

# 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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1 defined in section 5(b)(3) of the Orphan Drug Act (21 U.S.C.  
2 360ee(b)(3)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 any beverage that contains less than one-half of one percent alcohol per  
2 volume.

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

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

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

14 (a) Beverages:

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

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

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

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

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

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

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

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

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

46 3. The tax rates set forth in this section shall be reviewed annually  
47 and adjusted periodically by the commissioner as needed to maintain a  
48 consistent effect relative to inflation.

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

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

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

3 § 402. Local taxes on sugary drinks by municipalities. 1. Any city or  
4 municipality in this state acting through its local legislative body,  
5 is hereby authorized and empowered to adopt and amend local laws impos-  
6 ing in any such municipality an excise tax on a distributor on the  
7 following products:

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

10 (b) Syrups and powders sold or offered for sale to a retailer for sale  
11 in the state to a consumer, either as syrup or powder or as a sugary  
12 drink derived from such syrup or powder if the beverages made from  
13 the syrup or powder have more than seven and a half grams of sugars per  
14 twelve fluid ounces.

15 2. All the provisions of this article shall apply to the taxes author-  
16 ized by subdivision one of this section, so far as such article can be  
17 made applicable to the taxes authorized by this section with such limi-  
18 tations as set forth in this section and such modifications as may be  
19 necessary in order to adapt such language to the local taxes authorized  
20 by this section. Provided, however, in every case where the words "this  
21 state" appear, such words "this state" shall be read as "this munici-  
22 pality" for purposes of the taxes authorized by this section. Where the  
23 word "state" is used in a phrase referring to the sale or use of sugary  
24 drinks in this state, such word "state" shall be read as "municipality"  
25 for purposes of the taxes authorized by this section, unless the word  
26 "municipality" clearly is not applicable.

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

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

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

51 6. All taxes, penalties and interest imposed by a municipality under  
52 the authority of this section, which are collected by the state tax  
53 commission, shall be deposited daily with such responsible banks, bank-  
54 ing houses or trust companies, as may be designated by the state comp-  
55 troller, to the credit of the comptroller, in trust for such munici-  
56 pality imposing the tax. Such deposits shall be kept separate and apart

1 from all other monies in the possession of the comptroller. The comp-  
2 troller shall require adequate security from all such depositories of  
3 such revenue collected by the tax commission. The comptroller shall  
4 retain in his hands such amount as the commissioner of taxation and  
5 finance may determine to be necessary for refunds in respect of the  
6 taxes imposed under the authority of this section, and for reasonable  
7 costs of the state tax commission in administering, collecting and  
8 distributing such taxes, out of which the comptroller shall pay any  
9 refunds of such taxes to which taxpayers shall be entitled under the  
10 provisions of this article. The amount so payable shall be certified to  
11 the comptroller by the president of the state tax commission or his  
12 delegate, who shall not be held liable for any inaccuracy in such  
13 certificate. Where the amount so paid over to such municipality in any  
14 such distribution is more or less than the amount then due to such muni-  
15 cipality, the amount of the overpayment or underpayment shall be certi-  
16 fied to the comptroller by the president of the state tax commission or  
17 his delegate, who shall not be held liable for any inaccuracy in such  
18 certificate. The amount of the overpayment or underpayment shall be so  
19 certified to the comptroller as soon after the discovery of the overpay-  
20 ment or underpayment as reasonably possible and subsequent payments and  
21 distributions by the comptroller to such municipality shall be adjusted  
22 by subtracting the amount of any such overpayment from or by adding the  
23 amount of any such underpayment to such number of subsequent payments  
24 and distributions as the comptroller and the president of the state tax  
25 commission shall consider reasonable in view of the amount of the over-  
26 payment or underpayment and all other facts or circumstances.

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

29 § 403. Report of sales and remittance of tax. Any distributor or  
30 retailer liable for the tax imposed by this article shall, on or before  
31 the last day of April, July, October, and January of each year, file  
32 with the department a return, on forms to be prescribed by the commis-  
33 sioner and furnished by the department, stating the quantity of sugary  
34 drinks, syrups and powders subject to the excise tax imposed by this  
35 article sold or offered for sale in the three months immediately preced-  
36 ing the month in which the report is due, and any other information  
37 required by the commissioner, along with the tax due.

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

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

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

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

55 2. Bottled sugary drinks, syrups, and powders sold by a distributor to  
56 another distributor if the sales invoice clearly indicates that the sale



1 is exempt. If the sale is to a person who is both a distributor and a  
2 retailer, the sale shall also be tax exempt and the tax shall be paid  
3 when the purchasing distributor or retailer resells the product to a  
4 retailer or a consumer. This exemption does not apply to any other sale  
5 to a retailer.

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

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

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

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

14 7. Infant formula.

15 8. Beverages for medical use.

16 9. Water without added sugars.

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

20 § 408. Severability. If any clause, sentence, paragraph, section or  
21 part of this article shall be adjudged by any court of competent juris-  
22 isdiction to be invalid, such judgment shall not affect, impair, or inval-  
23 idate the remainder thereof, but shall be confined in its operation to  
24 the clause, sentence, paragraph, section, or part thereof directly  
25 involved in the controversy in which such judgment shall have been  
26 rendered.

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

29 § 99-rr. Community health equity fund. 1. There is hereby established  
30 in the joint custody of the comptroller and the commissioner of taxation  
31 and finance a fund to be known as the "community health equity fund".  
32 The community health equity fund shall consist of all taxes, interest,  
33 penalties, and other amounts collected pursuant to article seventeen of  
34 the tax law.

35 2. All moneys in the community health equity fund shall, upon appro-  
36 priation by the legislature, be allocated for the purposes of statewide  
37 programs. Up to five hundred thousand dollars shall be allocated to the  
38 community health benefits trust account for the establishment and opera-  
39 tion of the community advisory board on health equity, as provided in  
40 section two hundred forty-four-b of the public health law. Of the  
41 remaining funds, moneys shall be allocated as follows:

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

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

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

54 § 3. Article 2 of the public health law is amended by adding a new  
55 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.