

JAN 26 2011

A BILL FOR AN ACT

RELATING TO TAXATION.

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

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

4 "CHAPTER

5 SUGAR-SWEETENED BEVERAGES TAX

6 § -1 Title. This chapter may be cited as the Sugar-
7 Sweetened Beverages Tax Act.

8 § -2 Definitions. For the purposes of this chapter:

9 "Bottle" means any closed or sealed container regardless of
10 size or shape, including those made of glass, metal, paper, or
11 plastic or any other material or combination of materials.

12 "Bottled sugar-sweetened beverage" means any sugar-
13 sweetened beverage contained in a bottle that is ready for
14 consumption without further processing such as, without
15 limitation, dilution or carbonation.

16 "Caloric sweetener" means any caloric substance suitable
17 for human consumption that humans perceive as sweet and includes
18 sucrose, fructose, glucose, other sugars, and fruit juice



1 concentrates, but does not include non-caloric sweeteners. For
2 purposes of this definition, "caloric" means a substance that
3 adds calories to the diet of a person who consumes that
4 substance.

5 "Consumer" means a person who purchases a sugar-sweetened
6 beverage for consumption and not for sale to another.

7 "Department" means the department of taxation.

8 "Director" means the director of taxation.

9 "Distributor" means any person, including a manufacturer or
10 wholesale dealer, who receives, stores, manufactures, bottles or
11 distributes bottled sugar-sweetened beverages, syrup, or powder,
12 for sale to retailers doing business in the State regardless of
13 whether that person also sells such products to consumers.

14 "Fund" means the children's health promotion special fund
15 established pursuant to section 321-

16 "Non-caloric sweetener" means any non-caloric substance
17 suitable for human consumption that humans perceive as sweet and
18 includes aspartame, saccharin, stevia, and sucralose, but does
19 not include caloric sweeteners. For purposes of this
20 definition, "non-caloric" means a substance that does not add
21 calories to the diet of a person who consumes that substance.



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

5 "Place of business" means any place where sugar-sweetened
6 beverages, syrups, or powder are manufactured or received for
7 sale in the State.

8 "Powder" means any solid mixture of ingredients used in
9 making, mixing, or compounding sugar-sweetened beverages by
10 mixing the powder with one or more other ingredients, including
11 water, ice, syrup, simple syrup, fruits, vegetables, fruit
12 juice, vegetable juice, carbonation, or other gas.

13 "Retailer" means any person who sells or otherwise
14 dispenses in the State a sugar-sweetened beverage to a consumer
15 regardless of whether that person is also a distributor as
16 defined in this section.

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

20 "Sugar-sweetened beverage" means any non-alcoholic
21 beverage, carbonated or noncarbonated, that is intended for
22 human consumption and contains any added caloric sweetener. As



1 used in this definition, "non-alcoholic beverage" means any
2 beverage that contains less than one-half of one per cent
3 alcohol per volume. "Sugar-sweetened beverage" does not
4 include:

- 5 (1) Beverages sweetened solely with non-caloric
6 sweeteners;
- 7 (2) Beverages consisting of one hundred per cent natural
8 fruit or vegetable juice with no added caloric
9 sweetener. For purposes of this paragraph, "natural
10 fruit juice" and "natural vegetable juice" mean the
11 original liquid resulting from the pressing of fruits
12 or vegetables, or the liquid resulting from the
13 dilution of dehydrated natural fruit juice or natural
14 vegetable juice;
- 15 (3) Milk without any added caloric sweetener, which means:
 - 16 (A) Natural liquid milk regardless of animal source
17 or butterfat content;
 - 18 (B) Natural milk concentrate, whether or not
19 reconstituted, regardless of animal source or
20 butterfat content; or



1 (C) Dehydrated natural milk, whether or not
2 reconstituted and regardless of animal source or
3 butterfat content;

4 (4) Coffee or tea without added caloric sweetener;

5 (5) Infant formula; or

6 (6) Water to which neither carbonation nor any other
7 substance has been added, except for minerals and non-
8 caloric flavoring agents.

9 "Syrup" means a liquid mixture of ingredients used in
10 making, mixing, or compounding sugar-sweetened beverages using
11 one or more other ingredients including water, ice, a powder,
12 simple syrup, fruits, vegetables, fruit juice, vegetable juice,
13 carbonation, or other gas.

14 § -3 Tax imposed. (a) Every distributor selling sugar-
15 sweetened beverages in this State shall pay a tax that is hereby
16 imposed at the following rates:

17 (1) \$ per gallon of bottled sugar-sweetened
18 beverages sold or offered for sale to a retailer for
19 sale in the State to a consumer; and

20 (2) \$ per gallon of sugar-sweetened beverage
21 produced from syrup or powder sold or offered for sale
22 to a retailer for sale in the State to a consumer.



1 For the purposes of paragraph (2), the volume of sugar-
2 sweetened beverage produced from syrup or powder shall be the
3 larger of: the largest volume resulting from use of the syrup
4 or powder according to any manufacturer's instructions; or the
5 volume actually produced by the retailer, as reasonably
6 determined by the department.

7 (b) Any retailer that sells bottled sugar-sweetened
8 beverages, syrup, or powder in the State to a consumer, on which
9 the tax imposed by this section has not been paid by a
10 distributor, shall be liable for the tax imposed in subsection
11 (a) at the time of sale to the consumer.

12 § -4 **Return, form, contents.** Every taxpayer, on or
13 before the twentieth day of each month, shall file with the
14 department of taxation in the taxation district in which the
15 taxpayer's place of business is located, or with the department
16 in Honolulu, a return showing all sales of sugar-sweetened
17 beverages by gallonage and dollar volume in each category
18 defined in section -2 and taxed under section -3(a) made
19 by the taxpayer during the preceding month, showing separately
20 the amount of the nontaxable sales, and the amount of the
21 taxable sales, and the tax payable thereon. The form of the
22 return shall be prescribed by the department and shall contain



1 such information as it may deem necessary for the proper
2 administration of this chapter.

3 § -5 Payment of tax; penalties. At the time of the
4 filing of the return required under section -4 and within the
5 time prescribed therefor, each taxpayer shall pay to the
6 department the tax imposed by this chapter, required to be shown
7 by the return.

8 Penalties and interest shall be added to and become a part
9 of the tax, when and as provided by section 231-39.

10 § -6 Determination of tax, additional assessments,
11 credit, and refunds. (a) As soon as practicable after each
12 return has been filed, the department of taxation shall cause it
13 to be examined and shall compute and determine the amount of the
14 tax payable thereon.

15 (b) If it appears upon the initial examination of the
16 return, within two years after the filing of the return, or at
17 any time if no return has been filed, as a result of the
18 examination or as a result of any examination of the records of
19 the taxpayer or of any other inquiry or investigation, that the
20 correct amount of the tax is greater than that shown on the
21 return, or that any tax imposed by the chapter has not been
22 paid, an assessment of additional tax may be made in the manner



1 provided in section 235-108(b). The amount of the tax for the
2 period covered by the assessment shall not be reduced below the
3 amount determined by an assessment so made, except upon appeal
4 or in a proceeding brought pursuant to section 40-35.

5 (c) If the taxpayer has paid or returned with respect to
6 any month more than the amount determined to be the correct
7 amount of tax for that month, the amount of the tax so returned
8 and any assessment of tax made pursuant to the return may be
9 reduced, and any overpayment of tax may be credited upon the tax
10 imposed by this chapter, or at the election of the taxpayer, the
11 taxpayer not being delinquent in the payment of any taxes owing
12 to the State, may be refunded in the manner provided in section
13 231-23(c); provided that no reduction of tax may be made when
14 forbidden by subsection (b) or more than two years after the
15 filing of the return.

16 § -7 Records to be kept. (a) Every taxpayer shall keep
17 a record of all sales of sugar-sweetened beverages by gallonage
18 and dollar volume in each category defined in section -2 and
19 taxed under section -3(a) made by the taxpayer, in such form
20 as the department of taxation may prescribe. These records
21 shall be offered for inspection and examination at any time upon
22 demand by the department and shall be preserved for a period of



1 two years, except that the department may consent in writing to
2 their destruction within that period or may require that they be
3 kept longer.

4 The department, by rule, may require the taxpayer to keep
5 other records as it may deem necessary for the proper
6 enforcement of this chapter.

7 (b) If any taxpayer fails to keep records upon which a
8 proper determination of the tax due under this chapter may be
9 made, the department may fix the amount of tax for any period
10 from the best information it may obtain and assess the tax as
11 hereinbefore provided.

12 § -8 **Inspection.** The director of taxation, or the duly
13 authorized agent of the director, may examine all records
14 required to be kept under this chapter and books, papers, and
15 records of any person engaged in the sale of sugar-sweetened
16 beverages to verify the accuracy of the payment of the tax
17 imposed by this chapter and other compliance with this chapter
18 and rules adopted pursuant thereto. Every person in possession
19 of such books, papers, and records and the person's agents and
20 employees shall give the director, or the duly authorized agent
21 of the director, the means, facilities, and opportunities for
22 the examination.



1 § -9 **Tax in addition to other taxes.** The tax imposed by
2 this chapter shall be in addition to any other tax imposed upon
3 the business of selling sugar-sweetened beverages or upon any of
4 the transactions, acts, or activities taxed by this chapter.

5 § -10 **Appeals.** Any person aggrieved by any assessment
6 of the tax imposed by this chapter may appeal the assessment in
7 the manner and within the time and in all other respects as
8 provided in the case of income tax appeals by section 235-114.
9 The hearing and disposition of the appeal, including the
10 distribution of costs, shall be as provided in chapter 232.

11 § -11 **Other provisions applicable.** All of the
12 provisions of chapters 235 and 237 not inconsistent with this
13 chapter and that may appropriately be applied to the taxes,
14 persons, circumstances, and situations involved in this chapter,
15 including without prejudice to the generality of the foregoing:
16 provisions as to penalties and interest; provisions granting
17 administrative powers to the director of taxation; and
18 provisions for the assessment, levy, and collection of taxes;
19 shall be applicable to the taxes imposed by this chapter and to
20 the assessment, levy, and collection thereof.

21 § -12 **Investigations; contempts; fees.** (a) The
22 director of taxation, and any agent authorized by the director



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

14 (b) If any person disobeys a subpoena 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 the disobedience to
22 process or refusal to answer. The court or the judge shall cite



1 the person to appear before the court or the judge to answer the
2 question or to produce such books and papers and, upon the
3 person's refusal shall hold the person in contempt and sentence
4 the person to prison until the person testifies; provided that
5 the period of imprisonment shall not exceed sixty days.

6 Notwithstanding the serving of the term of any imprisonment by
7 any person, the director may proceed in all respects with the
8 inquiry and examination as if the witness had not previously
9 been called upon to testify.

10 (c) Officers who serve subpoenas issued by the director or
11 under the director's authority and witnesses attending hearings
12 conducted by the director shall be awarded fees in an amount
13 equal to witness fees awarded in accordance with section 621-7,
14 to be paid on vouchers of the director, from any moneys
15 available for litigation expenses of the department of taxation.

16 § -13 Administration by director; rules. The
17 administration of this chapter is vested in the director of
18 taxation, who may adopt and enforce rules in accordance with
19 chapter 91 for the enforcement and administration of this
20 chapter.

21 § -14 Disposition of revenues. All moneys collected
22 pursuant to this chapter shall be paid into the children's



1 health promotion special fund established pursuant to section
2 321- , to be kept and accounted for as provided by law.

3 § -15 Exemptions. The following shall be exempt from
4 the tax imposed by this chapter:

5 (1) Bottled sugar-sweetened beverages, syrups, and powder
6 sold to the United States government and American
7 Indian tribal governments;

8 (2) Bottled sugar-sweetened beverages, syrups, and powder
9 sold by a distributor or a retailer expressly for
10 resale or consumption outside the State; and

11 (3) Bottled sugar-sweetened beverages, syrups, and powder
12 sold by a distributor to another distributor, if the
13 sales invoice clearly indicates that the sale is
14 exempt. If the sale is to a person who is both a
15 distributor and a retailer, the sale shall be exempt
16 and the tax shall be paid when the purchasing
17 distributor/retailer resells the product to a retailer
18 or a consumer. This exemption does not apply to any
19 other sale to a retailer."

20 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§321- Children's health promotion special fund. (a)

2 There is established in the state treasury a special fund to be
3 known as the children's health promotion special fund and to be
4 administered by the department of health, into which shall be
5 deposited sugar-sweetened beverages tax revenues pursuant to
6 section -14.

7 (b) The fund shall be used for:

8 (1) All costs to implement this chapter;

9 (2) Statewide childhood obesity prevention activities and
10 programs;

11 (3) Community-based childhood obesity prevention programs;

12 (4) Evidence-based prevention, early recognition,
13 monitoring, and weight management intervention
14 activities in the medical setting; and

15 (5) Promotion of nutrition and physical activity in
16 elementary and secondary schools.

17 (c) All moneys in the children's health promotion special
18 fund shall:

19 (1) Be expended only for the purposes expressed in this
20 section;

21 (2) Be used only to supplement existing levels of service;
22 and



1 (3) Not be used to supplant current federal, state, or
2 local funding for existing levels of service."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act, upon its approval, shall apply to
5 taxable years beginning after December 31, 2010.

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Report Title:

Sugar-Sweetened Beverages Tax

Description:

Establishes a tax on the sale of sugar-sweetened beverages in the State. Creates a children's health promotion special fund.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

