

JAN 25 2012

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that taxing soda and
2 other sugar-sweetened beverages can lead to a reduction in
3 overall consumption, according to a scientific study published
4 in the Archives of Internal Medicine in March 2010. The study
5 found that a ten per cent tax on soda led to a seven per cent
6 reduction in calories from soft drinks. Study researchers
7 believe that an eighteen per cent tax on these foods could cut
8 daily intake by fifty-six calories per person, resulting in a
9 weight loss of five pounds per person per year. The study
10 followed 5,115 young adults ages eighteen to thirty from 1985 to
11 2006.

12 An April 2010 study published in the medical journal Health
13 Affairs found that small taxes on soft drinks do little to
14 lessen soft drink consumption or prevent childhood obesity, but
15 the study's author estimated that if taxes were at the level of
16 eighteen per cent, this would make a significant difference in
17 consumption.



1 In addition, adults who drink one or more sodas or other
2 sugar-sweetened beverages each day are more likely to be
3 overweight or obese, as a twelve-ounce soda on average contains
4 ten teaspoons of sugar and a twenty-ounce soda contains
5 seventeen teaspoons of sugar.

6 The purpose of this Act is to establish a tax on sugar-
7 sweetened beverages and deposit portions of the revenue
8 generated to the community health centers special fund and the
9 trauma system special fund.

10 SECTION 2. The Hawaii Revised Statutes is amended by
11 adding a new chapter to title 14 to be appropriately designated
12 and to read as follows:

13 **"CHAPTER**

14 **SUGAR-SWEETENED BEVERAGES TAX**

15 § -1 **Title.** This chapter may be cited as the Sugar-
16 Sweetened Beverages Tax Act.

17 § -2 **Definitions.** For the purposes of this chapter:

18 "Bottle" means any closed or sealed container regardless of
19 size or shape, including those made of glass, metal, paper, or
20 plastic or any other material or combination of materials.

21 "Bottled sugar-sweetened beverage" means any sugar-
22 sweetened beverage contained in a bottle that is ready for



1 consumption without further processing such as, without
2 limitation, dilution or carbonation.

3 "Caloric sweetener" means any caloric substance suitable
4 for human consumption that humans perceive as sweet and includes
5 sucrose, fructose, glucose, other sugars, and fruit juice
6 concentrates, but does not include non-caloric sweeteners. For
7 purposes of this definition, "caloric" means a substance that
8 adds calories to the diet of a person who consumes that
9 substance.

10 "Consumer" means a person who purchases a sugar-sweetened
11 beverage for consumption and not for sale to another.

12 "Department" means the department of taxation.

13 "Director" means the director of taxation.

14 "Distributor" means any person, including a manufacturer or
15 wholesale dealer, who receives, stores, manufactures, bottles,
16 or distributes bottled sugar-sweetened beverages, syrup, or
17 powder, for sale to retailers doing business in the State
18 regardless of whether that person also sells such products to
19 consumers.

20 "Fund" means the health promotion special fund established
21 pursuant to section 321- .



1 "Non-caloric sweetener" means any non-caloric substance
2 suitable for human consumption that humans perceive as sweet and
3 includes aspartame, saccharin, stevia, and sucralose, but does
4 not include caloric sweeteners. For purposes of this
5 definition, "non-caloric" means a substance that does not add
6 calories to the diet of a person who consumes that substance.

7 "Person" means any natural person, partnership, cooperative
8 association, limited liability company, corporation, personal
9 representative, receiver, trustee, assignee, or any other legal
10 entity.

11 "Place of business" means any place where sugar-sweetened
12 beverages, syrups, or powders are manufactured or received for
13 sale in the State.

14 "Powder" means any solid mixture of ingredients used in
15 making, mixing, or compounding sugar-sweetened beverages by
16 mixing the powder with one or more other ingredients, including
17 water, ice, syrup, simple syrup, fruits, vegetables, fruit
18 juice, vegetable juice, carbonation, or other gas.

19 "Retailer" means any person who sells or otherwise
20 dispenses in the State a sugar-sweetened beverage to a consumer
21 regardless of whether that person is also a distributor as
22 defined in this section.



1 "Sale" means the transfer of title or possession for
2 valuable consideration regardless of the manner by which the
3 transfer is completed.

4 "Sugar-sweetened beverage" means any beverage that contains
5 less than one-half of one per cent alcohol per volume, whether
6 carbonated or noncarbonated, that is intended for human
7 consumption and contains any added caloric sweetener. "Sugar-
8 sweetened beverage" shall not include:

9 (1) Beverages sweetened solely with non-caloric
10 sweeteners;

11 (2) Beverages consisting of one hundred per cent natural
12 fruit or vegetable juice with no added caloric
13 sweetener. For purposes of this paragraph, "natural
14 fruit juice" and "natural vegetable juice" mean the
15 original liquid resulting from the pressing of fruits
16 or vegetables, or the liquid resulting from the
17 dilution of dehydrated natural fruit juice or natural
18 vegetable juice;

19 (3) Milk without any added caloric sweetener, which means:
20 (A) Natural liquid milk regardless of animal source
21 or butterfat content;



(B) Natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or

(C) Dehydrated natural milk, whether or not reconstituted, regardless of animal source or butterfat content;

(4) Coffee or tea without added caloric sweetener;

(5) Infant formula; or

(6) Water to which neither carbonation nor any other substance has been added, except for minerals and non-caloric flavoring agents.

"Syrup" means a liquid mixture of ingredients used in making, mixing, or compounding sugar-sweetened beverages using one or more other ingredients including water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or other gas.

§ -3 **Tax imposed.** (a) Every distributor selling sugar-sweetened beverages, syrup, or powder in this State shall pay a tax that is hereby imposed at the rate of 1 cent per teaspoon of sugar placed into bottled sugar-sweetened beverages or the equivalent amount of concentrate sold or offered for sale to a retailer for sale in the State to a consumer.



(b) Any retailer that sells bottled sugar-sweetened beverages, syrup, or powder in the State to a consumer, on which the tax imposed by this section has not been paid by a distributor, shall be liable for the tax imposed in subsection (a) at the time of sale to the consumer.

§ -4 Return; form; contents. Every taxpayer, on or before the twentieth day of each month, shall file with the department in the taxation district in which the taxpayer's place of business is located, a return showing all sales of sugar-sweetened beverages, syrup, and powder by amount and dollar volume in each category defined in section -2 and taxed under section -3(a) made by the taxpayer during the preceding month, showing separately the amount of the nontaxable sales, and the amount of the taxable sales, and the tax payable thereon. The form of the return shall be prescribed by the department and shall contain such information as it may deem necessary for the proper administration of this chapter.

§ -5 Payment of tax; penalties. At the time of the filing of the return required under section -4 and within the time prescribed therefor, each taxpayer shall pay to the department the tax imposed by this chapter, required to be shown by the return.



1 Penalties and interest shall be added to and become a part
2 of the tax, when and as provided by section 231-39.

3 § -6 Determination of tax, additional assessments,
4 credit, and refunds. (a) As soon as practicable after each
5 return has been filed, the department shall cause it to be
6 examined and shall compute and determine the amount of the tax
7 payable thereon.

8 (b) If it appears upon the initial examination of the
9 return, within two years after the filing of the return, or at
10 any time if no return has been filed, as a result of the
11 examination or as a result of any examination of the records of
12 the taxpayer or of any other inquiry or investigation, that the
13 correct amount of the tax is greater than that shown on the
14 return, or that any tax imposed by this chapter has not been
15 paid, an assessment of additional tax may be made in the manner
16 provided in section 235-108(b). The amount of the tax for the
17 period covered by the assessment shall not be reduced below the
18 amount determined by an assessment so made, except upon appeal
19 or in a proceeding brought pursuant to section 40-35.

20 (c) If the taxpayer has paid or returned with respect to
21 any month more than the amount determined to be the correct
22 amount of tax for that month, the amount of the tax so returned



1 and any assessment of tax made pursuant to the return may be
2 reduced, and any overpayment of tax may be credited upon the tax
3 imposed by this chapter, or at the election of the taxpayer, the
4 taxpayer not being delinquent in the payment of any taxes owing
5 to the State, may be refunded in the manner provided in section
6 231-23(c); provided that no reduction of tax may be made when
7 forbidden by subsection (b) or more than two years after the
8 filing of the return.

9 § -7 **Records to be kept.** (a) Every taxpayer shall keep
10 a record of all sales of sugar-sweetened beverages by amount and
11 dollar volume in each category defined in section -2 and
12 taxed under section -3(a) made by the taxpayer, in such form
13 as the department may prescribe. These records shall be offered
14 for inspection and examination at any time upon demand by the
15 department and shall be preserved for a period of two years,
16 except that the department may consent in writing to their
17 destruction within that period or may require that they be kept
18 longer.

19 The department, by rule, may require the taxpayer to keep
20 other records as it may deem necessary for the proper
21 enforcement of this chapter.



1 (b) If any taxpayer fails to keep records upon which a
2 proper determination of the tax due under this chapter may be
3 made, the department may fix the amount of tax for any period
4 from the best information it may obtain and assess the tax as
5 provided herein.

6 § -8 **Inspection.** The director, or the duly authorized
7 agent of the director, may examine all records required to be
8 kept under this chapter and books, papers, and records of any
9 person engaged in the sale of sugar-sweetened beverages, syrup,
10 or powder to verify the accuracy of the payment of the tax
11 imposed by this chapter and other compliance with this chapter
12 and rules adopted pursuant thereto. Every person in possession
13 of such books, papers, and records and the person's agents and
14 employees shall give the director, or the duly authorized agent
15 of the director, the means, facilities, and opportunities for
16 the examination.

17 § -9 **Tax in addition to other taxes.** The tax imposed by
18 this chapter shall be in addition to any other tax imposed upon
19 the business of selling sugar-sweetened beverages, syrup, or
20 powder or upon any of the transactions, acts, or activities
21 taxed by this chapter.



1 § **-10 Appeals.** Any person aggrieved by any assessment
2 of the tax imposed by this chapter may appeal the assessment in
3 the manner and within the time and in all other respects as
4 provided in the case of income tax appeals by section 235-114.
5 The hearing and disposition of the appeal, including the
6 distribution of costs, shall be as provided in chapter 232.

7 § **-11 Other provisions applicable.** All of the
8 provisions of chapters 231, 235, 237, and 238 not inconsistent
9 with this chapter and that may appropriately be applied to the
10 taxes, persons, circumstances, and situations involved in this
11 chapter, including without prejudice to the generality of the
12 foregoing: provisions as to penalties and interest; provisions
13 granting administrative powers to the director; and provisions
14 for the assessment, levy, and collection of taxes; shall be
15 applicable to the taxes imposed by this chapter and to the
16 assessment, levy, and collection thereof.

17 § **-12 Investigations; contempts; fees.** (a) The
18 director, and any agent authorized by the director to conduct
19 any inquiry, investigation, or hearing under this section, shall
20 have power to administer oaths and take testimony under oath
21 relative to the matter of inquiry or investigation. At any
22 hearing ordered by the director, the director or the director's



1 agent may subpoena witnesses and require the production of
2 books, papers, and documents pertinent to the inquiry. No
3 witness under subpoena authorized to be issued by this section
4 shall be excused from testifying or from producing books,
5 papers, or documents on the ground that the testimony or the
6 production of the books or other documentary evidence would tend
7 to incriminate the witness, but the evidence or the books,
8 papers, or documents so produced shall not be used in any
9 criminal proceeding against the witness.

10 (b) If any person disobeys a subpoena process or, having
11 appeared in obedience thereto, refuses to answer any pertinent
12 question put to the person by the director or the director's
13 authorized agent or to produce any books, papers, and documents
14 pursuant thereto, the director or the agent may apply to the
15 circuit court of the circuit wherein the taxpayer resides or
16 wherein the transaction, act, or activity under investigation
17 has occurred, or to any judge of the court, setting forth the
18 disobedience to process or refusal to answer. The court or the
19 judge shall cite the person to appear before the court or the
20 judge to answer the question or to produce such books, papers,
21 or documents and, upon the person's refusal shall hold the
22 person in contempt and sentence the person to prison until the



1 person testifies; provided that the period of imprisonment shall
2 not exceed sixty days. Notwithstanding the serving of the term
3 of any imprisonment by any person, the director may proceed in
4 all respects with the inquiry and examination as if the witness
5 had not previously been called upon to testify.

6 (c) Officers who serve subpoenas issued by the director or
7 under the director's authority and witnesses attending hearings
8 conducted by the director shall be awarded fees in an amount
9 equal to witness fees awarded in accordance with section 621-7,
10 to be paid on vouchers of the director, from any moneys
11 available for litigation expenses of the department.

12 § -13 **Administration by director; rules.** The
13 administration of this chapter is vested in the director, who
14 may adopt and enforce rules in accordance with chapter 91 for
15 the enforcement and administration of this chapter.

16 § -14 **Disposition of revenues.** Revenues collected under
17 this chapter shall be distributed as follows, with the excess
18 revenues to be deposited into the general fund:

- 19 (1) per cent of the revenues collected under this
20 chapter shall be deposited into the community health
21 centers special fund established under section 321-
22 1.65; and



(2) per cent of the revenues collected under this chapter shall be deposited into the trauma system special fund established under section 321-22.5.

§ -15 **Exemptions.** The following shall be exempt from the tax imposed by this chapter:

(1) Bottled sugar-sweetened beverages, syrups, and powder sold to the United States government and American Indian tribal governments;

(2) Bottled sugar-sweetened beverages, syrups, and powder sold by a distributor or a retailer expressly for resale or consumption outside the State; and

(3) Bottled sugar-sweetened beverages, syrups, and powder sold by a distributor to another distributor, if the sales invoice clearly indicates that the sale is exempt; provided that:

(A) If the sale is to a person who is a distributor and a retailer, the sale shall be exempt and the tax shall be paid when the purchasing distributor-retailer resells the product to a retailer or a consumer; and

(B) This exemption shall not apply to any other sale to a retailer."



S.B. NO. 3019

1 SECTION 3. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2011.

3

INTRODUCED BY:

John H.

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Report Title:

Taxation; Sugar-sweetened Beverages

Description:

Establishes a tax on sugar-sweetened beverages, syrup, and powder with the revenues generated to be deposited into the community health centers special fund and the trauma system special fund.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

