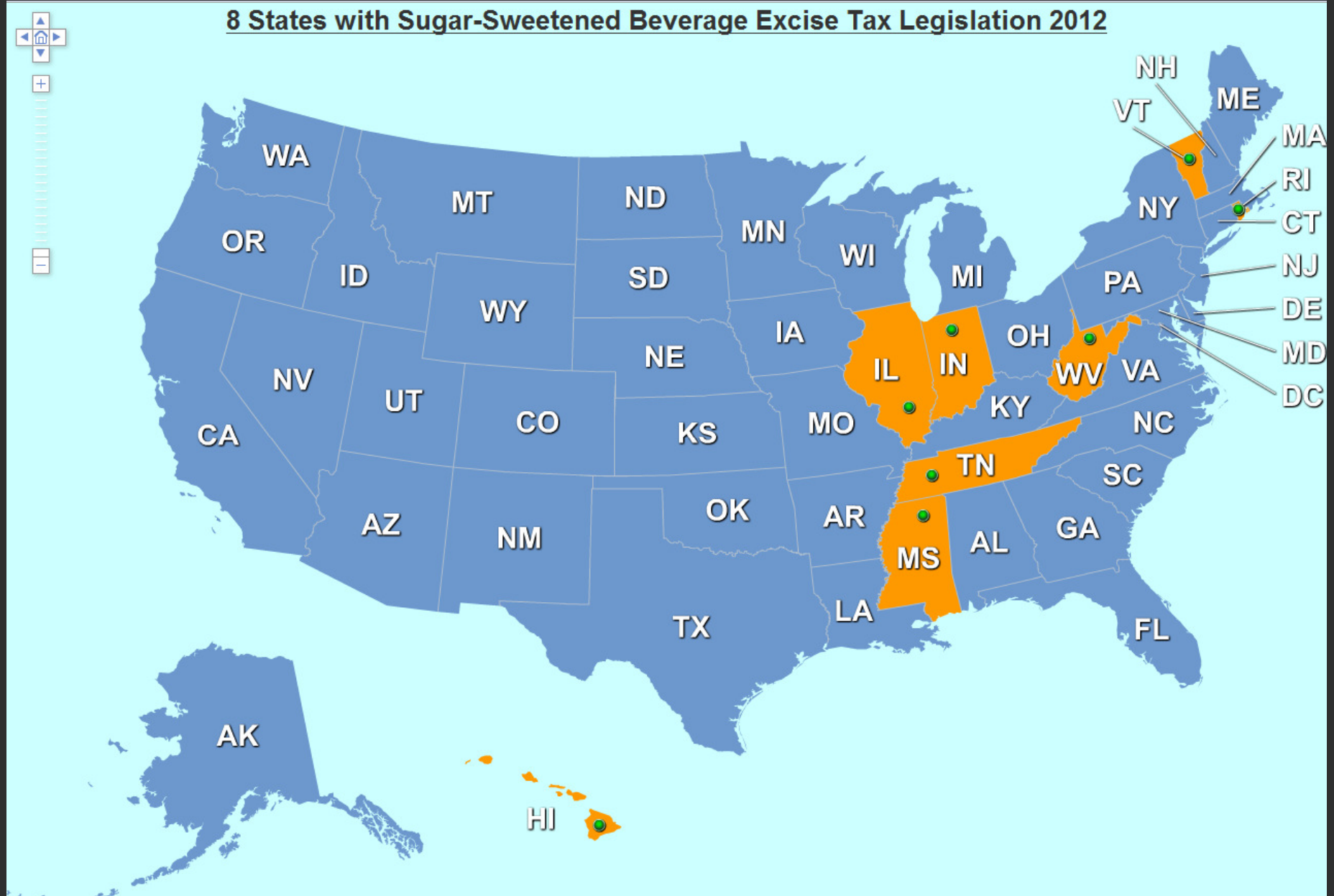


17 states, Baltimore, Philadelphia and Washington, DC (as of May 2010)

# Sugar-Sweetened Beverage Tax Legislation

## 15 states filed as of May 2011





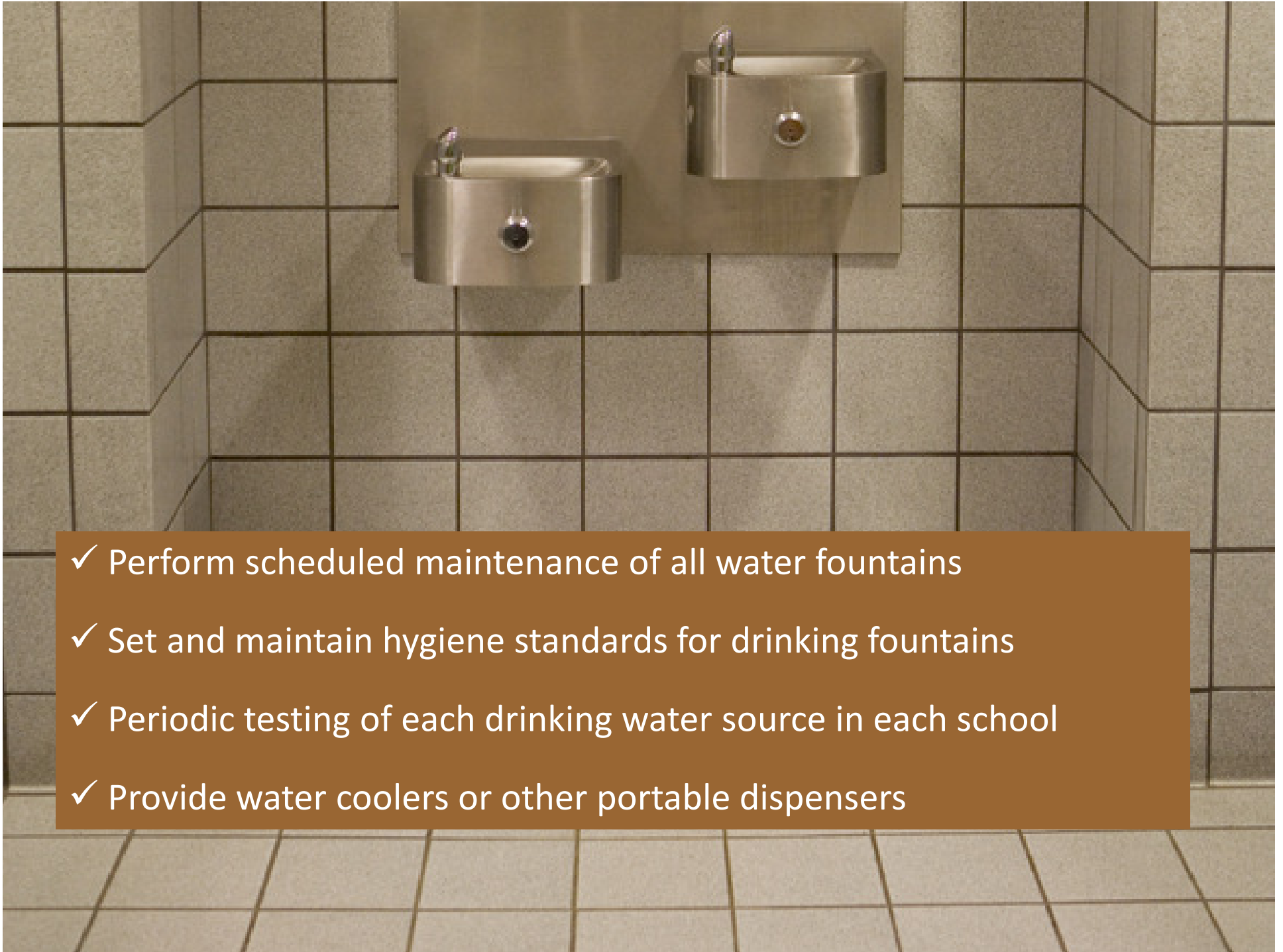
# Earmarking tax proceeds

To ensure public health benefit, earmark proceeds for:

- ✓ Programs to increase physical activity
- ✓ Increase access to healthy food and water
- ✓ Improve Built Environment
- ✓ School programs
- ✓ Health education
- ✓ Disease screening and treatment

Can direct funding to vulnerable communities





- ✓ Perform scheduled maintenance of all water fountains
- ✓ Set and maintain hygiene standards for drinking fountains
- ✓ Periodic testing of each drinking water source in each school
- ✓ Provide water coolers or other portable dispensers

# Poll Results Show Support for Earmarking

Philadelphia, PA (2010):

Global Strategy Group surveyed 401 residents on support for proposed tax on SSBs:

Generally:	44% support
2 cents/oz, earmarked:	53% support
1 cent/oz, earmarked:	62% support

# Poll Results Show Support for Earmarking

Philadelphia, PA (2010):

If Philadelphia were to tax sugar-sweetened beverages there are a number of different ways to spend the money raised. I am going to read a list of proposals on how this money could be spent. After each, please tell me whether you please tell me whether you strongly support, somewhat support, somewhat oppose, or strongly oppose spending some of the money from a sugar-sweetened beverage tax on that proposal.

	FAVOR		OPPOSE		(DK/Ref.)	NET	
	Strong	Some	Some	Strong		FAVOR	OPPOSE
• Increasing the availability of fresh fruits and vegetables throughout the city.....	64%	22	4	7	3	86%	11
• Making healthy food more accessible to low-income Philadelphians by rewarding those who use their food stamps to buy fresh fruits and vegetables, particularly in farmer's markets .....	64%	20	3	10	2	85%	14
• Supporting school and community based childhood obesity prevention programs.....	59%	23	5	11	1	82%	16
• Expanding access to and use of city parks and recreation centers.....	54%	31	4	10	3	84%	13
• Building walking and bike paths throughout the city to promote physical activity .....	47%	27	11	15	1	73%	26
• Pay down the city's budget deficit.....	43%	27	8	17	4	70%	26

## California (2010): Field Research Corporation surveyed 503 registered voters on support for proposed tax on SSBs

### QUESTION

Some have proposed raising funds for childhood obesity prevention and other children's health programs through a small tax on sodas and other sweetened beverages. Diet sodas would be excluded.

Do you support or oppose this?

**56% support**

**43% oppose**

**1% had no opinion**

For each, please tell me if you support or oppose increasing funding for this purpose (read in random order).

**84% support providing healthier food in our schools**

**84% support providing more active and enjoyable physical education programs in schools**

**82% support ensuring that all schools and communities have clean drinking water**

**74% support providing affordable health insurance for children whose families cannot afford it**

**64% support improving local parks, and building more biking and walking paths**

# Administration and Evaluation

*Issues to consider:*

- Identifying potential taxpayers- licensing/permitting system
- Identifying all beverages subject to tax
- Calculating tax on syrups
- Enforcing substantive requirements (e.g., has tax been included in price?)
- Evaluation of effects of tax



# Industry response

## External response:

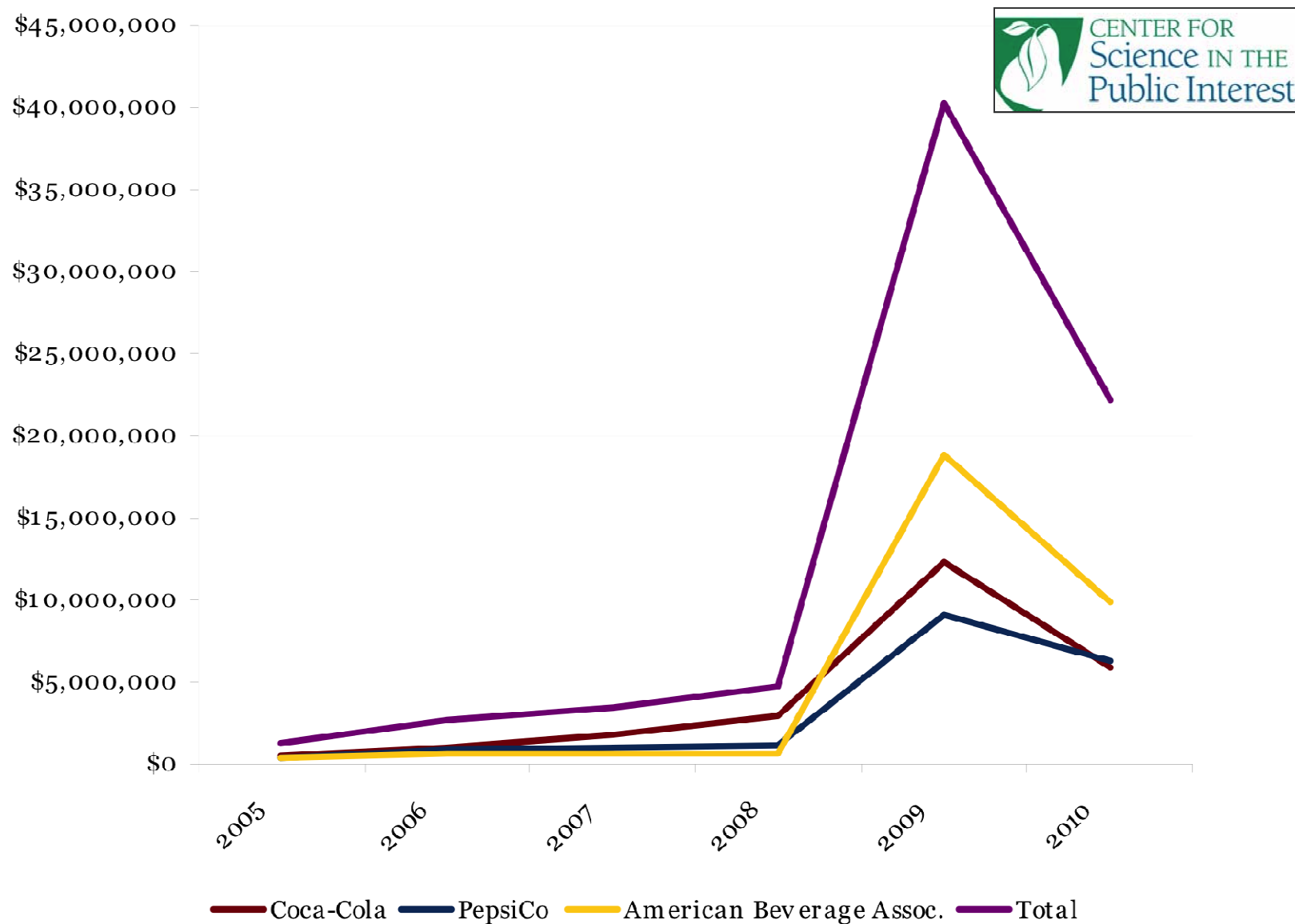
- Large increase in political lobbying
- Robust media campaign


## Internal response:

- Product and packaging changes

## I. Spending at the Federal level

### Explosive Growth in Soda Industry Political Expenses, 2005-2010<sup>1</sup>



Article rank  | 13 Sep 2011 | The Philadelphia Inquirer

By Bob Warner INQUIRER STAFF WRITER

# City rejects antiobesity funds



It turned down a Children's Hospital proposal because the money was coming from the soft-drink industry.

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*The program would be aimed at educating young people about food intake and exercise.*

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The Nutter administration has turned down an offer from Children's Hospital of Philadelphia to fund an antiobesity program through city health centers, because the money to pay for it would come from one of the administration's political adversaries, the nation's beverage industry.

# AMERICANS ... AGAINST ... FOOD TAXES

## OPEN LETTER TO CONGRESS

Dear Members of Congress, **Don't Tax Our Groceries**

Improving health care in America is an admirable goal we support. But food and beverage taxes have no place in health care reform, particularly taxes that single out one product like juice drinks and soda.

- Taxes do not make people healthier – making responsible decisions about diet and physical activity do.
- Taxes will not teach children healthy lifestyles or change anyone's behavior – education and support for physical activity programs will.
- Taxes will only burden working families already struggling in this trying economy.

This is why we, as businesses, unions, trade associations, and organizations across the country, have joined Americans Against Food Taxes and 64,000 individual petition signers nationwide in urging you to reject a federal tax on juice drinks and soda.

**Sincerely,**  
**JUST A FEW OF OUR MEMBERS**

**NATIONAL ASSOCIATIONS**  
American Council on Science & Health  
National Taxpayers Union  
Council for Citizens Against Government Waste  
U.S. Chamber of Commerce  
U.S. Hispanic Chamber of Commerce  
U.S.-Mexico Chamber of Commerce  
Americans for Prosperity  
Americans for Tax Reform  
National Association of Manufacturers  
SEIU-USA for Progress National, Inc.  
Institute for Liberty  
American Advertising Federation  
ASPIRA Association, The  
Caribbean American Chamber of Commerce & Industry, Inc.  
Cuban American National Council  
GALOT Corporation  
Hispanic Alliance for Prosperity  
Hispanic Association of Colleges & Universities  
Hispanic Federation, The  
Hispanic Institute, The  
Hispanic Media Council  
KAGRO International  
Latin Chamber of Commerce  
Latino Coalition, The  
Latino Council on the Media  
League of United Latin American Citizens  
MANA, A National Latina Organization  
Mexican American Grocers Association  
National Association of Hispanic Publications  
National Hispanic Leadership Institute  
National Hispanic Caucus of State Legislators  
National Hispanic Foundation for the Arts  
National Hispanic Medical Association  
National Latino Education Institute (Chicago)  
National Puerto Rican Coalition  
American Bakers Association  
American Beverage Association  
American Hotel & Lodging Association  
American Wholesale Merchants Association  
Can Manufacturers Institute  
Corn Refiners Association  
Food Industry Association Executives  
Food Marketing Institute  
Grocery Manufacturers Association  
Independent Bakers Association  
International Dairy Foods Association  
National Association of Concessionaires  
National Association of Convenience Stores  
National Association of PET Container Resources  
National Association of Theatre Owners  
National Automatic Merchandising Association

National Confectioners Association  
National Council of Chain Restaurants  
National Grocers Association  
National Restaurant Association  
National Retail Federation  
National Supermarket Association  
Snack Food Association  
**STATE & LOCAL ORGANIZATIONS**  
Teamsters Local Union 1199 (Cincinnati, OH)  
Teamsters Local Union 812 (New York, NY)  
NAACP Chicago Westside Branch  
NAACP Milwaukee Branch  
NAACP New York State Conference  
Alivio Medical Center of Chicago  
Association of Commerce & Industry (NM)  
Boulder (Itasca County) Hispanic Chamber of Commerce  
Chicagoland Chamber of Commerce  
Colorado Association of Commerce & Industry  
Colorado/Wyoming NIBB  
Florida Chamber of Commerce  
Georgia Chamber of Commerce  
Georgia Hispanic Chamber of Commerce  
Greater Phoenix Chamber of Commerce  
Illinois Chamber of Commerce  
Iowa Association of Business & Industry  
Kansas Chamber of Commerce  
Little Village Chamber of Commerce (Chicago)  
Michigan Chamber of Commerce  
Minnesota Chamber of Commerce  
Nebraska Chamber of Commerce & Industry  
Ohio Chamber of Commerce  
State Chamber of Oklahoma  
Texas Association of Mexican American Chambers of Commerce  
Virginia Chamber of Commerce  
Oregon Beverage Recycling Cooperative  
Chemistry Industry Council of Illinois  
American GI Forum Midwest  
Associated Oregon Industries  
Bowling Centers Association of Wisconsin  
Ever Neighborhood House (Chicago)  
Florida Maritime Leadership Coalition  
Pilsen Neighbors Community Council  
Illinois Manufacturers' Association  
Manufacture Alabama  
Ohio Manufacturers' Association  
Tosco Association of Manufacturers  
Virginia Manufacturers Association  
Wisconsin Manufacturers & Commerce  
Alabama Grocers Association  
Arizona Automatic Merchandising Association  
Arizona Food Marketing Alliance

Arizona Retailers Association  
Arkansas Grocers & Retail Merchants Association  
Associated Food and Petroleum Dealers (MI)  
California Grocers Association  
Carroll's Food Industry Council  
Colorado/Wyoming Petroleum Merchants Association  
Connecticut Food Association  
Delaware Food Industry Council  
Florida Dairy Products Association  
Florida Petroleum Merchants & Convenience Store Association  
Florida Restaurant & Lodging Association  
Georgia Agribusiness Council  
Georgia Association of Convenience Stores  
Georgia Food Industry Association  
Georgia Restaurant Association  
Georgia Retail Association  
Illinois Association of Convenience Stores  
Illinois Food Retailers Association  
Illinois Petroleum Merchants Association  
Illinois Retail Merchants Association  
Independent Buyers Co-op (TX)  
Indiana Grocery & Convenience Store Association  
Indiana Restaurant Association  
Iowa Wholesale Distributors Association  
Kansas Food Dealers Association  
Kansas Restaurant & Hospitality Association  
Kentucky Association of Convenience Stores  
Kentucky Grocers Association  
Kentucky Hotel & Lodging Association  
Kentucky Restaurant Association  
Louisiana Retailers Association  
Maine Grocers Association  
Maine Merchants Association  
Maine Restaurant Association  
Maryland Retailers Association  
Massachusetts Food Association  
Michigan Distributors & Vendors Association  
Michigan Food & Beverage Association  
Michigan Grocers Association  
Michigan Restaurant Association  
Michigan Retailers Association  
Mid-Atlantic National Association of Theatre Owners  
Mid-Atlantic Petroleum Distributors' Association  
Mid-States National Association of Theatre Owners  
Midwest Dairy Foods Association  
Midwest Food Processors Association  
Minnesota Grocers Association

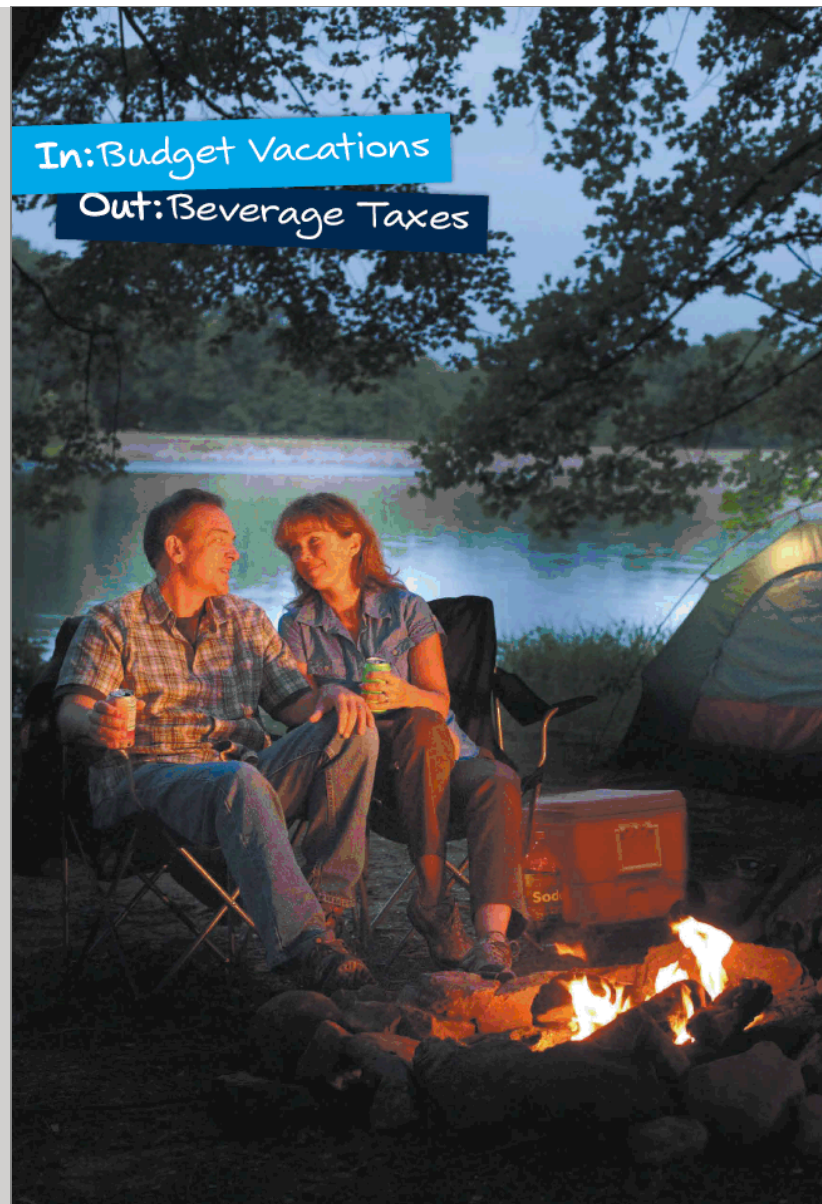
Minnesota Lodging Association  
Minnesota Restaurant Association  
Minnesota Retailers Association  
Mississippi Automatic Merchandising Association  
Mississippi Hospitality and Restaurant Association  
Missouri Retailers Association  
National Association of Theatre Owners of California/  
Nevada  
National Association of Theatre Owners of New York  
State  
Neighborhood Market Association (CA)  
New England Convenience Store Association  
New Hampshire Grocers Association  
New Jersey Food Council  
New Mexico Grocers Association  
North Carolina Restaurant & Lodging Association  
North Carolina Retail Merchants Association  
North Carolina Wholesalers Association  
North Dakota Grocers Association  
North Dakota Hospitality Association  
North Dakota Petroleum Merchants Association  
North Dakota Retail Association  
Ohio Corn Grocers Association  
Ohio Council of Retail Merchants  
Ohio Grocers Association  
Ohio Hotel & Lodging Association  
Ohio Restaurant Association  
Pennsylvania Food Merchants Association  
Pennsylvania Restaurant Association  
Retail Merchants of Hawaii  
South Carolina Retail Association  
South Central States National Association of Theatre  
Owners  
Tennessee Grocers & Convenience Store Association  
Texas Grocery & Convenience Association  
Theatre Owners of Indiana  
Utah Food Industry Association  
Vermont Grocers Association  
Virginia Automatic Merchandising Association  
Virginia Wholesalers and Distributors Association  
West Virginia Oil Merchants and Grocers Association  
Wisconsin Automatic Merchandising Council  
Wisconsin Grocers Association  
Wisconsin Petroleum Merchants & Convenience Store  
Association  
Wisconsin Restaurant Association  
Wisconsin Retail Council

Nearly 400 groups, organizations and  
businesses of all sizes say they'll be hurt  
by the tax.

To see the complete list, go to  
[NoBeverageandFoodTaxes.com](http://NoBeverageandFoodTaxes.com)

PAID FOR BY THE AMERICANS AGAINST FOOD TAXES

## In: Budget Vacations Out: Beverage Taxes



This is no time for Congress to be adding taxes on simple pleasures we enjoy like juice drinks and soda. But that's just what some in Congress are talking about doing right now.

**American families are watching their budgets this year - doing more with less.**

Middle class families are struggling to make ends meet—they aren't getting raises to pay higher taxes. And they know taxes never made anyone healthy—education, exercise and balanced diets do that. We all want to improve health care but discriminatory and punitive taxes are not the way to do it.

Tell Congress, a tax on simple pleasures like juice drinks and soda is the last thing Americans need right now at [www.NoBeverageandFoodTaxes.com](http://www.NoBeverageandFoodTaxes.com)

Follow us on Twitter @NoBeverandFoodTax

PAID FOR BY THE AMERICANS AGAINST FOOD TAXES

AMERICANS  
... AGAINST ...  
FOOD TAXES



# Big Apple or Big Brother?



## Warning and Nutritional Notice:

Soda pop and sports drinks may contain calories. If consumed without any activity or exercise you will gain weight. (This warning applies to all food.)

After tackling margarine on bagels in New York, the New York Department of ~~Health~~ Hype is attacking soft drinks. Priorities?

For more information, go to:

[ConsumerFreedom.com](http://ConsumerFreedom.com)

YOU  
ARE TOO  
STUPID

...to make good personal decisions  
about foods and beverages.

The New York Department of ~~Health~~ Hype  
has used your tax dollars to launch an  
advertising campaign to demonize soda.

Food cops and politicians are attacking  
food and soda choices they don't like.  
Have they gone too far?



*It's your food. It's your drink. It's your freedom.*

*Find out more about attacks on your favorite foods and drinks at:*

[ConsumerFreedom.com](http://ConsumerFreedom.com)



# American Beverage Association



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## We're Delivering.

More Choices. Smaller Portions. Fewer Calories.

America's beverage industry is delivering more choices, smaller portions, fewer calories and clearer labels across the country. By doing so, our companies are delivering real results that are making a difference for families and individuals in our communities – making it easier to choose the beverage that's right for them.

# Discounting Strategies



# Proportional pricing





# Proportional pricing

**Orville's**  
Real Butter Popcorn

**POPCORN**

Large Tub	6.50
Large	6.00
Medium	5.50
Small	4.75
Junior	4.00

**FOUNTAIN DRINKS**

Large	4.25
Medium	4.00
Small	3.50
ICEE	4.00/4.25

**SNACKS**

Hot Dog	3.75/4.25
Nachos	4.50
Extra Cheese	1.50
Movie Snack Pack	4.75
Pickles	2.25

real *Coca-Cola* taste  
zero calories

**BOTTLED DRINKS**

DAŠANI	3.75/4.25
vitaminwater	4.25
FUZE	4.25
20 oz. Sodas	3.75

**CANDY**

3.50	3.00
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**CINEMARK**

cinemark.com

APPLICABLE SALES TAX INCLUDED

# A regulatory fee instead of a tax?

## *Regulatory Fee*

- Not a tax- a fee charged on businesses that sell harmful products
- Fee proceeds can only be used for regulatory programs to mitigate the harm caused by the product
  - Must establish a NEXUS
  - Proceeds cannot be redirected



**USING REGULATORY FEES  
TO COMBAT THE ADVERSE EFFECTS OF  
SUGAR-SWEETENED BEVERAGES**





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