2019 -- S 0418

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:

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

CHAPTER 70
SUGARY DRINKS TAX

44-70-1. Short title.
This chapter shall be known and may be cited as the "Sugary Drinks Tax".

44-70-2. Legislative Intent.
It is the intent of the general assembly, by adopting a sugary drinks tax and creating the children’s health promotion fund, to diminish the human and economic costs of obesity in the state of Rhode Island. The intent is to discourage excessive consumption of sugary drinks and to create a dedicated revenue source for programs designed to benefit public health and wellness.

44-70-3. Definitions.
As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicate another or different meaning or intent:

(1) "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" shall also mean a "medical food" as defined in section 5(b)(3) of the Orphan Drug...
Act (21 U.S.C. 360ee(b)(3)); this chapter defines medical food as "a food which is formulated to be consumed or administered externally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation." "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

License Required.

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

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

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

44-70-5. Tax Imposed.

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

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

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

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

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

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

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

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

(B) Tier 2: If the beverages made from the syrup or powder have more than five grams
(5g) but less than twenty grams (20g) of sugar per twelve fluid ounces (12 fl. oz.), the syrup or powder will be taxed at a rate equal to one cent ($0.01) per ounce for each gallon of sugary drink produced from that syrup or powder.

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

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

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

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

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

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

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

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


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


Every distributor, and every retailer subject to this chapter, shall maintain for not less than two (2) years accurate records, showing all transactions that gave rise, or may have given
rise, to tax liability under this chapter. All records are subject to inspection by the tax
administrator at all reasonable times during normal business hours.

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

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

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

(2) Investments in safe routes to schools;

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

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

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

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

(7) Efforts to promote and achieve health equity;

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

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

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


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

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

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

(4) Beverages consisting of one hundred percent (100%) natural fruit or vegetable juice with no added caloric sweetener;

(5) Beverages in which milk, soy, rice, or similar milk substitute, is the primary ingredient or the first listed ingredient on the label of the beverage;

(6) Coffee or tea without added caloric sweetener;

(7) Infant formula;

(8) Beverages for medical use;

(9) Water without any caloric sweeteners.

44-70-10. Penalties.

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

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

44-70-11. Unpaid Taxes a Debt.

All taxes and penalties imposed under the provisions of this chapter remaining due and unpaid shall constitute a debt to the state, which may be collected from the person owing same by suit or otherwise.
44-70-12. Records of the division of taxation.

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


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


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


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

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