Sugary Beverage Tax Policy: Lessons Learned From Tobacco

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EXCESSIVE SUGARY BEVERAGE consumption is associated with metabolic changes and increased risk for diabetes, coronary heart disease, and obesity.1 Excise taxes on sugary beverages have been proposed as a method to replicate the public health successes of tobacco control and to generate revenue that could be used for other public health strategies and help fund government activity.1 The reduction of smoking incidence and prevalence in the United States is partially attributed to the implementation of several successful policy strategies, one of which is increased Excise taxes.2

The federal government and the states share concurrent power to tax; local jurisdictions’ authority to tax is determined by state law and varies widely. My focus is on state taxes because sugary beverage taxes have been mostly proposed by state governments.3 All 50 states and the District of Columbia impose excise taxes on cigarettes, and their amounts have gradually increased.4 In 2011, the mean tax rate among all states was $1.46; the lowest state cigarette excise tax was $0.17 per pack, and the highest was $4.35 per pack.4 Such taxes are partially credited for reducing youth smoking initiation and cigarette consumption while simultaneously decreasing the total amount of cigarettes consumed by persistent users.2 Although high taxes have been proven to deter consumption, they are not acting alone.2 The combination of price increases and other restrictions, such as indoor smoking bans and limits on marketing, have resulted in changes to social norms and a steady decline in smoking rates.

Proponents of sugary beverage excise taxes do not suggest that price increases alone will terminate consumption or reverse obesity trends.1 Additional policy options that align with a sugary beverage taxation strategy include removal of coupons and discounts from schools, mandated serving size restrictions, educational campaigns, retail marketing strategies, and age limits to purchase particularly harmful products such as energy drinks. However, for the tax component of this policy portfolio to be effective, it must actually increase the price of the product to a level that deters consumption. Therefore, it must be assessed at more than a negligible amount and be passed through to consumers. In light of some differences and similarities between sugary beverage manufacturers and tobacco manufacturers, policymakers should consider complementary laws to ensure that the tax levied is factored into the final retail price of the product. Two such laws—minimum price mandates and prohibitions on coupons and discounts—are paramount to the policy discussion.

MINIMUM PRICE LAWS

Minimum price laws require the addition of a minimum percentage markup to the base price by the retailer to increase the retail price to consumers.5 Cigarette minimum price laws were initially enacted to protect retailers against predatory practices.5 Tobacco control advocates have since reconfigured them as a method to maintain high prices to deter consumption; for this purpose, they have not been overwhelmingly successful.2,6 However, the deficiencies in that strategy can be overcome in the context of sugary beverages. First, some states maintain very low cigarette tax rates, so regardless of the existence of minimum price laws, the retail price remains low.5 Second, most states with minimum price laws do not additionally restrict the use of trade discounts, which are used to reduce the sales price below the minimum or taxed price.5 Finally, there is evidence that states do not actively enforce the minimum price laws, so retailer noncompliance without repercussion may be an issue.6

State bills to institute a tax on sugary beverages propose the use of excise taxes levied at the manufacturer level.7 Policy options that end there leave the administration of such a tax in the hands of the manufacturers. Unlike tobacco companies, sugary beverage manufacturers produce additional products that would not be subject to the tax, such as diet beverages, bottled water, and juice, and that could function as likely substitutes for consumers who respond to the increased price by shifting consumption elsewhere. Thus, despite policymakers’ intentions, beverage manufacturers might not pass the cost of the tax on to the price of...
the sugary products alone. Unlike cigarette manufacturers, sugary beverage manufacturers could distribute the cost of the tax among all of their products, including beverages not subject to the excise tax, to increase the price of their entire portfolio by a negligible amount, thereby nullifying the effect of the tax. To deter manufacturers from circumventing the price increase in this way, policymakers might consider the simultaneous enactment of a sufficiently high tax and a minimum price law, both calculated per ounce of the taxed beverage. This would increase the initial retail price and require a statewide minimum price on store shelves. But this alone would not be sufficient, because of other price-discounting strategies.

**LAWS PROhibiting Price Discounting**

Sugary beverage manufacturers, like tobacco companies, offer price discounts, coupons, and other promotions that reduce the retail price of their products to encourage purchase.\(^5\)\(^,\)\(^7\) Discounting measures that are redeemable at the retail level bring the price of the product down to pretext levels or lower. In the case of tobacco, studies have found that among adult cigarette users, certain groups—heavy smokers, smokers trying to quit, young adults, and other price-sensitive individuals—are significantly more likely to engage in price reduction strategies to purchase cigarettes at reduced prices and avoid the need to reduce smoking in response to tax increases.\(^8\)\(^,\)\(^9\) Young adult smokers were found to use coupons and multipack promotional discounts more than all other adult smokers.\(^8\) Health and economic experts have found that banning the redemption of coupons and multipack discounts reduces tobacco use among price-sensitive individuals and especially among young people.\(^9\)\(^,\)\(^10\) A federal court, upholding a law passed by the City of Providence, Rhode Island, that prohibits retailers from accepting such discounts and coupons, relied on evidence that it will reduce tobacco use by underage youths.\(^10\) The same rationale is applicable to sugary beverages. Sugary beverages are highly marketed to and consumed by youths, which multiplies health concerns because of the potential for a lifetime of consumption. Economists have found that youths are among the individuals most sensitive to increased costs of sugary beverages.\(^13\) Sugary beverage manufacturers additionally offer price discounts, coupons, and other promotions at the retail level; one study found that one fifth to one third of all incremental sales of sugary beverages are attributable to price discounting alone.\(^7\) It can be expected that manufacturers would continue this practice, especially upon enactment of a sugary beverage tax. Therefore, policymakers considering enacting a sugary beverage tax should similarly consider legal measures to prohibit the use of trade discounts intended to reduce the efficacy of taxes.

**Enforcement**

For these complementary laws to make an impact, jurisdictions must provide for a method of enforcement. One method used in tobacco control is to incorporate legal requirements into retailers’ licenses. This is called conditional licensing, whereby the retailer’s license to operate is conditioned on its compliance with the law. Thus, a violation of the law becomes a violation of the license, which can then be suspended; this system may function as a stronger deterrent than a financial penalty. In the Providence law, for example, the city conditioned the maintenance of tobacco retailers’ license to sell cigarettes on their compliance with prohibitions on accepting or redeeming coupons or multipack discounts for tobacco products for less than the nondiscounted price.\(^14\) Conditional licensing has not yet been used in the context of sugary beverages, so more research into the feasibility of this approach is warranted.\(^15\) Nonetheless, jurisdictions can use the lessons learned from tobacco control to consider enforcement of complementary laws as integral to their overall legislative and tax strategy.

**Conclusions**

As policymakers have increased efforts to implement sugary beverage taxes, they have faced fierce opposition by affected businesses through adverse lobbying and issue advertising campaigns targeting the public. If beverage taxes become a reality, policymakers can anticipate practical strategies by manufacturers to counteract their impact. Thus, it is important to consider the enactment and enforcement of complementary minimum price laws and prohibitions on discounting to accomplish the intended price increase in an effort to deter consumption and raise revenue.

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