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

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

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

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

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

(3) Any product for use for weight reduction.

(4) Milk or milk products.

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

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

(7) Medical food.

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

(f) "Consumer" means a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.

(g) "Distribution" includes:

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

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

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

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

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

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

(j) "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source, plant source, or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content.

(k) "Natural fruit juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Milk or milk products.

(E) Medical food.

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

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

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

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

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

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

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

(a) The name and address of the distributor.

(b) The name and address of the purchaser.

(c) The date of sale and invoice number.

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

(e) The amount of excise taxes due to the commissioner from the distributor on the sale of the bottled sweetened beverages or concentrate.

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

§ 333. Exemption. There is exempt from the taxes imposed by this article the distribution of bottled sweetened beverages or concentrate distributed by a distributor to:

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

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

(1) Facilities operated by the distributor.

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

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

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

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

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

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

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

§ 338. Taxes due. The taxes imposed by this article are due and payable to the commissioner on or before the last day of the month following each tax quarter.

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

(b) The commissioner may prescribe those forms and reporting requirements as are necessary to implement the tax, including, but not limited to, information regarding the total amount of bottled sweetened beverages and concentrate sold and the amount of tax due.

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

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

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

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

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

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

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

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

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

(d) Thirty-five percent to elementary and secondary schools for educational, environmental, policy and other public health approaches that promote nutrition and physical activity. The approaches funded pursuant to this paragraph can include improving or building school recreational facilities that are used for recess and physical education; providing continuing education training for physical education teachers; hiring qualified physical education teachers; improving the quality and nutrition of school breakfasts, lunches, and snacks; ensuring free, clean drinking water access throughout the school day; and incorporating practical nutrition education into the curriculum. The commissioner of education is responsible for the allocation and distribution of these funds.

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

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

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