



SOUTH CAROLINA
BEVERAGE
ASSOCIATION

October 26, 2010

Dear Commissioner,

Let me begin by thanking you for your service on the Tax Re-Alignment Commission. I realize that each of you receives no compensation and are on this commission solely from a sense of duty as a good citizen. On behalf of my fellow bottlers and businesses across South Carolina – thank you.

Last week I wrote to ask that TRAC make an in depth analysis before making any recommendations on a soft drink tax, today I ask for your attention again. My previous letter gave a long list of suggested materials to be researched before an issue as a soft drink tax can be prudently decided. There is no such study apparent in the recommendations you now have. I do not believe the proposal you have meets the minimal research necessary to make an informed position on a soft drink tax. Below are some points I would like to draw to your attention:

The TRAC Draft states under Findings, “Industry/trade testimony did not provide information indicating that tax ... passed on to consumers in the form of lower prices.”

The first and primary reason testimony on pricing was not provided is that our Association President, James Hicks, is prohibited from doing so by the Sherman Anti - Trust Act. That long-standing federal statute prohibits him from engaging in any pricing discussions. He does not and will not discuss soft drink prices.

Secondly, Mr. Hicks was asked to testify and did testify on the History of the Soft Drink Tax. I am sure had the TRAC asked at the meeting or subsequently for pricing information, Mr. Hicks would have connected TRAC staff with the correct parties from the beverage companies to answer any such questions.

Thirdly, I respectfully ask, what bearing does the issue of current pricing of a product have on the development of tax policy? South Carolina government does not set prices on any industry; competition and the free market do. When the soft drink tax was repealed the market reset prices. The six cents formerly charged on a two-liter bottle

went to a variety of places – to build new plants, purchase vehicles and equipment, betterer salaries for employees, improved benefits, increased community contributions, shareholders and, of course, lower prices. As your report states there are currently 300 more beverage employees in South Carolina today as when the tax was repealed. These jobs and the tens of millions of dollars in property investments would not have happened had the tax remained.

Please also recognize that a soft drink tax is not the sole component affecting the price of soft drinks. Soft drink packaging materials, product delivery costs and beverage ingredients are all commodity based. Over the 10 years since the tax has been repealed prices of water, sugar, aluminum and petroleum have each set record prices. As a real world businessman you can understand what I am expressing.

The Draft findings states, “TRAC anectdodetly (sic) finds that any consideration of a soft drink tax ... met with claims in the form of higher prices.”

No doubt the reverse of what the market did with the repeal would happen if an additional tax were enacted – no new plants, no new vehicles, or other capital improvements that benefit the State of South Carolina.

We believe tax laws should not be based upon anecdotes. Tax laws should be based on information and research as my letter last week requested.

The Draft findings state, “TRAC finds that seven states presently have some form of a soft drink tax.”

This is a misleading statement. While Tennessee and Virginia do have taxes that are imposed on the soft drink industry, they are not excise taxes of the kind being recommended by the TRAC. In fact, in both states what the TRAC report calls a soft drink tax is also imposed on other industries. The Tennessee tax collects only about 12% of the amount of tax the report recommends for South Carolina. Yet Tennessee has 50% more people than South Carolina. In Virginia the tax applies to every beverage production facility in the state including alcohol. Virginia has twice the population of South Carolina. The tax brings in \$1.9 million per year. The Rhode Island tax the report refers to also brings in about 5% of the tax suggested in TRAC’s report. To compare these miniscule taxes with a proposed \$35,000,000 tax increase on the people of a state with our small population is unfair and wrong. They are not at all the same things.

The report omits the fact that 10 soft drink taxes in various localities and states have been repealed in the last decade. The latest repeal was just two years ago in Maine where over 60% of the voters repealed their soft drink. Soft drink taxes are unpopular with the people. Soft drink taxes are antiquated taxes.

Draft report says, “34 states impose a sales tax on soft drinks (South Carolina currently does not).”

This statement leaves out the full truth. Soft drinks in South Carolina pay sales tax at vending machines. The sales tax is included in the vended price. It is collected by the vendor at the full retail/vended price. All soft drinks sold in restaurants pay a sales tax plus any local hospitality tax. At convenience stores all fountain drinks and many other soft drinks are subject to a sales tax.

There is no sales tax on non-ready to eat food or beverages sold in grocery stores. For the record, our industry does not oppose sales taxes on food and beverages sold in grocery stores so long as a every item is taxed at the same rate. We want to be treated fairly.

The Draft Recommendations say, “that the General Assembly (should) thoroughly study the 75 year history of the soft drink tax ... “.

The fact of the matter is the General Assembly has already studied this tax. The tax was under legislative review for each and every year from 1994 until the tax was fully removed in 2001. The issue was researched and testimony was taken numerous times by all concerned. The legislative votes were overwhelming at every step of the process. The present leadership of the General Assembly including the Senate President pro- tem, Majority and Minority Leaders, Senate Finance Chairman, Speaker of the House and Chairmen of Ways and Means and Judiciary Committees were all members of the legislature and voted to repeal the tax. Since its repeal, no bill has been introduced by any member to re-instate the old soft drink tax. The issue does not need to be “studied” further.

The Draft recommendation says, “Tax Relief, TRAC recommends that if the General Assembly decides to re-impose an excise tax on soft drinks, it provide broader based (rather than specific industry targeted) tax relief compared to that provided by the repeal,”.

This recommendation insinuates the soft drink industry receives special treatment and gets “tax relief” that no one else enjoys. This is totally false. Repeal of the old tax merely put South Carolina’s beverage makers on a level field with other companies and products. The recommendation above is a socialistic argument – it recommends changing our law and putting an extra tax on one industry so that all other industries/groups can pay less. That is not the kind of change South Carolinians want.

The Draft recommendation of, “it (a soft drink tax) not expand the tax base (e.g., the list of items subject to the tax) and consider narrowing the base to a more finite list”.

The list referred to in the Findings was looked at numerous times by the legislature a few years back. Please look at the pictures attached. The wisdom was that there was no way to make the tax fair by moving products around from “stack” to the other. All the items pictured are non-alcoholic beverages. Moving an item from the “Subject” to the “Exempt” picture or vice versa will not make a soft drink tax fair and rational. The legislature also realized that the old soft drink tax had it backwards, we were taxing products made here in South Carolina while exempting hundreds of out of state products. Please do not believe the Draft argument that this tax can be improved later. It is bad policy from the beginning.

I apologize for the length of this letter. Since my customers – the restaurants, vendors, convenience store owners, grocery stores, and my suppliers – too numerous to name and my competitors – Coca-Cola, Cheer-Wine, Dr. Pepper/7Up and many others did not get to testify, I had many points to make. There are many more that I could add.

I appreciate your attention to this matter. Thank you.

Sincerely,

Mark S. Avent

Enclosures

