

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) "Milk" means natural liquid milk regardless of animal source or  
11 butter fat content; or natural milk concentrate, whether or not reconstituted,  
12 regardless of animal source or butter fat content or dehydrated natural milk  
13 whether or not reconstituted.

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

18 (7) "Natural vegetable juice" means the original liquid resulting from  
19 the pressing of vegetables or the liquid resulting from the reconstitution of  
20 natural vegetable juice concentrate or the liquid resulting from the  
21 restoration of water to dehydrated natural vegetable juice.

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

24 (9) "Place of business" means any place where soft drinks, syrups,  
25 simple syrups, powder or base products are manufactured or any place where  
26 bottled soft drinks, soft drink syrup, simple syrup, soft drink powder or  
27 other soft drink base product or any other item taxed under this act are  
28 received.

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

34 (11) "Retailer" or "retail dealer" means any person other than a  
35 manufacturer, distributor or wholesaler, who receives, stores, mixes,  
36 compounds or manufacturers any soft drink and sells or otherwise dispenses the

1 same to the ultimate consumer.

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

8       (13) "Simple syrup" means a mixture of sugar and water.

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

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

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22       SECTION 3. LICENSES

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

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

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

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

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2 SECTION 4. TAX RATE

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

5 (1) Five dollars (\$5.00) per gallon for each gallon of soft drink syrup  
6 or simple syrup sold or offered for sale in the State of Arkansas.

7 (2) Fifty-four cents (\$0.54) per gallon for each gallon of bottled soft  
8 drinks sold or offered for sale in the State of Arkansas.

9 (3) Where a package or container of powder or other base product other  
10 than a syrup or simple syrup is sold or offered for sale in Arkansas, and the  
11 powder is for the purpose of producing a liquid soft drink, then the tax on  
12 the sale of each package or container shall be equal to fifty-four cents  
13 (\$0.54) for each gallon of soft drink which may be produced from each package  
14 or container by following the manufacturer's directions. This tax applies when  
15 (1) for sale to the ultimate consumer; or (2) soft drink is produced by the  
16 retailer.

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18 SECTION 5. IMPOSITION OF TAX - RETAILER

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

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

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27 SECTION 6. EXEMPTIONS

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

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

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

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

35 (d) Any frozen concentrate or freeze dried concentrate to which only

1 water is added to produce a soft drink containing more than ten percent (10%)  
 2 natural fruit juice or natural vegetable juice.

3 (e) Any soft drink containing more than ten percent (10%) natural fruit  
 4 juice, natural vegetable juice or milk.

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

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

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

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

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

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24 SECTION 7. TAX REPORTING

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

1 administration of this act.

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

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

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

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

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20 SECTION 12. EMERGENCY CLAUSE.

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

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*/s/John E. Miller*

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