

1 **State of Arkansas**

**Call Item 2**

2 **78th General Assembly**

# **A Bill**

3 **Second Extraordinary Session, 1992**

**HOUSE BILL 1006**

4 **By: Representatives McGee, J. Miller and Maddox**

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## **For An Act To Be Entitled**

8 "AN ACT TO LEVY A TAX ON SOFT DRINKS SOLD OR OFFERED FOR  
9 SALE IN ARKANSAS; TO PROVIDE DEFINITIONS AND PROCEDURES  
10 FOR THE COLLECTION OF THE TAX; AND FOR OTHER PURPOSES."

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## **Subtitle**

15 "AN ACT TO LEVY A TAX ON SOFT DRINKS."

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20 SECTION 1. This act shall be known and may be cited as the "Arkansas  
21 Soft Drink Tax Act" and is hereby declared to levy a state tax as defined in  
22 the Arkansas Tax Procedure Act (Ark. Code Ann. §26-18-101 et seq.) This act  
23 is to be administered in all respects in accordance with the Arkansas Tax  
24 Procedure Act unless otherwise provided.

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26 SECTION 2. DEFINITIONS

27 (a) Terms used in this Act which are defined by the Arkansas Tax  
28 Procedure Act (Ark. Code. Ann. §26-18-101 et seq.), shall have the meaning set  
29 out in that act unless otherwise provided or unless a different meaning is  
30 required by the use of the term.

31 (b) As used in this act:

32 (1) "Bottle" means any closed or sealed glass, metal, paper, plastic,  
33 or any other type of container regardless of the size or shape of such  
34 container.

35 (2) "Bottled soft drinks" means any complete, ready to consume, non-

1 alcoholic drink, whether carbonated or not, commonly referred to as a soft  
2 drink, contained in any bottle.

3 (3) "Director" means the Director of the Department of Finance and  
4 Administration or his authorized agent.

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

10 (5) "Natural fruit juice" means the original liquid resulting from the  
11 pressing of fruit or the liquid resulting from the reconstitution of natural  
12 fruit juice concentrate or the liquid resulting from the restoration of water  
13 to dehydrated natural fruit juice.

14 (6) "Natural vegetable juice" means the original liquid resulting from  
15 the pressing of vegetables or the liquid resulting from the reconstitution of  
16 natural vegetable juice concentrate or the liquid resulting from the  
17 restoration of water to dehydrated natural vegetable juice.

18 (7) "Non-alcoholic beverage" means and includes all beverages not  
19 subject to tax under Ark. Code Ann. §3-7-104.

20 (8) "Place of business" means any place where soft drinks, syrups,  
21 simple syrups, powder or base products are manufactured or any place where  
22 bottled soft drinks, soft drink syrup, simple syrup, soft drink powder or  
23 other soft drink base product or any other item taxed under this act are  
24 received.

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

30 (10) "Retailer" or "retail dealer" means any person other than a  
31 manufacturer, distributor or wholesaler, who receives, stores, mixes,  
32 compounds or manufacturers any soft drink and sells or otherwise dispenses the  
33 same to the ultimate consumer.

34 (11) "Sale" means the transfer of title or possession for a valuable  
35 consideration of tangible personal property regardless of the manner by which  
36 the transfer is accomplished. When a retailer is also acting as a wholesaler

1 or distributor, the duty to report and pay the tax imposed by this act arises  
2 when the property is transferred to a retail store for sale to the ultimate  
3 consumer as reflected by the records of the taxpayer.

4 (12) "Simple syrup" means a mixture of sugar and water.

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

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

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18 SECTION 3. LICENSES

19 (a) All distributors, wholesalers or manufacturers of soft drinks  
20 whether located within or without the State of Arkansas, who sell or offer  
21 syrups, simple syrups, powders or base products, or soft drinks for sale to  
22 retail dealers within the State of Arkansas shall obtain a license for the  
23 privilege of conducting such business within Arkansas from the Director.

24 (b) Any retailer who purchases syrups, simple syrups, powders or base  
25 products, or soft drinks from an unlicensed manufacturer, wholesaler or  
26 distributor shall obtain a license for the privilege of conducting such  
27 business from the Director.

28 (c) Any person required to obtain a license under this act shall obtain  
29 a license for each place of business owned or operated by him.

30 (d) The license shall be conspicuously displayed at the place of  
31 business for which it was issued.

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33 SECTION 4. TAX RATE

34 There is hereby levied and there shall be collected a tax upon every  
35 distributor, manufacturer or wholesale dealer to be calculated as follows:

1 (1) *Two dollars (\$2.00)* per gallon for each gallon of soft drink syrup  
2 or simple syrup sold or offered for sale in the State of Arkansas.

3 (2) *Twenty-two cents (\$0.22)* per gallon for each gallon of bottled soft  
4 drinks sold or offered for sale in the State of Arkansas.

5 (3) Where a package or container of powder or other base product other  
6 than a syrup or simple syrup is sold or offered for sale in Arkansas, and the  
7 powder is for the purpose of producing a liquid soft drink, then the tax on  
8 the sale of each package or container shall be equal to *twenty-two cents*  
9 *(\$0.22)* for each gallon of soft drink which may be produced from each package  
10 or container by following the manufacturer's directions. This tax applies when  
11 soft drink is produced by the retailer.

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13 SECTION 5. IMPOSITION OF TAX - RETAILER

14 (a) Any retailer or retail dealer who purchases bottled soft drinks,  
15 soft drink syrup, simple syrup, powder or base product from an unlicensed  
16 distributor, manufacturer or wholesale dealer, shall be liable for the tax  
17 levied in Section 4 of this Act on those purchases.

18 (b) A retailer shall not be subject to this tax if the retailer  
19 purchases syrups, simple syrups, powders or base products, or soft drinks from  
20 a supplier licensed under Section 3 of this Act.

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22 SECTION 6. EXEMPTIONS

23 The following shall be exempt from the tax levied by this act:

24 (a) Syrups, simple syrups, powders or base products, or soft drinks  
25 sold to the United States Government.

26 (b) Syrups, simple syrups, powders or base products, or soft drinks  
27 exported from the State of Arkansas by a distributor, wholesaler or  
28 manufacturer.

29 (c) Any powder or base product that is used in preparing coffee or tea.

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

33 (e) Any soft drink containing more than ten percent (10%) natural fruit  
34 juice or natural vegetable juice.

35 (f) Syrups, simple syrups, powders or base products, or soft drinks

1 sold by one distributor, wholesaler or manufacturer to another distributor,  
 2 wholesaler or manufacturer who holds a license issued by the Director under  
 3 the provisions of this act as a distributor, wholesaler or manufacturer  
 4 provided that the license number of the distributor, wholesaler, manufacturer  
 5 to whom the soft drink is sold is clearly shown on the invoice for the sale  
 6 which is claimed to be exempt. This exemption shall not apply to any sale to  
 7 a retailer.

8 (g) Any product whether sold in liquid or powder form which is intended  
 9 by the manufacturer for consumption by infants and which is commonly referred  
 10 to as "infant formula".

11 (h) Any product whether sold in liquid or powder form which is intended  
 12 by the manufacturer for use as a dietary supplement or for weight reduction.

13 (i) Water to which no flavoring, whether artificial or natural, nor  
 14 carbonation has been added.

15 (j) *Any powder or other base product which is intended by the*  
 16 *manufacturer to be sold and used for the purpose of domestically mixing soft*  
 17 *drinks by the ultimate consumer.*

18 (k) *Milk, meaning natural liquid milk regardless of animal source or*  
 19 *butter fat content; or natural milk concentrate, whether or not reconstituted,*  
 20 *regardless of animal source or butter fat content, or dehydrated natural milk*  
 21 *whether or not reconstituted, or any other soft drink containing more than ten*  
 22 *percent (10%) milk or more than ten percent (10%) of another natural dairy*  
 23 *product in liquid or powdered form.*

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25 SECTION 7. TAX REPORTING

26 The tax levied by this act shall be paid by the distributor, wholesaler  
 27 or manufacturer when the syrup, powder or base product, or soft drink is sold.

28 The tax levied by this act shall be paid by a retailer who purchases syrups,  
 29 powder or base products or soft drinks from an unlicensed distributor,  
 30 wholesaler or manufacturer. The distributor, wholesaler or manufacturer and  
 31 any retailer subject to this tax shall file a monthly return and remit the tax  
 32 for the month to the Director on or before the 15th day of the month next  
 33 following the month in which the sale or purchase was made. The returns shall  
 34 be made upon forms prescribed and furnished by the Director and signed by the  
 35 person required to collect and remit the tax or his agent. The return shall

1 contain such information as the Director shall require for the proper  
2 administration of this act.

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4 SECTION 8. The revenues derived from the tax collected under this act  
5 shall be remitted to the State Treasurer who shall deposit the revenues in the  
6 State Treasury as general revenues.

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8 SECTION 9. All provisions of this act of a general and permanent nature  
9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
10 Revision Commission shall incorporate the same in the Code.

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12 SECTION 10. If any provision of this act or the application thereof to  
13 any person or circumstance is held invalid, such invalidity shall not affect  
14 other provisions or applications of the act which can be given effect without  
15 the invalid provision or application, and to this end the provisions of this  
16 act are declared to be severable.

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18 SECTION 11. All laws and parts of laws in conflict with this act are  
19 hereby repealed.

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21 SECTION 12. EMERGENCY CLAUSE.

22 *It is hereby found and determined by the General Assembly that the state*  
23 *is in immediate need of additional revenues to maintain Medicaid services at*  
24 *their present level; that this act generates those revenues; and that unless*  
25 *this act goes into effect immediately, the services provided the citizens of*  
26 *this state under the medicaid program will be drastically curtailed.*  
27 *Therefore, an emergency is hereby declared to exist and this act being*  
28 *necessary for the immediate preservation of the public peace, health and*  
29 *safety shall be in full force and effect on and after March 1, 1993.*

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/s/John E. Miller

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