

By: Farias

H.B. No. 2213

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of a tax on certain sweetened beverages and ingredients used to make certain sweetened beverages and to the use of certain revenue for the promotion of children's health programs; providing penalties.

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

SECTION 1. Subtitle E, Title 2, Tax Code, is amended by adding Chapter 163 to read as follows:

CHAPTER 163. TAX ON SWEETENED BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 163.001. DEFINITIONS. In this chapter:

(1) "Retailer" means a person, other than a manufacturer, distributor, or wholesaler, who receives, stores, mixes, compounds, or manufactures sweetened beverages and who sells or otherwise distributes sweetened beverages to the ultimate consumer.

(2) "Sweetened beverage" means a carbonated or non-carbonated nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include:

(A) a beverage that:

(i) is sweetened only by a sweetener that does not add calories to the beverage;

(ii) is 100 percent vegetable or fruit juice by volume;

1 (iii) contains more than one-half of one
2 percent alcohol per ounce;

3 (iv) is commonly referred to as a "sports
4 drink" or "electrolyte replacement drink" and contains not more
5 than 110 milligrams of potassium and 200 milligrams of sodium per
6 eight-ounce serving;

7 (v) is intended by the manufacturer for
8 consumption by an infant and is commonly referred to as "infant
9 formula"; or

10 (vi) is intended by the manufacturer to be
11 sold and used by the ultimate consumer in domestically mixing soft
12 drinks;

13 (B) milk or milk products that do not contain
14 sweeteners that add calories to the milk or milk products;

15 (C) non-carbonated water or water without any
16 additional substances except for minerals and flavoring agents that
17 do not add calories to the water; or

18 (D) coffee or tea that does not contain
19 sweeteners that add calories to the coffee or tea.

20 (3) "Sweetened beverage powder" means a solid mixture
21 of basic ingredients used to make, mix, or compound sweetened
22 beverages.

23 (4) "Sweetened beverage syrup" means a liquid mixture
24 of basic ingredients used to make, mix, or compound sweetened
25 beverages.

26 [Sections 163.002-163.050 reserved for expansion]

1 SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

2 Sec. 163.051. TAX IMPOSED ON SWEETENED BEVERAGES. (a) A
3 tax is imposed on the sale to a retailer of a sweetened beverage.

4 (b) A tax is imposed on the importation into this state of a
5 sweetened beverage for sale to the ultimate consumer.

6 (c) Except as provided by Subsection (d), the rate of the
7 tax imposed by this section is five cents for each 12-ounce
8 increment or fractional part of that increment of sweetened
9 beverage.

10 (d) On January 1 of each year, the comptroller shall
11 increase the rate of the tax prescribed by Subsection (c) by a
12 percentage equal to the percentage increase in the most recent
13 annual revised Consumer Price Index for All Urban Consumers, as
14 published by the federal Bureau of Labor Statistics of the United
15 States Department of Labor.

16 Sec. 163.052. TAX IMPOSED ON SWEETENED BEVERAGE POWDER.

17 (a) A tax is imposed on the sale to a retailer of sweetened beverage
18 powder.

19 (b) A tax is imposed on the importation into this state of
20 sweetened beverage powder for sale to the ultimate consumer.

21 (c) Except as provided by Subsection (d), the rate of tax
22 imposed by this section is five cents for the greater of:

23 (1) each 12-ounce increment or fractional part of that
24 increment of sweetened beverage that may be produced from the
25 powder by following the manufacturer's directions; or

26 (2) each 12-ounce increment or fractional part of that
27 increment of sweetened beverage actually produced by the retailer,

1 as determined by the comptroller.

2 (d) On January 1 of each year, the comptroller shall
3 increase the rate of the tax prescribed by Subsection (c) by a
4 percentage equal to the percentage increase in the most recent
5 annual revised Consumer Price Index for All Urban Consumers, as
6 published by the federal Bureau of Labor Statistics of the United
7 States Department of Labor.

8 Sec. 163.053. TAX IMPOSED ON SWEETENED BEVERAGE SYRUP. (a)
9 A tax is imposed on the sale to a retailer of sweetened beverage
10 syrup in this state.

11 (b) A tax is imposed on the importation into this state of
12 sweetened beverage syrup for sale to the ultimate consumer.

13 (c) Except as provided by Subsection (d), the rate of tax
14 imposed by this section is five cents for the greater of:

15 (1) each 12-ounce increment or fractional part of that
16 increment of sweetened beverage that may be produced from the syrup
17 by following the manufacturer's directions; or

18 (2) each 12-ounce increment or fractional part of that
19 increment of sweetened beverage actually produced by the retailer,
20 as determined by the comptroller.

21 (d) On January 1 of each year, the comptroller shall
22 increase the rate of the tax prescribed by Subsection (c) by a
23 percentage equal to the percentage increase in the most recent
24 annual revised Consumer Price Index for All Urban Consumers, as
25 published by the federal Bureau of Labor Statistics of the United
26 States Department of Labor.

27 Sec. 163.054. EXEMPTION FROM TAX. The tax imposed by this

1 chapter does not apply to:

2 (1) sweetened beverages that:

3 (A) the comptroller determines are unsalable; or

4 (B) this state is prohibited from taxing under
5 federal law; or

6 (2) a sale of sweetened beverages, sweetened beverage
7 powder, or sweetened beverage syrup that occurs after a sale that is
8 taxed under this chapter.

9 Sec. 163.055. IMPACT OF TAX. The ultimate consumer or user
10 in this state bears the impact of the tax imposed by this chapter.
11 If another person pays the tax, the amount of the tax is added to the
12 price to the ultimate consumer or user.

13 Sec. 163.056. PAYMENT OF TAX. (a) The manufacturer,
14 distributor, wholesaler, or other person selling sweetened
15 beverages, sweetened beverage syrup, or sweetened beverage powder
16 in this state to a retailer or importing sweetened beverages,
17 sweetened beverage syrup, or sweetened beverage powder for sale in
18 this state to the ultimate consumer shall pay the tax imposed by
19 this chapter.

20 (b) On or before the 25th day of each month, the person
21 responsible for paying the tax shall send to the comptroller the
22 amount of tax due under this chapter for the preceding month.

23 Sec. 163.057. REPORTS. On or before the 25th day of each
24 month, the person responsible for paying the tax under this chapter
25 shall file with the comptroller a report stating:

26 (1) the volume of sweetened beverages, sweetened
27 beverage powder, and sweetened beverage syrup sold in this state to

1 retailers;

2 (2) the volume of sweetened beverages, sweetened
3 beverage powder, and sweetened beverage syrup imported into this
4 state for sale in this state to the ultimate consumer; and

5 (3) any other information required by the comptroller.

6 Sec. 163.058. RECORDS. (a) The person responsible for
7 paying the tax under this chapter shall keep a complete record of:

8 (1) the volume of sweetened beverages, sweetened
9 beverage powder, and sweetened beverage syrup sold in this state to
10 retailers;

11 (2) the volume of sweetened beverages, sweetened
12 beverage powder, and sweetened beverage syrup imported into this
13 state for sale in this state to the ultimate consumer; and

14 (3) any other information required by the comptroller.

15 (b) A record required by this section must be kept or
16 maintained for at least two years after the date the record is made.

17 [Sections 163.059-163.100 reserved for expansion]

18 SUBCHAPTER C. SALES PERMITS

19 Sec. 163.101. SALES PERMITS. (a) The comptroller shall
20 issue to an applicant who qualifies under Section 163.102 a
21 separate permit for each place of business in this state.

22 (b) The holder of a permit shall display it conspicuously in
23 the place of business to which it applies.

24 (c) A permit is valid only for the person and the place of
25 business to which it applies and is non-assignable.

26 (d) A permit issued under this chapter must be renewed
27 annually.

1 Sec. 163.102. APPLICATION FOR PERMIT. (a) A person
2 desiring to sell to a retailer in this state, or import for sale to
3 the ultimate consumer in this state, sweetened beverages, sweetened
4 beverage powder, or sweetened beverage syrup shall file with the
5 comptroller an application for a permit for each place of business.

6 (b) The application must:

7 (1) be on a form prescribed by the comptroller;

8 (2) state the name under which the applicant transacts
9 or intends to transact business;

10 (3) give the address of the place of business to which
11 the permit is to apply;

12 (4) contain any other information required by the
13 comptroller; and

14 (5) be signed by the applicant or a person authorized
15 to act on behalf of the applicant.

16 [Sections 163.103-163.150 reserved for expansion]

17 SUBCHAPTER D. PENALTIES AND OFFENSES

18 Sec. 163.151. INTEREST ON DELINQUENT TAX. A tax imposed by
19 this chapter that is delinquent draws interest as provided by
20 Section 111.060.

21 Sec. 163.152. PENALTY. (a) A person who is responsible for
22 paying the tax imposed by this chapter and who fails to file a
23 report as required by this chapter or does not pay the tax when it is
24 due forfeits to the state a penalty of 50 percent of the amount of
25 the delinquent tax.

26 (b) The minimum penalty under this section is \$1.

27 Sec. 163.153. CRIMINAL PENALTY. (a) A person who violates

1 this chapter commits an offense.

2 (b) An offense under this section is a Class C misdemeanor.

3 [Sections 163.154-163.200 reserved for expansion]

4 SUBCHAPTER E. DISPOSITION OF REVENUE

5 Sec. 163.201. ALLOCATION OF REVENUE. The revenue from the
6 tax imposed by this chapter shall be deposited as follows:

7 (1) 40 percent to the credit of the children's health
8 promotion account established under Subchapter F; and

9 (2) the remainder to the credit of the general revenue
10 fund.

11 [Sections 163.202-163.250 reserved for expansion]

12 SUBCHAPTER F. CHILDREN'S HEALTH PROMOTION ACCOUNT

13 Sec. 163.251. ACCOUNT. (a) The children's health
14 promotion account is a separate account in the general revenue
15 fund.

16 (b) The account consists of:

17 (1) certain revenue from the tax imposed under this
18 chapter;

19 (2) any gifts or grants received for the purposes of
20 this subchapter; and

21 (3) interest earned on money in the account.

22 (c) The account is exempt from the application of Section
23 403.095, Government Code.

24 Sec. 163.252. USE OF ACCOUNT. (a) Money in the account may
25 be appropriated only as follows:

26 (1) 80 percent to the Texas Education Agency for the
27 purposes authorized by Subsection (b); and

1 (2) 20 percent to the Department of State Health
2 Services for the purposes authorized by Subsection (c).

3 (b) Money appropriated to the Texas Education Agency under
4 this section may be used only to:

5 (1) implement and maintain coordinated school health
6 programs, which may include enhancements to the basic school health
7 program; or

8 (2) improve the school health environment through
9 activities, which may include:

10 (A) improving or building recreational
11 facilities used for physical education and related activities at
12 public elementary and secondary schools;

13 (B) providing continuing education training for
14 physical education teachers;

15 (C) hiring qualified physical education
16 teachers;

17 (D) implementing Safe Routes to Schools
18 programs;

19 (E) improving the quality and nutrition of foods
20 served at public elementary and secondary schools;

21 (F) ensuring, at no cost, access to clean
22 drinking water throughout the school day; and

23 (G) incorporating nutrition and health into the
24 standard educational curriculum.

25 (c) Money appropriated to the Department of State Health
26 Services under this section may be used only to fund training and
27 technical assistance for the implementation and maintenance of

1 coordinated school health programs in public elementary and
2 secondary schools.

3 (d) Money appropriated under this section may be used only
4 to supplement and not to supplant current federal, state, and local
5 funding for children's health programs in public elementary and
6 secondary schools.

7 SECTION 2. Chapter 163, Tax Code, as added by this Act,
8 applies to a sweetened beverage, sweetened beverage powder, or
9 sweetened beverage syrup sold or imported on or after the effective
10 date of this Act. A sweetened beverage, sweetened beverage powder,
11 or sweetened beverage syrup sold or imported before that date is
12 governed by the law in effect when the sweetened beverage,
13 sweetened beverage powder, or sweetened beverage syrup was sold or
14 imported, and that law is continued in effect for that purpose.

15 SECTION 3. This Act takes effect September 1, 2011.