Testimony Against HB1469

Honorable Delegates

Please enter an unfavorable report against HB1469.

I am against imposing a tax on certain distributors of certain "sugary" beverages, syrups, and powders for the privilege of selling those products to certain retailers or offering those products for sale to consumers in the State.

At the time I wrote this testimony, there was no fiscal and policy note document posted. Consequently there is no estimate regarding the expected revenue this bill would generate, no estimate as to the decrease in sales of sugary beverages because of the tax increases and no estimate as to the administrative burden the Office of the Comptroller would incur to administer this program. Of course, the administrative burden to the businesses would not be calculated for this document.

The bill itself has projected income figures (page 5, lines 1-9). After reimbursing the Comptroller Office's administrative costs, the first $189 million would go to the Healthy School Meals for All Fund. The next $50 million would go to the Child Care Scholarship Program. Any remainder would go to the General Fund.

The sum of those two revenue amounts is $239 million. If one assumes a $1 million admin cost, then the total revenues would be $240 million dollars. At a fee of 2 cents per ounce, then distributors would have sold the equivalent of 12 billion ounces of sugary beverage to generate $240 million, or 1 billion, 12-ouce containers of sugary beverages, including non-caloric diet beverages. Taking $240 million from one segment of the economy is bound to have major repercussions for that industry. Will the projected tax revenue, if actually generated be offset by the retailers not selling as much, and will grocery stores near other states lose even more business?

The bill's sponsors must be fans of the novel 1984 since its title, Sugary Beverage Distributor Tax, allows one to infer the tax is only on beverages containing sugar whose calories are allegedly making our kids fat and pre-diabetic. This concept leads to the bill's subtitle of For Our Kids Act. However, beverages with sugar substitutes with fewer than 5 calories are also taxed.

Looking at the tax for beverages that are sold in cans or bottles, the tax appears to be relatively straight forward. A 12 ounce can of Coke or Diet Coke would have a 24 cent added tax. For coke, a 5 gallon bag of soda contains 640 ounces. Each 12 ounce coke has 2 ounces of syrup and 10 ounces of water. Thus, each bag of syrup can produce 320, 12-ounce containers of coke. For tax purposes then, the 5 gallon bag of syrup would produce 3,850 ounces of soda, which would generate a tax of $76.80 per syrup bag (3,840 X $0.02).

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However the taxing of powders that are added to water are a real revenue enhancer. For example, one packet of Propel powder using sucralose as a sweetener, is designed for a 16.9 ounce container. This zero calorie, "sugary beverage" would generate 33.8 cents in tax revenue per packet. With 10 packets per box, each box of Propel powder would generate $3.38 in tax revenue per box. A box of propel at Walmart costs $4.58. A $3.38 tax on a box costing $4.58 would be a 73.8 percent price increase. Since Walmart would almost certainly pass this tax to the customer, it would now cost $7.96. Assuming that Propel is subject to sales tax, then the State's sales tax revenue would also go up by 6 percent of $3.38, or 21 cents.

In the press, the sponsors of this bill talk about the revenue it will generate for the two programs stated in the bill and talk about how the tax increase will lead families not to buy or to decrease the amount of "sugary" beverages purchased. Some families will continue to buy the product regardless of the tax and will help generate tax revenue, while some will not buy it because of the price increase. I wonder what ratio of buyers to non-buyers was used by the sponsors for their estimates of $239 million in tax revenue?

Moreover, those families that live near our neighboring states will most likely buy their "sugary" drinks from stores in those states. Maryland will not get the anticipated tax revenue from border families and will probably lose sales tax and income tax revenue from the grocery stores near our borders.

Finally, this bill does not appear to be based on any nutrition science. My 12 ounce can of Coke has 140 calories and has no nutritional value. If I drank 8 ounces, I would consume roughly 47 calories. An 8-ounce glass of exempt natural sugar apple juice has 120 calories and provides only a small amount of potassium as a nutrient. Generally speaking, a calorie is a calorie. I would get fatter sooner drinking apple juice than I would from drinking a Coke . If I were drinking a diet coke (not likely), I would theoretically not be getting fatter at all. However a coke and a diet coke, or water with Propel would be taxed, but the apple juice with natural sugar would not be taxed.

This is a horrible bill, which will make Maryland's business climate reputation that much worse. Some businesses, such as grocery stores will suffer if consumers drop consumption. Others near the borders will suffer even more losses as consumers who can will do all of their grocery shopping out of state. This is plain and simply a tax increase disguised as a way to make kids healthier.

So please enter an unfavorable report against HB1469

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March 6, 2025

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Does "food" include everything which is edible?
No. For sales and use tax purposes, soft drinks, bottled water, alcoholic beverages, candy and confectionery are not "food." The sale of any of these items is, therefore, not entitled to any of the exemptions for sales of food, including the exemptions for sales of food by volunteer fire companies and veterans organizations. Neither water nor ice is food, although they may be treated as food when sold as components of food.
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