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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO TAXATION - SUGARY DRINKS

Introduced By: Senators Cano, Goldin, Valverde, Crowley, and Quezada

Date Introduced: February 27, 2019

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. TITLE 44 of the General Laws entitled "TAXATION" is hereby amended  
2 by adding thereto the following chapter:

3 CHAPTER 70

4 SUGARY DRINKS TAX

5 **44-70-1. Short title.**

6 This chapter shall be known and may be cited as the "Sugary Drinks Tax".

7 **44-70-2. Legislative Intent.**

8 It is the intent of the general assembly, by adopting a sugary drinks tax and creating the  
9 children's health promotion fund, to diminish the human and economic costs of obesity in the  
10 state of Rhode Island. The intent is to discourage excessive consumption of sugary drinks and to  
11 create a dedicated revenue source for programs designed to benefit public health and wellness.

12 **44-70-3. Definitions.**

13 As used in this chapter, the following words and terms shall have the following meanings  
14 unless the context clearly indicate another or different meaning or intent:

15 (1) "Beverage for medical use" means a beverage suitable for human consumption and  
16 manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize  
17 dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for  
18 infants and children formulated to prevent or treat dehydration due to illness. "Beverage for  
19 medical use" shall also mean a "medical food" as defined in section 5(b)(3) of the Orphan Drug

1 Act (21 U.S.C. 360ee(b)(3)); this chapter defines medical food as "a food which is formulated to  
2 be consumed or administered externally under the supervision of a physician and which is  
3 intended for the specific dietary management of a disease or condition for which distinctive  
4 nutritional requirements, based on recognized scientific principles, are established by medical  
5 evaluation." "Beverage for medical use" shall not include drinks commonly referred to as "sports  
6 drinks" or any other common names that are derivations thereof.

7 (2) "Bottle" means any closed or sealed container regardless of size or shape, including,  
8 without limitation, those made of glass, metal, paper, plastic, or any other material or  
9 combination of materials.

10 (3) "Bottled sugary drink" means any sugary drink contained in a bottle that is ready for  
11 consumption without further processing such as, without limitation, dilution or carbonation.

12 (4) "Caloric sweetener" means any caloric substance suitable for human consumption that  
13 humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, fruit juice  
14 concentrate or other sugars. "Caloric sweetener" excludes noncaloric sweeteners. For purposes of  
15 this definition, "caloric" means a substance which adds calories to the diet of a person who  
16 consumes that substance.

17 (5) "Consumer" means a person who purchases a sugary drink for consumption and not  
18 for sale to another.

19 (6) "Department of health" means the Rhode Island department of health.

20 (7) "Distributor" means any person, including manufacturers and wholesale dealers, who  
21 receives, stores, manufactures, bottles, or distributes bottled sugary drinks, syrups, or powders,  
22 for sale to retailers doing business in the state, whether or not that person also sells such products  
23 to consumers.

24 (8) "Division of taxation" means the Rhode Island division of taxation.

25 (9) "Fund" means the children's health promotion fund established pursuant to §44-70-8.

26 (10) "Milk" means natural liquid milk regardless of animal or plant source or butterfat  
27 content, including natural milk concentrate, whether or not reconstituted, or dehydrated natural  
28 milk, whether or not reconstituted.

29 (11) "Natural fruit juice" means the original liquid resulting from the pressing of fruits, or  
30 the liquid resulting from the dilution with water of dehydrated natural fruit juice.

31 (12) "Natural vegetable juice" means the original liquid resulting from the pressing of  
32 vegetables, or the liquid resulting from the dilution with water of dehydrated natural vegetable  
33 juice.

34 (13) "Noncaloric sweetener" means any noncaloric substance suitable for human

1 consumption that humans perceive as sweet and includes, without limitation, aspartame,  
2 acesulfame-K, neotame, saccharin, sucralose, and stevia. "Noncaloric sweetener" excludes caloric  
3 sweeteners. For purposes of this definition, "noncaloric" means a substance that contains fewer  
4 than five (5) calories per serving.

5 (14) "Person" means any natural person, partnership, cooperative association, limited  
6 liability company, corporation, personal representative, receiver, trustee, assignee, or any other  
7 legal entity.

8 (15) "Place of business" means any place where sugary drinks, syrups, or powders are  
9 manufactured or received for sale in the state.

10 (16) "Powder" means any solid mixture of ingredients used in making, mixing, or  
11 compounding sugary drinks by mixing the powder with any one or more other ingredients,  
12 including, without limitation water, ice, syrup, simple syrup, fruits, vegetables, fruit juice,  
13 vegetable juice, carbonation, or other gas.

14 (17) "Retailer" means any person who sells or otherwise dispenses in the state a sugary  
15 drink to a consumer whether or not that person is also a distributor as defined in this section.

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

18 (19) "Sugary drink" means any nonalcoholic beverage, carbonated or noncarbonated,  
19 which is intended for human consumption and contains any added caloric sweetener. As used in  
20 this definition, "nonalcoholic beverage" means any beverage that contains less than one-half of  
21 one percent (.5%) alcohol per volume.

22 (20) "Syrup" means a liquid mixture of ingredients used in making, mixing, or  
23 compounding sugary drinks using one or more other ingredients including, without limitation,  
24 water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or  
25 other gas.

26 (21) "Tax administrator" means the tax administrator of the Rhode Island division of  
27 taxation or authorized agents and employees.

28 (22) "Water" means plain (nonflavored) or flavored with "natural fruit essence" (with no  
29 calories), or "natural flavor". The source of the water may be: artesian, mineral, spring, or well.  
30 The type may also include, carbonated (sparkling, club, seltzer), still, distilled, or purified  
31 (distilled, demineralized, deionized, reverse osmosis).

32 **44-70-4. License Required.**

33 (a) Every distributor doing business in this state shall file with the division of taxation an  
34 application for a license to engage in a business under this chapter, for each place of business

1 owned and operated by the distributor before the sooner of January 1, 2020 or a distributor's first  
2 acts which constitute the doing of business in the state. An application for a license shall be filed  
3 on forms to be furnished by the division of taxation for that purpose. An application must be  
4 subscribed and sworn to by a person with legal authority to bind the business. The application  
5 shall identify the owners of the applicant, the applicant's mailing address, the place of business to  
6 which the license shall apply, and the nature of the business in which engaged, and any other  
7 information the division of taxation may require for the enforcement of this chapter.

8 (b) Upon receipt of an application and any license fee hereafter provided for, the division  
9 of taxation may issue to the applicant, for the place of business designated, a nonassignable  
10 license, authorizing the sale of sugary drinks, syrups, and powders in the state. No distributor  
11 shall sell any sugary drink, syrup or powder without first obtaining a license to do so under this  
12 chapter. Licenses issued pursuant to this section shall expire on January 31 of each year and may  
13 be renewed annually.

14 (c) A license cannot be transferred, and shall at all times be prominently displayed in a  
15 distributor's place of business. The division of taxation may refuse to issue a license to any  
16 person previously convicted of violations of this chapter under such procedures as the division of  
17 taxation may establish by regulation.

18 **44-70-5. Tax Imposed.**

19 (a) There is hereby imposed an excise tax on every distributor for the privilege of selling  
20 the products governed by this chapter in the state.

21 (1) The tax shall be calculated using the following tiered system.

22 (i) Tier 1: Beverages with less than five grams (5g) of sugar per twelve fluid ounces (12  
23 fl. oz.) will not be taxed.

24 (ii) Tier 2: Beverages with more than five grams (5g) but less than twenty grams (20g) of  
25 sugar per twelve fluid ounces (12 fl. oz.) will be taxed at a rate of one cent (\$0.01) per ounce.

26 (iii) Tier 3: Beverages with twenty grams (20g) of sugar or more per twelve fluid ounces  
27 (12 fl. oz.) will be taxed at a rate of two cents (\$0.02) per ounce.

28 (2) Syrups and powders sold or offered for sale to a retailer for sale in the state to a  
29 consumer, either as syrup or powder or as a sugary drink derived from that syrup or powder, are  
30 taxable.

31 (i) Syrups and powders shall be taxed using the following tiered system.

32 (A) Tier 1: If the beverages made from the syrup or powder have less than five grams  
33 (5g) of sugar per twelve fluid ounces (12 fl. oz.), the syrup or powder will not be taxed.

34 (B) Tier 2: If the beverages made from the syrup or powder have more than five grams

1 (5g) but less than twenty grams (20g) of sugar per twelve fluid ounces (12 fl. oz.), the syrup or  
2 powder will be taxed at a rate equal to one cent (\$0.01) per ounce for each gallon of sugary drink  
3 produced from that syrup or powder.

4 (C) Tier 3: If the beverages made from the syrup or powder have twenty grams (20g) of  
5 sugar or more per twelve fluid ounces (12 fl. oz.), the syrup or powder will be taxed at a rate  
6 equal to two cents (\$0.02) per ounce for each gallon of sugary drink produced from that syrup or  
7 powder.

8 (ii) For purposes of calculating the tax, the volume of sugary drinks produced from  
9 syrops or powders shall be the larger of:

10 (A) The largest volume resulting from use of the syrups or powders according to any  
11 manufacturer's instructions; or

12 (B) The volume actually produced by the retailer, as reasonably determined by the tax  
13 administrator.

14 (3) The tax amounts set forth in this section shall be adjusted annually by the tax  
15 administrator in proportion with the consumer price index for all urban consumers (CPI-U) for  
16 All Items for the Northeast Region Statistical Area as reported by the United States Bureau of  
17 Labor Statistics or any successor to that index.

18 (4) Manufacturers, bottlers, wholesalers, or distributors shall add the amount of the tax  
19 imposed by this section to the retail price of sugary drinks.

20 (b) A retailer who sells bottled sugary drinks, syrups, or powders in the state to a  
21 consumer, on which the tax imposed by this section has not been paid by a distributor, is liable  
22 for the tax imposed in subsection (a) of this section at the point of sale to a consumer.

23 (c) The taxes imposed by this section are in addition to any other taxes that may apply to  
24 persons or products subject to this chapter.

25 **44-70-6. Report of sales and tax remittances.**

26 Any distributor or retailer liable for the tax imposed by this chapter shall, on or before the  
27 twentieth day of every month, return to the tax administrator under oath of a person with legal  
28 authority to bind the distributor or retailer, a statement containing their name and place of  
29 business, the quantity of sugary drinks, syrups, and powders subject to the excise tax imposed by  
30 this chapter sold or offered for sale in the preceding month, and any other information required by  
31 the tax administrator, along with the tax due.

32 **44-70-7. Records of Distributors.**

33 Every distributor, and every retailer subject to this chapter, shall maintain for not less  
34 than two (2) years accurate records, showing all transactions that gave rise, or may have given

1 rise, to tax liability under this chapter. All records are subject to inspection by the tax  
2 administrator at all reasonable times during normal business hours.

3 **44-70-8. Establishment of the Children's Health Promotion Fund.**

4 There shall be established and set up a separate fund to be known as the children's health  
5 promotion fund. The department of health shall administer the fund. The fund shall consist of  
6 revenues from the state generated by the tax imposed by chapter 70 of title 44. The fund shall be  
7 expended first for the implementation, administration, enforcement and evaluation of chapter 70  
8 of title 44. Unexpended balances shall be allocated in a proportion to be determined by the  
9 director of the department of health in consultation with other agency heads. Qualifying programs  
10 and initiatives funded under chapter 70 of title 44 shall include, but not be limited to:

11 (1) Investments in biking, walking and outdoor recreation;

12 (2) Investments in safe routes to schools;

13 (3) Efforts to promote more frequent, effective physical education in schools;

14 (4) Initiatives that promote access to healthy foods, especially in underserved  
15 communities;

16 (5) Programs that significantly increase Supplemental Nutrition Assistance Program  
17 (SNAP) benefits when used to purchase fruits and vegetables;

18 (6) Initiatives that promote good nutrition, physical activity, and limited screen time in  
19 early childcare settings and out-of-school programs;

20 (7) Efforts to promote and achieve health equity;

21 (8) Programs that help children achieve a healthy weight;

22 (9) Development and promotion of materials that educate children, families and citizens  
23 about the health effects of consuming sugary drinks and promote the consumption of tap water;

24 (10) Other evidence-based methods of improving children's health and wellness in areas  
25 including, but not limited to, nutrition, physical activity, access to health care and oral care.

26 **44-70-9. Exemptions.**

27 The following shall be exempt from the tax imposed by this chapter:

28 (1) Bottled sugary drinks, syrups, and powders sold to the United States government and  
29 American Indian Tribal governments;

30 (2) Bottled sugary drinks, syrups, and powders sold by a distributor to another distributor  
31 that holds a license issued pursuant to chapter, if the sales invoice clearly indicates that the sale is  
32 exempt. If the sale is to a person who is both a distributor and a retailer, the sale shall also be tax  
33 exempt and the tax shall be paid when the purchasing distributor/retailer resells the product to a  
34 retailer or a consumer. This exemption does not apply to any other sale to a retailer;

- 1           (3) Beverages sweetened solely with noncaloric sweeteners;  
2           (4) Beverages consisting of one hundred percent (100%) natural fruit or vegetable juice  
3 with no added caloric sweetener;  
4           (5) Beverages in which milk, soy, rice, or similar milk substitute, is the primary  
5 ingredient or the first listed ingredient on the label of the beverage;  
6           (6) Coffee or tea without added caloric sweetener;  
7           (7) Infant formula;  
8           (8) Beverages for medical use;  
9           (9) Water without any caloric sweeteners.

10           **44-70-10. Penalties.**

11           (a) Any person subject to the provisions of this chapter who fails to pay the entire amount  
12 of tax imposed by this chapter by the date that payment is due, fails to submit a report or maintain  
13 records required by this chapter, or violates any other provision of this chapter, or rules and  
14 regulations promulgated by the division of taxation for the enforcement of this chapter, shall be  
15 guilty of a misdemeanor and shall also be liable for the amount of the tax that may be due and a  
16 penalty equal to fifty percent (50%) of the tax due. The division of taxation, or its duly authorized  
17 representative, may determine the amount due in the event of any payment or underpayment that  
18 may come to its attention and demand payment of all such taxes and penalties. Interest shall  
19 accrue on non- or under-payment of tax at a rate of twelve percent (12%) per annum from the  
20 date the tax was due until paid. For good reason shown the division of taxation may waive all or  
21 any part of the penalties imposed, but shall have no power to waive interest.

22           (b) All administrative provisions of chapter 18 of title 44 including those which provide  
23 for the apportionment of economic activity between that within the tax jurisdiction of the state  
24 and such activity outside that jurisdiction, which fix damages, penalties and interest for  
25 nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other  
26 requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under  
27 the provisions of this chapter, and the division of taxation shall exercise all the power and  
28 authority and perform all the duties with respect to taxpayers under this chapter as are provided in  
29 chapter 18 of title 44, except in the event of a conflict, and then the provisions of this chapter  
30 shall control.

31           **44-70-11. Unpaid Taxes a Debt.**

32           All taxes and penalties imposed under the provisions of this chapter remaining due and  
33 unpaid shall constitute a debt to the state, which may be collected from the person owing same by  
34 suit or otherwise.

1           **44-70-12. Records of the division of taxation.**

2           At the end of each month, the state auditor shall carefully check the books and records of  
3 the tax administrator and their accounts with any bank or banks, and shall verify the amounts  
4 collected pursuant to this chapter and paid into the children's health promotion fund. Any duty  
5 herein required of the state auditor may be performed by any duly trained clerk in that office,  
6 designated by the state auditor for that purpose.

7           **44-70-13. Exercise of Powers and Duties.**

8           Whenever in this chapter any reference is made to any power or duty of the tax  
9 administrator the reference is construed to mean that the power or duty shall be exercised by the  
10 tax administrator, under the supervision and direction of the director of revenue.

11           **44-70-14. Rules and Regulations.**

12           The tax administrator is hereby empowered to make such rules and regulations, and  
13 provide such procedural measures, in cooperation with the state auditor, as may be reasonably  
14 necessary to accomplish the purposes of this chapter.

15           **44-70-15. Severability.**

16           If any provision of this chapter, any rule or regulation made under this chapter, or the  
17 application of this chapter to any person or circumstance is held invalid by any court of  
18 competent jurisdiction, the remainder of the chapter, rule, or regulation, and the application of the  
19 provision to other persons or circumstances shall not be affected. The invalidity of any section or  
20 sections or parts of any section of this chapter shall not affect the validity of the remainder of the  
21 chapter.

22           SECTION 2. This act shall take effect on January 1, 2020.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TAXATION - SUGARY DRINKS

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1           This act would create a tax on sugary drinks with the intent of discouraging excessive  
2 consumption of those beverages and would create a dedicated revenue source for programs  
3 designed to benefit public health in addition to the ultimate goal of reducing the health and  
4 economic costs of obesity in the state.

5           This act would take effect on January 1, 2020.

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