

JAN 23 2009

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that the average
2 American consumes approximately thirty five gallons of non-diet
3 soda each year. Sugary drinks have become a major source of
4 obesity and linked to diabetes, heart disease and dental
5 problems.

6 One new study estimates that twenty-four million Americans
7 now suffer from diabetes--more than four times the number in
8 1980. The total direct and indirect cost to Americans caused by
9 diabetes is approximately \$218,000,000,000 each year--an
10 average of \$1,900 per American household. Diabetes also
11 contributes to the deaths of more than two hundred thousand
12 Americans.

13 In response to the growing problems caused by sugary
14 drinks, the state of New York has proposed a tax on soft drinks
15 and other non-diet sugary beverages. The tax is expected to
16 raise \$400,000,000 per year to discourage the consumption of
17 sugary drinks, lower the cost of healthcare for the state of New
18 York, and finance healthcare programs to prevent the medical



1 maladies caused by a sugary diet such as diabetes, heart
2 disease, and dental problems.

3 The purpose of this Act is to assess a surcharge on sugary
4 drinks in Hawaii.

5 SECTION 2. Title XIV, Hawaii Revised Statutes is amended
6 by adding a new chapter to be appropriately designated and to
7 read as follows:

8 "CHAPTER

9 SOFT DRINK SURCHARGE TAX

10 § -1 **Definitions.** As used in this chapter, unless the
11 context otherwise requires:

12 "Department" means the department of taxation.

13 "Director" means the director of taxation.

14 "Soft drink" means any soda, juice, or non-alcoholic
15 beverage that is sold in separate containers and the contents of
16 which contain more than per cent sugar; provided that a
17 soft drink is not coffee, tea, cocoa, a diet soda, a water
18 product or a fruit drink that contains seventy per cent or more
19 natural fruit juice.

20 "Surcharge tax" means the soft drink surcharge tax
21 established under this chapter.



1 § -2 **Soft drink surcharge tax.** (a) There is levied and
2 shall be assessed and collected each month, a soft drink
3 surcharge tax of \$ per can or container of soft drink sold in
4 the State. The soft drink surcharge tax shall be levied upon
5 the seller of the soft drink.

6 § -3 **Certificate of registration.** (a) Each person, as
7 a condition precedent to engaging or continuing in the business
8 of selling soft drinks to the public shall register with the
9 director and make a one-time payment of \$20. Upon receipt of
10 the payment, the director shall issue a certificate of
11 registration to the person. The registration shall not be
12 transferable and shall be valid only for the person in whose
13 name it is issued and for the transaction of business at the
14 place designated therein. The registration, or in lieu thereof
15 a notice stating where the registration may be inspected and
16 examined, shall at all times be conspicuously displayed at the
17 place for which it is issued.

18 (b) The registration shall be effective until canceled in
19 writing. Any application for the reissuance of a previously
20 canceled registration identification number shall be regarded as
21 a new registration application and shall be subject to the
22 payment of the one-time registration fee in subsection (a). The



1 director may revoke or cancel any certificate of registration
2 issued under this chapter for cause as provided by rule adopted
3 pursuant to chapter 91.

4 (c) If the registration fee is paid, the department shall
5 not refuse to issue a registration or revoke or cancel a
6 registration for the exercise of a privilege protected by the
7 first amendment of the Constitution of the United States, or for
8 the carrying on of interstate or foreign commerce, or for any
9 privilege the exercise of which, under the Constitution and laws
10 of the United States, cannot be restrained on account of
11 nonpayment of taxes, nor shall section -13 be invoked to
12 restrain the exercise of such a privilege, or the carrying on of
13 such commerce.

14 (d) Any person who may lawfully be required by the State,
15 and who is required by this chapter, to register as a condition
16 precedent to engaging or continuing in the business of selling
17 soft drinks to the public subject to taxation under this
18 chapter, who engages or continues in the business without
19 registering in conformity with this chapter, shall be guilty of
20 a misdemeanor. Any officer or director of a corporation who
21 permits, aids, or abets the corporation to engage or continue in
22 business without registering in conformity with this chapter,



1 shall likewise be guilty of a misdemeanor. The penalty for the
2 misdemeanors shall be that prescribed by section 231-34 for
3 violation of that section.

4 § -4 **Return and payments; penalties.** (a) On or before
5 the last day of each calendar month, every person taxable under
6 this chapter during the preceding calendar month shall file a
7 sworn return with the director in such form as the director
8 shall prescribe together with a remittance for the amount of the
9 surcharge tax in the form required under this chapter. Sections
10 237-30 and 237-32 shall apply to returns and penalties made
11 under this chapter to the same extent as if the sections were
12 set forth specifically in this section.

13 (b) Notwithstanding subsection (a), the director, for good
14 cause, may permit a person to file the person's return required
15 under this section and make payments thereon:

16 (1) On a quarterly basis during the calendar or fiscal
17 year, the return and payment to be made on or before
18 the last day of the calendar month after the close of
19 each quarter, to wit: for calendar year taxpayers, on
20 or before April 30, July 31, October 31, and January
21 31 or, for fiscal year taxpayers, on or before the
22 last day of the fourth month, seventh month, and tenth



1 month following the beginning of the fiscal year and
2 on or before the last day of the month following the
3 close of the fiscal year; provided that the director
4 is satisfied that the grant of the permit will not
5 unduly jeopardize the collection of the surcharge
6 taxes due thereon and that the person's total
7 surcharge tax liability for the calendar or fiscal
8 year under this chapter will not exceed \$4,000; or

- 9 (2) On a semiannual basis during the calendar or fiscal
10 year, the return and payment to be made by or before
11 the last day of the calendar month after the close of
12 each six-month period, to wit: for calendar year
13 taxpayers, on July 31 and January 31 or, for fiscal
14 year taxpayers, on or before the last day of the
15 seventh month following the beginning of the fiscal
16 year and on or before the last day of the month
17 following the close of the fiscal year; provided that
18 the director is satisfied that the grant of the permit
19 will not unduly jeopardize the collection of the
20 surcharge taxes due thereon and that the person's
21 total surcharge tax liability for the calendar or
22 fiscal year under this chapter will not exceed \$2,000.



1 The director, for good cause, may permit a person to make
2 monthly payments based on the person's estimated quarterly or
3 semiannual liability; provided that the person files a
4 reconciliation return at the end of each quarter or at the end
5 of each six-month period during the calendar or fiscal year, as
6 provided in this section.

7 (c) If a person filing the return on a quarterly or
8 semiannual basis, as provided in this section, becomes
9 delinquent in either the filing of the return or the payment of
10 the surcharge taxes due thereon, or if the liability of a
11 person, who possesses a permit to file the return and to make
12 payments on a semiannual basis exceeds \$2,000 in surcharge taxes
13 during the calendar year or exceeds \$4,000 in surcharge taxes
14 during the calendar year if making payments on a quarterly
15 basis, or if the director determines that any such quarterly or
16 semiannual filing of return would unduly jeopardize the proper
17 administration of this chapter, including the assessment or
18 collection of the surcharge tax, the director, at any time, may
19 revoke a person's permit, in which case the person then shall be
20 required to file the person's return and make payments thereon
21 as provided in subsection (a).



1 (d) Section 232-2 does not apply to a monthly, quarterly,
2 or semiannual return.

3 § -5 **Remittances.** All remittances of surcharge taxes
4 imposed under this chapter shall be made by cash, bank draft,
5 cashier's check, money order, or certificate of deposit to the
6 office of the taxation district to which the return was
7 transmitted. The department shall deposit the moneys into the
8 state treasury to the credit of the soft drink surcharge special
9 fund under section -16.

10 § -6 **Annual return.** On or before the twentieth day of
11 the fourth month following the close of the taxable year, every
12 person who has become liable for the payment of the surcharge
13 taxes under this chapter during the preceding tax year shall
14 file a return summarizing the person's liability under this
15 chapter for the year, in such form as the director prescribes.
16 The person shall transmit with the return a remittance covering
17 the residue of the surcharge tax chargeable to the person, if
18 any, to the office of the appropriate state district tax
19 assessor designated in section -7. The return shall be
20 signed by the person, if made by an individual, or by the
21 president, vice-president, secretary, or treasurer of a
22 corporation, if made on behalf of a corporation. If made on



1 behalf of a partnership, firm, society, unincorporated
2 association, group, hui, joint adventure, joint stock company,
3 corporation, trust estate, decedent's estate, trust, or other
4 entity, any individual delegated by the entity shall sign the
5 same on behalf of the person. If for any reason it is not
6 practicable for the individual person to sign the return, it may
7 be done by any duly authorized agent. The department, for good
8 cause shown, may extend the time for making the return on the
9 application of any person and grant such reasonable additional
10 time within which to make the return as the department may deem
11 advisable.

12 Section 232-2 applies to the annual return, but not to a
13 monthly, quarterly, or semiannual return.

14 § -7 **Filing of returns.** All monthly, quarterly,
15 semiannual, and annual returns shall be transmitted to the
16 office of the taxation district in which the person's place of
17 business is situated or to the office of the first taxation
18 district in Honolulu.

19 § -8 **Assessment of surcharge tax upon failure to make**
20 **return; limitation period; exceptions; extension by agreement.**

21 (a) If any person fails to make a return as required by this
22 chapter, the director shall make an estimate of the surcharge



1 tax liability of the person from any information the director
2 obtains, and according to the estimate so made, assess the
3 surcharge taxes, interest, and penalty due the State from the
4 person, give notice of the assessment to the person, and make
5 demand upon the person for payment. The assessment shall be
6 presumed to be correct until and unless, upon an appeal duly
7 taken as provided in section -10, the contrary shall be
8 clearly proved by the person assessed, and the burden of proof
9 upon the appeal shall be upon the person assessed to disprove
10 the correctness of assessment.

11 (b) After a return is filed under this chapter the
12 director shall cause the return to be examined, and may make
13 such further audits or investigation as the director considers
14 necessary. If the director determines that there is a
15 deficiency with respect to the payment of any surcharge tax due
16 under this chapter, the director shall assess the surcharge
17 taxes, interest, and penalty due the State, give notice of the
18 assessment to the persons liable, and make demand upon the
19 persons for payment.

20 (c) Except as otherwise provided by this section, the
21 amount of surcharge taxes imposed by this chapter shall be
22 assessed or levied within three years after the annual return



1 was filed, or within three years of the due date prescribed for
2 the filing of the return, whichever is later, and no proceeding
3 in court without assessment for the collection of any such
4 surcharge taxes shall begin after the expiration of the period.

5 (d) In the case of a false or fraudulent return with
6 intent to evade the surcharge tax, or of a failure to file the
7 annual return, the surcharge tax may be assessed or levied at
8 any time; however, in the case of a return claimed to be false
9 or fraudulent with intent to evade the surcharge tax, the
10 determination as to the claim shall first be made by a judge of
11 the circuit court as provided in section 235-111(c) which shall
12 apply to the surcharge tax imposed by this chapter.

13 (e) Where, before the expiration of the period prescribed
14 in subsection (c), both the department of taxation and the
15 person have consented in writing to the assessment or levy of
16 the surcharge tax after the date fixed by subsection (c), the
17 surcharge tax may be assessed or levied at any time prior to the
18 expiration of the period agreed upon. The period so agreed upon
19 may be extended by subsequent agreements in writing made before
20 the expiration of the period previously agreed upon.

21 § -9 **Overpayment; refunds.** Upon application by a
22 person, if the director determines that any surcharge tax,



1 interest, or penalty has been paid more than once, or has been
2 erroneously or illegally collected or computed, the surcharge
3 tax, interest, or penalty shall be credited by the director on
4 any surcharge taxes then due from the person under this chapter.
5 The director shall refund the balance to the person or the
6 person's successors, administrators, executors, or assigns in
7 accordance with section 231-23(d). No credit or refund shall be
8 allowed for any surcharge tax imposed by this chapter, unless a
9 claim for the credit or refund is filed as follows:

10 (1) If an annual return is timely filed, or is filed
11 within three years after the date prescribed for
12 filing the annual return, then the credit or refund
13 shall be claimed within three years after the date the
14 annual return was filed or the date prescribed for
15 filing the annual return, whichever is later.

16 (2) If an annual return is not filed, or is filed more
17 than three years after the date prescribed for filing
18 the annual return, a claim for credit or refund shall
19 be filed within:

20 (A) Three years after the payment of the tax; or

21 (B) Three years after the date prescribed for the
22 filing of the annual return,



1 whichever is later.

2 Paragraphs (1) and (2) are mutually exclusive. The preceding
3 limitation shall not apply to a credit or refund pursuant to an
4 appeal, provided for in section -10.

5 As to all tax payments for which a refund or credit is not
6 authorized by this section (including, without prejudice to the
7 generality of the foregoing, cases of unconstitutionality), the
8 remedies provided by appeal or by section 40-35 are exclusive.

9 § -10 **Appeals.** Any person aggrieved by any assessment
10 of the surcharge tax for any month or any year may appeal from
11 the assessment in the manner and within the time and in all
12 other respects as provided in the case of income tax appeals by
13 section 235-114.

14 § -11 **Records to be kept; examination.** Every person
15 shall keep in the English language within the State, and
16 preserve for a period of three years, suitable records relating
17 to the surcharge tax levied and assessed under this chapter, and
18 such other books, records of account, and invoices as may be
19 required by the department of taxation, and all such books,
20 records, and invoices shall be open for examination at any time
21 by the department or the Multistate Tax Commission pursuant to
22 chapter 255, or the authorized representative thereof.



1 § -12 **Disclosure of returns unlawful; destruction of**
2 **returns.** (a) All tax returns and return information required
3 to be filed under this chapter, and the report of any
4 investigation of the return or of the subject matter of the
5 return, shall be confidential. It shall be unlawful for any
6 person or any officer or employee of the State to intentionally
7 make known information imparted by any tax return or return
8 information filed pursuant to this chapter, or any report of any
9 investigation of the return or of the subject matter of the
10 return, or to wilfully permit any such tax return, return
11 information, or report so made, or any copy thereof, to be seen
12 or examined by any person; provided that for surcharge tax
13 purposes only seller or the seller's authorized agent, or
14 persons with a material interest in the return, return
15 information, or report may examine them. Unless otherwise
16 provided by law, persons with a material interest in the return,
17 return information, or report shall include:

- 18 (1) Trustees;
- 19 (2) Partners;
- 20 (3) Persons named in a board resolution or a one per cent
21 shareholder in case of a corporate return;



- 1 (4) The person authorized to act for a corporation in
- 2 dissolution;
- 3 (5) The shareholder of an S corporation;
- 4 (6) The personal representative, trustee, heir, or
- 5 beneficiary of an estate or trust in case of the
- 6 estate's or decedent's return;
- 7 (7) The committee, trustee, or guardian of any person in
- 8 paragraphs (1) to (6) who is incompetent;
- 9 (8) The trustee in bankruptcy or receiver, and the
- 10 attorney-in-fact of any person in paragraphs (1) to
- 11 (7);
- 12 (9) Persons duly authorized by the State in connection
- 13 with their official duties;
- 14 (10) Any duly accredited tax official of the United States
- 15 or of any state or territory;
- 16 (11) The Multistate Tax Commission or its authorized
- 17 representative; and
- 18 (12) Members of a limited liability company.

19 Any violation of this subsection shall be a misdemeanor.
20 Nothing in this subsection shall prohibit the publication of
21 statistics so classified as to prevent the identification of

1 particular reports or returns and the items of the reports or
2 returns.

3 (b) The department may destroy the monthly, quarterly, or
4 semiannual returns filed pursuant to section -4, or any of
5 them, upon the expiration of three years after the end of the
6 calendar or fiscal year in which the surcharge taxes so returned
7 accrued.

8 § -13 **Collection by suit; injunction.** The department
9 may collect surcharge taxes due and unpaid under this chapter,
10 together with all accrued penalties, by action in assumpsit or
11 other appropriate proceedings in the circuit court of the
12 judicial circuit in which the surcharge taxes arose. After
13 delinquency shall have continued for sixty days, or if any
14 person lawfully required so to do under this chapter shall fail
15 to apply for and secure a certificate as provided by this
16 chapter for a period of sixty days after the first date when the
17 person was required under this chapter to secure the
18 certificate, the department may proceed in the circuit court of
19 the judicial circuit in which the soft drink sales were made, to
20 obtain an injunction restraining further sales until full
21 payment shall have been made of all surcharge taxes, penalties,



1 and interest due under this chapter, or until the certificate is
2 secured, or both, as the circumstances of the case may require.

3 § -14 **Application of surcharge tax.** (a) The director
4 of health shall publish a listing of all soft drinks that are
5 subject to this chapter and publish the listing on the
6 department of health's webpage. The listing shall be updated
7 annually.

8 (b) The surcharge tax imposed by this chapter shall be in
9 addition to any other taxes imposed by any other laws of the
10 State, except as otherwise specifically provided in this
11 chapter; provided that if it be held by any court of competent
12 jurisdiction that the surcharge tax imposed by this chapter may
13 not legally be imposed in addition to any other tax or taxes
14 imposed by any other law or laws with respect to the same soft
15 drink, then this chapter shall be deemed not to apply to such
16 soft drink under the specific circumstances, but the other laws
17 shall be given full effect with respect to such soft drink.

18 § -15 **Administration and enforcement; rules.** (a) The
19 director shall administer and enforce this chapter in respect
20 of:

21 (1) The examination of books and records;



1 (2) Procedure and powers upon failure or refusal by a
2 person to make a return or proper return; and

3 (3) The general administration of this chapter.

4 All of the provisions of chapter 237 not inconsistent with this
5 chapter and which may appropriately be applied to the taxes,
6 persons, circumstances, and situations involved in this chapter,
7 including (without prejudice to the generality of the foregoing)
8 provisions as to penalties and interest, and provisions granting
9 administrative powers to the department, and provisions for the
10 assessment, levy, and collection of taxes, shall be applicable
11 to the surcharge taxes imposed by this chapter, and to the
12 assessment, levy, and collection thereof.

13 (b) The director may adopt rules pursuant to chapter 91 to
14 effectuate this chapter.

15 § -16 **Soft drink surcharge special fund.** (a) There is
16 established within the state treasury a special fund to be known
17 as the soft drink surcharge special fund to be administered and
18 expended by the department of health.

19 (b) The moneys in the special fund shall be used by the
20 department of health to:



- 1 (1) Educate the public with respect to the dangers of
- 2 sugary soft drinks and a sugary diet and suggestions
- 3 to lead a healthier lifestyle;
- 4 (2) Fund projects that support a healthy lifestyle without
- 5 sugary drinks and sugary diet;
- 6 (3) Support community health centers with respect to the
- 7 purposes of this chapter; and
- 8 (4) Support any other project or program that furthers the
- 9 purposes of this chapter."

10 SECTION 3. This Act shall take effect on January 1, 2010
11 and shall apply to taxable years beginning after December 31,
12 2009.

13

INTRODUCED BY: *Frzanne Chun Oalland*



Report Title:

Taxation; Soft Drinks

Description:

Assesses a surcharge on all soft drinks sold in the State.

