

1 **State of Arkansas**
2 **78th General Assembly**
3 **Second Extraordinary Session, 1992**
4 **By: Representatives Jones and Wyrick**

Call Item #2

A Bill

HOUSE BILL

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."

Subtitle

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

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

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

23 SECTION 2. DEFINITIONS

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

28 (b) As used in this act:

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

32 (2) "Bottled soft drinks" means any complete, ready to consume, non-
33 alcoholic drink, whether carbonated or not, commonly referred to as a soft
34 drink, contained in any bottle.

35 (3) "Director" means the Director of the Department of Finance and

1 Administration or his authorized agent.

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

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

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

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

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

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

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

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

35 (12) "Sale" means the transfer of title or possession for a valuable

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

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

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

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

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20 SECTION 3. LICENSES

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

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

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

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

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35 SECTION 4. TAX RATE

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

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

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

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

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16 SECTION 5. IMPOSITION OF TAX - RETAILER

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

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

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25 SECTION 6. EXEMPTIONS

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

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

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

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

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

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

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

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

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

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

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19 SECTION 7. TAX REPORTING

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

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

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

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SECTION 9. In order to provide supplemental funds during the fiscal year ending June 30, 1993, for the Arkansas Medicaid program as operated by the Department of Human Services and to do so from monies which were unanticipated by the various state agencies and programs when they completed their financial plans for the current fiscal year due to the release of the escrow account in Pledger v. Brunner and Lay, Inc., 308 Ark. 512 (1992), the State Treasurer shall transfer the sum of nine million one hundred forty-eight thousand three hundred twenty-five dollars and twenty-five cents (\$9,148,325.25) or so much thereof at such times as may be certified as being necessary by the Chief Fiscal Officer, from the General Revenue Fund Account of the State Apportionment Fund to the Department of Human Services Grants Fund Account. In addition and immediately upon the effective date of this act, the Chief Fiscal Officer of the State shall transfer on his books and those of the State Treasurer the sum of four million eighty-seven thousand two hundred sixty-seven dollars and seven cents (\$4,087,267.07) from the General Revenue Allotment Reserve Fund to the Department of Human Services Grants Fund Account. The funds so transferred by this section shall be used to supplement other funds as may be made available for the Arkansas Medicaid Program and shall not be used to supplant such other funds nor shall the funds so transferred be used for any other purpose.

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

SECTION 11. 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 12. All laws and parts of laws in conflict with this act are hereby repealed.

1 SECTION 13. EMERGENCY CLAUSE.

2 It is hereby found and determined by the General Assembly that the State
3 of Arkansas is in serious need of additional revenues which are necessary to
4 provide adequate funding for essential services required by the citizens of
5 this State and the provisions of this act are necessary to increase State
6 revenues. Therefore, an emergency is hereby declared to exist and this act
7 being necessary for the preservation of the public peace, health and safety
8 shall be in full force and effect on and after March 1, 1993.

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