STATE OF NEW YORK

5107--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 2, 2023

Introduced by M. of A. REYES, KELLES, ZACCARO -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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; and to amend the public health law, in relation to community health benefits

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. Local taxes on sugary drinks by municipalities.
403. Report of sales and remittance of tax.
404. Deposit and disposition of revenue.
405. Records of distributors.
406. Exemptions.
407. Rules and regulations.
408. 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

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

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defined in section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).

2. "Bottle" 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.

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

4. "Consumer" means a person who purchases a sugary drink for consumption and not for sale to another.

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

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

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

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

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

10. "Person" means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee or any other legal entity.

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

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

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

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

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

16. "Sugary drink" means any nonalcoholic beverage, carbonated or noncarbonated, which is intended for human consumption and contains any added sugars. As used in this definition, "nonalcoholic beverage" means

any beverage that contains less than one-half of one percent alcohol per 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 reviewed annually and adjusted periodically by the commissioner as needed to maintain a consistent effect relative to inflation.

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. Local taxes on sugary drinks by municipalities. 1. Any city or municipality in this state acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such municipality an excise tax on a distributor on the following products:

(a) Beverages with more than seven and a half grams of sugars per twelve fluid ounces.

(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 if the beverages made from the syrup or powder have more than seven and a half grams of sugars per twelve fluid ounces.

2. All the provisions of this article shall apply to the taxes authorized by subdivision one of this section, so far as such article can be made applicable to the taxes authorized by this section with such limitations as set forth in this section and such modifications as may be necessary in order to adapt such language to the local taxes authorized by this section. Provided, however, in every case where the words "this state" appear, such words "this state" shall be read as "this municipality" for purposes of the taxes authorized by this section. Where the word "state" is used in a phrase referring to the sale or use of sugary drinks in this state, such word "state" shall be read as "municipality" for purposes of the taxes authorized by this section, unless the word "municipality" clearly is not applicable.

3. Any taxes imposed pursuant to the authority of this section shall be administered and collected by the tax commission in the same manner as the taxes imposed under section four hundred one of this article subject to all provisions of this article as may be applicable. The state tax commission is hereby empowered to make such provisions as it deems necessary for the joint administration and collection of the state and local taxes imposed and authorized by this article. Nothing in this article which requires payment of both state and local taxes to the tax commission shall be construed as the payment of either tax more than once.

4. A local law imposing taxes pursuant to the authority of this section or repealing or suspending such taxes must go into effect only on the first day of a calendar month. No such local law shall be effective unless a certified copy of such law is mailed by registered mail to the state tax commission at its office in Albany at least sixty days prior to the date it is to become effective. However, the tax commission, by resolution, may waive and reduce such sixty day minimum notice requirement to a mailing of such certified copy by registered mail within a period of not less than thirty days prior to such effective date if it deems such action to be consistent with its duties under this section.

5. Certified copies of any local law described in this section shall also be filed with the clerk of the municipality, the secretary of state and the state comptroller within five days after the date it is enacted.

6. All taxes, penalties and interest imposed by a municipality under the authority of this section, which are collected by the state tax commission, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for such municipality imposing the tax. Such deposits shall be kept separate and apart

from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the tax commission. The comptroller shall retain in his hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds in respect of the taxes imposed under the authority of this section, and for reasonable costs of the state tax commission in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under the provisions of this article. The amount so payable shall be certified to the comptroller by the president of the state tax commission or his delegate, who shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to such municipality in any such distribution is more or less than the amount then due to such municipality, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the state tax commission or his delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to such municipality shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the state tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts or circumstances.

7. As used in this section, "municipality" shall mean any county, town, village or city within the state.

§ 403. 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 April, July, October, and January 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.

§ 404. Deposit and disposition of revenue. All taxes collected or received by the department under this article shall be deposited in the community health equity fund established pursuant to the provisions of section ninety-nine-rr of the state finance law; provided, however, that the provisions of this section shall not apply to taxes collected or received pursuant to any tax imposed pursuant to the provisions of section four hundred two of this article.

§ 405. 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.

§ 406. 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. Unsweetened drinks to which a purchaser can add, or can request that a seller add, sugar at the point of sale, such as coffee or tea.

7. Infant formula.

8. Beverages for medical use.

9. Water without added sugars.

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

§ 408. 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-rr to read as follows:

§ 99-rr. Community health equity 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 "community health equity fund". The community health equity fund shall consist of all taxes, interest, penalties, and other amounts collected pursuant to article seventeen of the tax law.

2. All moneys in the community health equity fund shall, upon appropriation by the legislature, be allocated for the purposes of statewide programs. Up to five hundred thousand dollars shall be allocated to the community health benefits trust account for the establishment and operation of the community advisory board on health equity, as provided in section two hundred forty-four-b of the public health law. Of the remaining funds, moneys shall be allocated as follows:

(a) Fifty percent to supplemental nutrition assistance program (SNAP) incentives. Such funding shall support programs that provide recipients of SNAP with additional moneys or coupons directed to their electronic benefits transfer card when they purchase fruits and vegetables. This allocation of funds shall be used to promote the consumption of fruits and vegetables and foster a healthier community.

(b) Fifty percent to be dispersed to the community health benefits trust established pursuant to the provisions of section two hundred forty-four-a of the public health law.

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

§ 3. Article 2 of the public health law is amended by adding a new title 3-A to read as follows:

TITLE III-A
COMMUNITY HEALTH BENEFITS

Section 244. Empire state community benefits grant.
244-a. Community health benefits trust.
244-b. Community advisory board on health equity.

§ 244. Empire state community benefits grant. The commissioner shall establish a grant program to be administered by the department and to be known as the "empire state community benefits grant". Such grant shall be made available to, but not limited to, community-based programs and organizations related to promoting food access and equity in the community, improving community nutrition, increasing access to nutrient rich foods in schools, identifying and improving the quality of school-based courts, playgrounds, parks or trails, promoting physical activity and exercise, reducing nutrition related chronic illnesses including diabetes, heart disease, obesity and tooth decay, and targeting communities most affected by adverse health disparities, community-based initiatives that impact social determiners of health, among other community-based programs and organizations. Such community-based programs and organizations shall submit an application to the department to determine their eligibility. The commissioner shall promulgate rules and regulations regarding eligibility, the application process, and awarding of grants pursuant to this section. All moneys for grants awarded pursuant to this section shall be from the community health benefits trust established pursuant to section two hundred forty-four-a of this title.

§ 244-a. Community health benefits trust. 1. There is hereby established in the joint custody of the commissioner and the comptroller, a trust fund to be known as the "community health benefits trust". Moneys deposited into the community health benefits trust shall be utilized solely for the purpose of awarding grants pursuant to the provisions of section two hundred forty-four of this title.

2. The comptroller shall track and maintain a record of all moneys of the community health benefits trust and shall provide an annual report to the governor, temporary president of the senate and speaker of the assembly outlining how such moneys were allocated, how the allocation of such moneys was determined and how such moneys were ultimately spent. This report shall be submitted to the executive and legislature no later than December thirty-first of each calendar year. This report shall be published and made public on the department's website no later than thirty days after submission.

§ 244-b. Community advisory board on health equity. 1. A community advisory board on health equity shall be established within the department to make recommendations on the allocation of funds received pursuant to section ninety-nine-rr of the state finance law to support and improve health equity.

2. (a) The board shall consist of thirteen members and shall be appointed as follows:

(i) five members shall be appointed by the governor;

(ii) three members shall be appointed by the temporary president of the senate;

(iii) three members shall be appointed by the speaker of the assembly;

(iv) one member shall be appointed by the minority leader of the senate; and

(v) one member shall be appointed by the minority leader of the assembly.

(b) Four members of the board shall be representatives of the public health system; three members shall have experience in the implementation of community-based programs and organizations that have a focus on expanding health food access and food security; three members shall have experience in researching or evaluating programs related to the consumption of sugary beverages; and three members shall be representative of those communities that have been disproportionately impacted by the effects of sugar-sweetened beverage consumption.

(c) For the purposes of this section, communities that have been disproportionately affected by the consumption of sugar-sweetened beverages shall be determined by the commissioner by reviewing data which shall include, but is not limited to, the following:

(i) the rate of adult or childhood obesity in a community;

(ii) the rate of diabetes in a community;

(iii) the rate of cardiovascular disease in a community;

(iv) the rate of geographic proximity to healthy food and beverage options in a community;

(v) the rate of dental decay in a community; and

(vi) the rate of liver disease in a community.

3. The board shall have its first meeting within six months of the effective date of this section and shall meet every six months thereafter.

4. A majority of the appointed voting membership of the board shall constitute a quorum, but not less than seven voting members shall be necessary for any action taken by the board.

5. The board shall be staffed by the department and may create technical advisory workgroups as deemed necessary.

6. Members of the board shall serve for a term of three years, at which point such membership position shall be subject to reappointment.

7. Vacancies on the board shall be filled in the same manner as the original appointment upon the expiration of a member's term pursuant to subdivision six of this section, or upon the death, resignation or removal of any such member.

8. Community advisory board members shall serve without compensation but shall be reimbursed for their necessary and actual expenses incurred while engaged in the business of the community advisory board.

9. The board shall prepare an annual report detailing the amount of funds in the health equity account pursuant to section ninety-nine-qq of the state finance law, including but not limited to any unspent funds, recommendations for the use of any unspent funds, the programs and initiatives implemented with the allocated funding, and an impact evaluation of such initiatives. The initial report shall be submitted to the governor, speaker of the assembly and temporary president of the senate no later than two years following the effective date of this section. Such reports shall also be posted on the department's website.

§ 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.