

1 sucrose, fructose, glucose, other sugars, and fruit juice
2 concentrates, but does not include non-caloric sweeteners. For
3 purposes of this definition, "caloric" means a substance that
4 adds calories to the diet of a person who consumes that
5 substance.

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

8 "Department" means the department of taxation.

9 "Director" means the director of taxation.

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

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 powders 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 beverage that contains
21 any added caloric sweetener and contains twenty-four or more



1 calories per twelve ounces. "Sugar-sweetened beverage" shall
2 not include:

- 3 (1) Infant formula;
- 4 (2) Beverages in which milk is the primary ingredient.

5 For the purposes of this paragraph, "milk" means
6 natural liquid milk regardless of animal source or
7 butterfat content; natural milk concentrate, whether
8 or not reconstituted, regardless of animal source or
9 butterfat content; dehydrated natural milk, whether or
10 not reconstituted and regardless of animal source or
11 butterfat content; soy milk; or rice milk;

- 12 (3) Beverages or liquids sold for use for weight reduction
13 as a meal replacement;

14 (4) Dietary aids. For the purposes of this paragraph,
15 "dietary aid" means liquid products manufactured for
16 use as:

- 17 (A) An oral nutritional therapy for persons who
18 cannot absorb or metabolize dietary nutrients
19 from food or beverages;
- 20 (B) A source of necessary nutrition used due to a
21 medical condition; or



1 (C) An oral electrolyte solution for infants and
2 children formulated to prevent dehydration due to
3 illness;

4 (5) Beverages consisting of one hundred per cent natural
5 fruit or vegetable juice with no added caloric
6 sweetener. For purposes of this paragraph, "natural
7 fruit juice" and "natural vegetable juice" mean the
8 original liquid resulting from the pressing of fruits
9 or vegetables, or the liquid resulting from the
10 dilution of dehydrated natural fruit juice or natural
11 vegetable juice; or

12 (6) Alcoholic beverages.

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

18 § -3 **Fee imposed.** (a) Every distributor selling sugar-
19 sweetened beverages, syrup, or powder in this State shall pay a
20 fee that is hereby imposed at the rate of 1 cent per fluid ounce
21 of bottled sugar-sweetened beverages or the equivalent amount of



1 concentrate, syrup, or powder sold or offered for sale to a
2 retailer for sale in the State to a consumer.

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

8 § -4 **Return; form; contents.** Every taxpayer, on or
9 before the twentieth day of each month, shall file with the
10 department in the taxation district in which the taxpayer's
11 place of business is located, a return showing all sales of
12 sugar-sweetened beverages, syrup, and powder by amount and
13 dollar volume in each category defined in section -2 and fees
14 paid under section -3 by the taxpayer during the preceding
15 month, showing separately the amount of the non-fee sales, and
16 the amount of the fee sales, and the fees payable thereon. The
17 form of the return shall be prescribed by the department and
18 shall contain such information as it may deem necessary for the
19 proper administration of this chapter.

20 § -5 **Payment of fees; penalties.** At the time of the
21 filing of the return required under section -4 and within the



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

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

6 § -6 **Determination of fees, 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 fees
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 fees is greater than that shown on the
17 return, or that any fee imposed by this chapter has not been
18 paid, an assessment of additional fees may be made in the manner
19 provided in section 235-108(b). The amount of the fees for the
20 period covered by the assessment shall not be reduced below the



1 amount determined by an assessment so made, except upon appeal
2 or in a proceeding brought pursuant to section 40-35.

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

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



1 destruction within that period or may require that they be kept
2 longer.

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

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

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



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

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

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



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

16 (b) If any person disobeys a subpoena process or, having
17 appeared in obedience thereto, refuses to answer any pertinent
18 question put to the person by the director or the director's
19 authorized agent or to produce any books, papers, and documents
20 pursuant thereto, the director or the agent may apply to the
21 circuit court of the circuit wherein the taxpayer resides or



1 wherein the transaction, act, or activity under investigation
2 has occurred, or to any judge of the court, setting forth the
3 disobedience to process or refusal to answer. The court or the
4 judge shall cite the person to appear before the court or the
5 judge to answer the question or to produce such books, papers,
6 or documents and, upon the person's refusal shall hold the
7 person in contempt and sentence the person to prison until the
8 person testifies; provided that the period of imprisonment shall
9 not exceed sixty days. Notwithstanding the serving of the term
10 of any imprisonment by any person, the director may proceed in
11 all respects with the inquiry and examination as if the witness
12 had not previously been called upon to testify.

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

19 § -13 Administration by director; rules. The
20 administration of this chapter is vested in the director, who



1 may adopt and enforce rules in accordance with chapter 91 for
2 the enforcement and administration of this chapter.

3 § -14 **Disposition of revenues.** Revenues collected under
4 this chapter shall be used by the department of education for
5 cooking, gardening, nutrition, physical education, early
6 education, science, and youth health programs at public and
7 charter schools; provided that revenues may be used for
8 administration expenses associated with the programs.

9 § -15 **Exemptions.** The following shall be exempt from
10 the fees imposed by this chapter:

- 11 (1) Bottled sugar-sweetened beverages, syrups, and powder
12 sold to the United States government and American
13 Indian tribal governments;
- 14 (2) Bottled sugar-sweetened beverages, syrups, and powder
15 sold by a distributor or a retailer expressly for
16 resale or consumption outside the State; and
- 17 (3) Bottled sugar-sweetened beverages, syrups, and powder
18 sold by a distributor to another distributor, if the
19 sales invoice clearly indicates that the sale is
20 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 fees 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 2. This Act, upon its approval, shall apply to
9 taxable years beginning after December 31, 2016.

10

INTRODUCED BY:

Paul E. Rader
Mike Hubbard
Randy H. Baker



S.B. NO. 837

Report Title:

Fee; Sugar-sweetened Beverages

Description:

Establishes a fee on sugar-sweetened beverages, syrup, and powder with the revenues generated to be used for department of education cooking, gardening, nutrition, physical education, early education, science, and youth health programs at public and charter schools.

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