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.
The fine print

The information provided in this seminar is for informational purposes only, and does not constitute legal advice. Public Health Law & Policy does not enter into attorney-client relationships.

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
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)
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%


• 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

- Fresh fruits: 1.46%
- Fresh vegetables: 1.41%
- Beer: 0.85
- Butter: 0.71
- Sodas: 0.67

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

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

\[
\begin{align*}
\text{Costs of Production} & \quad (\$5.00) \\
+ \quad \text{Producer’s Profit} \\
+ \quad \text{Federal Excise Tax (\$1.01)} \\
+ \quad \text{State Excise Tax (avg. \$1.20)} \\
+ \quad \text{Local Excise Tax} \\
\hline
\quad \text{Counter Price (\$7.21)} \\
\quad \text{General Sales Tax (8.25\%)} \\
\hline
\equiv \quad \text{Final Price to Consumer (\$7.80)}
\end{align*}
\]
Points of Intervention

- Excise
- Sales Tax

Manufacturer → Bottler → Distributor/Wholesaler → Retailers
# Existing soda-specific excise taxes

<table>
<thead>
<tr>
<th>State</th>
<th>Description</th>
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<tbody>
<tr>
<td>AL</td>
<td>License taxes and fees</td>
</tr>
<tr>
<td>ARK</td>
<td>Excise tax of $0.21/gallon</td>
</tr>
<tr>
<td>RI</td>
<td>Excise tax of $0.04/case</td>
</tr>
<tr>
<td>TN</td>
<td>Privilege tax of 1.9% of gross receipts</td>
</tr>
<tr>
<td>VA</td>
<td>Range of excise taxes</td>
</tr>
<tr>
<td>WA</td>
<td>Excise tax of $1/gallon of syrup</td>
</tr>
<tr>
<td>WV</td>
<td>Range of excise taxes for bottles and syrups</td>
</tr>
<tr>
<td>Chicago</td>
<td>3% excise tax</td>
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</tbody>
</table>
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”
Soft Drink Tax Legislation Filed 2009-2010

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

Source: Yale Rudd Center for Food Policy and Obesity
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


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


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.

<table>
<thead>
<tr>
<th></th>
<th>FAVOR</th>
<th>OPPOSE</th>
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<tr>
<td></td>
<td>Strong</td>
<td>Some</td>
</tr>
<tr>
<td>Increasing the availability of fresh fruits and vegetables throughout the city</td>
<td>64%</td>
<td>22</td>
</tr>
<tr>
<td>Making healthy food more accessible to low-income Philadelphia by rewarding those who use their food stamps to buy fresh fruits and vegetables, particularly in farmer’s markets</td>
<td>64%</td>
<td>20</td>
</tr>
<tr>
<td>Supporting school and community based childhood obesity prevention programs</td>
<td>59%</td>
<td>23</td>
</tr>
<tr>
<td>Expanding access to and use of city parks and recreation centers</td>
<td>54%</td>
<td>31</td>
</tr>
<tr>
<td>Building walking and bike paths throughout the city to promote physical activity</td>
<td>47%</td>
<td>27</td>
</tr>
<tr>
<td>Pay down the city’s budget deficit</td>
<td>43%</td>
<td>27</td>
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</tbody>
</table>
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

[Graph showing the growth in political expenses for the years 2005 to 2010, with a notable peak in 2009. The graph includes lines for Coca-Cola, PepsiCo, American Beverage Assoc., and the total.]

1. Source: CENTER FOR SCIENCE IN THE PUBLIC INTEREST
City rejects antiobesity funds

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

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

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.
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

Nearly 400 groups, organizations, and individual signers from all states say they disagree.

Nearly 400 groups, organizations, and individual signers from all states say they disagree.

Follow us on Twitter @AMAFoodTax

In: Budget Vacations
Out: Beverage Taxes

This is our time for Congress to help ordinary Americans enjoy something simple: a refreshing glass of juice or soda. Don’t let our elected leaders take it away.

American families are wondering that budgets this year — and every year with law.

Middle-class families are struggling to make ends meet — and now getting taxes to pay higher taxes. And they know taxes mean less health care — education, exercise and balanced diet 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. www.FoodTaxDay.com

Follow us on Twitter @AMAFoodTax
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

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
American Beverage Association

We're Delivering.

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

Kosher For Passover Coke

3/$3.99
Proportional pricing
Proportional pricing

<table>
<thead>
<tr>
<th>FOUNTAIN DRINKS</th>
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<tbody>
<tr>
<td>Large</td>
<td>4.25</td>
</tr>
<tr>
<td>Medium</td>
<td>4.00</td>
</tr>
<tr>
<td>Small</td>
<td>3.50</td>
</tr>
<tr>
<td><strong>ICEE</strong></td>
<td><strong>4.00/4.25</strong></td>
</tr>
</tbody>
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- **SNACKS**
  - Eisenberg Hot Dog 3.75/4.25
  - Nachos 4.50
  - Extra Cheese 1.50
  - Movie Snack Pack 4.75
  - Pickles 2.25

- **BOTTLED DRINKS**
  - DASANI 3.75/4.25
  - vitaminWater 4.25
  - FUZE 4.25
  - 20 oz. Sodas 3.75

- **CANDY**
  - 3.50
  - 3.00

*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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