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ESTABLISHES PUBLIC HEALTH FUND BY
ENACTING DEDICATED STATEWIDE TAX
ON DISTRIBUTION OF SUGAR-
SWEETENED DRINKS. INITIATIVE
CONSTITUTIONAL AMENDMENT AND
STATUTE

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ESTABLISHES PUBLIC HEALTH FUND BY ENACTING DEDICATED STATEWIDE TAX ON DISTRIBUTION OF SUGAR-SWEETENED DRINKS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE California Initiative 1855 (2018).
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The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

ESTABLISHES PUBLIC HEALTH FUND BY ENACTING DEDICATED STATEWIDE TAX ON DISTRIBUTION OF SUGAR-SWEETENED DRINKS. INITIATIVE

CONSTITUTIONAL AMENDMENT AND STATUTE. Creates a fund for public health programs to prevent, treat, and research obesity, diabetes, dental diseases, and other diseases linked to sugar-sweetened beverages, and to increase access to healthy food and drinks. Enacts a dedicated statewide tax on distributors of sugar-sweetened beverages (\$0.02 per fluid ounce).

Exempts specified beverages from tax—including milk, juice, infant formula, medical beverages, and low-sugar drinks. Requires audit of fund expenditures. Amends Constitution to allow new local taxes on sugar-sweetened drinks. Summary of estimate by Legislative Analyst and

Director of Finance of fiscal impact on state and local governments: **Increased state revenues starting in 2021-22. Annual revenues would be roughly \$2 billion to \$3 billion by 2022-23.**

The measure designates these revenues for health care; disease prevention; disease research; and access to fruit, vegetables, and water. (18-0004)

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18 - 0004 Amdt. # 1

July 30, 2018

VIA MESSENGER

Ashley Johansson, Initiative Coordinator
Office of the Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

RECEIVED

AUG 06 2018

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Submission of Amendment to Statewide Initiative Measure
The California Sugar-Sweetened Beverages Tax Act of 2020
Initiative No. 18-0004

Dear Ms. Johansson:

This firm is counsel for the proponents of the proposed statewide initiative, "The California Sugar-Sweetened Beverages Tax Act of 2020." The proponents of the proposed initiative are Dustin Corcoran and Carrie Gordon. On their behalf, I am enclosing the following documents:

- The amended text of "The California Sugar-Sweetened Beverages Tax Act of 2020"
- A red-line version showing the changes made in the amended text
- Signed authorizations from each of the proponents requesting that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries and correspondence regarding this proposed initiative to the address listed below:

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Very truly yours,



Beverly Grossman Palmer

The people of the State of California do enact as follows:

The CALIFORNIA SUGAR-SWEETENED BEVERAGES TAX ACT OF 2020

SECTION 1. Findings and Declarations

(a) There is overwhelming evidence of the link between obesity, diabetes, dental disease and heart disease and the consumption of sugar-sweetened beverages (SSB), such as soft drinks, energy drinks, sweet teas and sports drinks. Each year thousands of Californians require medical and dental treatment because of consumption of sweetened beverages.

(b) According to a 2016 report by the UCLA Center for Health Policy Research, over 2.5 million California adults report having been diagnosed with diabetes, representing one out of every 12 adult Californians. Combined with an estimated 13 million California adults who have prediabetes or undiagnosed diabetes, these groups make up 55 percent of the state's adult population. The vast majority of diabetes cases in California are type 2, representing 1.9 million adults.

(c) According to the Centers for Disease Control and Prevention, diabetes is the seventh leading cause of death in California and has been determined to be the underlying cause of death for over 9,000 Californians each year.

(d) Adults with type 2 diabetes more often have other health problems. One-half of adults with type 2 diabetes also have hypertension. This rate of occurrence is twice as high as for those without diabetes. Adults with diabetes are significantly more likely to have cardiovascular disease, arthritis and kidney failure than adults without diabetes.

(e) Latino Americans, African Americans, Native Americans and Asian/Pacific Islander Americans have higher prevalence of type 2 diabetes than non-Hispanic Whites. Seven percent of non-Hispanic Whites have type 2 diabetes, compared with 12 percent of Latino Americans, 9 percent of Asian Americans, 14 percent of Pacific Islander Americans, 13 percent of African Americans and 17.5 percent of Native American populations. If trends are not reversed, it is predicted that one in three children and nearly one-half of Latino American and African American children born in the year 2000 will develop type 2 diabetes in their lifetime.

(f) The prevalence of obesity in the United States has accelerated dramatically over the past 20 years. In California, 25 percent of adults in California were obese in 2016 — an increase in obesity prevalence of nearly 40 percent since 2001. Although no group has escaped the epidemic, those who are low income and communities of color are disproportionately affected.

(g) The rate of children who are overweight has also increased dramatically in recent decades. In 2010, 38 percent of California children in grades 5, 7, and 9 were overweight or obese. Thirty-one of California's 58 counties experienced an increase in childhood obesity from 2005 to 2010.

(h) 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.

(i) According to nutritional experts, sugar-sweetened beverages, such as soft drinks, energy drinks, sweet teas and sports drinks, offer little or no nutritional value, but massive quantities of added sugars. A 20-ounce bottle of soda contains the equivalent of approximately 16 teaspoons of sugar. Yet, the American Heart Association recommends that Americans consume no more than five to nine teaspoons of sugar per day.

(j) Research shows that almost one-half of the extra calories Americans consume in their diet comes from sugar-sweetened beverages, with the average American drinking nearly 50 gallons of sugar-sweetened beverages a year, the equivalent of 39 pounds of extra sugar every year.

(k) California Health Interview Survey from 2014 shows that 41 percent of California children from 2 to 11 years of age, inclusive, and 62 percent of California teens from 12 to 17 years of age, inclusive, drink soda daily and for every additional serving of sugar-sweetened beverage that a child consumes per day, the likelihood of the child becoming obese increases by 60 percent.

(l) Sugary drinks are a unique contributor to excess caloric consumption. A large body of research shows that calories from sugary drinks do not satisfy hunger the way calories from solid food or beverages containing fat or protein do,

such as those containing milk and plant-based proteins. As a result, sugary beverages tend to add to the calories people consume rather than replace them.

(m) Dental caries (tooth decay) is the most common chronic childhood disease, experienced by more than two-thirds of California's children. Left untreated, decay may cause chronic pain, infection, failure to thrive and delayed growth, school absenteeism, the inability to concentrate and interference with intellectual tasks. Dental decay can become severe enough to require emergency room treatment and when left untreated can lead to death.

(n) People are susceptible to dental caries throughout their lifetimes. Not only do adults experience dental caries, but a substantial proportion of that disease is untreated at any given time. National Health and Nutrition Examination Survey (NHANES) results showed that approximately 91 percent of U.S. adults aged 20–64 had dental caries in permanent teeth in 2011–2012, 27 percent of those adults aged 20–64 had untreated tooth decay in their permanent teeth.

(o) Tooth loss is an important indicator of oral health and quality of life. It affects one's ability to chew, speak, socialize and obtain employment.

(p) The prevalence of permanent tooth loss in 2012 ranged from 13 percent among 18- to 24-year-old group to 68 percent among adults aged 65 or older in California. African American adults in California have a higher prevalence of tooth loss due to decay or gum disease.

(q) Children and adults who frequently or excessively consume beverages high in sugar are at increased risk for dental caries. Sugar-sweetened beverages are dietary sources of sugar that are factors in caries development and tooth loss.

(r) The acidity, carbonation and sugars in soft drinks create a high risk of acid demineralization of dental enamel and makes consumption of these beverages one of the most significant contributors to tooth decay in children. Sugar-sweetened beverages, which have minimal nutritional value, are the primary source of added sugar in the daily diet of children.

(s) For every additional 25 grams of sugar consumed per person and day, the cost of dental treatment in the U.S. increases on average by \$185 per person per year.

(t) Evidence suggests that taxes on sugar-sweetened beverages can significantly affect consumption patterns, thereby having an impact on obesity, diabetes, dental disease and heart disease rates. A review indicated that for every 10 percent increase in price, sugar-sweetened beverages consumption decreased by 7.8 percent.

(u) It is the intent of the people, by adopting the Children and Family Health Promotion Trust Fund, to diminish the human and economic costs to California of diseases related to the overconsumption of sugar-sweetened beverages. The fund is intended to create a dedicated revenue source for health, education and wellness programs designed to prevent and treat obesity, diabetes, dental disease and heart disease and to reduce the economic and health burden of these costly health conditions that result from the overconsumption of sugar-sweetened beverages.

SECTION 2. Statement of Purpose

The purpose of this act is to:

(a) Diminish the human and economic costs of diseases associated with the overconsumption of sugar-sweetened beverages by discouraging their distribution and consumption in California through a tax on the distribution of sugar-sweetened beverages, such as high-calorie, low-nutrition products like soda, energy drinks and syrup or powder used to produce sugar-sweetened beverages. Certain drinks containing sugar are exempted, including infant formula and milk products.

(b) Provide funds to increase funding for existing medical and dental health care programs and services that treat diseases that result from the overconsumption of sugar-sweetened beverages (SSB-related diseases).

(c) Provide funds to support activities aimed at prevention of disease related to the consumption of sugar-sweetened beverages, improvement of access to and

consumption of healthy and affordable foods and beverages and promotion of physical activity.

SECTION 3. The CALIFORNIA SUGAR-SWEETENED BEVERAGES TAX ACT OF 2020

Part 14.6 (commencing with Section 34100) is added to Division 2 of the Revenue and Taxation Code, to read:

Part 14.6 Sugar-Sweetened Beverages Tax

§ 34100. Definitions

For the purposes of this part:

(a) "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness.

(b) "Beverage for medical use" includes a "medical food." Consistent with Section 5(b)(3) of the Orphan Drug Act (Public Law 97-414; at 21 U.S.C. 360ee(b)(3)), "medical food" means a food that is formulated to be consumed or administered internally under the supervision of a physician and that is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

(c) "Beverage for medical use" does not include drinks commonly referred to as "sports drinks" or any other derivative or similar terms.

(d) "Bottle" means any closed or sealed container regardless of size or shape, including, without limitation, those made of glass, metal, paper or plastic or any other material or combination of materials.

(e) *"Bottled sugar-sweetened beverage" means any sugar-sweetened beverage contained in a bottle that is ready for consumption without further processing such as, without limitation, dilution or carbonation.*

(f) *"Caloric sweetener" means any substance containing calories, suitable for human consumption, that humans perceive as sweet, and includes, without limitation, sucrose, fructose, glucose, fruit juice concentrate, or other sugars. "Caloric sweetener" excludes noncaloric sweeteners. For purposes of this definition, "caloric" means a substance that adds calories to the diet of a person who consumes that substance.*

(g) *"Consumer" means a person who purchases a sugar-sweetened beverage for consumption and not for sale to another.*

(h) *"Department" means the Department of Tax and Fee Administration.*

(i) *"Distributor" means any person, including a manufacturer or wholesale dealer, who receives, stores, manufactures, bottles, or distributes bottled sugar-sweetened beverages, syrups, or powders for sale to retailers doing business in the state, or any combination of these activities, whether or not that person also sells those products to consumers.*

(j) *"Fund" means the Children and Family Health Promotion Fund established pursuant to Section 34103.*

(k) *"Milk" means natural liquid milk, regardless of animal or plant source or butterfat content, natural milk concentrate whether or not reconstituted or dehydrated natural milk, whether or not reconstituted.*

(l) *"Natural fruit juice" means the original liquid resulting from the pressing of fruits or the liquid resulting from the dilution with water of dehydrated natural fruit juice.*

(m) *"Natural vegetable juice" means the original liquid resulting from the pressing of vegetables or the liquid resulting from the dilution with water of dehydrated natural vegetable juice.*

(n) "Noncaloric sweetener" means any noncaloric substance suitable for human consumption that humans perceive as sweet, including, but not limited to, aspartame, acesulfame-K, neotame, saccharin, sucralose and stevia. "Noncaloric sweetener" excludes caloric sweeteners. For purposes of this definition, "noncaloric" means a substance that contains fewer than five calories per serving.

(o) "Person" means a natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee or other legal entity.

(p) "Place of business" means any place where sugar-sweetened beverages, syrups or powders are manufactured or received for sale in the state.

(q) "Powder" means any solid mixture of ingredients used in making, mixing or compounding sugar-sweetened beverages by mixing the powder with one or more other ingredients, including, but not limited to, water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation or other gas.

(r) "Retailer" means any person who sells or otherwise dispenses in the state a sugar-sweetened beverage to a consumer whether or not that person is also a distributor.

(s) "Sale" means the transfer of title or possession for valuable consideration, regardless of the manner by which the transfer is completed.

(t) "State" means the State of California.

(u) (1) "Sugar-sweetened beverage" means any nonalcoholic beverage, carbonated or noncarbonated, that is intended for human consumption and contains added caloric sweetener. As used in this subdivision, "nonalcoholic beverage" means any beverage that contains less than one-half of 1 percent alcohol per volume.

(2) "Sugar-sweetened beverage" does not include any of the following:

(A) Bottled sugar-sweetened beverages, syrups and powders sold to the United States government and American Indian tribal governments.

(B) Bottled sugar-sweetened beverages, syrups and powders sold by a distributor to another distributor that is registered pursuant to Section 34105, if the sales invoice clearly indicates that the sale is exempt. If the sale is to a person who is both a distributor and a retailer, the sale shall also be tax-exempt and the tax shall be paid when the purchasing distributor or retailer resells the product to a retailer or a consumer. This exemption does not apply to any other sale to a retailer.

(C) Beverages sweetened solely with noncaloric sweeteners.

(D) Beverages consisting of 100 percent natural fruit or vegetable juice with no added caloric sweetener.

(E) Beverages in which milk, or soy, rice or similar milk substitute, is the primary ingredient or the first listed ingredient on the label of the beverage.

(F) Beverages with fewer than five grams of added sugar or other caloric sweeteners per 12 ounces.

(G) Coffee or tea without added caloric sweetener.

(H) Infant formula.

(I) Beverages for medical use.

(J) Water without any caloric sweetener.

(v) "SSB-related disease" includes but is not limited to:

(1) Obesity.

(2) Diabetes.

(3) Dental disease.

(4) Heart disease.

(5) Other related conditions linked to the adverse effects of overconsumption of sugar-sweetened beverages.

(6) Other conditions or diseases in which consumption of sugar-sweetened beverages have been established to be a risk factor for excess disability and illness.

(w) "Syrup" means a liquid mixture of ingredients used in making, mixing or compounding sugar-sweetened beverages using one or more other ingredients, including, but not limited to, water, ice, powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation or other gas.

(x) "Water" includes nonflavored water or water flavored with noncaloric "natural fruit essence" or "natural flavor." The source of the water may be artesian, mineral, spring or well. The type of water may also include carbonated, such as sparkling, club or seltzer, and still, distilled or purified, such as demineralized, deionized or reverse osmosis.

§ 34101. Taxes

(a) A tax is imposed at 12:01 a.m. on the first day of the first calendar quarter beginning July 1, 2021 on every distributor for the privilege of distributing bottled sugar-sweetened beverages, syrups or powder in the state, for deposit into the fund. The taxes shall be calculated as follows:

(1) The tax on bottled sugar-sweetened beverages distributed in this state shall be two cents (\$0.02) per fluid ounce.

(2) The tax on syrup or powder distributed in the state either as syrup or powder or as a sugar-sweetened beverage produced from syrup or powder shall be equal to two cents (\$0.02) per fluid ounce of sweetened beverage produced from that syrup or powder.

(3) For purposes of calculating the tax for syrup or powder, the volume of sugar-sweetened beverage to be produced from syrup or powder shall be the

largest volume resulting from use of the syrup or powder according to any manufacturer's instructions.

(b) In each transaction described in subdivision (a), the distributor shall include the following information on each receipt, invoice or other form of accounting for the distribution of bottled sugar-sweetened beverages, syrup, or powder:

(1) The name and address of the distributor.

(2) The name and address of the purchaser.

(3) The date of sale and invoice number.

(4) The kind, quantity, size and capacity of packages of bottled sugar-sweetened beverages, sweetened beverages syrup, or powder sold.

(5) The amount of taxes due from the distributor on the sale of the bottled sugar-sweetened beverages, sweetened beverages syrup or powder.

(6) Any other information, as required by the department.

§ 34102. Local Taxes

The taxes imposed by this part shall be in addition to any other tax imposed by a city, county or city and county, including, but not limited to, any taxes on the distribution of sugar-sweetened beverages in effect in any city, county or city and county on July 1, 2018. Nothing in this part shall pre-empt or prohibit adoption and implementation of any policy related to sugar-sweetened beverages, including taxation, by a city, county or city and county of the state, and a city, county or city and county may adopt any such taxes subject to applicable voter approval requirements imposed by law at the time such tax is proposed.

§ 34103. Children and Family Health Promotion Fund

(a) The Children and Family Health Promotion Fund is hereby established in the State Treasury. Moneys in the fund may only be appropriated for the following purposes:

(1) To support existing programs to improve quality and access to health care programs that provide medical and dental disease prevention and treatment services for Californians with SSB-related diseases.

(2) To support community and school health education programs for the reduction of SSB-consumption, prevention of SSB-related diseases, improved school nutrition and increased physical activity.

(3) To support access to nutritious food and clean drinking water.

(4) To support SSB-related diseases research.

(b) The fund consists of four separate accounts, as follows:

(1) The SSB-related Diseases Health Care Services Account, which shall only be available for appropriation to existing programs to improve quality and access to health care programs for medical and dental disease prevention and treatment services for Californians with SSB-related diseases.

(2) The SSB-related Diseases Prevention Account, which shall only be available for appropriation for programs that support reduction of SSB consumption and SSB-related diseases prevention.

(3) The Access to Healthy Food and Drink Account, which shall only be available for appropriation for programs that support access to fruit, vegetables and clean drinking water.

(4) The SSB-related Diseases Research Account, which shall only be available for appropriation for SSB-related diseases research by individuals or entities that reside or are located entirely within California.

(c) All revenues raised pursuant to the taxes imposed by this part (including interest, penalties and other amounts collected and paid to the department pursuant to this part), less refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, and reimbursement to the department pursuant to Section 34014 and the appropriation for the Bureau of State Audits pursuant to Section 34013.1, shall be deposited into the Children and Family Health Promotion Fund.

(1) Moneys shall be deposited in the fund according to the following formula:

- (A) Eighty-two percent to the SSB-related Diseases Health Care Services Account.*
- (B) Twelve percent to the SSB-related Diseases Prevention Account.*
- (C) Three percent to the Access to Healthy Food and Drink Account.*
- (D) Three percent to the SSB-related Diseases Research Account.*

(d) Notwithstanding any other law, the taxes imposed by this part and the revenues therefrom, including investment interest, shall not be considered to be part of the General Fund, as that term is used in Chapter 1 (commencing with section 16300) of Part 2 of Division 4 of the Government Code, shall not be considered General Fund revenue for purposes of Section 8 of Article XVI of the California Constitution and its implementing statutes, and shall not be considered "moneys" for purposes of subdivisions (a) and (b) of Section 8 of Article XVI of the California Constitution and its implementing statutes.

(e) All such funds described in subdivision (c) shall only be used for the specific purposes set forth in this act, and shall be appropriated and expended only for the purposes expressed in this act and shall not be subject to appropriation reversion or transfer by the Legislature, the Governor, the Director of Finance or the Controller for any purpose other than those specified in this act, nor shall such revenues be loaned to the General Fund or any other fund of the state or any local government fund.

Funds provided pursuant to this section shall supplement and not supplant existing federal, state, or local funding for any of the purposes provided in

subdivision (a) of this section. Not more than five percent (5%) of the funds received by any state or local agency or department pursuant to this section shall be used for administrative costs. The California State Auditor shall promulgate regulations pursuant to the rulemaking provisions of the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code) to define administrative costs for purposes of this part. Such regulations shall take into account the differing nature of the agencies or departments receiving funds.

§ 34103.1. Independent Audit and Disclosure

To provide full public accountability concerning the uses to which funds from the CALIFORNIA SUGAR-SWEETENED BEVERAGES TAX ACT OF 2020 are put and to ensure full compliance with the CALIFORNIA SUGAR-SWEETENED BEVERAGES TAX ACT OF 2020:

- (a) The nonpartisan California State Auditor shall conduct at least biennially an independent financial audit of the state and local agencies receiving funds pursuant to the CALIFORNIA SUGAR-SWEETENED BEVERAGES TAX ACT OF 2020. An audit conducted pursuant to this section shall include, but not be limited to, a review of the administrative costs expended by the state agencies that administer the fund.*
- (b) Based on the independent audit, the nonpartisan California State Auditor shall prepare a report detailing its review and include any recommendations for improvements. The report shall be made available to the public.*
- (c) Each state agency or department receiving funds pursuant to this act shall, on an annual basis, publish on their respective internet website an accounting of how much money was received from the Children and Family Health Promotion Fund and how that money was spent. The annual accounting shall also be posted on any social media outlets the state agency or department deems appropriate.*
- (d) Moneys from the Children and Family Health Promotion Fund shall be used to reimburse the independent nonpartisan California State Auditor up to four hundred thousand dollars (\$400,000) annually for actual costs incurred to conduct each of the audits required by Section 34103.1 for the purpose of*

providing public transparency and ensuring that the revenues generated by this article are used for their stated purpose.

§ 34104. Tax Collection

- (a) Moneys from the Children and Family Health Promotion Fund shall be used to reimburse the department for expenses incurred in the administration, calculation and collection of the tax imposed by this article and for expenses incurred in the calculation and distribution of funds and in the promulgation of regulations as required by this act; provided, however, that not more than five percent (5%) annually of the funds from the Children and Family Health Promotion Fund shall be used for such administrative costs.*
- (b) The department shall administer and collect the taxes imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the taxes imposed by this part and references to "fee payer" shall include a person required to pay the taxes imposed by this part.*
- (c) The department may prescribe, adopt and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, permits, reporting, refunds, penalties and appeals.*
- (d) The department may prescribe, adopt and enforce any emergency regulations as necessary to implement, administer and enforce its duties under 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. Notwithstanding any other provision of law, the emergency regulations adopted by the department may remain in effect for two years from adoption.*

- (e) *The taxes imposed by this part are due and payable to the department on or before the last day of the first month following each calendar quarter.*
- (f) *On or before the last day of the first month following each calendar quarter, a return for the preceding calendar quarter shall be filed with the department using electronic media.*
- (g) *Any person who fails to pay the taxes imposed under this part shall, in addition to owing the taxes not paid, be subject to a penalty of at least one-half the amount of taxes not paid.*
- (h) *The department may bring such legal actions as are necessary to collect any deficiency in the tax required to be paid and upon the department's request, the Attorney General shall bring the actions.*
- (i) *The department 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 and syrup and powder sold and the amount due.*
- (j) *Returns shall be authenticated in a form or pursuant to methods prescribed by the department.*

§ 34105. Distributor Registration

Every distributor required to pay the taxes imposed under this part shall register with the department. An application for registration shall be made upon a form prescribed by the department and shall set forth the name under which the applicant transacts or intends to transact business, the location or locations of each place of business and any other information required by the department. An application for an account under this section shall be authenticated in a form, or pursuant to methods, prescribed by the department.

§ 34106. Exemptions From Tax

The distribution of bottled sugar-sweetened beverages, syrup, or powder by a distributor to either of the following persons shall be exempt from the taxes

imposed by this part:

(a) To a person when, pursuant to the contract of sale, the bottled sweetened beverages, syrup, or powder shall be shipped, and are shipped, to a point outside of this state by the distributor by means of either 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.

(b) To a person who is otherwise exempt from the taxation of that sale, use or consumption under the Constitution of the United States, federal law or regulation or the California Constitution.

§ 34107. Statutory References

Unless otherwise stated, all references in this act refer to statutes as they existed on July 1, 2018.

SECTION 4. Constitutional Amendment for Local Tax Authority

Section 16 is added to Article XI of the California Constitution, to read:

Sec. 16. A local government, including any city, county, or city and county, may, subject to the requirements of Article XIII C, adopt, enact, enforce and collect taxes on the distribution or sale of nonalcoholic beverages that its legislative body finds to contribute to diabetes, obesity, dental disease, heart disease or other similar public health factors.

SECTION 5. Conformity With State Constitution

Section 16 is added to Article XIII B of the California Constitution, to read:

Sec. 16. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from The California Sugar-Sweetened

Beverages Tax Act of 2020. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Children and Family Health Promotion Fund.

SECTION 6. Severability

If the provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this act are severable.

SECTION 7. Conflicting Measures

(a) It is the intent of the people that in the event that this measure and another measure relating to the taxation of sugar-sweetened beverages shall appear on the same statewide election ballot, the provisions of the other measure or measures shall not be deemed to be in conflict with this measure and if approved by the voters, this measure shall take effect notwithstanding approval by the voters of another measure relating to the taxation of sugar-sweetened beverages by a greater number of affirmative votes.

(b) If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting measure is later held invalid, this measure shall be self-executing and given the full force of law.

SECTION 8. Amendments

(a) Except as hereafter provided, this act may only be amended by the electors as provided in subdivision (c) of Section 10 of Article II of the California Constitution.

(b) The Legislature may amend Revenue and Taxation Code Section 34104 to further the purposes of the CALIFORNIA SUGAR-SWEETENED BEVERAGES TAX ACT OF 2020 by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring.

LAO

August 20, 2018

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

RECEIVED

AUG 21 2018

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional and statutory initiative (A.G. File No. 18-0004, Amendment #1) that would create a new statewide tax on sugar-sweetened drinks.

BACKGROUND

Taxes on Sugar-Sweetened Drinks

Four California Cities Tax Sugar-Sweetened Drinks. Albany, Berkeley, Oakland, and San Francisco levy excise taxes on nonalcoholic sugar-sweetened drinks. These taxes require businesses to pay one cent for every fluid ounce of sugar-sweetened drinks that they distribute to retailers within city limits. The taxed drinks include soda, energy drinks, sports drinks, sweetened teas, and fruit drinks containing less than 100 percent juice. For the four cities combined, these taxes currently raise an estimated \$25 million per year.

State Bans New Local Taxes on Sugar-Sweetened Drinks. A law passed by the Legislature and signed by the Governor on June 28, 2018 prohibits other local governments from enacting new excise taxes on sugar-sweetened drinks. The law also prohibits local excise taxes on many other types of food and drinks. This ban on local food and drink taxes ends on January 1, 2031.

State Health Programs

Health Care Programs. The state administers several programs that provide health care coverage to Californians. Through these health care programs, the state pays for the treatment and prevention of medical and dental conditions, including diseases linked to sugar-sweetened drinks, such as heart disease, obesity, diabetes, and dental disease. Medi-Cal, which provides health care coverage to more than 13 million low-income Californians, is the state's largest health care program, with a total budget of \$104 billion (\$37 billion state and local) in 2018-19. Other state programs that fund health care include the California Public Employees' Retirement System (CalPERS), which pays for health insurance coverage for state and local government

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employees and their dependents, and the California Health Benefit Exchange (Covered California), where low-income individuals can obtain subsidized health insurance coverage. (In 2017, CalPERS provided coverage for 1.4 million people, with premiums totaling \$8.9 billion, a large share of which was paid by state and local governments. Roughly 1.2 million Californians are expected to obtain insurance through Covered California in 2018-19, with \$6 billion in projected federal subsidies.)

Disease Prevention and Other Public Health Programs. The state administers a variety of programs that address diseases linked to sugar-sweetened drinks. These programs are intended to reduce consumption of unhealthy foods and drinks, increase access to healthy foods and clean drinking water, prevent and reverse diseases, and fund research. These programs are run by numerous state departments, including the Department of Public Health, the Department of Education, the University of California, the Department of Social Services, the Department of Food and Agriculture, and the Water Resources Control Board. Most of their funding comes from federal funds and state special funds.

State Spending Limit

Proposition 4 of 1979 added to the State Constitution annual limits on state and individual local government spending. These limits apply to the appropriation of all tax revenues, unless specifically exempted in the constitution.

PROPOSAL

Statewide Tax on Sugar-Sweetened Drinks

This measure creates a new two-cent-per-ounce statewide excise tax on sugar-sweetened drinks starting July 1, 2021. It sets aside up to 5 percent of the revenue for the California Department of Tax and Fee Administration to administer the tax and up to \$400,000 per year for the California State Auditor to conduct financial audits of the agencies that receive revenue from the tax.

After paying for tax administration and audits, the remaining funds would be spent as follows:

- ***82 Percent for Health Care.*** This money would be spent on existing programs that fund prevention and treatment for medical and dental diseases linked to sugar-sweetened drinks. Within these existing programs, the money would be used “to improve quality and access to health care programs.”
- ***12 Percent for Disease Prevention.*** This money would support programs that seek to reduce consumption of sugar-sweetened drinks and to prevent diseases linked to sugar-sweetened drinks.
- ***3 Percent for Access to Healthy Foods and Water.*** This money would pay for improving access to fruit, vegetables, and clean drinking water.
- ***3 Percent for Research.*** This money would fund research on diseases linked to sugar-sweetened drinks.

The measure states that these funds shall supplement and not supplant existing funds.

Other Major Provisions

Lets Local Governments Tax Nonalcoholic Drinks. The measure amends the State Constitution to allow local governments to tax nonalcoholic drinks. This constitutional provision would override the aforementioned ban on local food and drink taxes.

Exempts New State Revenues From State Spending Limit. The measure amends the State Constitution to exempt the measure's revenues and spending from the state's constitutional spending limit. (This constitutional exemption is similar to ones already in place for prior, voter-approved excise taxes.)

FISCAL EFFECTS

New State Revenue

Sources of Revenue Uncertainty. The amount of revenue from the new statewide tax would depend on a variety of factors, including:

- ***Consumption Prior to Tax.*** The current level of sugar-sweetened drink consumption in California is uncertain due to data limitations. The level of consumption in 2021—when the tax would go into effect—is even more uncertain.
- ***Response to Tax.*** The tax likely would raise retail prices of sugar-sweetened drinks by 15 percent to 25 percent on average. As a result, consumers would buy fewer sugar-sweetened drinks. Some of the programs funded by the tax could further reduce consumption of these drinks. The magnitude of the resulting drop in consumption likely would be in the range of 15 percent to 35 percent.

New Revenue of Roughly \$2 Billion to \$3 Billion in 2022-23. In light of the uncertainties noted above, revenues could fall within a wide range. We estimate that the new tax would raise roughly \$2 billion to \$3 billion in revenue annually, beginning in 2022-23.

Revenue Likely Somewhat Lower in 2021-22. The statewide tax would go into effect on July 1, 2021. In anticipation of the new tax, consumers and retailers likely would stockpile sugary drinks—buying more drinks shortly before July 1, and fewer drinks shortly after. This stockpiling effect likely would make revenue in the first year of the tax—2021-22—somewhat lower than revenue in 2022-23.

Effects on State Spending

Funds Could Go to Various Departments and Programs. Figure 1 (see next page) shows how 2022-23 revenue from the new tax would be spent in two plausible revenue scenarios: \$2 billion and \$3 billion. Although the measure sets aside fixed portions of the new revenue for specified purposes, it does so in general terms. As a result, the state could allocate the funding across departments and programs in a variety of ways, depending on decisions made by the Legislature and by the Governor in the annual state budget process.

Figure 1
Allocation of Revenue From New Sugar-Sweetened Drink Tax in Two Scenarios
(In Millions)

	2022-23 Funding	
	1 st Scenario	2 nd Scenario
Revenue from new tax	\$2,000	\$3,000
Allocation of estimated revenue		
Tax administration	2	2
Audits	0.4	0.4
Health care services	1,638	2,458
Disease prevention	240	360
Access to fruit, vegetables, and water	60	90
Disease research	60	90

New Revenue Would Go Primarily to Health Care. In the first scenario shown in the figure, \$1.6 billion of the \$2 billion in new tax revenue would go to health care in 2022-23. In the other scenario, health care programs would receive \$2.5 billion of the \$3 billion total. These health care programs could include, for example, the Medi-Cal program.

New Spending for Other Designated Purposes. The measure would increase state and local spending on disease prevention; disease research; and access to fruit, vegetables, and water, likely by hundreds of millions of dollars per year.

Spending on Tax Administration Likely Much Lower Than 5 Percent. Although the measure allows up to 5 percent of the revenue to be used for tax administration, we estimate that the amount of ongoing spending would be much lower—in the short term, roughly \$2 million per year.

Changes in Local Revenues

Potential Revenue Increases. The measure would allow local governments to enact taxes on nonalcoholic drinks. To the extent that local governments enact such taxes, local tax revenues would increase. The amount of new revenue would depend on the number of local governments that enact these taxes and on the policy choices they make (such as the tax rate).

Revenue Reductions in Four Cities. As noted above, the new statewide tax would reduce consumption of sugar-sweetened drinks. This drop in consumption would reduce local tax revenue in the four cities that currently levy similar taxes. For the four cities combined, the reduction in annual revenue likely would total several million dollars.

Other Effects

The measure could affect many other aspects of state and local finances, particularly:

- ***Effects on Health Care Spending.*** As noted above, the measure would reduce consumption of sugar-sweetened drinks. It also would affect other health-related behaviors, such as consumption of other foods and drinks. The new tax payments and

new state and local spending also could affect Californians' health. The effects on people who face the greatest health risks could be different from the effects on people who face the lowest health risks. The resulting net effect on state and local health care spending is highly uncertain.

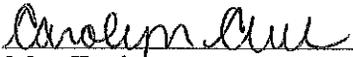
- **Effects on Tax Revenue.** The measure would change the choices made by consumers, which could have a variety of economic effects. These effects, along with the health effects described above, would affect income tax and sales tax revenues. The net effect on these revenues is also highly uncertain.

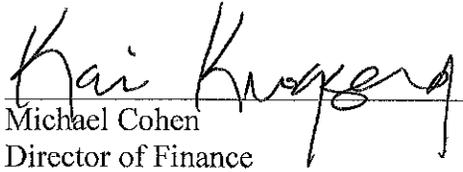
Summary of Fiscal Effects

This measure would have the following major fiscal effects:

- Increased state revenues starting in 2021-22. Annual revenues would be roughly \$2 billion to \$3 billion by 2022-23. The measure designates these revenues for health care; disease prevention; disease research; and access to fruit, vegetables, and water.

Sincerely,

for 
Mac Taylor
Legislative Analyst

for 
Michael Cohen
Director of Finance