

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2116

By: Ellis

AS INTRODUCED

An Act relating to revenue and taxation; creating the Oklahoma Soft Drink Tax Code; defining terms; providing for levy of tax on certain manufacturers, wholesale dealers, and distributors of certain syrups and drinks; providing exemptions from tax for certain syrups and drinks; providing for payment of tax; providing for apportionment of revenues generated from tax; requiring licensing; amending 62 O.S. 2001, Section 41.29b, as amended by Section 2, Chapter 315, O.S.L. 2003 (62 O.S. Supp. 2003, Section 41.29b), which relates to the Education Reform Revolving Fund; providing for apportionment of monies to fund; and providing for codification.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1380 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "Oklahoma Soft Drink Tax Code".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1381 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Soft Drink Tax Code:

1. "Bottle" means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of such container;

2. "Bottled soft drinks" means any complete, ready to consume, nonalcoholic drink, whether carbonated or not, commonly referred to as a soft drink, contained in any bottle;

3. "Commission" or "Tax Commission" means the Oklahoma Tax Commission;

4. "Distributor", "manufacturer", or "wholesale dealer" means any person who receives, stores, manufactures, bottles, or sells bottled soft drinks, soft drink syrups, simple syrups, or powders, or base products for mixing, compounding, or making soft drinks for sale to retail dealers, other manufacturers, wholesale dealers, or distributors for resale purposes;

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

6. "Natural fruit juice" means the original liquid resulting from the pressing of fruit, or the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice;

7. "Natural vegetable juice" means the original liquid resulting from the pressing of vegetables, or the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice;

8. "Place of business" means any place where soft drinks, syrups, simple syrups, powder, or base products are manufactured or any place where bottled soft drinks, soft drink syrup, simple syrup, soft drink powder, or other soft drink base product, or any other item taxed under this act is received;

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

10. "Retailer" or "retail dealer" means any person, other than a manufacturer, distributor, or wholesaler, who receives, stores, mixes, compounds, or manufactures any soft drink and sells or otherwise dispenses the same to the ultimate consumer;

11. "Sale" means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished. When a retailer is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed by this act arises when the property is transferred to a retail store for sale to the ultimate consumer, as reflected by the records of the taxpayer;

12. "Simple syrup" means a mixture of sugar and water;

13. "Soft drink" means any nonalcoholic beverage sold for human consumption including, but not limited to, the following: soda water, ginger ale, all drinks commonly referred to as cola, lime, lemon, lemon-lime, and other flavored drinks, whether naturally or artificially flavored, including any fruit or vegetable drink containing ten percent (10%) or less natural fruit juice, or ten percent (10%) or less natural vegetable juice, and all other drinks and beverages commonly referred to as soft drinks, but not including coffee or tea unless the coffee or tea is bottled as a liquid for sale; and

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1382 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby levied upon every distributor, manufacturer, or wholesale dealer a tax in the following amounts:

1. Two Dollars (\$2.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the state of Oklahoma;

2. Twenty-one cents (\$0.21) per gallon for each gallon of bottled soft drinks sold or offered for sale in the state of Oklahoma; and

3. Where a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in Oklahoma, and the powder is for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to twenty-one cents (\$0.21) for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions. This tax applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer.

B. 1. Any retailer or retail dealer who purchases bottled soft drinks, soft drink syrup, simple syrup, powder, or base product from an unlicensed distributor, manufacturer, or wholesale dealer shall be liable for the tax levied in subsection A of this section on those purchases.

2. A retailer shall not be subject to this tax if the retailer purchases syrups, simple syrups, powders or base products, or soft drinks from a supplier licensed under Section 7 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1383 of Title 68, unless there is created a duplication in numbering, reads as follows:

There are hereby specifically exempted from the tax levied by Section 3 of this act:

1. Syrups, simple syrups, powders or base products, or soft drinks sold to the United States government;

2. Syrups, simple syrups, powders or base products, or soft drinks exported from the State of Oklahoma by a distributor, wholesaler, or manufacturer;

3. Any powder or base product that is used in preparing coffee or tea;

4. Any frozen concentrate or freeze-dried concentrate to which only water is added to produce a soft drink containing more than ten percent (10%) natural fruit juice or natural vegetable juice;

5. Any soft drink containing more than ten percent (10%) natural fruit juice or natural vegetable juice;

6. Syrups, simple syrups, powders or base products, or soft drinks sold by one distributor, wholesaler, or manufacturer to another distributor, wholesaler, or manufacturer who holds a license issued by the Commission under the provisions of Section 7 of this act as a distributor, wholesaler, or manufacturer, provided that the license number of the distributor, wholesaler, or manufacturer to whom the soft drink is sold is clearly shown on the invoice for the sale which is claimed to be exempt. This exemption shall not apply to any sale to a retailer;

7. Any product, whether sold in liquid or powder form, which is intended by the manufacturer for consumption by infants and which is commonly referred to as "infant formula";

8. Any product, whether sold in liquid or powder form, which is intended by the manufacturer for use as a dietary supplement or for weight reduction;

9. Water to which no flavoring, whether artificial or natural, or carbonation has been added;

10. Any powder or other base product which is intended by the manufacturer to be sold and used for the purpose of domestically mixing soft drinks by the ultimate consumer; and

11. Any product containing milk or milk products.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1384 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. The tax levied by Section 3 of this act shall be paid by the distributor, wholesaler, or manufacturer when the syrup, powder or base product, or soft drink is sold; and

2. The tax levied by Section 3 of this act shall be paid by a retailer who purchases syrups, powder or base products, or soft drinks from an unlicensed distributor, wholesaler, or manufacturer.

B. The tax levied by Section 3 of this act shall be due and payable on the first day of each month. For the purpose of ascertaining the amount of the tax payable, it shall be the duty of the distributor, wholesaler, or manufacturer and any retailer subject to this tax to file a monthly return and remit the tax for the month to the Oklahoma Tax Commission on or before the fifteenth day of the month next following the month in which the sale or purchase was made. If the payment of such tax is not postmarked or delivered to the Commission on or before the fifteenth of such month, the tax shall be delinquent from such date.

C. 1. The returns shall be made upon forms prescribed and furnished by the Commission and signed by the person required to collect and remit the tax or the agent of the person; and

2. The return shall contain such information as the Commission shall require for the proper administration of the Oklahoma Soft Drink Tax Code.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1385 of Title 68, unless there is created a duplication in numbering, reads as follows:

Revenues derived pursuant to the provisions of the Oklahoma Soft Drink Tax Code collected by the Oklahoma Tax Commission shall be apportioned and distributed monthly as follows:

1. Thirty-five percent (35%) of the levy shall be remitted to the State Treasurer to the credit of the Education Reform Revolving Fund;

2. Thirty-five percent (35%) of the levy shall be remitted to the State Treasurer to the credit of the State Highway Construction and Maintenance Fund; and

3. Thirty percent (30%) of the levy shall be remitted to the State Treasurer to the credit of the Public Health Special Fund.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1386 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. All distributors, wholesalers, or manufacturers of soft drinks whether located within or without this state, who sell or offer syrups, simple syrups, powders or base products, or soft drinks for sale to retail dealers within this state shall obtain a license for the privilege of conducting such business within this state from the Oklahoma Tax Commission.

B. Any retailer who purchases syrups, simple syrups, powders, or base products, or soft drinks from an unlicensed manufacturer, wholesaler, or distributor shall obtain a license for the privilege of conducting such business from the Oklahoma Tax Commission.

C. Any person required to obtain a license under the Oklahoma Soft Drink Tax Code shall obtain a license for each place of business owned or operated by the person.

D. The license shall be conspicuously displayed at the place of business for which it was issued.

SECTION 8. AMENDATORY 62 O.S. 2001, Section 41.29b, as amended by Section 2, Chapter 315, O.S.L. 2003 (62 O.S. Supp. 2003, Section 41.29b), is amended to read as follows:

Section 41.29b There is hereby created in the State Treasury a revolving fund for the State Department of Education to be designated the "Education Reform Revolving Fund". The said

Education Reform Revolving Fund shall consist of any monies as apportioned by Sections 1353, 1403 and 2352 of Title 68 of the Oklahoma Statutes and such revenue as is apportioned pursuant to the provisions of Section 312.1 of Title 36 of the Oklahoma Statutes and Section 6 of this act. The Education Reform Revolving Fund herein created may be expended for the purposes stated in Enrolled House Bill No. 1017 of the 1st Extraordinary Session of the 42nd Oklahoma Legislature, and in the same manner as appropriated funds.

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