Department of Finance and Administration

Legislative Impact Statement

Bill: HB1546 Amendment Number: H2
Bill Subtitle: TO PHASE OUT THE SOFT DRINK TAX; AND TO PROVIDE FOR ADDITIONAL AMOUNTS TO BE DISTRIBUTED TO OFFSET THE REVENUE REDUCTION RESULTING FROM THE PHASEOUT OF THE SOFT DRINK TAX.

Basic Change :

Sponsors:

Reps. L. Fite, Beaty Jr., M. Berry, Bragg, Brooks, Brown, Crawford, Deffenbaugh, Evans, Hollowell, Jean, Lowery, Lundstrum, Lynch, Miller, Ray, Rye, Slape, and Warren

Sens. D. Wallace, L. Eads, T. Garner, Gilmore, K. Hammer

House Amendment No. 2 --- HB1546-H2 clarifies the timing of the soft drink tax cuts and allows for funding of the Medicaid Trust Fund Program.

HB1546-H2 shifts the dates of the tax reductions to July 1 instead of January 1. The amendment builds in at least one fiscal session in between rate reduction cuts to allow adequate time for budgeting. The economic trigger thresholds remain the same as those proposed in HB1546-H1. The triggers as provided by HB1546-H2 are as follows:

- First rate reduction will occur beginning on the later of July 1, 2023 or July 1 of the calendar year following the fiscal year in which total general revenue collections of sales and use tax exceed $2,681,000,000;

- Second rate reduction will occur on the later of July 1 of the calendar year following the first tax rate reduction or July 1 of the calendar year beginning after the fiscal year in which the total general revenue collections of sales and use tax exceed $2,754,000,000; and

- Expiration of the soft drink tax will occur beginning on the later of July 1 of the calendar year following the second tax rate reduction or July 1 of the calendar year beginning after the fiscal year in which the total general revenue collections of sales and use tax exceed $2,830,000,000.

Additionally, the amendment clarifies that the trigger for rate reductions occurs upon the later of a pre-determined amount of time or the occurrence of an economic trigger. This modification requires each rate reduction to occur before the eventual expiration of the tax.

The amendment also clarifies the funding of the Medicaid Trust Fund Program and creates a stair-step funding mechanism to match the rate reductions. The amendment allows for part year transfers (in years with a cut) and full year transfers (in the event there is longer than a year in between cuts).

House Amendment No. 1 --- HB1546-H1 (engrossed 3/23/21) modified the reduction and expiration of the soda tax based upon economic triggers, instead of dates certain.

Original Bill --- HB1546 reduces and ultimately eliminates the existing soft drink tax levied under § 26-57-904. This tax is levied on the sale of soft drink syrup or simple syrup at the rate of one dollar and twenty-six cents ($1.26) per gallon, bottled soft drinks at the rate of twenty and six-tenths cents (20.6¢)

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per gallon, and powders and base products at the rate of twenty and six-tenths cents (20.6¢) per gallon that may be produced. Distributors, manufacturers, and wholesalers are required to collect the tax.

HB1546 provides a mechanism to transfer general revenue funds to the Medicaid Program Trust Fund in amounts that reflect the projected fiscal impact from the gradual reduction and elimination of the soft drink tax.

HB1546 will gradually phase-out the soft drink tax by implementing increasing tax rate reductions for each category of soft drink on January 1, 2023 and January 1, 2024. The soft drink tax will cease entirely on January 1, 2025.

<u>**Revenue Impact :**</u>

HB1546-H2 proposes reductions and eliminations based upon economic triggers. Due to uncertainty on when those triggers will be met, DFA can only estimate impact based on information currently available.

If the reductions and elimination occur on July 1, 2023, July 1, 2024, and July 1, 2025, the impact will be as follows:

Fiscal Year Beginning July 1, 2023 - General Revenue Transfer $9,037,862
Fiscal Year Beginning July 1, 2024 - General Revenue Transfer $23,416,279
Fiscal Year Beginning July 1, 2025 - General Revenue Transfer $38,205,508
Fiscal Years After July 1, 2025 - General Revenue Transfer $39,437,944

If the reductions and elimination occur in any intervening years, there will be 12 months of impact instead of the eleven month impact during the year of the rate reduction. Accordingly, DFA projects the impact will be as follows:

Fiscal Year of First Rate Reduction
General Revenue Transfer of $9,037,862

Fiscal Years Between (if any) First and Second Rate Reduction
General Revenue Transfer of $9,859,486

Fiscal Year of Second Rate Reduction
General Revenue Transfer of $23,416,279

Fiscal Years Between (if any) Second Rate Reduction and Expiration
General Revenue Transfer of $24,648,715

Fiscal Years Beginning of Expiration
General Revenue Transfer of $38,205,508

Fiscal Years After Expiration of Tax

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General Revenue Transfer $39,437,944

Taxpayer Impact :

The soft drink tax will be gradually phased out with two rate reductions and then eliminated. The timing of the reductions and phase-out of the tax will be based upon economic triggers.

Resources Required :

Computer programs, training procedures, forms and instructions will need to be updated.

Time Required :

Adequate time is allowed for implementation.

Procedural Changes :

Rules, tax forms, and instructions will need to be updated and Department employees will need to be trained about the changes for processing returns. The tax community will need to be educated as well.

Other Comments :

None.

Legal Analysis :

House Amendment No. 2 --- HB1546-H2 modifies the soft drink tax reductions and elimination based upon economic triggers. HB1546-H2 as amended will require two-thirds approval based upon a yea and nay vote on roll call of all the members elected to each house of the General Assembly.

House Amendment No. 1 --- HB1546-H1 (engrossed 3/23/21) modified the reduction and expiration of the soda tax based upon economic triggers, instead of dates certain.

Original Bill --- HB1546 reduces and ultimately repeals law that was confirmed by Act 7 of the 2d Ex. Session of 1992 by a referendum vote during the 1994 general election. Article 5, § 1 of the Arkansas Constitution, as amended by Amendment 7, provides that "No measure approved by a vote of the people shall be amended or repealed by the General Assembly … except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly." Accordingly, the General Assembly must conduct a roll call vote to amend or repeal the soft drink tax and any amendment or repeal must receive a two-thirds vote for approval.