

State of Arkansas

76th General Assembly

First Extraordinary Session, 1987

HOUSE BILL

1039

By: Representative Mahony

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

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

SECTION 1. This Act shall be known and may be cited as the "Arkansas Soft Drink Tax Act" and is hereby declared to levy a state tax within the meaning of section 2 of the Arkansas Tax Procedure Act, Act 401 of 1979, the same being Ark. Stat. Ann. §84-4702. This Act is to be administered in all respects in accordance with the Arkansas Tax Procedure Act unless otherwise specifically herein provided.

SECTION 2. (a) Terms used in this Act which are defined by the Arkansas Tax Procedure Act, Act 401 of 1979, as amended, the same being Ark. Stat. Ann. §84-4701 et seq., shall have the meaning set out in that Act unless otherwise provided or unless a different meaning is required by the use of the term.

(b) The following terms shall have the meaning set out herein unless a different meaning is clearly required by the use of the term in this Act:

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

(2) "Bottled drinks" means soft drinks in any bottle.

(3) "Bottled" shall mean contained in any bottle.

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

(5) "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.

(6) "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.

(7) "Milk" means any natural liquid milk regardless of animal source or butter fat content; or natural milk concentrate, whether or not reconstituted, regardless of animal source or butter fat content or dehydrated natural milk whether or not reconstituted.

(8) "Place of business" means any place where soft drinks are manufactured or any place where bottled soft drinks, soft drink syrup, soft drink powder or other soft drink base product or any other item taxed under this Act are received or stored by any person.

(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, milk 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) "Simple syrup" means a mixture of sugar and water.

(12) "Soft drink" means any non-alcoholic 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 and whether or not containing any natural fruit juice, or vegetable juice, including any fruit or vegetable drink containing thirty percent or less natural fruit juice or natural vegetable juice and all other drinks and beverages commonly referred to as soft drinks but not including milk and not including coffee or tea unless the coffee or tea is bottled as a liquid for sale. The term soft drink includes these beverages in any form subject to tax under this Act

whether as a finished bottled soft drink, soft drink syrup, simple syrup, powder or other base.

(13) "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, milk or any other product suitable to make a complete soft drink.

SECTION 3. (a) All distributors, wholesalers or manufacturers of soft drinks whether located within or without the State of Arkansas, who sell or offer for sale soft drinks to retail dealers within the State of Arkansas shall obtain a license for the privilege of conducting such business within Arkansas from the Commissioner of Revenues.

(b) Any retailer who offers soft drinks for sale in Arkansas and who purchases soft drinks, on which the tax levied by this Act has not been paid, from a distributor, wholesaler or manufacturer located outside the State of Arkansas shall obtain a license for the privilege of conducting such business from the Commissioner of Revenues.

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

(d) The license required by this Act shall be purchased prior to January 1 of each calendar year, shall be valid for the calendar year for which purchased and shall be renewed prior to expiration. In the year the tax levied by this Act is first collected, each person required to be licensed shall purchase a license on or before July 1, 1987 and shall be required to pay one-half (|) of the amount which is otherwise due for the license.

(e) The Commissioner of Revenues shall charge each distributor, wholesaler or manufacturer a fee of fifty dollars (\$50.00) for each license issued for each place of business of the distributor, wholesaler or manufacturer and shall charge each retailer twenty-five dollars (\$25.00) for each license for each place of business of the retailer.

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

SECTION 4. (a) There is hereby levied and there shall be collected a tax at the rate of five dollars (\$5.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State of Arkansas.

(b) A tax at the rate of five cents (5_) for each twelve ounces of soft drink or fractional part thereof for each bottled soft drink sold or offered for sale in the State of Arkansas.

(c) A tax at the rate of fifty-three cents (53_) for each gallon of soft drink that is customarily manufactured from the contents of a package or container of powder or base other than a syrup on each package or container of powder or base other than a syrup which is sold or offered for sale in Arkansas and which powder is for the purpose of producing a liquid soft drink for resale by the retailer.

(d) There is also hereby levied a tax on those items taxed in subsections (a), (b) and (c) of this section, at the rates levied in those subsections when the items are imported, without the tax levied by this Act having been paid, into this state by a retailer who has purchased them from any person located outside this state.

SECTION 5. The following shall be exempt from the tax levied by this Act:

(a) Soft drinks sold to the United States government.

(b) Soft drinks exported from the State of Arkansas by a distributor, wholesaler or manufacturer.

(c) Any soft drink powder or base that is used in preparing coffee, tea, cocoa or chocolate.

(d) Any frozen concentrate or freeze dried concentrate to which only water is added to produce a natural fruit juice or natural vegetable juice.

(e) Any soft drink containing more than thirty percent (30%) natural fruit juice or natural vegetable juice.

(f) Soft drink powders to be resold at retail in powder form.

(g) Soft drinks sold by one distributor, wholesaler or manufacturer to another distributor, wholesaler or manufacturer who holds a license issued by Commissioner of Revenues under the provisions 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 including those having a license because they purchase untaxed soft drinks from out of state.

SECTION 6. The tax levied by this Act shall be collected by the distributor, wholesaler or manufacturer when the soft drink is sold. The tax levied by this Act shall be paid by a retailer who purchases untaxed soft drinks from out of state. The distributor, wholesaler or manufacturer or retailer purchasing untaxed soft drinks from out of state shall make a return and remit the tax for the month to the Commissioner of Revenues on or before the 20th day of the month next following the month in which the sale or purchase was made. The returns shall be made upon forms prescribed and furnished by the Commissioner of Revenues and signed by the person required to collect and remit the tax or his agent. The return shall contain such information as the Commissioner shall require for the proper administration of this Act.

SECTION 7. All taxes, penalties and costs received by the Commissioner under the provisions of this Act shall be deposited in the State Treasury as "general revenues" and shall be allocated and transferred to the various State Treasury funds participating in general revenues in the respective proportions and to be used for the respective purposes as is set forth in the Revenue Stabilization Law of Arkansas.

SECTION 8. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 9. REPEALER. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 10. EMERGENCY CLAUSE. It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenues which are necessary to provide adequate funding for essential services required by the citizens of this State and the provisions of this Act are necessary to increase State revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect July 1, 1987.

