

# STATE OF NEW YORK

6857--A

2021-2022 Regular Sessions

## IN ASSEMBLY

April 12, 2021

Introduced by M. of A. REYES -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

### ARTICLE 17

#### EXCISE TAX ON SUGARY DRINKS

##### Section 400. Definitions.

401. Imposition of excise tax.

402. Report of sales and remittance of tax.

403. Deposit and disposition of revenue

404. Records of distributors.

405. Exemptions.

406. Rules and regulations.

407. Severability.

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

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

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

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

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

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

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

14    6. "Milk" means natural liquid milk regardless of animal or plant  
15    source or butterfat content; natural milk concentrate, whether or not  
16    reconstituted; or dehydrated natural milk, whether or not reconstituted.

17    7. "Natural fruit juice" means the original liquid resulting from the  
18    pressing of fruits, or the liquid resulting from the dilution with water  
19    of dehydrated natural fruit juice.

20    8. "Natural vegetable juice" means the original liquid resulting from  
21    the pressing of vegetables, or the liquid resulting from the dilution  
22    with water of dehydrated natural vegetable juice.

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

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

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

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

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

42    14. "Sale" means the transfer of title or possession for valuable  
43    consideration regardless of the manner by which the transfer is  
44    completed.

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

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

17. "Syrup" means a liquid mixture of ingredients used in making, mixing, or compounding sugary drinks using one or more other ingredients including, without limitation, water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation or other gas.

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

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

(a) Beverages:

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 402. Report of sales and remittance of tax. Any distributor or retailer liable for the tax imposed by this article shall, on or before the last day of March, June, October, and December of each year, file with the department a return, on forms to be prescribed by the commissioner and furnished by the department, stating the quantity of sugary drinks, syrups and powders subject to the excise tax imposed by this article sold or offered for sale in the three months immediately preceding the month in which the report is due, and any other information required by the commissioner, along with the tax due.

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

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

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

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

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

3. Beverages sweetened solely with non-nutritive sweeteners.

4. Beverages consisting of one hundred percent natural fruit or vegetable juice with no added sugars.

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

6. Coffee or tea without added sugars.

7. Infant formula.

8. Beverages for medical use.

9. Water without added sugars.

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

§ 407. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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

§ 99-ii. Children's health promotion fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of

1 taxation and finance a fund to be known as the "children's health  
2 promotion fund". The children's health promotion fund shall consist of  
3 all taxes, interest, penalties, and other amounts collected pursuant to  
4 article seventeen of the tax law.

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

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

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

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

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

47 3. Monies shall be payable from the fund on the audit and warrant of  
48 the comptroller on vouchers approved and certified by the commissioner  
49 of health.

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