

JAN 20 2012

S.B. NO. 2480

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that taxing soda and
2 other sugar-sweetened beverages can lead to a reduction in
3 overall consumption, according to a scientific study published
4 in the Archives of Internal Medicine in March 2010. The study
5 found that a ten per cent tax on soda led to a seven per cent
6 reduction in calories from soft drinks. Study researchers
7 believe that an eighteen per cent tax on these foods could cut
8 daily intake by fifty-six calories per person, resulting in a
9 weight loss of five pounds per person per year. The study
10 followed 5,115 young adults ages eighteen to thirty from 1985 to
11 2006.

12 An April 2010 study published in the medical journal Health
13 Affairs found that small taxes on soft drinks do little to
14 lessen soft drink consumption or prevent childhood obesity, but
15 the study's author estimated that if taxes were at the level of
16 eighteen per cent, this would make a significant difference in
17 consumption.



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

4 "Bottled sugar-sweetened beverage" means any sugar-
5 sweetened beverage contained in a bottle that is ready for
6 consumption without further processing such as, without
7 limitation, dilution or carbonation.

8 "Caloric sweetener" means any caloric substance suitable
9 for human consumption that humans perceive as sweet and includes
10 sucrose, fructose, glucose, other sugars, and fruit juice
11 concentrates, but does not include non-caloric sweeteners. For
12 purposes of this definition, "caloric" means a substance that
13 adds calories to the diet of a person who consumes that
14 substance.

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

17 "Department" means the department of taxation.

18 "Director" means the director of taxation.

19 "Distributor" means any person, including a manufacturer or
20 wholesale dealer, who receives, stores, manufactures, bottles,
21 or distributes bottled sugar-sweetened beverages, syrup, or
22 powder, for sale to retailers doing business in the State



1 regardless of whether that person also sells such products to
2 consumers.

3 "Fund" means the health promotion special fund established
4 pursuant to section 321- .

5 "Non-caloric sweetener" means any non-caloric substance
6 suitable for human consumption that humans perceive as sweet and
7 includes aspartame, saccharin, stevia, and sucralose, but does
8 not include caloric sweeteners. For purposes of this
9 definition, "non-caloric" means a substance that does not add
10 calories to the diet of a person who consumes that substance.

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

15 "Place of business" means any place where sugar-sweetened
16 beverages, syrups, or powders are manufactured or received for
17 sale in the State.

18 "Powder" means any solid mixture of ingredients used in
19 making, mixing, or compounding sugar-sweetened beverages by
20 mixing the powder with one or more other ingredients, including
21 water, ice, syrup, simple syrup, fruits, vegetables, fruit
22 juice, vegetable juice, carbonation, or other gas.



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

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

8 "Sugar-sweetened beverage" means any beverage that contains
9 less than one-half of one per cent alcohol per volume, whether
10 carbonated or noncarbonated, that is intended for human
11 consumption and contains any added caloric sweetener. "Sugar-
12 sweetened beverage" shall not include:

- 13 (1) Beverages sweetened solely with non-caloric
14 sweeteners;
- 15 (2) Beverages consisting of one hundred per cent natural
16 fruit or vegetable juice with no added caloric
17 sweetener. For purposes of this paragraph, "natural
18 fruit juice" and "natural vegetable juice" mean the
19 original liquid resulting from the pressing of fruits
20 or vegetables, or the liquid resulting from the
21 dilution of dehydrated natural fruit juice or natural
22 vegetable juice;



1 (3) Milk without any added caloric sweetener, which means:

2 (A) Natural liquid milk regardless of animal source
3 or butterfat content;

4 (B) Natural milk concentrate, whether or not
5 reconstituted, regardless of animal source or
6 butterfat content; or

7 (C) Dehydrated natural milk, whether or not
8 reconstituted, regardless of animal source or
9 butterfat content;

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

11 (5) Infant formula; or

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

15 "Syrup" means a liquid mixture of ingredients used in
16 making, mixing, or compounding sugar-sweetened beverages using
17 one or more other ingredients including water, ice, a powder,
18 simple syrup, fruits, vegetables, fruit juice, vegetable juice,
19 carbonation, or other gas.

20 § -3 Tax imposed. (a) Every distributor selling sugar-
21 sweetened beverages, syrup, or powder in this State shall pay a
22 tax that is hereby imposed at the rate of 1 cent per teaspoon of



1 sugar placed into bottled sugar-sweetened beverages or the
2 equivalent amount of concentrate sold or offered for sale to a
3 retailer for sale in the State to a consumer.

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

9 § -4 **Return; form; contents.** Every taxpayer, on or
10 before the twentieth day of each month, shall file with the
11 department in the taxation district in which the taxpayer's
12 place of business is located, a return showing all sales of
13 sugar-sweetened beverages, syrup, and powder by amount and
14 dollar volume in each category defined in section -2 and
15 taxed under section -3(a) made by the taxpayer during the
16 preceding month, showing separately the amount of the nontaxable
17 sales, and the amount of the taxable sales, and the tax payable
18 thereon. The form of the return shall be prescribed by the
19 department and shall contain such information as it may deem
20 necessary for the proper administration of this chapter.

21 § -5 **Payment of tax; penalties.** At the time of the
22 filing of the return required under section -4 and within the



1 time prescribed therefor, each taxpayer shall pay to the
2 department the tax imposed by this chapter, required to be shown
3 by the return.

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

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

11 (b) If it appears upon the initial examination of the
12 return, within two years after the filing of the return, or at
13 any time if no return has been filed, as a result of the
14 examination or as a result of any examination of the records of
15 the taxpayer or of any other inquiry or investigation, that the
16 correct amount of the tax is greater than that shown on the
17 return, or that any tax imposed by this chapter has not been
18 paid, an assessment of additional tax may be made in the manner
19 provided in section 235-108(b). The amount of the tax for the
20 period covered by the assessment shall not be reduced below the
21 amount determined by an assessment so made, except upon appeal
22 or in a proceeding brought pursuant to section 40-35.



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

12 § -7 **Records to be kept.** (a) Every taxpayer shall keep
13 a record of all sales of sugar-sweetened beverages by amount and
14 dollar volume in each category defined in section -2 and
15 taxed under section -3(a) made by the taxpayer, in such form
16 as the department may prescribe. These records shall be offered
17 for inspection and examination at any time upon demand by the
18 department and shall be preserved for a period of two years,
19 except that the department may consent in writing to their
20 destruction within that period or may require that they be kept
21 longer.



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

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

9 § -8 **Inspection.** The director, or the duly authorized
10 agent of the director, may examine all records required to be
11 kept under this chapter and books, papers, and records of any
12 person engaged in the sale of sugar-sweetened beverages, syrup,
13 or powder to verify the accuracy of the payment of the tax
14 imposed by this chapter and other compliance with this chapter
15 and rules adopted pursuant thereto. Every person in possession
16 of such books, papers, and records and the person's agents and
17 employees shall give the director, or the duly authorized agent
18 of the director, the means, facilities, and opportunities for
19 the examination.

20 § -9 **Tax in addition to other taxes.** The tax imposed by
21 this chapter shall be in addition to any other tax imposed upon
22 the business of selling sugar-sweetened beverages, syrup, or



1 powder or upon any of the transactions, acts, or activities
2 taxed by this chapter.

3 § -10 Appeals. Any person aggrieved by any assessment
4 of the tax imposed by this chapter may appeal the assessment in
5 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 The hearing and disposition of the appeal, including the
8 distribution of costs, shall be as provided in chapter 232.

9 § -11 Other provisions applicable. All of the
10 provisions of chapters 231, 235, 237, and 238 not inconsistent
11 with this chapter and that may appropriately be applied to the
12 taxes, persons, circumstances, and situations involved in this
13 chapter, including without prejudice to the generality of the
14 foregoing: provisions as to penalties and interest; provisions
15 granting administrative powers to the director; and provisions
16 for the assessment, levy, and collection of taxes; shall be
17 applicable to the taxes imposed by this chapter and to the
18 assessment, levy, and collection thereof.

19 § -12 Investigations; contempts; fees. (a) The
20 director, and any agent authorized by the director to conduct
21 any inquiry, investigation, or hearing under this section, shall
22 have power to administer oaths and take testimony under oath



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

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



1 or documents and, upon the person's refusal shall hold the
2 person in contempt and sentence the person to prison until the
3 person testifies; provided that the period of imprisonment shall
4 not exceed sixty days. Notwithstanding the serving of the term
5 of any imprisonment by any person, the director may proceed in
6 all respects with the inquiry and examination as if the witness
7 had not previously been called upon to testify.

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

14 § -13 **Administration by director; rules.** The
15 administration of this chapter is vested in the director, who
16 may adopt and enforce rules in accordance with chapter 91 for
17 the enforcement and administration of this chapter.

18 § -14 **Disposition of revenues.** Revenues collected under
19 this chapter shall be distributed as follows, with the excess
20 revenues to be deposited into the general fund:

21 (1) per cent of the revenues collected under this
22 chapter shall be deposited into the community health



1 centers special fund established under section 321-
2 1.65;

3 (2) per cent of the revenues collected under this
4 chapter shall be deposited into the trauma system
5 special fund established under section 321-22.5; and

6 (3) per cent of the revenues collected under this
7 chapter shall be deposited into the John A. Burns
8 school of medicine medical loan forgiveness program
9 special fund established under section 304A- .

10 § -15 **Exemptions.** The following shall be exempt from
11 the tax imposed by this chapter:

12 (1) Bottled sugar-sweetened beverages, syrups, and powder
13 sold to the United States government and American
14 Indian tribal governments;

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

18 (3) Bottled sugar-sweetened beverages, syrups, and powder
19 sold by a distributor to another distributor, if the
20 sales invoice clearly indicates that the sale is
21 exempt; provided that:



1 (A) If the sale is to a person who is a distributor
 2 and a retailer, the sale shall be exempt and the
 3 tax shall be paid when the purchasing
 4 distributor-retailer resells the product to a
 5 retailer or a consumer; and

6 (B) This exemption shall not apply to any other sale
 7 to a retailer."

8 SECTION 3. Chapter 304A, Hawaii Revised Statutes, is
 9 amended by adding a new section to be appropriately designated
 10 and to read as follows:

11 "§304A- John A. Burns school of medicine medical loan
 12 forgiveness program special fund. (a) There is established the
 13 John A. Burns school of medicine medical loan forgiveness
 14 program special fund, to be administered and expended by the
 15 University of Hawaii.

16 (b) The following shall be deposited into the special
 17 fund:

- 18 (1) Appropriations by the legislature;
- 19 (2) Cigarette tax revenues pursuant to section 245-15(6)
 20 as enacted by Act , Session Laws of Hawaii 2012;
- 21 (3) Sugar-sweetened beverages tax revenues pursuant to
 22 section -14(3);



1 (4) Liquor tax revenues pursuant to section 244D-17(3) as
2 enacted by Act , Session Laws of Hawaii 2012;

3 (5) Grants, donations, gifts, or other income received for
4 the purposes of the special fund; and

5 (6) Interest earned or accrued on moneys in the special
6 fund.

7 (c) Moneys in the special fund shall be used to support
8 the John A. Burns school of medicine medical loan forgiveness
9 program for medical students graduating after May 1, 2013.

10 (d) The John A. Burns school of medicine shall submit an
11 annual report to the governor and the legislature accounting for
12 the income, expenditures, and fund balance of the John A. Burns
13 school of medicine medical loan forgiveness program special
14 fund."

15 SECTION 4. New statutory material is underscored.

16 SECTION 5. This Act, upon its approval, shall apply to
17 taxable years beginning after December 31, 2011.

18

INTRODUCED BY: Josh Kamao
[Signature]



S.B. NO. 2480

Report Title:

Taxation; Sugar-sweetened Beverages; JABSOM

Description:

Establishes a tax on sugar-sweetened beverages, syrup, and powder with the revenues generated to be deposited into the community health centers special fund, the trauma system special fund, and establishes the John A. Burns school of medicine medical loan forgiveness program special fund.

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