

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Senator Wilson

# A Bill

SENATE BILL 689

## For An Act To Be Entitled

"AN ACT TO LEVY AN ADDITIONAL TAX ON BOTTLED SOFT DRINKS;  
TO REPEAL THE TAX ON SOFT DRINK SYRUPS AND POWDERS; AND  
FOR OTHER PURPOSES."

## Subtitle

"TO LEVY AN ADDITIONAL TAX ON BOTTLED  
SOFT DRINKS; TO REPEAL THE TAX ON SOFT  
DRINK SYRUPS AND POWDERS."

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

SECTION 1. Arkansas Code §26-57-902 is amended to read as follows:

"§26-57-902. Definitions.

(a) Terms used in this subchapter which are defined by the Arkansas Tax Procedure Act, §26-18-101 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) As used in this subchapter:

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

(2) Bottled soft drinks means any complete, ready to consume, nonalcoholic drink, whether carbonated or not, commonly referred to as a soft drink, contained in any bottle;

(3) Director means the Director of the Department of Finance and Administration or his authorized agent;

(4) Distributor, manufacturer, or wholesale dealer means any person who receives, stores, manufactures, bottles, or sells bottled soft

1 drinks for sale to retail dealers, other manufacturers, wholesale dealers, or  
2 distributors for resale purposes;

3           (5) Milk means natural liquid milk, regardless of animal  
4 source or butterfat content; or natural milk concentrate, whether or not  
5 reconstituted, regardless of animal source or butterfat content; or  
6 dehydrated natural milk, whether or not reconstituted;

7           (6) Natural fruit juice means the original liquid resulting  
8 from the pressing of fruit, or the liquid resulting from the reconstitution  
9 of natural fruit juice concentrate, or the liquid resulting from the  
10 restoration of water to dehydrated natural fruit juice;

11           (7) Natural vegetable juice means the original liquid  
12 resulting from the pressing of vegetables, or the liquid resulting from the  
13 reconstitution of natural vegetable juice concentrate, or the liquid  
14 resulting from the restoration of water to dehydrated natural vegetable  
15 juice;

16           (8) Nonalcoholic beverage means and includes all beverages not  
17 subject to tax under § 3-7-104;

18           (9) Place of business means any place where soft drinks are  
19 manufactured or any place where bottled soft drinks are received;

20           (10) Retailer or retail dealer means any person, other than  
21 a manufacturer, distributor, or wholesaler, who receives, stores, mixes,  
22 compounds, or manufactures any soft drink and sells or otherwise dispenses  
23 the same to the ultimate consumer;

24           (11) Sale means the transfer of title or possession for a  
25 valuable consideration of tangible personal property regardless of the manner  
26 by which the transfer is accomplished. When a retailer is also acting as a  
27 wholesaler or distributor, the duty to report and pay the tax imposed by this  
28 subchapter arises when the property is transferred to a retail store for sale  
29 to the ultimate consumer, as reflected by the records of the taxpayer;

30           (12) Soft drink means any nonalcoholic beverage sold for  
31 human consumption including, but not limited to, the following: soda water,  
32 ginger ale, all drinks commonly referred to as cola, lime, lemon, lemon-lime,  
33 and other flavored drinks, whether naturally or artificially flavored,  
34 including any fruit or vegetable drink containing ten percent (10%) or less  
35 natural fruit juice, natural vegetable juice, and all other drinks and

1 beverages commonly referred to as soft drinks, but not including coffee or  
2 tea unless the coffee or tea is bottled as a liquid for sale."

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4       SECTION 2. (a) In addition to the tax levied by the Arkansas Soft  
5 Drink Tax Act (Arkansas Code §26-57-901 et seq.), there is hereby levied and  
6 there shall be collected upon every distributor, manufacturer, or wholesale  
7 dealer, a tax in the amount of thirty-two cents (\$.32) per gallon for each  
8 gallon of bottled soft drinks sold or offered for sale in the State of  
9 Arkansas. This tax shall be collected, reported, and paid in the same manner  
10 and at the same time as is prescribed by law for the collection, reporting,  
11 and payment of the Arkansas Soft Drink Tax Act (Arkansas Code §26-57-901 et  
12 seq.).

13       (b) The revenues derived from the tax collected under this Act shall  
14 be deposited into the Arkansas Medicaid Program Trust Fund in the same manner  
15 and under the same restrictions as the soft drink tax under §26-57-908.

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17       SECTION 3. Subsections (a)(1) and (a)(3) of Arkansas Code §26-57-904  
18 are hereby repealed.

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20       SECTION 4. Arkansas Code §26-57-905 is amended to read as follows:  
21       "§26-57-905. Exemptions.

22       The following shall be exempt from the tax levied by §26-57-904:

23       (1) Soft drinks sold to the United States Government;

24       (2) Soft drinks exported from the State of Arkansas by a distributor,  
25 wholesaler, or manufacturer;

26       (3) Any soft drink containing more than ten percent (10%) natural  
27 fruit juice or natural vegetable juice;

28       (4) Soft drinks sold by one distributor, wholesaler, or manufacturer  
29 to another distributor, wholesaler, or manufacturer who holds a license  
30 issued by the director under the provisions of §26-57-909 as a distributor,  
31 wholesaler, or manufacturer, provided that the license number of the  
32 distributor, wholesaler, or manufacturer to whom the soft drink is sold is  
33 clearly shown on the invoice for the sale which is claimed to be exempt.

34 This exemption shall not apply to any sale to a retailer;

35       (5) Any product, whether sold in liquid or powder form, which is

1 intended by the manufacturer for consumption by infants and which is commonly  
2 referred to as infant formula;

3 (6) Any product, whether sold in liquid or powder form, which is  
4 intended by the manufacturer for use as a dietary supplement or for weight  
5 reduction;

6 (7) Water to which no flavoring, whether artificial or natural, or  
7 carbonation has been added;and

8 (8) Any product containing milk or milk products."  
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10 SECTION 5. Arkansas Code §26-57-906 is amended to read as follows:

11 "§26-57-906. Tax reporting.

12 (a)(1) The tax levied by § 26-57-904 shall be paid by the distributor,  
13 wholesaler, or manufacturer when the soft drink is sold.

14 (2) The tax levied by § 26-57-904 shall be paid by a retailer  
15 who purchases soft drinks from an unlicensed distributor, wholesaler, or  
16 manufacturer.

17 (b) The distributor, wholesaler, or manufacturer and any retailer  
18 subject to this tax shall file a monthly return and remit the tax for the  
19 month to the director on or before the fifteenth day of the month next  
20 following the month in which the sale or purchase was made.

21 (c)(1) The returns shall be made upon forms prescribed and furnished  
22 by the director and signed by the person required to collect and remit the  
23 tax or his agent.

24 (2) The return shall contain such information as the director  
25 shall require for the proper administration of this subchapter."  
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27 SECTION 6. Arkansas Code Annotated §26-57-907 is amended to read as  
28 follows:

29 "§26-57-907. Tax rate.

30 (a) If a distributor, manufacturer, or wholesale dealer sells bottled  
31 soft drinks to retailers or retail dealers located in a city or incorporated  
32 town which is subject to the border city tax rate provided in §26-52-303,  
33 then the tax shall be at the same rate as imposed by the adjoining state on  
34 distributors, manufacturers, or wholesale dealers, not to exceed the rate  
35 imposed by §26-57-904.

1 (b) If a retailer or retail dealer is located in a city or  
2 incorporated town which is subject to the border city tax rate provided by §  
3 26-52-303 and the retailer or retail dealer purchases bottled soft drinks  
4 from an unlicensed distributor, manufacturer, or wholesale dealer, then the  
5 tax imposed by §26-57-904 shall be at the same rate imposed by the adjoining  
6 state, not to exceed the rate imposed by §26-57-904."

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8 SECTION 7. Arkansas Code §26-57-909 is amended to read as follows:  
9 "§26-57-909. Licenses.

10 (a) All distributors, wholesalers, or manufacturers of soft drinks,  
11 whether located within or without the State of Arkansas, who sell or offer  
12 soft drinks for sale to retail dealers within the State of Arkansas shall  
13 obtain a license for the privilege of conducting such business within  
14 Arkansas from the director.

15 (b) Any retailer who purchases soft drinks from an unlicensed  
16 manufacturer, wholesaler, or distributor shall obtain a license for the  
17 privilege of conducting such business from the director.

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

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

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23 SECTION 8. In the event that this act is repealed through referendum,  
24 the law in effect prior to the effective date of this act shall be  
25 reinstated.

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

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31 SECTION 10. If any provision of this act or the application thereof to  
32 any person or circumstance is held invalid, such invalidity shall not affect  
33 other provisions or applications of the act which can be given effect without  
34 the invalid provision or application, and to this end the provisions of this  
35 act are declared to be severable.

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

SECTION 12. EMERGENCY. It is hereby found and determined by the General Assembly that in 1992 the State of Arkansas was in need of additional revenues necessary to provide adequate funding for essential services required by the citizens of this State; that the General Assembly passed the "Arkansas Soft Drink Tax Act" to generate the needed funding for those services; that the passage of the Soft Drink Tax in its current form has proved an administrative burden and the provisions of this act are necessary to reallocate the tax thereby alleviating the administrative burden in collecting the tax. 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 on and after July 1, 1995.

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