

Jon Wainwright: Welcome to another episode of California Lawmaking In Depth. Today we are continuing our look ahead to the second half of the 2017-18 legislative cycle. And to help us out with that we've brought back Erinn Ryberg, Leg. Director for Assembly Member Cristina Garcia. Erinn, thank you for joining us again.

Erinn Ryberg: Yep. Thanks for having me.

JW: So we're talking about another issue that was addressed by your office. It didn't get too far this past year, so we'll see where it goes this year. We're talking about snack taxes. So can you give us a little background on the issue here?

ER: Going all the way back, another bill that our office has done every year is the tampon tax - to get rid of taxes on tampons - because in California you don't pay any taxes on anything that's deemed essential. So the fact that we pay taxes on tampons shows that the state does not feel tampons are essential - which I know every woman and probably a lot of men would disagree with.

The Governor vetoed the bill and he said find me the \$20 million that it would take to pay for this tax exemption. Our project was going through the sales and use tax code and one of the things we found is that we don't pay taxes on snack food and candy.

Snack food is a little more, there's more disagreement around it. But if we start with candy, everyone knows that there is no nutritional value in candy. You can't live off candy. Thirty other states already tax candy, and California is not one of them.

It all started because in the 90's there was a budget deficit. So in order to pay for it, the Legislature agreed in a budget trailer bill to tax snack food and candy. It lasted for about a year before the candy companies came back, wrote a ballot measure, and repealed it. Not only did they repeal it, they put it in the Constitution. So now, any changes thereafter would require a two thirds vote and go to the ballot.

JW: Gotcha.

ER: Ever since then we've paid no taxes on snack food and candy, and that's what we felt wasn't fair.

JW: Okay. So, getting into the bill, I guess the first question is: you came at this with a pair of bills. You had a constitutional amendment and then a separate bill, AB 274 that set out some specific exemptions. Why the two bill route? Why not just take the exemptions that you laid out in 274 and work that into the constitutional amendment that you were trying to get through the Legislature?

ER: That's a good question, and one we get a lot. The reason is, like I said, because this was repealed through a ballot measure, you have to do a constitutional amendment. What we don't want to do is make this change and then two years later

make another change, go back to the constitutional amendment – two thirds vote, and go back to the voters.

This idea was that the constitutional amendment would repeal would repeal the special treatment that the candy companies were getting by not taxing candy and snack food and then it would reference the code section. Then in the actual code section is where we'd define what is a food, what's not a food. Then defining that candy is not a food, because we don't tax food in California either.

So, that's why we have to go the two bill route, so that way if anybody else decides to make any changes to this section in the future, they don't have to go the same route as us which is a two thirds vote - an uphill battle - and a ballot measure - which is millions of dollars to get the statewide support we would need.

JW: So, basically, just you would mean, if we wanted to change the exemptions later on down the road, the Legislature could do that? It doesn't have to be kicked out to the voters?

ER: Exactly.

JW: Okay. That seems to make some sense. What would the new money have done with, putting the taxes back on candy and snack foods? Would it have gone straight to finding the money for the tampon tax repeal?

ER: Yeah, no. What we decided, because this is a very contentious issue, and not so much I feel like, maybe with the public but more so with the lobbyists and the candy companies. There's like five companies that own all the snack foods and all the candy, and they own a lot of other things - some dog food, some cereal companies - so we're really taking on a corporate giant. The only way that we felt we could justify this tax is by funneling that money back into programs to fight the obesity epidemic, diabetes epidemic, return nutrition counseling in schools that we've gotten rid of because of budget cuts.

So it wouldn't pay for tampons per se, but what it would do is it would go into the General Fund, and most of it would go into the General Fund, but we would take out - because this stood to make the state \$900 million a year, we have a lot of money to work with - so we would do a couple million into one obesity program, a couple million into another diabetes program. Also, cutting Medi-Cal costs, since that's most of who bears the brunt of all of these diseases, into the Cal Fresh program which also comes out of a segment of the General Fund.

So it wouldn't necessarily be this-for-that, but when we went to the Governor with the tampon tax, we would say, "Hey, by the way, our other bill made you guys \$900 million, the tampons are only \$20 million of that. Can we get the \$20 million?"

But we don't want to link those because you don't have a legislative purpose to link those, per se, and again, the tax itself is very controversial. Basically, our argument is that we're collected all this money up front - and not all, it's like seven cents on the dollar. We're collecting it up front to pay for all these programs on the backend that the state is paying for already through Medi-Cal, hospital bills, and stuff like that.

JW: So, pretty similar rationale then to the cigarette tax that passed the ballot in 2016?

ER: Exactly. Yep. Same idea.

JW: Although, I do think one of the differences here that I think is worth - and maybe not too different from the cigarette tax. But when we're looking at candy, snack foods, and reinstating tax on that, that's a fairly regressive tax though. When we're looking at trying to help communities that are already impoverished. We're adding a tax on them. What's the rationale for making it tougher on them?

ER: Definitely, that's one of the biggest argument that the opponents came out with, that the tax is regressive. But the problem is our sales tax system is naturally regressive, by definition. When the ballot measure came out in the 90s, I went through the state archives and looked through all the campaign mailers and ads they had, and they're biggest argument was "You're taxing poor people."

We kind of dared them to bring that argument now by saying only poor people eat this food and that's who's going to be affected the most. But it's true that if you look at the most unhealthy districts in the state are also the poorest districts in the state. And they're districts where they don't have a lot of grocery stores, they're food deserts. They have to rely on mom and pop corner shops, 7-11's that don't have a lot of fresh fruits and vegetables and you do buy chips, and jerky and candy.

Our argument for why we think we can get around that is, again, but funneling this money back into those communities to help them afford to buy healthier food choices. Healthier food is more expensive, so let's get more money in their hands in order to buy this food. Especially with that Cal Fresh program, they already have a matching program for farmer's markets. So, for every dollar you spend at the farmer's market, you get another dollar free - so upping that. Or whether it's food vouchers, or enticing stores to open in these food desert neighborhoods.

But it is an argument that won't go away. And one of the big groups that came out, not in opposition but out of concern, represented college campuses and college students and how you live off Top Ramen and chips and beef jerky for, maybe not even the first year, maybe it's throughout your four or five years if you can't afford other food.

So, that's why we started from the beginning talking to these organizations and talking to local cities in especially the poorer districts, the law and poverty group, it's how can we get money into the hands of people that need it in order to buy these healthier

products. But it's not helping them by continuing to encourage them to buy these unhealthy products and then having to live with the medical consequences later.

I think it's an incentive program to get them to make healthier choices and give them the money to do so.

JW: Okay. And, as I referenced at the top, these bills didn't really get very far. Let's talk a little bit about what committee they landed in and then where the holdup happened.

ER: We knew this was an uphill battle when we started, and our first and last committee was the Assembly Committee on Revenue and Taxation, because it would be an exemption, it would be changing the tax code. So that's the committee we had to go through.

It's a difficult committee already. The Rev and Tax Committee is unique in that they kind of consider themselves to be like Appropriations because they are responsible for giving or taking money out of the General Fund. Because of that they have a whole other process in that if your bill costs the state so much money, it kind of is moved into this suspense file and it can kind of just sit there. And that's what happened with our bill.

It's a difficult decision, and I think we had a couple factors all working against us on this bill. One of which is that we had three huge bills going through that committee all on the same exact day. So when you look at your leg package - and this is a recommendation for any Leg Director - is if you look at your leg package and you think we have three big bills, but that's okay, we'll space them out.

Well because they all ended up in that suspense file, they all ended up in the same exact hearing. So we had to go and ask these members for three controversial tax exemptions all on the same exact day. And of course, if any person, if any group came up to me and asked my boss to make three tough decisions in one day, I'd be like, "Pick you top one, or pick you top two. There's no way that we're going to get three."

Especially because the Chair had a "No" recommendation on all three of our bills. So that's asking members to go against the Chair three times in one day.

JW: Big ask.

ER: And, I mean, in one hour. Two hours. And so, what we ended up doing is we didn't have that bill heard that day. Because this bill is special, we have all these rules about deadlines, making sure that you're staying on track. But these two bills are an exemption to all the deadlines because: one, it's a constitutional amendment, which can be done at any time and it's not subject to any rules. And then the other one is that it's a tax levy, and that also is not subject to any rules.

So we held them to work up the votes so that way the other two bills could be heard instead. One made it out, one failed. I think what we did with this, is it was a good

gauge, and sometimes you just have to bring bills up to test the waters and to really see where the loyalties lies. With this one, we really saw the uphill battle that we were going to have.

And as a consequence what we ended up doing after, and what we're still working on, is a statewide poll. That way we can have these poll numbers in our back pocket to really help the members, to show them, because one of the arguments is, "The public voted on this 20 years ago. We know how the public feels."

But then we say, "It's 20 years ago and a lot has changed in 20 years. We know how bad this food is for us. A lot of other states have started taxing this good already. And California, again, is missing out on \$900 million a year, just by this small tax."

And, I want to say it's different than the tobacco tax because tobacco is already tax, and everything we do is adding more taxes to tobacco. This isn't taxed at all. So when you go to the grocery store and you have to pay taxes and you buy a candy bar and you don't have to pay taxes, it doesn't make any sense. And it's not fair. And I think people are starting to realize how unjust that is.

JW: So, going into next year, and I feel like to some degree, previous ballot measure elections have gone against this, but, you're going into an election year. You're basically asking legislators to put a new tax on the ballot. Do you feel like that makes it's even more of an uphill battle for you?

ER: Yep. Next year is going to be really hard, and this is definitely a conversation that my boss and I and supporters are having right now. This year was a hard year for the members. They passed the gas tax - the transportation tax - they passed Cap and Trade. Two huge tax bills. And now we're coming into this year and it is an election year and this is another tax.

Again, that's why we're waiting for the poll to come back, to see the results of the poll. And a poll was used for the transportation tax, and it proved really helpful. It's easy for the media to get these stories, or even strong conservative Republican members, to get these stories of these constituents that hate all of this - hate these taxes, and driving them out of California. But when you actually look at the numbers, people aren't leaving and they actually support it if it's going to road repairs, or in this case going to nutritious programs.

But it's going to be an uphill battle from the start, starting with the Committee on Revenue and Taxation. The Committee membership has not changed, so we're still dealing with the same people that voted no before, but, one positive is we don't have any other tax bills. So maybe we can put all of our support and risk all of our capital on this one bill.

I think, you know, taking a stronger ... seeing how you can change it. One of the things I've started to advocate for, and ultimately my boss has to decide is, maybe just

dropping it to a candy tax. People are a lot more supportive of a candy tax. We're hoping the poll will show that.

With snacks it's harder. You have to define a snack. What is a snack? Is yogurt a snack? Because you can eat it as a snack, but it can also be breakfast. We had tried to take a route of just taxing the snacks that are worse for you to encourage healthier choices, but then that left it up to the cashiers to decide is it taxed or is it not. Which, I pity any cashier that has to figure that out.

But I think candy; we can all agree what's candy. And there's 30 other states that already tax candy.

JW: Well, except for the ones that say it's got flour, so Twix and Kit Kats, those are out.

ER: Exactly. Which is a mistake I made with our drafting is I excluded the flour. And then yeah, not the candy ... the candy companies didn't point it out to me, someone else did, "You just tossed out all these candy bars."

Frankly, all the good candy bars. I feel like the ones that really sell have the cookie centers. So we changed that really fast. But that's the life of a bill. And putting out a draft that you've worked for so long on, thinking this is it, and then to immediately get feedback saying, "Oh, well you actually just excluded ten candy bars."

And I was like, "Oh. Okay."

It's still going to be an uphill battle. We were working with a lot of, some candy companies and the confectioner's association immediately came out in opposition. They won't work with us at all. But some others: soda companies - because soda is already taxed, they know what this is like. And they felt my boss often picks the moderate approach, so they want to work with us so we can have this moderate approach instead of working with somebody that's going to charge a lot higher of taxes.

They were working with us and we hope they'll continue to work with us again to come up with some middle ground that's fair. And I get it; it's only seven cents on the dollar. We're hoping that's not making or breaking people's bank accounts, but if it is, trying to get money in their hands in other ways.

JW: Any other changes you anticipate needing to make from the previous version to the version going forward next year.

ER: No. I think the big thing that is not in the version now because we never had the chance to add it is exactly how we will divide out the money. It's a careful calculation because right now, the whole bill goes to the General Fund. Since the whole bill goes to the General Fund, half goes to education and we need those education groups to support the bill, because they stand to make the most out of this.

We don't want to cut too much into that, but if you consider almost half goes to them, then what are we going to do with the other and how are we really going to build support on that. That's what we really tasked the supporters with doing, is tell us where this money should go. What organizations? What cities? What agencies? That's the big other side of this bill, we need to put in where this money goes and make sure that we don't affect our support.

We want to give money to places to build support, not to lose support. That's the next big hurdle. That will be the big drafting change. Anything else will just be little tweaks and making sure flour is included next year.

both chuckle

JW: Sounds good. Well this will be another interesting one to keep an eye on. Erinn, thank you so much for taking the time to join us again.

ER: Yep. Thanks for having me.