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**Model Sugar-Sweetened Beverage Tax Legislation**

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## Introduction and Report

This Model Sugar-Sweetened Beverage Tax Legislation is based on our legal research and analysis, as well as the research and evidence base linking consumption of sugar-sweetened beverages and overweight/obesity. It is intended to be used as one potential policy intervention designed to reduce the consumption of sugar-sweetened beverages and to raise funds that can be dedicated to public health prevention and treatment programs.

This Introduction and Report summarizes our nonpartisan analysis, study, and research on the contribution of sugar-sweetened beverages to the obesity epidemic, and the rationale for a dedicated tax as an effective policy intervention. It is intended for broad distribution to the public. Our presentation of this model legislation, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data, and should enable readers to draw their own opinions and conclusions about the merits of this sample legislation.

### Childhood Obesity Epidemic

Childhood obesity rates in the United States have risen dramatically over the past 30 years, particularly among low-income communities and communities of color. Today almost one-third of American children are obese or overweight.[[1]](#endnote-1) Across the nation, children have easy access to non-nutritious foods and do not get enough exercise. All other things being equal, a small, persistent energy imbalance of as little as 50 calories per day can result in up to a 5-pound weight gain over the course of a year.[[2]](#endnote-2)

Overweight children are at increased risk for serious health problems in adulthood such as heart disease, type 2 diabetes, asthma, and cancer.[[3]](#endnote-3) A recent study among youth with type 1 diabetes found that increased consumption of sugar-sweetened beverages was associated with increased risk of coronary heart disease.[[4]](#endnote-4) Today’s young people may be the first generation in the history of the United States to live sicker and die younger than their parents’ generation.[[5]](#endnote-5)

Preventing the current generation of young people from developing these health conditions can not only improve Americans’ quality of life but also save federal, state, and local governments billions of dollars in health care costs and lost productivity. The costs of obesity are rising rapidly and are estimated to be as high as $147 billion per year.[[6]](#endnote-6) Moreover, in the United States roughly one-half of these costs are paid by Medicare and Medicaid, which suggests that taxpayers foot the bill for much of the costs of obesity.[[7]](#endnote-7) Medicare and Medicaid spending would be 8.5 percent and 11.8 percent lower, respectively, in the absence of obesity-related spending.[[8]](#endnote-8)

### The Role of Sugar-Sweetened Beverages

Sugar-sweetened beverages,[[9]](#endnote-9) such as non-diet soda, sports drinks, energy drinks, and sweet teas, account for the growing proportion of calories consumed by children.[[10]](#endnote-10) These sugar-sweetened beverages (SSBs) offer little or no nutritional value, but contain massive quantities of sugar.[[11]](#endnote-11) Sugar in liquid form accounts for almost half the total added-sugar intake in the U.S. population, and sweetened beverages displace healthier, more nutrient-dense beverages like milk, 100% fruit juice, and water.[[12]](#endnote-12) Soft drinks now contribute more added sugars to the diet than any other single type of food or beverage.[[13]](#endnote-13) Children are consuming 10 to 15 percent of their daily caloric intake from sugar-sweetened beverages, and many times the recommended amount of refined sugar per day as a result.[[14]](#endnote-14) Additionally, Americans who are at greatest risk for obesity, including African-Americans, Mexican-Americans, and lower education and income populations, have the highest intake of sugar-sweetened beverages.[[15]](#endnote-15)

Numerous scientific studies demonstrate the link between consumption of sugar-sweetened beverages and obesity.[[16]](#endnote-16),[[17]](#endnote-17),[[18]](#endnote-18),[[19]](#endnote-19) A recent meta-analysis examining 88 cross-sectional and prospective studies that explored the relationship between soft drink intake and nutrition or health outcomes found that higher intake of soft drinks was associated with greater energy intake, higher body weight, lower intake of other nutrients, and worse health outcomes. [[20]](#endnote-20) Subsequent analyses from a large trial confirmed these findings, namely, greater weight loss as sugar-sweetened beverage intake decreased.[[21]](#endnote-21) Additionally, consumption of sugar-sweetened beverages has been linked with an increase in blood pressure.[[22]](#endnote-22) Research has also shown that reducing sugar-sweetened beverage consumption by one serving per day is associated with a drop in blood pressure.[[23]](#endnote-23)

### Industry-sponsored Studies and Response

There is no doubt that many factors have contributed to the obesity epidemic, and some experts argue that the evidence base linking sugar-sweetened beverages to obesity and other chronic disease is not strong enough to warrant policy intervention. In a response to an October 2009 policy report supporting SSB taxes in the *New England Journal of Medicine* by several public health luminaries, Dr. Michael Kaplan of Maimonides Medical Center in New York wrote a letter to the editor of the journal noting several flaws in the studies cited by the policy report authors as the evidence base for SSB taxes.[[24]](#endnote-24) Commenting on a 2011 study linking SSB consumption to hypertension, Dr. Maureen Storey, senior vice president of science policy for the American Beverage Association, stated, “This cross-sectional epidemiological study does not and cannot establish that drinking sugar-sweetened beverages in any way causes hypertension.”[[25]](#endnote-25)

One industry-funded meta-analysis of studies involving children concluded that no evidence of an association between consumption of sugar-sweetened beverages and body weight exists.[[26]](#endnote-26) In another intervention study to reduce sugar-sweetened beverage consumption among adolescents, there was no significant change in body mass index between adolescents who reduced their SSB intake and those who did not.[[27]](#endnote-27) However, both of these studies were funded by the beverage industry, and the overwhelming body of independent evidence demonstrates a very strong link between sugar-sweetened beverages and obesity.

### Taxing Sugar-Sweetened Beverages to Combat the Obesity Epidemic

Just as there are many factors contributing to the obesity epidemic, there are many potential policy interventions to reduce the prevalence and overconsumption of SSBs. A multifaceted combination of programmatic and policy approaches will be necessary to reverse the epidemic.[[28]](#endnote-28) Complementary policy approaches should also be pursued, to remove sugar-sweetened beverages from schools and to reduce the prevalence of marketing of sugar-sweetened beverages to children. In addition, governments can control the types of goods, including beverages, that are purchased with government funds and sold on government property. All policy interventions should be considered.

Implementing a Sugar-Sweetened Beverage Tax and creating a Children’s Health Promotion Fund, however, can be a particularly effective tool for reducing the human and economic costs of obesity. There are numerous studies showing that a price increase for sugar-sweetened beverages can dramatically reduce consumption and overall caloric intake if there is no beverage substitution.[[29]](#endnote-29) Some opponents of SSB taxes cite studies indicating that taxes are problematic and may not reduce consumption in part because it is difficult to forecast whether high-calorie beverages would be substituted (such as 100% juice or whole milk), and because governments may decide not to dedicate the proceeds to obesity-related programs and services.[[30]](#endnote-30) It is difficult to say exactly how consumer behavior will change with a sugar-sweetened beverage tax, which is why evaluation of successful tax legislation is needed. Further, earmarking language in SSB tax legislation will ensure that the revenue is dedicated to public health policies and programs that reduce obesity rates.

The model legislation addresses both of these issues. It includes language requiring a meaningful evaluation of the effect of the tax on consumer purchasing and health outcomes. The results of the evaluation can be used to adjust the tax to ensure the maximum public health benefit. In addition, this model legislation earmarks all of the tax proceeds for public health prevention and treatment programs. Following the recommendations in the model legislation guarantees a public health benefit through effective earmarking of proceeds, and significantly increases the likelihood that consumption will be reduced.

One argument opponents of a SSB tax often raise is that the tax is regressive (the same argument that was often made in opposition to tobacco excise taxes). Like any tax that is not levied in proportion to the income level of the taxpayer, a SSB tax is technically regressive. As noted above, however, low-income populations and communities of color are disproportionately affected by overweight, obesity, and resulting health conditions.[[31]](#endnote-31) This Model Sugar-Sweetened Beverage Tax Legislation addresses those inequities by providing that tax proceeds be directed back into the communities that are disproportionately affected by overweight and obesity.

### Conclusion

A substantial tax on sugar-sweetened beverages, with proceeds dedicated to public health programs, is a very promising policy intervention that complements other interventions to reduce the consumption of sugary drinks and to combat the health conditions that result from consumption of those beverages.

Opponents make several arguments against such a tax, based on the issues set forth above and also on speculation that the tax would hurt businesses or cause job losses, or would not have the desired effect. The evidence suggests otherwise: sugar-sweetened beverages are a major contributor to the obesity epidemic, and a tax will raise funds to combat the epidemic, in addition to also potentially reducing consumption. While a tax should be considered in combination with a variety of other programmatic and policy interventions, a tax can be uniquely effective.

### AN ACT TO ASSESS A TAX ON SUGAR-SWEETENED BEVERAGES, SYRUPS, AND POWDERS; TO CREATE A SPECIAL FUND FOR PROMOTION OF CHILDREN’S HEALTH AND PREVENTION OF CHILDHOOD OBESITY

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]:

### SECTION ONE. See APPENDIX A: Findings

**Comment on Findings:** A draft statute based on this model legislation should include “findings” of fact that support the purposes of the legislation. The findings section is part of the statute and legislative record, but it usually does not become codified in the state codes. The findings contain factual information supporting the need for the law – in this case, documenting the potential benefits of a tax on sugar-sweetened beverages with the proceeds dedicated for public health programs. A list of findings supporting this model legislation appears in “Appendix A: Findings.” States may select findings from that list to insert here, along with additional findings addressing the specific conditions in the particular state.

**SECTION TWO.** [*State Code*] is hereby amended by adding thereto a new chapter to read as follows:

**CHAPTER [*\_\_*]**

**SUGAR-SWEETENED BEVERAGES TAX**

**§\_\_-1. Title of chapter.** This chapter may be cited as the Sugar-Sweetened Beverages Tax Law.

### §\_\_-2. Legislative intent.

It is the intent of the Legislature, by adopting the Sugar-Sweetened Beverages Tax Law and creating the Children’s Health Promotion Fund, to diminish the human and economic costs of obesity in the State of [\_\_\_\_\_\_\_\_\_\_\_]. This chapter is intended to discourage excessive consumption of Sugar-Sweetened Beverages and to create a dedicated revenue source for programs designed to prevent and treat childhood obesity and health conditions which result from it.

**§\_\_-3. Definitions.** For purposes of this chapter:

1. “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.
2. “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.
3. “Caloric Sweetener” means any substance containing calories, suitable for human consumption, that humans perceive as sweet, and includes, without limitation, sucrose, fructose, glucose, other sugars, and fruit juice concentrates. “Caloric Sweetener” excludes Non-Caloric Sweeteners.
4. “Consumer” means a person who purchases a Sugar-Sweetened Beverage for consumption and not for Sale to another.
5. “Department” means the State Department of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

**Comment on definition of “Department”:** This definition should identify the state department or agency which is responsible for administration and collection of state taxes.

1. “Distributor” means any Person, including manufacturers and wholesale dealers, who receives, stores, manufactures, bottles or distributes Bottled Sugar-Sweetened Beverages, Syrup, or Powder, for Sale to Retailers doing business in the State whether or not that Person also sells such products to Consumers.
2. “Fund” means the Children’s Health Promotion Fund established pursuant to Section [\_\_-*\_\_\_*].
3. “Nonalcoholic Beverage” means any beverage that contains less than one-half of one (.05) percent alcohol per volume.
4. “Non-Caloric Sweetener” means any substance that contains fewer than five (5) calories per serving, suitable for human consumption, that humans perceive as sweet, and includes, without limitation, aspartame, saccharin, stevia, and sucralose.

**COMMENT on definition of “Non-Caloric Sweetener”:**   
The Food and Drug Administration (FDA) regulates the use of terms like “no-calorie” and “calorie free” as nutrient content claims. This definition of “Non-Caloric Sweetener” aligns with the FDA’s definition. (21 C.F.R. 101.60.) For a discussion of calorie content claims, see section 101.60 of the following: [*www.access.gpo.gov/nara/cfr/waisidx\_08/21cfr101\_08.html*](http://www.access.gpo.gov/nara/cfr/waisidx_08/21cfr101_08.html)*.*

1. “Person” means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
2. “Place of Business” means any place where Sugar-Sweetened Beverages, Syrups, or Powder are manufactured or received for Sale in the State.
3. “Powder” means any solid mixture of ingredients that contains Caloric Sweetener, which is intended to be used in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Powder with any one or more other ingredients.
4. “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 as defined in this section.
5. “Sale” means the transfer of title or possession for valuable consideration regardless of the manner by which the transfer is completed.
6. “State” shall mean the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_].
7. “Sugar-Sweetened Beverage” and “SSB” mean:

**COMMENT on definition of “Sugar-Sweetened Beverage”:**

The following definition is very broad and intended to include all beverages containing any amount of added Caloric Sweetener, with specific and limited exceptions. The definition can be tailored to meet community needs; which beverages to include is a policy decision.

Subparagraph (2) lists some beverages that are exempt from the regulation. Which beverages to exclude is a policy decision; this list of exemptions can be modified at the discretion of policymakers and public health professionals.

The default definition of Sugar-Sweetened Beverage includes all beverages with any amount of added Caloric Sweetener; it is not necessary to specifically exempt beverages that do not contain added Caloric Sweetener. For example, plain water, coffee, or tea, with no added Caloric Sweetener do not need to be included in the exemption list. On the other hand, if you would like to exempt flavored milk, you would need to include language to effectuate that exemption (see below).

This definition only applies to nonalcoholic beverages, which is defined. As an alternative to the definition included, the term “nonalcoholic beverages” could be defined to mean those beverages that are not subject to taxation under the State’s alcoholic beverage tax, if applicable.

Some jurisdictions may prefer to include a specific list of beverage types subject to regulation. For a comprehensive list of the types of beverages that may merit regulation, see Healthy Eating Research’s *Recommendations for Healthier Beverages*, released in March 2013 and available at: [*www.healthyeatingresearch.org/images/stories/comissioned\_papers/her\_beverage\_recommendations.pdf*](http://www.healthyeatingresearch.org/images/stories/comissioned_papers/her_beverage_recommendations.pdf)*.*

1. Any Nonalcoholic Beverage, carbonate or noncarbonated, which contains any added Caloric Sweetener.

**COMMENT on milk with added Caloric Sweetener:**Some jurisdictions may wish to exempt milk with added Caloric Sweetener, such as chocolate or strawberry milk, in order to be in line with school policies or for other reasons.

Many public schools serve these milks to students as part of the National School Lunch program. Under the Healthy, Hunger-Free Kids Act of 2010, the U.S. Department of Agriculture (USDA) updated the meal patterns and nutrition standards for the National School Lunch and School Breakfast Programs, including the fluid milk requirements. The USDA allows school to offer unflavored or flavored fat-free milk and unflavored low-fat (one-percent milk fat or less).[1]

The public health community is divided over whether flavored milk has a net positive impact on health. Research funded by the dairy industry suggests that flavored milk consumption among children is associated with greater calcium intake and lower consumption of other sugar-sweetened beverages, as compared with children who do not drink flavored milk.[2] On the other hand, the Institute of Medicine recently found that most Americans, except girls between the ages 9-18, obtain sufficient calcium and vitamin D (both found in milk) from their diets. This same IOM study indicated that more calcium and vitamin D consumption is not necessarily better and cautioned against over-consumption of the nutrients.[3] This guidance, combined with a growing concern about overconsumption of added sugars and calories, leads some in the public health community to argue against encouraging flavored milk consumption, especially among children.

Flavored milks are Sugar-Sweetened Beverages, which are as a whole linked to weight gain and chronic disease. Due to the lack of independent research clearly demonstrating a net positive health impact of flavored milk consumption, this model treats flavored milk as a

sugar-sweetened beverage that is subject to the tax. As a matter of policy, you may wish to include an exemption for flavored milk, and if so, consider the following definitions:

“Milk” means any beverage whose principal ingredient by weight is natural liquid milk, which is secreted by an animal and consumed by humans. For purposes of this definition, “milk” includes natural milk concentrate and dehydrated natural milk, whether or not reconstituted.

“Milk substitute” means a plant-based beverage in which the principal ingredients by weight are (i) water and (ii) grains, nuts, legumes, or seeds. For purposes of this definition, “milk substitutes” include but are not limited to soy milk, almond milk, rice milk, coconut milk, hemp milk, oat milk, hazelnut milk, flax milk.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[1] *See* National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010, 78 Fed. Reg. 39068 (Interim Final Rule, June 28, 2013) (to be codified at 7 CFR 210.11).

[2] Johnson RK, Frary C, and Wang MQ. “The Nutritional Consequences of Flavored-Milk Consumption by School-Aged Children and Adolescents in the United States.” *Journal of the American Dietetic Association*, 102(6): 853–856, 2002.

[3] Institute of Medicine, Food and Nutrition Board. Dietary Reference Intakes: Calcium, Vitamin D. Washington DC: National Academies Press, 2010.

1. Exceptions. “Sugar-Sweetened Beverage” and “SSB” do not include:
2. A beverage consisting of one hundred (100) percent natural fruit or vegetable juice with no added Caloric Sweetener. For purposes of this paragraph, “natural fruit juice” and “natural vegetable juice” mean the original liquid resulting from the pressing of fruits or vegetables, or the liquid resulting from the dilution of dehydrated or concentrated natural fruit juice or natural vegetable juice;

**COMMENT on juices:**Whether to exempt diluted juices from regulation is a matter of policy. Jurisdictions should note the following when deciding whether to exempt diluted juice beverages:

* + Many diluted juice beverages do not contain any vitamins or minerals that would make the beverage healthier. These beverages use the juice as a Caloric Sweetener.
  + Diluted juice beverages may contain added Caloric Sweetener in addition to water and other ingredients. If some diluted beverages are exempt, jurisdictions should carefully consider whether diluted juice beverages with Caloric Sweetener should be regulated. [1]

If diluted juice is exempted from the definition of Sugar-Sweetened Beverage, please note that those beverages will be exempted from all regulation under this ordinance; in addition, for consistency, you might also consider excluding fruit juice concentrate from the definition of Caloric Sweetener.

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[1] See the FDA’s food labeling regulations pertaining to beverages containing fruit or vegetable juice (21 C.F.R. 101.30), available at: [*www.gpo.gov/fdsys/pkg/CFR-2008-title21-vol1/content-detail.html*](http://www.gpo.gov/fdsys/pkg/CFR-2008-title21-vol1/content-detail.html)*.*

1. A dietary aid, which means a liquid product manufactured for use as:
2. An oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages;
3. A source of necessary nutrition used as a result of a medical condition; or

1. An oral electrolyte solution for infants and children formulated to prevent dehydration due to illness;
2. Infant formula; and
3. Sweetened Medication.

**COMMENT on threshold amount:**Some jurisdictions may want to exempt lower calorie beverages despite the fact that they contain caloric sweetener, because they are seen as a healthier alternative to higher calorie beverages.

If your community wants to exempt lower calorie beverages from regulation even though they do contain added Caloric Sweetener, the definition of Sugar-Sweetened Beverage can be amended to exclude beverages that fall under a threshold amount of added Caloric Sweetener. To do so, add the following to this list of exceptions:

(e) Beverages containing less than [\_\_\_] grams of added Caloric Sweetener per [\_\_] ounces of beverage.

If you decide to include such a threshold exemption, the exact threshold amount is a policy decision for your jurisdiction. A threshold amount of 4.2 grams of added caloric sweetener per 8 ounces would be the equivalent of one teaspoon of white granular sugar per 8 ounces. It is also important to consider practical and administrative issues if you use this exemption: will the businesses in your jurisdiction be able to administer the policy effectively and efficiently?

1. “Syrup” means any liquid mixture of ingredients that contains Caloric Sweetener, which is intended to be used in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Syrup with any one or more other ingredients.
2. “Tax Administrator” means the [*State Tax Administrator*] within the Department of [\_\_\_\_\_\_\_\_\_\_\_\_] and his authorized agents and employees.

**Comment on definition of “Tax Administrator”:** This definition should refer to the head of the agency that is responsible for taxation in your state. It is important to identify that person in the text of the legislation, because that person and the agency should be given specific authority to promulgate rules and regulations to effectuate and administer the tax.

### §\_\_-4. Permit required.

1. Every Distributor doing business in the State shall file with the Tax Administrator an application for a permit to engage in such business, for each Place of Business owned and operated by the Distributor before the sooner of [effective date] or a Distributor’s first acts which constitute the doing of business in the State. An application for a permit shall be filed on forms to be furnished by the Tax Administrator for that purpose. An application must be subscribed and sworn to by a person with legal authority to bind the business. The application shall identify the owners of the applicant, the applicant’s mailing address, the Place of Business to which the permit shall apply, and the nature of the business in which engaged, and any other information the Tax Administrator may require for the enforcement of this chapter.
2. Upon receipt of an application and any permit fee hereafter provided for, the Tax Administrator may issue to the applicant, for the Place of Business designated, a nonassignable permit, authorizing the sale of Sugar-Sweetened Beverages, Syrups, and Powder in the State. No Distributor shall sell any Sugar-Sweetened Beverage, Syrup or Powder without first obtaining a permit to do so under this chapter. Permits issued pursuant to this section shall expire on January 31 of each year and may be renewed annually.
3. A permit cannot be transferred from one Person to another, and a permit shall at all times be prominently displayed in a Distributor’s Place of Business. The Tax Administrator may refuse to issue a permit to any Person previously convicted of violations of this chapter under such procedures as the Tax Administrator may establish by regulation.

**Comment on requiring permits:** Requiring businesses subject to the tax to obtain a permit can assist in efficient administration of the tax, by enabling the Tax Administrator to more easily identify and track these businesses. Whether to include a permitting scheme, and how the permit scheme should be designed and implemented, is a policy matter and depends on the structure of the law in your jurisdiction. This tax can also be implemented without issuing permits.

### §\_\_-5. Tax imposed.

**OPTION 1: TAX PER OUNCE OF BEVERAGE**

1. There is hereby imposed an excise tax on every Distributor for the privilege of selling the products governed by this chapter in the State, calculated as follows:
2. [One dollar twenty-eight cents ($1.28) per gallon] / [one cent ($0.01) per ounce] of Bottled Sugar-Sweetened Beverages sold or offered for Sale to a Retailer for Sale in the State to a Consumer;
3. The tax on Syrup and Powder sold or offered for Sale to a Retailer for Sale in the State to a Consumer, either as Syrup or Powder or as a Sugar-Sweetened Beverage derived from that Syrup or Powder, is equal to [One dollar twenty-eight cents ($1.28) per gallon] / [one cent ($0.01) per ounce] of Sugar-Sweetened Beverage produced from that Syrup or Powder. For purposes of calculating the tax, the volume of Sugar-Sweetened Beverage produced from Syrup or Powder shall be the larger of (i) the largest volume resulting from use of the Syrup or Power according to any manufacturer’s instructions, or (ii) the volume actually produced by the Retailer, as reasonably determined by the Tax Administrator;
4. The tax amounts set forth in this section shall be adjusted annually by the Tax Administrator in proportion with the Consumer Price Index: All Urban Consumers for All Items for the [region] Statistical Area as reported by the United States Bureau of Labor Statistics or any successor to that index.

**OPTION 2: TAX PER TEASPOON OF ADDED CALORIC SWEETENER**

(a) There is hereby imposed an excise tax on every Distributor for the privilege of selling the products governed by this chapter in the State, at the rate of [one cent ($0.01)] per teaspoon of added Caloric Sweetener in a Bottled Sugar-Sweetened Beverage, Syrup or Powder sold or offered for Sale to a Retailer in the State. For purposes of this Act, one teaspoon of Caloric Sweetener shall be deemed to equal [4.2] grams. The tax amounts set forth in this section shall be adjusted annually by the Tax Administrator in proportion with the Consumer Price Index: All Urban Consumers for All Items for the [region] Statistical Area as reported by the United States Bureau of Labor Statistics or any successor to that index.

**comment on imposition of tax:** The amount of the tax is a policy decision for legislators. This draft includes two alternative methods for calculating the tax: a tax per ounce of bottled sugar-sweetened beverage sold (or made from syrup or powder), and a tax based on the exact amount of sugar in a beverage, syrup or powder. Include the appropriate language in subsection (a) for whichever method you want to include. Both methods have advantages, and which method to choose is a policy decision for your jurisdiction.

For more information on a tax of one cent per ounce, see: [Brownell KD and Frieden TR. “Ounces of Prevention: The Public Policy Case for Taxes on Sugared Beverages.”](http://www.ncbi.nlm.nih.gov/pubmed/19357400?dopt=Abstract" \t "_blank) *[New England Journal of Medicine](http://www.ncbi.nlm.nih.gov/pubmed/19357400?dopt=Abstract" \t "_blank)*[, 360: 1805–1808, 2009;](http://www.ncbi.nlm.nih.gov/pubmed/19357400?dopt=Abstract" \t "_blank) and [Brownell KD, Farley T, Willett WC, et al. “The Public Health and Economic Benefits of Taxing Sugar-Sweetened Beverages.”](http://yaleruddcenter.org/../resources/upload/docs/what/policy/BenefitsSodaTaxNEJM9.09.pdf" \t "_blank) *[New England Journal of Medicine](http://yaleruddcenter.org/../resources/upload/docs/what/policy/BenefitsSodaTaxNEJM9.09.pdf" \t "_blank)*[, 361: 1599–1605, 2009.](http://yaleruddcenter.org/../resources/upload/docs/what/policy/BenefitsSodaTaxNEJM9.09.pdf" \t "_blank)  
  
Basing the tax on the amount of added caloric sweetener more accurately reflects the association between the beverage, syrup or powder and weight gain. In addition, a tax based on amount of added sugar may be easier for some tax agencies to calculate for syrups and powders than a “per ounce” tax, which would be based on the volume of sugar-sweetened beverages produced from the syrups or powder

The tax is imposed on distributors, based on volume of sales of sugar-sweetened beverages to retailers in the state. The business paying the tax will determine whether to pass the tax on to retailers (and ultimately to consumers) through an increase in the price of the beverages.

Cigarette excise taxes are commonly included in the shelf price of cigarettes. This is largely due to industry practice, though several states’ cigarette excise tax laws require that the tax be passed on to the consumer. Depending on the laws of your state, it may be possible to include a similar requirement for sugar-sweetened beverage taxes. If you would like to require that the tax be passed through to the consumer, and it is legal in your state to do so, you can include the following language in this section:

A Distributor shall add the amount of taxes levied by this Act to the price of sugar-sweetened beverages sold to a Retailer, and the Retailer shall pass the amount of the tax through to a Consumer as a component of the final retail purchase price. The amount of the taxes may be stated separately on all invoices, signs, sales or delivery slips, bills and statements that advertise or indicate the price of such beverages.

A tax calculator prepared by the Rudd Center for Food Policy and Obesity at Yale University can assist in calculating the amount of tax revenue that will result for any given tax amount, based on sales in your state. Available at: [*www.yaleruddcenter.org/sodatax.aspx*](http://www.yaleruddcenter.org/sodatax.aspx).

1. A Retailer which sells Bottled Sugar-Sweetened Beverages, Syrup, or Powder in the State to a Consumer, on which the tax imposed by this section has not been paid by a Distributor, is liable for the tax imposed in subsection (a) at the time of Sale to a Consumer.

**Comment:** This subsection applies when a Retailer purchases inventory on which tax has not been paid; in these cases, the Retailer is liable for the tax rather than the Distributor. This subsection will also apply if the Retailer and the Distributor are the same business. This makes the Retailer a guarantor of the tax and will likely lead to a practice by which Retailers require proof of tax payment by Distributors at the time of sale. It may be useful to create, perhaps by regulation, a system for applying tax stamps as evidence of payment, as many states use to ensure payment of tobacco taxes.

1. The taxes imposed by this section are in addition to any other taxes that may apply to Persons or products subject to this chapter.

§\_\_-6. Report of sales and tax remittances**.**

1. Any Distributor or Retailer liable for the tax imposed by this chapter shall, [*on or before the [15th] day of every month*,] [*on or before the last day of March, June, October and December of each year*,] return to the Tax Administrator under oath of a person with legal authority to bind the Distributor or Retailer, a statement containing its name and Place of Business, the quantity of Sugar-Sweetened Beverages, Syrup, and Powder subject to the excise tax imposed by this chapter sold or offered for sale in the [*preceding* *month*] [*three months immediately preceding the month in which the report is due*], and any other information required by the Tax Administrator, along with the tax due.
2. The [*Treasurer of the State*] shall credit the proceeds of the tax to the Children’s Health Promotion Fund.

### §\_\_-7. Records of Distributors.

Every Distributor, and every Retailer subject to this chapter, shall maintain for not less than [*two (2)*] years accurate records, showing all transactions that gave rise, or may have given rise, to tax liability under this chapter. Such records are subject to inspection by the Tax Administrator at all reasonable times during normal business hours.

### §\_\_-8. Establishment of Children’s Health Promotion Fund.

(a) There is hereby created a trust fund in the State Treasury called the Children’s Health Promotion Fund. All moneys collected pursuant to the taxes imposed by Section [\_\_-*\_\_*] and all interest on those moneys, shall be paid into the Children’s Health Promotion Fund. All costs to implement this chapter shall be paid from the Children’s Health Promotion Fund.

(b) It is the intent of the Legislature that this Act not be altered or amended to divert any portion of the proceeds of the tax imposed by this chapter away from the Children’s Health Promotion Fund unless the [State] Legislature makes specific legislative findings that the combined overweight and obesity rate for minors in the State of [\_\_\_\_\_\_], as defined by the Centers for Disease Control, is at least [50 percent] lower than the combined overweight and obesity rate for minors during the year this chapter was first enacted.

**COMMENT on existing special funds**: Some states already have established special funds, the proceeds of which are earmarked or dedicated to prevention and treatment of childhood obesity (or obesity generally). It is possible to direct the proceeds of the tax to an existing special fund for that purpose, rather than creating a new fund. If this approach is used, you must also decide whether to further earmark the proceeds of the sugar-sweetened beverage tax, or to allow those proceeds to be allocated pursuant to the established guidelines for the existing fund.

This section also includes language demonstrating a specific legislative intent to prevent future legislatures from diverting tax proceeds away from the special fund unless the combined overweight and obesity rate among children is significantly reduced. To help with this calculation, it is important to include legislative findings indicating the State’s combined overweight and obesity rate for minors when this tax is first enacted.   
  
The Centers for Disease Control and Prevention defines “overweight” for adolescents as a Body Mass Index (BMI) at or above the 85th percentile and lower than the 95th percentile. Obesity is defined as a BMI at or above the 95th percentile for children of the same age and sex.

A general legal tenet is that a sitting legislature cannot bind a future legislature (i.e., prohibit a future legislature from taking certain actions) except through a Constitutional amendment or other legislative action approved by the electorate. Some states may allow this practice, however, and in those states this provision can be strengthened beyond a statement of intent.

### §\_\_-9. Expenditure of Children’s Health Promotion Fund.

1. All moneys in the Children’s Health Promotion Fund, after costs to implement this chapter have been deducted, shall be appropriated and allocated as follows:
2. Twenty percent (20%) to the State [*Department of Health*] to coordinate evidenced-based statewide childhood obesity prevention activities and to fund state-level childhood obesity prevention programs. This funding shall support programs that use educational, environmental, policy, and other public health approaches that achieve the following goals: eliminate racial, ethnic, and socioeconomic disparities in childhood obesity rates; improve access to and consumption of healthy, safe, and affordable foods; reduce access to and consumption of calorie-dense, nutrient-poor foods; encourage physical activity; decrease sedentary behavior; and raise awareness about the importance of nutrition and physical activity to childhood obesity prevention.
3. Thirty-five percent (35%) for evidence-based community-based childhood obesity prevention programs. This funding shall support programs that use educational, environmental, policy, and other public health approaches that achieve the following goals: eliminate racial, ethnic, and socioeconomic disparities in childhood obesity rates; improve access to and consumption of healthy, safe, and affordable foods; reduce access to and consumption of calorie-dense, nutrient-poor foods; encourage physical activity; decrease sedentary behavior; and raise awareness about the importance of nutrition and physical activity to childhood obesity prevention. The State [*Director of Health*] shall be responsible for the distribution of these funds to community-based organizations and to local health departments, with priority given to low-income communities and communities of color that are most affected by the obesity epidemic.
4. Ten percent (10%) to evidence-based prevention, early recognition, monitoring, and weight management intervention activities in the medical setting. The State [*Director of Health*] shall be responsible for identifying activities and allocating these funds.
5. Thirty-five percent (35%) to elementary and secondary schools for educational, environmental, policy and other public health approaches that promote nutrition and physical activity. The approaches funded pursuant to this subsection can include improving or building school recreational facilities that are used for recess and physical education; providing continuing education training for physical education teachers; hiring qualified physical education teachers; implementing Safe Routes to Schools programs; improving the quality and nutrition of school breakfasts, lunches, and snacks; ensuring free, clean drinking water access throughout the school day; counteradvertising; and incorporating practical nutrition education into the curriculum. The State [*Superintendent of Education*] is responsible for the allocation and distribution of these funds.

**Comment on earmarking:** Earmarking the proceeds of the tax serves an important public health purpose by dedicating funds for prevention programs to address the obesity epidemic. The earmarked amounts in this section, and the programs for which the funds are earmarked, are examples that can have a positive public health impact. Your jurisdiction could identify other public health programs to receive funds as well, and could dedicate the funds in whatever percentages are appropriate for your community.

1. All moneys in the Children’s Health Promotion Fund shall be expended only for the purposes expressed in this chapter, and shall be used only to supplement existing levels of service and not to supplant current federal, state, or local funding for existing levels of service.

**COMMENT on oversight committee**: One option to ensure that funds are allocated consistent with these earmarking guidelines is to create an oversight committee to report back to the state legislature. The oversight committee could include representatives from state agencies, the public health community, and the general public.

1. The [*Department of Health*] shall develop criteria and components for an

independent evaluation to assess the impact that the tax imposed by this chapter has on consumption of products subject to the tax. The evaluation shall seek to determine the impact of the tax on beverage prices, consumer purchasing behavior, and health outcomes. The reasonable costs of evaluation shall be considered an implementation cost of this chapter.

1. The State [*Director of Health*] and the State [*Superintendent of Education*] are hereby empowered to make such rules and regulations, and provide such procedural measures, as shall bring into effect the purposes of this section. The rules and regulations may provide for specific programs to be funded consistent with the allocation of funds set forth above.

**Comment on administrative regulations:** The agencies charged with allocating and administering these funds will likely need to promulgate administrative regulations to effectuate the purposes of this section. (Alternatively, the state legislature could enact more specific implementing legislation.) While this section provides general guidance regarding the types of organizations and programs that will receive funds, and also designates a state agency to administer those funds, the specific details of the allocations are not set forth in this model legislation. Leaving these provisions more general allows for greater flexibility as programs and recipients change.

### §\_\_-10. Exemptions.

The following shall be exempt from the tax imposed by section [\_\_-*\_\_*]:

1. Bottled Sugar-Sweetened Beverages, Syrups, and Powder sold to the United States Government and American Indian Tribal Governments;
2. Bottled Sugar-Sweetened Beverages, Syrups, and Powder sold by a Distributor or a Retailer expressly for resale or consumption outside the State; and
3. Bottled Sugar-Sweetened Beverages, Syrups, and Powder sold by a Distributor to another Distributor that holds a permit issued pursuant to section [\_\_-*\_\_*], 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 / Retailer resells the product to a Retailer or a Consumer. This exemption does not apply to any other sale to a Retailer.

### §\_\_-11. Penalties.

**Comment on Penalties:** Penalties for violation of state tax laws vary from state to state. Penalties should be determined by the legislative body of your jurisdiction, in consultation with an attorney licensed in your jurisdiction to ensure consistency with existing law and administrative efficiency.

Penalties should apply for any violation of this chapter, including failure to pay tax, failure to keep records and allow inspections, and failure to obtain a required permit.

1. Any Person subject to the provisions of this chapter who fails to pay the entire amount of tax imposed by this chapter by the date that payment is due, fails to submit a report or maintain records required by this chapter, does business in the State of without first obtaining a permit as required by this chapter, or violates any other provision of this chapter, or rules and regulations promulgated by the Tax Administrator for the enforcement of this chapter, shall be guilty of a misdemeanor and shall also be liable for the amount of the tax that may be due and a penalty equal to fifty percent (50%) of the tax due. The Tax Administrator, or his duly authorized representative, may determine the amount due in the event of any payment or underpayment that may come to his attention and demand payment of all such taxes and penalties. Interest shall accrue on non- or under-payment of tax at a rate of twelve percent (12%) per year from the date the tax was due until paid.
2. All administrative provisions of the [*State* *Sales Tax Law* / *other applicable law specified*], including those which provide for the apportionment of economic activity between that within the tax jurisdiction of the State and such activity outside that jurisdiction, which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all Persons liable for taxes under the provisions of this chapter, and the Tax Administrator shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the [*State Sales Tax Law / other applicable law*], except where there is conflict, then the provisions of this chapter shall control.

### §\_\_-12. Unpaid taxes a debt.

All taxes and penalties imposed under the provisions of this chapter remaining due and unpaid shall constitute a debt to the State, which may be collected from the person owing same by suit or otherwise.

### §\_\_-13. Records of Tax Administrator.

At the end of each [month/quarter], the state auditor shall check the books and records of the Tax Administrator and his accounts with any bank or banks, and shall verify the amounts collected pursuant to this chapter and paid into the Children’s Health Promotion Fund. Any duty herein required of the state auditor may be performed by any duly trained clerk in his office, designated by the state auditor for that purpose.

### §\_\_-14. Exercise of powers and duties.

Whenever in this chapter any reference is made to any power or duty of the Tax Administrator, the reference is construed to mean that the power or duty shall be exercised by the Tax Administrator, under the supervision and direction of the [*State Director of Revenue*].

### §\_\_-15. Rules and regulations.

The Tax Administrator [and the *Department of Health*] [is/are] hereby empowered to make such rules and regulations, and provide such procedural measures, in cooperation with the state auditor, as may be reasonably necessary to accomplish the purposes of this chapter.

**§\_\_-16.** **Preservation of local authority.** Nothing in this chapter shall preempt or prohibit adoption and implementation of any policy related to Sugar-sweetened Beverages, including taxation, by a municipal government or political subdivision of the State.

### §\_\_-17. Severability.

If any provision of this chapter, any rule or regulation made under this chapter, or the application of this chapter to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of the chapter, rule or regulation, and the application of the provision to other persons or circumstances shall not be affected. The invalidity of any section or sections or parts of any section of this chapter shall not affect the validity of the remainder of the chapter.

**SECTION THREE**. This act shall take effect and be in force from and after [*date*].

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8. Finkelstein EA, Trogdon JG, Cohen JW, et al. “Annual Medical Spending Attributable to Obesity: Payer- and Service-Specific Estimates.” *Health Affairs,* 28(5): w822–w831, 2009. Available at: *http://obesity.procon.org/sourcefiles/FinkelsteinAnnualMedicalSpending.pdf*. [↑](#endnote-ref-8)
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