

STATE OF NEW YORK

9925

IN ASSEMBLY

February 27, 2020

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

AN ACT to amend the tax law and the state finance law, in relation to imposing an excise tax on sugary drinks

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

1 Section 1. The tax law is amended by adding a new article 17 to read
2 as follows:

ARTICLE 17

EXCISE TAX ON SUGARY DRINKS

Section 400. Definitions.

6 401. Imposition of excise tax.

7 402. Report of sales and remittance of tax.

8 403. Deposit and disposition of revenue

9 404. Records of distributors.

10 405. Exemptions.

11 406. Rules and regulations.

12 407. Severability.

13 § 400. Definitions. As used in this article, the following terms shall
14 have the following meanings:

15 1. "Beverage for medical use" means a beverage suitable for human
16 consumption and manufactured for use as an oral nutritional therapy for
17 persons who cannot absorb or metabolize dietary nutrients from food or
18 beverages, or for use as an oral rehydration electrolyte solution for
19 infants and children formulated to prevent or treat dehydration due to
20 illness. "Beverage for medical use" shall also mean a "medical food" as
21 defined in section 5(b)(3) of the Orphan Drug Act (2113 U.S.C.
22 360ee(b)(3)). "Beverage for medical use" shall not include drinks
23 commonly referred to as "sports drinks" or any other common names that
24 are derivations thereof.

25 2. "Bottle" means any closed or sealed container regardless of size or
26 shape, including, without limitation, those made of glass, metal, paper,
27 plastic or any other material or combination of materials.

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

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1 3. "Bottled sugary drink" means any sugary drink contained in a bottle
2 that is ready for consumption without further processing such as, with-
3 out limitation, dilution or carbonation.

4 4. "Consumer" means a person who purchases a sugary drink for consump-
5 tion and not for sale to another.

6 5. "Distributor" means any person, including manufacturers and whole-
7 sale dealers, who receives, stores, manufactures, bottles and/or
8 distributes bottled sugary drinks, syrups or powders, for sale to
9 retailers doing business in the state, whether or not that person also
10 sells such products to consumers.

11 6. "Milk" means natural liquid milk regardless of animal or plant
12 source or butterfat content; natural milk concentrate, whether or not
13 reconstituted; or dehydrated natural milk, whether or not reconstituted.

14 7. "Natural fruit juice" means the original liquid resulting from the
15 pressing of fruits, or the liquid resulting from the dilution with water
16 of dehydrated natural fruit juice.

17 8. "Natural vegetable juice" means the original liquid resulting from
18 the pressing of vegetables, or the liquid resulting from the dilution
19 with water of dehydrated natural vegetable juice.

20 9. "Non-nutritive sweetener" means any non-nutritive substance suit-
21 able for human consumption that humans perceive as sweet and includes,
22 but is not limited to, aspartame, acesulfame-K, neotame, saccharin,
23 sucralose and stevia. "Non-nutritive sweetener" excludes sugars. For
24 purposes of this definition, "non-nutritive sweetener" means a substance
25 that contains fewer than five calories per serving.

26 10. "Person" means any natural person, partnership, cooperative asso-
27 ciation, limited liability company, corporation, personal represen-
28 tative, receiver, trustee, assignee or any other legal entity.

29 11. "Place of business" means any place where sugary drinks, syrups or
30 powders are manufactured or received for sale in the state.

31 12. "Powder" means any solid mixture of ingredients used in making,
32 mixing, or compounding sugary drinks by mixing the powder with any one
33 or more other ingredients, including without limitation water, ice,
34 syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice,
35 carbonation or other gas.

36 13. "Retailer" means any person who sells or otherwise dispenses in
37 the state a sugary drink to a consumer whether or not that person is
38 also a distributor as defined in this section.

39 14. "Sale" means the transfer of title or possession for valuable
40 consideration regardless of the manner by which the transfer is
41 completed.

42 15. "Sugars" means any monosaccharide or disaccharide nutritive sweet-
43 ener such as glucose, fructose, lactose, and sucrose. Examples include,
44 but are not limited to, cane sugar, beet sugar, high-fructose corn
45 syrup, honey, fruit juice concentrate, and other caloric sweeteners. For
46 purposes of this definition, "nutritive" means a substance that contains
47 five or more calories per serving.

48 16. "Sugary drink" means any nonalcoholic beverage, carbonated or
49 noncarbonated, which is intended for human consumption and contains any
50 added sugars. As used in this definition, "nonalcoholic beverage" means
51 any beverage that contains less than one-half of one percent alcohol per
52 volume.

53 17. "Syrup" means a liquid mixture of ingredients used in making,
54 mixing, or compounding sugary drinks using one or more other ingredients
55 including, without limitation, water, ice, a powder, simple syrup,

1 fruits, vegetables, fruit juice, vegetable juice, carbonation or other
2 gas.

3 18. "Water" means no-calorie liquid water, which is either non-fla-
4 vored or flavored without the use of sugars. "Water" may be carbonated
5 (including but not limited to club soda and seltzer), still, distilled
6 and/or purified.

7 § 401. Imposition of excise tax. 1. There are hereby levied and
8 imposed on a distributor excise taxes at the following rates:

9 (a) Beverages:

10 (i) Beverages with seven and a half grams of sugars or less per twelve
11 fluid ounces shall not be taxed.

12 (ii) Beverages with more than seven and a half grams but less than
13 thirty grams of sugars per twelve fluid ounces shall be taxed at a rate
14 of one cent per ounce.

15 (iii) Beverages with thirty grams of sugars or more per twelve fluid
16 ounces shall be taxed at a rate of two cents per ounce.

17 (b) Syrups and powders sold or offered for sale to a retailer for sale
18 in the state to a consumer, either as syrup or powder or as a sugary
19 drink derived from such syrup or powder:

20 (i) If the beverages made from the syrup or powder have seven and a
21 half grams of sugars or less per twelve fluid ounces, such syrup or
22 powder shall not be taxed.

23 (ii) If the beverages made from the syrup or powder have more than
24 seven and a half grams but less than thirty grams of sugars per twelve
25 fluid ounces, such syrup or powder shall be taxed at a rate equal to one
26 cent per ounce of sugary drink produced from that syrup or powder.

27 (iii) If the beverages made from the syrup or powder have thirty grams
28 of sugars or more per twelve fluid ounces, such syrup or powder shall be
29 taxed at a rate equal to two cents per ounce of sugary drink produced
30 from that syrup or powder.

31 (c) For purposes of calculating the tax imposed pursuant to paragraph
32 (b) of this subdivision, the volume of sugary drink produced from syrups
33 or powders shall be the larger of (i) the largest volume resulting from
34 use of the syrups or powders according to the manufacturer's
35 instructions, or (ii) the volume actually produced by the retailer, as
36 reasonably determined by the commissioner.

37 2. The nutrition facts product label, as required by the food and drug
38 administration, shall be used to determine the amount of sugars per
39 twelve ounces of sugary drink by referencing the "serving size" and
40 "sugars" or "total sugars" lines on the label.

41 3. The tax rates set forth in this section shall be adjusted annually
42 by the commissioner in proportion with the Consumer Price Index: All
43 Urban Consumers for All Items for the Northeast Region Statistical Area
44 as reported by the United States bureau of labor statistics or any
45 successor to that index.

46 4. Manufacturers, bottlers, wholesalers or distributors shall add the
47 amount of the tax imposed by this section to the retail price of sugary
48 drinks.

49 5. A retailer who sells bottled sugary drinks, syrups or powders in
50 the state to a consumer, on which the tax imposed by this section has
51 not been paid by a distributor, is liable for the tax imposed in subdi-
52 vision one of this section at the point of sale to a consumer.

53 6. The taxes imposed by this section are in addition to any other
54 taxes that may apply to persons or products subject to this chapter.

55 § 402. Report of sales and remittance of tax. Any distributor or
56 retailer liable for the tax imposed by this article shall, on or before

1 the last day of March, June, October, and December of each year, file
2 with the department a return, on forms to be prescribed by the commis-
3 sioner and furnished by the department, stating the quantity of sugary
4 drinks, syrups and powders subject to the excise tax imposed by this
5 article sold or offered for sale in the three months immediately preced-
6 ing the month in which the report is due, and any other information
7 required by the commissioner, along with the tax due.

8 § 403. Deposit and disposition of revenue. All taxes collected or
9 received by the department under this article shall be deposited in the
10 children's health promotion fund established pursuant to the provisions
11 of section ninety-nine-hh of the state finance law.

12 § 404. Records of distributors. Every distributor, and every retailer
13 subject to this chapter, shall maintain for not less than two years
14 accurate records, showing all transactions that gave rise, or may have
15 given rise, to tax liability under this chapter. Such records are
16 subject to inspection by the commissioner at all reasonable times during
17 normal business hours.

18 § 405. Exemptions. The following shall be exempt from the tax imposed
19 by this chapter:

20 1. Bottled sugary drinks, syrups, and powders sold to the United
21 States government or an Indian nation or tribe.

22 2. Bottled sugary drinks, syrups, and powders sold by a distributor to
23 another distributor if the sales invoice clearly indicates that the sale
24 is exempt. If the sale is to a person who is both a distributor and a
25 retailer, the sale shall also be tax exempt and the tax shall be paid
26 when the purchasing distributor or retailer resells the product to a
27 retailer or a consumer. This exemption does not apply to any other sale
28 to a retailer.

29 3. Beverages sweetened solely with non-nutritive sweeteners.

30 4. Beverages consisting of one hundred percent natural fruit or vege-
31 table juice with no added sugars.

32 5. Beverages in which milk, or soy, rice or similar milk substitute,
33 is the primary ingredient or the first listed ingredient on the label of
34 the beverage.

35 6. Coffee or tea without added sugars.

36 7. Infant formula.

37 8. Beverages for medical use.

38 9. Water without added sugars.

39 § 406. Rules and regulations. The commissioner shall promulgate any
40 rules and regulations necessary to carry out the provisions of this
41 article.

42 § 407. Severability. If any clause, sentence, paragraph, section or
43 part of this article shall be adjudged by any court of competent juris-
44 isdiction to be invalid, such judgment shall not affect, impair, or inval-
45 idate the remainder thereof, but shall be confined in its operation to
46 the clause, sentence, paragraph, section, or part thereof directly
47 involved in the controversy in which such judgment shall have been
48 rendered.

49 § 2. The state finance law is amended by adding a new section 99-hh to
50 read as follows:

51 § 99-hh. Children's health promotion fund. 1. There is hereby estab-
52 lished in the joint custody of the comptroller and the commissioner of
53 taxation and finance a fund to be known as the "children's health
54 promotion fund". The children's health promotion fund shall consist of
55 all taxes, interest, penalties, and other amounts collected pursuant to
56 article seventeen of the tax law.

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

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

15 (b) Thirty-five percent for community-based childhood obesity
16 prevention programs. This funding shall support programs that use educa-
17 tional, environmental, policy, and other public health approaches that
18 achieve the following goals: improve access to and consumption of heal-
19 thy, safe, and affordable foods and beverages; reduce access to and
20 consumption of calorie-dense, nutrient-poor foods; encourage physical
21 activity; decrease sedentary behavior; and raise awareness about the
22 importance of nutrition and physical activity to childhood obesity
23 prevention. The commissioner of health shall be responsible for the
24 distribution of these funds to community-based organizations and to
25 local health departments, with priority given to counties that have the
26 highest rates of childhood obesity.

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

31 (d) Thirty-five percent to elementary and secondary schools for educa-
32 tional, environmental, policy and other public health approaches that
33 promote nutrition and physical activity. The approaches funded pursuant
34 to this paragraph can include improving or building school recreational
35 facilities that are used for recess and physical education; providing
36 continuing education training for physical education teachers; hiring
37 qualified physical education teachers; improving the quality and nutri-
38 tion of school breakfasts, lunches, and snacks; ensuring free, clean
39 drinking water access throughout the school day; and incorporating prac-
40 tical nutrition education into the curriculum. The commissioner of
41 education is responsible for the allocation and distribution of these
42 funds.

43 3. Monies shall be payable from the fund on the audit and warrant of
44 the comptroller on vouchers approved and certified by the commissioner
45 of health.

46 § 3. This act shall take effect on the first of January next succeed-
47 ing the date on which it shall have become a law. Effective immediately,
48 the addition, amendment and/or repeal of any rule or regulation neces-
49 sary for the implementation of this act on its effective date are
50 authorized to be made and completed on or before such effective date.