SENATE BILL No. 297

Introduced by Senator Romero

February 15, 2007

An act to amend Section 32010 of, and to add Chapter 3.58 (commencing with Section 7289.20) to Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 297, as introduced, Romero. Taxation: alcoholic beverages.

The Alcoholic Beverage Tax Law provides that taxes imposed by that law are in lieu of all county, municipal, or district taxes on the sale of beer, wine, or distilled spirits.

This bill would provide an exception to this prohibition by authorizing the board of supervisors of a county, subject to certain conditions that include voter approval, to levy on a countywide basis, for revenue purposes only, a tax on the privilege of consuming beer, wine, and distilled spirits, as defined, purchased in a retail sale for consumption on the premises of the seller, at a rate of at least \( \frac{1}{8} \) of 1%, but not to exceed 5%, of the sale price, as provided.

The bill would require the board of supervisors of a county either to notify the State Board of Equalization that the county will administer its tax on its own behalf or that it will contract with the State Board of Equalization to administer the tax, as provided.

This bill would also specify that a tax imposed under those provisions shall conform to certain tax laws and not prohibit the concurrent application or administration of other taxes.

SECTION 1. (a) The Legislature finds and declares that the inability of local governments to adequately provide essential services is a matter of statewide concern, and that this measure is necessary to meet that concern by allowing local governments to maintain critically needed public services.

(b) The Legislature further finds and declares that because counties lack a strong revenue base upon which to levy new taxes, counties are constrained in their ability to raise sufficient new revenues to meet the needs of their constituencies. These fiscal restraints limit the counties’ flexibility to fund and administer the types and levels of programs needed by their constituencies, thereby hindering the counties’ ability to provide those necessary programs and services. Authorizing counties to raise new revenues for local program needs, such as county health care, is therefore of considerable interest to the state.

SEC. 2. It is the intent of the Legislature in enacting this act to allow the board of supervisors of a county to levy, on a countywide basis for revenue purposes only, a tax on the privilege of consuming beer, wine, and distilled spirits purchased in a retail sale for consumption on the premises of the seller of the beer, wine, or distilled spirits. It is not the intent of the Legislature to create a transactions and use tax as described in Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code.

SEC. 3. Section 32010 of the Revenue and Taxation Code is amended to read:

32010. The (a) Except as otherwise provided in Chapter 3.58 (commencing with Section 7289.20) the taxes imposed by this part are in lieu of all county, municipal, or district taxes on the sale of beer, wine, or distilled spirits.

This (b) This section does not prohibit the application of Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200) or Part 1.6 (commencing with Section 7251) to the sale, storage, use or other consumption of beer, wine, or distilled spirits.
SEC. 4. Chapter 3.58 (commencing with Section 7289.20) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 3.58. COUNTY ALCOHOLIC BEVERAGE TAX AUTHORITY

7289.20. (a) Subject to the requirements of subdivision (b), the board of supervisors of a county may impose a tax, in addition to any other tax authorized by this division, on the privilege of consuming beer, wine, or distilled spirits purchased in a retail sale for consumption on the premises of the seller of the beer, wine, or distilled spirits. The board of supervisors may impose this tax within an incorporated city within the county.

(b) Any tax imposed under this section shall meet all of the following requirements:

(1) (A) An ordinance proposing a general tax shall be approved by a vote of two-thirds of the entire membership of the county board of supervisors, and shall be approved by a majority of the county’s voters voting on the issue in an election.

(B) An ordinance proposing a special tax shall be approved by a majority vote of the entire membership of the county board of supervisors, and shall be approved by two-thirds of the county’s voters voting on the issue in an election.

(2) The ordinance proposing the tax shall state the purpose or purposes for which the tax revenues are to be expended.

(3) The ordinance proposing the tax shall state the rate of the tax and the length of time for which the tax shall be imposed.

(4) The ordinance proposing the tax shall provide that the tax shall conform to Part 1.6 (commencing with Section 7251).

(5) The tax shall be imposed at a rate of at least one-eighth of 1 percent, with greater rates in increments of one-eighth of 1 percent, but not to exceed 5 percent of the underlying sale price, inclusive of other charges, taxes, or levies.

(c) (1) A producer, distributor, wholesaler, or retailer of beer, wine, or distilled spirits is not subject to the tax imposed pursuant to this section.

(2) The charging of an admission or sampling fee by breweries or wineries does not constitute the sale of beer, wine, or distilled
spirits for consumption on the premises of the seller within the meaning of this section.

7289.21. For purposes of this chapter, “beer, wine, and distilled spirits” have the same meanings as provided in Sections 23005, 23006, and 23007 of the Business and Professions Code.

7289.22. (a) The imposition of a tax pursuant to this chapter does not prohibit the concurrent application of a tax imposed pursuant to the Sales and Use Tax Law (Part 1 (commencing with Section 6001)), the Bradley-Burns Uniform Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or of a tax imposed in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), to the sale, storage, use, or other consumption of beer, wine, or distilled spirits.

(b) Notwithstanding Section 7203.5 or any other provision of law, the imposition of a tax pursuant to this chapter by a county does not prohibit the concurrent administration by the board of a sales or use tax ordinance adopted by that county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)).

7289.23. Any ordinance levying a tax pursuant to this chapter shall provide that the tax shall conform to Part 1.6 (commencing with Section 7251). However, a tax imposed pursuant to this chapter is not a sales tax or transactions tax, and shall not be considered for purposes of Section 7251.1.

7289.24. An ordinance adopted pursuant to this chapter shall be operative on the first day of a calendar quarter commencing more than 110 days after the adoption of the ordinance.

7289.25. Every retailer engaged in business in a county that has an operative ordinance adopted pursuant to this chapter shall, at the time of making a sale of beer, wine, or distilled spirits for consumption on the premises of the seller, collect the tax from the consumer and give to the consumer a receipt therefor in the manner and form prescribed by the State Board of Equalization or by the county board of supervisors, if the county elects to administer its own tax pursuant to subdivision (a) of Section 7289.26.

7289.26. Prior to the operative date of any ordinance imposing a tax pursuant to this chapter, the board of supervisors of the county shall do either of the following:

(a) Notify the State Board of Equalization in writing that the county will be responsible for administering the tax imposed
pursuant to an ordinance authorized by this chapter on its own
behalf, and that the ordinance does not impose any duties or
responsibilities for administering the tax upon the State Board of
Equalization.
(b) Contract with the State Board of Equalization to perform
all functions incident to the administration and operation of the
ordinance. If the county has not contracted with the board prior to
the operative date of the ordinance, but shall contract, the operative
date shall be delayed until the first day of the first calendar quarter
following the execution of the contract.
7289.27. For a county that elects to contract with the State
Board of Equalization to administer a tax imposed by the county,
as authorized by this chapter, the following provisions apply:
(a) The contract shall contain the following provisions:
(1) A provision that the county shall reimburse the State Board
of Equalization for, and hold the board harmless from, any and all
costs, losses, or refunds.
(2) A provision that, in the event that a legal action is
commenced challenging the validity of the tax in its entirety, as
opposed to the application of the tax to an individual taxpayer, the
county shall place the tax proceeds into an interest-bearing escrow
account until the legality of the tax is resolved by a final and
nonappealable decision of a court of competent jurisdiction. This
provision is enforceable by any interested party in a proceeding
for a writ of mandate.
(b) The county shall reimburse the State Board of Equalization
for any costs the board incurs in preparing to administer and
operate the tax. The county shall reimburse the board as the costs
are incurred and billed by the board, on a monthly basis. These
reimbursable costs shall include costs incurred for the following:
(1) Developing procedures.
(2) Programming for data processing.
(3) Developing and adopting appropriate regulations.
(4) Designing and printing forms.
(5) Developing instructions for the State Board of Equalization
staff and for taxpayers.
(6) Any other necessary preparatory costs, including the State
Board of Equalization’s direct and indirect costs as specified by
Section 11256 of the Government Code.
(c) Any disputes as to the amount of preparatory costs incurred by the State Board of Equalization shall be resolved by the Director of Finance, whose decision shall be final. The maximum amount of all preparatory costs to be paid by the county to the board shall not exceed one hundred seventy-five thousand dollars ($175,000).

(d) In addition to the amounts paid to the State Board of Equalization for the preparatory costs described in subdivision (b), the county shall reimburse the board for the cost of the board’s services in administering the tax. The amount of this cost shall be determined by the board with the concurrence of the Department of Finance.

(e) All revenues collected from taxes imposed pursuant to the authorization of this chapter in counties that have contracted with the State Board of Equalization to administer the tax shall be remitted to the board and allocated by the board as follows:

1. First, for reimbursement to the board for the reasonable costs, as specified in subdivisions (b) and (d), of administering and enforcing the tax ordinance on behalf of the county pursuant to the contract between the board and the county.

2. Second, for transmission to each county that has contracted with the board pursuant to subdivision (b) of Section 7289.26, in proportion to the amount of revenues derived from each county’s respective tax.

(f) The State Board of Equalization shall transmit to a county all revenues derived from the taxes imposed pursuant to this chapter and collected by the board pursuant to a contract with the county periodically as promptly as feasible. The transmittals shall be made at least twice in each calendar quarter.

7289.28. Except as provided in Section 7289.29, to the extent practicable, Chapter 5 (commencing with Section 6451), Chapter 6 (commencing with Section 6701), Chapter 7 (commencing with Section 6901), and Chapter 8 (commencing with Section 7051) of Part 1, shall govern determinations, collection of tax, overpayments, and refunds, and administration of all taxes imposed under the authorization of this chapter.

7289.29. The return and payment of any tax imposed pursuant to the authorization of this chapter and collected by a retailer as specified in Section 7289.25 is due and payable from the retailer to the board on the same date as the return and payment of the tax imposed pursuant to Part 1 (commencing with Section 6001),
provided that the retailer is within the jurisdiction of a county that
elects to contract with the board to administer the tax, pursuant to
subdivision (b) of Section 7289.26. If the retailer is within the
jurisdiction of a county that has elected not to contract with the
board to administer the tax, the return and payment of the tax
imposed pursuant to the authorization of this chapter is due and
payable from the retailer as prescribed in the ordinance adopted
by the county.