
A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Title 14, Hawaii Revised Statutes, is amended
2 by adding a new chapter to be appropriately designated and to
3 read as follows:

4 "CHAPTER . SOFT DRINK AND SYRUP TAX LAW

5 § -1 Definitions. Whenever used in this chapter, unless
6 the context otherwise requires:

7 "Bottle" means any closed or sealed glass, metal, paper, or
8 plastic container or any other type of container regardless of
9 the size or shape of the container.

10 "Bottled soft drink" means any ready-to-consume soft drink
11 contained in a bottle.

12 "Distributor, manufacturer, or wholesale dealer" means any
13 person who receives, stores, manufactures, bottles, or sells
14 bottled soft drinks, syrup, simple syrup, powder, or base
15 products for mixing, compounding, or making soft drinks for sale
16 to retailers or other manufacturers, wholesale dealers, or
17 distributors for resale purposes.



1 "Milk" means natural liquid milk regardless of animal
2 source or butterfat content, natural milk concentrate, whether
3 or not reconstituted, regardless of animal source or butterfat
4 content, or dehydrated natural milk, whether or not
5 reconstituted.

6 "Natural fruit juice" means the original liquid resulting
7 from the pressing of fruit, the liquid resulting from the
8 reconstitution of fruit juice concentrate, or the liquid
9 resulting from the restoration of water to dehydrated fruit
10 juice.

11 "Natural vegetable juice" means the original liquid
12 resulting from the pressing of vegetables, the liquid resulting
13 from the reconstitution of vegetable juice concentrate, or the
14 liquid resulting from the restoration of water to dehydrated
15 vegetable juice.

16 "Nonalcoholic beverage" means any beverage not subject to
17 tax under chapter 244D.

18 "Place of business" means any place where soft drinks,
19 syrups, simple syrups, powder, or base products are manufactured
20 or any place where bottled soft drinks, syrup, simple syrup,
21 powder, base product, or any other item taxed under this chapter
22 is received.



1 "Powder or base product" means a solid mixture of basic
2 ingredients used in making, mixing, or compounding soft drinks
3 by mixing the powder or other base with water, ice, syrup,
4 simple syrup, fruits, vegetables, fruit juice, vegetable juice,
5 or any other product suitable to make a soft drink.

6 "Retailer" means any person, other than a distributor,
7 manufacturer, or wholesale dealer, who receives, stores, mixes,
8 compounds, or manufactures any soft drink and sells or otherwise
9 dispenses the soft drink to the ultimate consumer.

10 "Sale" means the transfer of title or possession for a
11 valuable consideration of tangible personal property regardless
12 of the manner in which the transfer is accomplished.

13 "Simple syrup" means a mixture of sugar and water.

14 "Soft drink" means any nonalcoholic beverage, whether
15 naturally or artificially flavored, whether carbonated or
16 noncarbonated, sold for human consumption, including soda water,
17 cola and other flavored drinks, any fruit or vegetable drink
18 containing ten per cent or less of natural fruit juice or
19 natural vegetable juice, and all other drinks and beverages
20 commonly referred to as soft drinks, but not including coffee or
21 tea unless the coffee or tea is bottled as a liquid for sale.



1 "Syrup" means the liquid mixture of basic ingredients used
2 in making, mixing, or compounding soft drinks by mixing the
3 syrup with water, simple syrup, ice, fruits, vegetables, fruit
4 juice, vegetable juice, or any other product suitable to make a
5 soft drink.

6 § -2 Tax imposed. (a) There is imposed a gallonage tax
7 on every distributor, manufacturer, or wholesale dealer. For
8 the period July 1, 2009, and thereafter, the tax shall be:

9 (1) \$1.00 per gallon of syrup or simple syrup sold or
10 offered for sale; and

11 (2) \$1.00 per gallon of bottled soft drinks sold or
12 offered for sale.

13 (b) When a package or container of powder or base product
14 is sold or offered for sale in the state, the tax on the sale of
15 each package or container shall be equal to \$1.00 for each
16 gallon of soft drink that may be produced from each package or
17 container by following the manufacturer's instructions. This
18 tax shall apply when the powder or base product is sold to a
19 retailer for sale to the ultimate consumer after the soft drink
20 is produced by the retailer.

21 (c) All moneys collected under this chapter shall be
22 deposited to the general fund.



1 **§ -3 Return, form, contents.** Every taxpayer shall, on
2 or before the last day of each month, file with the department
3 of taxation in the taxation district in which the taxpayer's
4 business premises are located, or with the department in
5 Honolulu, a return showing all sales of soft drinks and syrup by
6 gallonage and dollar volume made by the taxpayer during the
7 preceding month, showing separately the amount of the nontaxable
8 sales, the amount of the taxable sales, and the tax payable
9 thereon. The return shall also show the amount of soft drinks
10 and syrup by gallonage and dollar volume taxed used during the
11 preceding month which is subject to tax, and the tax payable
12 thereon. The form of return shall be prescribed by the
13 department and shall contain such information as it may deem
14 necessary for the proper administration of this chapter.

15 **§ -4 Payment of tax; penalties.** At the time of the
16 filing of the return required under this chapter and within the
17 time prescribed, each taxpayer shall pay to the department of
18 taxation the tax imposed by this chapter, required to be shown
19 by the return.

20 Penalties and interest shall be added to and become a part
21 of the tax, when and as provided by this chapter.



1 § -5 **Exemptions.** The following are exempted from the
2 tax imposed by this chapter:

3 (1) Syrups, simple syrups, powder, base products, or soft
4 drinks sold to the federal government;

5 (2) Syrups, simple syrups, powder, base products, or soft
6 drinks exported from the state by a distributor,
7 manufacturer, or wholesale dealer;

8 (3) Any powder or base product used in preparing coffee or
9 tea;

10 (4) Any frozen, freeze-dried, or other concentrate to
11 which only water is added to produce a nonalcoholic
12 beverage containing more than ten per cent natural
13 fruit juice or natural vegetable juice;

14 (5) Any nonalcoholic beverage containing more than ten per
15 cent natural fruit juice or natural vegetable juice;

16 (6) Any product, whether sold in liquid or powder form,
17 that is intended by its manufacturer for consumption
18 by infants and that is commonly referred to as infant
19 formula;

20 (7) Water to which no flavoring, whether artificial or
21 natural, has been added and that has not been
22 artificially carbonated;



1 (8) Any product, whether sold in liquid or powder form,
2 that is intended by its manufacturer for use as a
3 dietary supplement or for weight reduction;

4 (9) Any powder or base product that is intended by its
5 manufacturer to be sold and used to domestically mix
6 soft drinks by the ultimate consumer; and

7 (10) Any product containing milk or milk products.

8 § -6 **Records to be kept.** (a) Every distributor,
9 manufacturer, and wholesale dealer shall keep a record of all
10 sales of soft drinks and syrup by gallonage and dollar volume
11 taxed made by the distributor, manufacturer, and wholesale
12 dealer, in such form as the department of taxation may
13 prescribe. Every person who sells soft drinks and syrup taxable
14 under this chapter shall keep a record of all purchases by the
15 person of soft drinks and syrup by gallonage and dollar volume
16 taxed in such form as the department may prescribe. All records
17 shall be offered for inspection and examination at any time upon
18 demand by the department and shall be preserved for a period of
19 five years, except that the department may in writing consent to
20 their destruction within such period or may require that they be
21 kept longer.



1 The department may by rule require the distributor,
2 manufacturer, or wholesale dealer to keep such records as it may
3 deem necessary for the proper enforcement of this chapter.

4 (b) If any distributor, manufacturer, wholesale dealer, or
5 any other taxpayer fails to keep records from which a proper
6 determination of the tax due under this chapter may be made, the
7 department may fix the amount of tax for any period from the
8 best information obtainable by it, and assess the tax as
9 hereinbefore provided.

10 **§ -7 Inspection.** The director of taxation or duly
11 authorized agent may examine all records required to be kept
12 under this chapter, and books, papers, and records of any person
13 engaged in the sale of soft drinks or syrup to verify the
14 accuracy of the payment of the tax imposed by this chapter and
15 other compliance with this chapter and rules adopted pursuant
16 thereto. Every person in possession of such books, papers, and
17 records and the person's agents and employees shall give the
18 director or the duly authorized agent the means, facilities, and
19 opportunities for such examination.

20 **§ -8 Tax in addition to other taxes.** The tax imposed by
21 this chapter shall be in addition to any other tax imposed upon



1 the business of selling soft drinks or syrup or upon any of the
2 transactions, acts, or activities taxed by this chapter.

3 **§ -9 Appeals.** Any person aggrieved by any assessment of
4 the tax imposed by this chapter may appeal from the assessment
5 in the manner and within the time and in all other respects as
6 provided in the case of income tax appeals by section 235-114;
7 provided that, for appeals other than to the district board of
8 review, the taxes so assessed shall have been paid. The hearing
9 and disposition of the appeal, including the distribution of
10 costs and of taxes paid pending the appeal, shall be as provided
11 in chapter 232.

12 **§ -10 Other provisions applicable.** All of the
13 provisions of chapters 235 and 237 not inconsistent with this
14 chapter and which may appropriately be applied to the taxes,
15 persons, circumstances, and situations involved in this chapter,
16 including (without prejudice to the generality of the foregoing)
17 provisions as to penalties and interest, and provisions granting
18 administrative powers to the director of taxation, and
19 provisions for the assessment, levy, and collection of taxes,
20 shall be applicable to the taxes imposed by this chapter.

21 **§ -11 Investigations; contempts; fees.** (a) The
22 director of taxation, and any agent authorized by the director



1 to conduct any inquiry, investigation, or hearing hereunder,
2 shall have power to administer oaths and take testimony under
3 oath relative to the matter of inquiry or investigation. At any
4 hearing ordered by the director, the director or the director's
5 agent authorized to conduct the hearing may subpoena witnesses
6 and require the production of books, papers, and documents
7 pertinent to the inquiry. No witness under subpoena authorized
8 to be issued by this section shall be excused from testifying or
9 from producing books or papers on the ground that such testimony
10 or the production of such books or other documentary evidence
11 would tend to incriminate the witness, but such evidence or the
12 books or papers so produced shall not be used in any criminal
13 proceeding against the witness.

14 (b) If any person disobeys such process or, having
15 appeared in obedience thereto, refuses to answer any pertinent
16 question put to the person by the director or the director's
17 authorized agent or to produce any books and papers pursuant
18 thereto, the director or the agent may apply to the circuit
19 court of the circuit wherein the taxpayer resides or wherein the
20 transaction, act, or activity under investigation has occurred,
21 or to any judge of the court, setting forth such disobedience to
22 process or refusal to answer, and the court or the judge shall



1 cite the person to appear before the court or the judge to
2 answer such question or to produce such books and papers, and,
3 upon the person's refusal so to do, shall commit the person to
4 jail until the person shall testify, but not for a longer period
5 than sixty days. Notwithstanding the serving of the term of
6 such commitment by any person, the director may proceed in all
7 respects with such inquiry and examination as if the witness had
8 not previously been called to testify.

9 (c) Officers who serve subpoenas issued by the director or
10 under the director's authority and witnesses attending hearings
11 conducted by the director hereunder shall receive the same fees
12 and compensation as officers and witnesses in the circuit
13 courts, to be paid on vouchers of the director, from any moneys
14 available for litigation expenses of the department.

15 § -12 **Administration by director; rules.** The director
16 of taxation may adopt and enforce rules, pursuant to chapter 91,
17 for the enforcement and administration of this chapter.

18 § -13 **Penalties.** (a) The penalties provided by this
19 section shall apply to any person.

20 (b) Any person found in violation of this chapter whether
21 acting as principal, agent, officer, or director, for oneself,



1 itself, or for another person, shall be fined not more than
2 \$1,000 per violation."

3 SECTION 2. New statutory material is underscored.

4 SECTION 3. This Act shall take effect on July 1, 2009.

5

INTRODUCED BY:



JAN 27 2009



Report Title:

Soft Drink and Syrup Tax

Description:

Imposes a tax on soft drinks and syrup. Provides that moneys collected be deposited into the general fund.

