

# STATE OF NEW YORK

3353

2017-2018 Regular Sessions

## IN ASSEMBLY

January 27, 2017

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to enacting the "sweetened beverage tax law"; and to amend the state finance law, in relation to establishing the children's health promotion fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "sweetened beverage tax law".

§ 2. The tax law is amended by adding a new article 15 to read as follows:

### ARTICLE 15

#### SWEETENED BEVERAGE TAX LAW

##### Section 330. Definitions.

331. Excise tax.

332. Distribution information.

333. Exemption.

334. Exemption certificate.

335. Credit.

336. Collection of tax.

337. Rules and regulations.

338. Taxes due.

339. Electronic filing.

340. Registration.

##### § 330. Definitions. For purposes of this article:

(a) "Beverage container" means any closed or sealed container regardless of size or shape, including, without limitation, those made of glass, metal, paper, plastic, or any other material or combination of materials.

(b) "Bottled sweetened beverage" means a sweetened beverage contained in a beverage container.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (c) "Beverage dispensing machine" means a device that mixes concen-  
2 trate with any one or more other ingredients and dispenses the resulting  
3 mixture into an open container as a ready-to-drink beverage.

4 (d) "Caloric sweetener" means any caloric substance suitable for human  
5 consumption that humans perceive as sweet and includes, without limita-  
6 tion, sucrose, fructose, including high fructose corn sweetener,  
7 glucose, other sugars, and fruit juice concentrates. "Caloric" means a  
8 substance that adds calories to the diet of a person who consumes that  
9 substance.

10 (e) "Concentrate" means a syrup, powder, or base product that is used  
11 for mixing, compounding, or making sweetened beverages in a beverage  
12 dispensing machine. For purposes of this part, "concentrate" does not  
13 include any of the following:

14 (1) Any product that is solely used in preparing coffee or tea.

15 (2) Any product for consumption by infants and which is commonly  
16 referred to as "infant formula."

17 (3) Any product for use for weight reduction.

18 (4) Milk or milk products.

19 (5) Any frozen concentrate or freeze-dried concentrate to which only  
20 water is added to produce a sweetened beverage containing more than  
21 fifty percent natural fruit juice or more than fifty percent natural  
22 vegetable juice or more than fifty percent combined natural fruit juice  
23 and natural vegetable juice.

24 (6) Any product that is sold and is intended to be used for the  
25 purpose of an individual consumer mixing a sweetened beverage.

26 (7) Medical food.

27 (8) Any product to which no caloric sweeteners have been added.

28 (f) "Consumer" means a person who purchases a bottled sweetened bever-  
29 age or concentrate for a purpose other than resale in the ordinary  
30 course of business.

31 (g) "Distribution" includes:

32 (1) The sale of bottled sweetened beverages or concentrate to a  
33 retailer.

34 (2) The receipt of untaxed bottled sweetened beverages or concentrate  
35 in this state from an unregistered out-of-state distributor by a retail-  
36 er.

37 (3) The retail sale of untaxed bottled sweetened beverages, sweetened  
38 beverages, or concentrate in this state.

39 (4) The use or consumption of untaxed bottled sweetened beverages or  
40 concentrate in this state by a distributor or retailer. For purposes of  
41 this paragraph, "use or consumption" includes the exercise of any right  
42 or power over bottled sweetened beverages or concentrate incident to the  
43 ownership thereof, except that it does not include the sale of that  
44 property or the keeping or retention thereof by a distributor or retail-  
45 er for the purpose of sale.

46 (h) "Distributor" means any person who makes a distribution of bottled  
47 sweetened beverages, sweetened beverages, or concentrate in the state,  
48 whether or not that person also sells these products to consumers.

49 (i) "Medical food" means any product that meets the definition of  
50 medical food in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.  
51 360ee(b)(3)).

52 (j) "Milk" means natural liquid milk, regardless of animal source or  
53 butterfat content, natural milk concentrate, whether or not reconsti-  
54 tuted, regardless of animal source, plant source, or butterfat content,  
55 or dehydrated natural milk, whether or not reconstituted and regardless  
56 of animal source or butterfat content.

1 (k) "Natural fruit juice" means the original liquid resulting from the  
2 pressing of fruit, the liquid resulting from the reconstitution of  
3 natural fruit juice concentrate, or the liquid resulting from the resto-  
4 ration of water to dehydrated natural fruit juice.

5 (l) "Natural vegetable juice" means the original liquid resulting from  
6 the pressing of vegetables, the liquid resulting from the reconstitution  
7 of natural vegetable juice concentrate, or the liquid resulting from the  
8 restoration of water to dehydrated natural vegetable juice.

9 (m) "Nonalcoholic beverage" means any beverage that does not contain  
10 alcohol.

11 (n) "Person" means an individual, trust, firm, joint stock company,  
12 business concern, business trust, receiver, trustee, syndicate, social  
13 club, fraternal organization, estate, corporation, including, but not  
14 limited to, a government corporation, partnership, limited liability  
15 company, and association or any other group or combination acting as a  
16 unit. "Person" also includes any city, county, city and county,  
17 district, commission, the state, or any department, agency, or political  
18 subdivision thereof, any interstate body, and the United States and its  
19 agencies and instrumentalities to the extent permitted by law.

20 (o) "Powder" or "base product" means a solid or liquid mixture of  
21 ingredients with added caloric sweetener used in making, mixing, or  
22 compounding sweetened beverages by mixing the powder or base product  
23 with any one or more other ingredients, including, without limitation,  
24 water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vege-  
25 table juice, or carbonation or other gas.

26 (p) "Retail sale" means the sale of sweetened beverages to a consumer.

27 (q) "Retailer" means any person who sells in this state sweetened  
28 beverages to a consumer, whether or not that person is also a distribu-  
29 tor as defined in this section.

30 (r) "Sale" means the transfer of title or possession for consideration  
31 in any manner or by any means whatever.

32 (s) "Simple syrup" means a mixture of sugar and water.

33 (t) (1) "Sweetened beverage" means any sweetened nonalcoholic beverage  
34 sold for human consumption that has caloric sweeteners and contains more  
35 than twenty-five calories per twelve ounces, including, but not limited  
36 to, the following: soda water, ginger ale, root beer, all beverages  
37 commonly referred to as cola, lime, lemon, lemon-lime, and other  
38 flavored beverages, including any fruit or vegetable beverage containing  
39 less than fifty percent natural fruit juice or natural vegetable juice  
40 or combined natural fruit juice and natural vegetable juice, and all  
41 other drinks and beverages commonly referred to as "soda," "soda pop,"  
42 "soft drinks," "sports drinks," "energy drinks," "juice drinks," "ice  
43 teas," and "vitamin fortified waters."

44 (2) "Sweetened beverage" does not include any of the following:

45 (A) Any product sold in liquid form for consumption by infants, which  
46 is commonly referred to as "infant formula" or any product whose purpose  
47 is infant rehydration.

48 (B) Any product sold in liquid form for use for weight reduction.

49 (C) Water, to which no caloric sweeteners have been added.

50 (D) Milk or milk products.

51 (E) Medical food.

52 (F) Any sweetened beverage containing fifty percent or more of natural  
53 fruit juice or natural vegetable juice or combined natural fruit juice  
54 and natural vegetable juice.

55 (u) "Syrup" means the liquid mixture of ingredients used in making,  
56 mixing, or compounding sweetened beverages using one or more other

1 ingredients including, without limitation, water, ice, a powder, simple  
2 syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation  
3 or other gas.

4 § 331. Excise tax. There is hereby imposed an excise tax on every  
5 distributor for the privilege of distributing bottled sweetened beverages  
6 and concentrate in the state, calculated as follows:

7 (a) The tax on bottled sweetened beverages distributed in this state  
8 shall be one cent (\$0.01) per fluid ounce.

9 (b) The tax on concentrates distributed in this state either as  
10 concentrate or as a sweetened beverage derived from that concentrate,  
11 shall be equal to one cent (\$0.01) per fluid ounce of sweetened beverage  
12 produced from that concentrate. For purposes of calculating the tax for  
13 concentrate, the volume of sweetened beverage to be produced from  
14 concentrate shall be the largest volume resulting from use of the  
15 concentrate according to any manufacturer's instructions.

16 § 332. Distribution information. Each distributor shall include the  
17 following information on each receipt, invoice, or other form of  
18 accounting for the distribution of bottled sweetened beverages or  
19 concentrate:

20 (a) The name and address of the distributor.

21 (b) The name and address of the purchaser.

22 (c) The date of sale and invoice number.

23 (d) The kind, quantity, size, and capacity of packages of bottled  
24 sweetened beverages, sweetened beverages, or concentrate sold.

25 (e) The amount of excise taxes due to the commissioner from the  
26 distributor on the sale of the bottled sweetened beverages or concen-  
27 trate.

28 (f) Any other information as required by the commissioner.

29 § 333. Exemption. There is exempt from the taxes imposed by this arti-  
30 cle the distribution of bottled sweetened beverages or concentrate  
31 distributed by a distributor to:

32 (a) A distributor registered with the commissioner under this article  
33 when supported by a properly completed exemption certificate.

34 (b) To a person when, pursuant to the contract of sale, the bottled  
35 sweetened beverages or concentrates are required to be shipped and are  
36 shipped to a point outside of this state by the distributor by means of  
37 any of the following:

38 (1) Facilities operated by the distributor.

39 (2) Delivery by the distributor to a carrier, customs broker, or  
40 forwarding agent, whether hired by the purchaser or not, for shipment to  
41 the out-of-state point.

42 (c) To a person where the state is prohibited from taxing that sale,  
43 use, or consumption under the constitution or laws of the United States  
44 or under the constitution of this state.

45 § 334. Exemption certificate. The exemption certificate to be provided  
46 by a distributor to another distributor as required by subdivision (a)  
47 of section three hundred thirty-three of this article shall consist of a  
48 statement that is signed under penalty of perjury by a person with  
49 authority to bind the distributor. The certificate shall be dated and  
50 include the distributor's name and account number. A new certificate  
51 shall be given if any information in the current certificate changes.  
52 The certificate may be included as part of any business records normally  
53 used to document a sale or distribution.

54 § 335. Credit. A distributor who has paid a tax, either directly to  
55 the state or to another distributor registered under this article, and  
56 makes a subsequent distribution of bottled sweetened beverages or

1 concentrate may claim a credit on its return for the period in which the  
2 subsequent sale or distribution occurs.

3 § 336. Collection of tax. The commissioner shall administer and  
4 collect the tax imposed by this article.

5 § 337. Rules and regulations. The commissioner is hereby authorized to  
6 promulgate rules and regulations relating to the administration and  
7 enforcement of this article, including, but not limited to, collections,  
8 reporting, refunds, and appeals.

9 § 338. Taxes due. The taxes imposed by this article are due and paya-  
10 ble to the commissioner on or before the last day of the month following  
11 each tax quarter.

12 § 339. Electronic filing. (a) On or before the last day of the month  
13 following each tax quarter, a return for the preceding tax quarter shall  
14 be filed using electronic media with the commissioner.

15 (b) The commissioner may prescribe those forms and reporting require-  
16 ments as are necessary to implement the tax, including, but not limited  
17 to, information regarding the total amount of bottled sweetened beverag-  
18 es and concentrate sold and the amount of tax due.

19 (c) Returns shall be authenticated in a form or pursuant to methods as  
20 may be prescribed by the commissioner.

21 § 340. Registration. Every person required to pay the tax imposed  
22 under this article shall register with the commissioner. Every applica-  
23 tion for registration shall be made upon a form prescribed by the  
24 commissioner and shall set forth the name under which the applicant  
25 transacts or intends to transact business, the location of his or her  
26 place or places of business, and such other information as the commis-  
27 sioner may require. An application for an account shall be authenticated  
28 in a form or pursuant to methods as may be prescribed by the commis-  
29 ioner.

30 § 3. The state finance law is amended by adding a new section 99-aa to  
31 read as follows:

32 § 99-aa. Children's health promotion fund. 1. There is hereby estab-  
33 lished in the joint custody of the comptroller and the commissioner of  
34 taxation and finance a fund to be known as the "children's health  
35 promotion fund". The children's health promotion fund shall consist of  
36 all taxes, interest, penalties, and other amounts collected pursuant to  
37 article fifteen of the tax law.

38 2. All moneys in the children's health promotion fund shall, upon  
39 appropriation by the legislature, be allocated for the purposes of  
40 statewide childhood obesity prevention activities and programs as  
41 follows:

42 (a) Twenty percent to the department of health to coordinate statewide  
43 childhood obesity prevention activities and to fund state-level child-  
44 hood obesity prevention and children's dental programs. This funding  
45 shall support programs that use educational, environmental, policy, and  
46 other public health approaches that achieve the following goals: improve  
47 access to and consumption of healthy, safe, and affordable foods and  
48 beverages; reduce access to and consumption of calorie-dense, nutrient-  
49 poor foods; encourage physical activity; decrease sedentary behavior;  
50 and raise awareness about the importance of nutrition and physical  
51 activity to childhood obesity prevention.

52 (b) Thirty-five percent for community-based childhood obesity  
53 prevention programs. This funding shall support programs that use educa-  
54 tional, environmental, policy, and other public health approaches that  
55 achieve the following goals: improve access to and consumption of heal-  
56 thy, safe, and affordable foods and beverages; reduce access to and

1 consumption of calorie-dense, nutrient-poor foods; encourage physical  
2 activity; decrease sedentary behavior; and raise awareness about the  
3 importance of nutrition and physical activity to childhood obesity  
4 prevention. The commissioner of health shall be responsible for the  
5 distribution of these funds to community-based organizations and to  
6 local health departments, with priority given to counties that have the  
7 highest rates of childhood obesity.

8 (c) Ten percent to evidence-based prevention, early recognition, moni-  
9 toring, and weight management intervention activities in the medical  
10 setting. The commissioner of health shall be responsible for identifying  
11 activities and allocating these funds.

12 (d) Thirty-five percent to elementary and secondary schools for educa-  
13 tional, environmental, policy and other public health approaches that  
14 promote nutrition and physical activity. The approaches funded pursuant  
15 to this paragraph can include improving or building school recreational  
16 facilities that are used for recess and physical education; providing  
17 continuing education training for physical education teachers; hiring  
18 qualified physical education teachers; improving the quality and nutri-  
19 tion of school breakfasts, lunches, and snacks; ensuring free, clean  
20 drinking water access throughout the school day; and incorporating prac-  
21 tical nutrition education into the curriculum. The commissioner of  
22 education is responsible for the allocation and distribution of these  
23 funds.

24 3. All moneys in the children's health promotion fund shall be  
25 expended only for the purposes expressed in this section, and shall be  
26 used only to supplement existing levels of service and not to supplant  
27 current federal, state, or local funding for existing levels of service.

28 4. The commissioner of health and the commissioner of education are  
29 hereby authorized to promulgate such rules and regulations, and provide  
30 such procedural measures, as shall bring into effect the purposes of  
31 this section. The rules and regulations may provide for specific  
32 programs to be funded consistent with the allocation of funds set forth  
33 in this section.

34 § 4. This act shall take effect July 1, 2018, provided, however, that  
35 effective immediately, the addition, amendment and/or repeal of any rule  
36 or regulation necessary for the implementation of this act on its effec-  
37 tive date is authorized to be made and completed on or before such date.