

By: Lucio

S.B. No. 493

A BILL TO BE ENTITLED

AN ACT

relating to imposing a tax on certain sweetened beverages and ingredients used to make certain sweetened beverages; providing a penalty.

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

SECTION 1. Subtitle E, Title 2, Tax Code, is amended by adding Chapter 164 to read as follows:

CHAPTER 164. TAX ON SWEETENED BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 164.001. 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 in this state 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;

(iii) contains more than one-half of one

percent alcohol per ounce; or

(iv) is intended by the manufacturer for consumption by an infant and is commonly referred to as "infant formula";

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

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

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

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

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

Sec. 164.002. RULES. The comptroller may adopt rules necessary for the implementation of this chapter and the collection of taxes imposed by this chapter.

SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

Sec. 164.051. TAX IMPOSED ON SWEETENED BEVERAGES. (a) A tax is imposed on the sale to a retailer of a sweetened beverage in this state.

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

(c) Except as provided by Subsection (d), the rate of the

1 tax imposed by this section is one cent for each ounce or fractional
2 part of an ounce of sweetened beverage.

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

10 Sec. 164.052. TAX IMPOSED ON SWEETENED BEVERAGE POWDER.

11 (a) A tax is imposed on the sale to a retailer of sweetened beverage
12 powder in this state.

13 (b) A tax is imposed on the importation into this state of
14 sweetened beverage powder for sale in this state to the ultimate
15 consumer.

16 (c) Except as provided by Subsection (d), the rate of the
17 tax imposed by this section is one cent for the greater of:

18 (1) each ounce or fractional part of an ounce of
19 sweetened beverage that may be produced from the powder by
20 following the manufacturer's directions; or

21 (2) each ounce or fractional part of an ounce of
22 sweetened beverage actually produced by the retailer, as determined
23 by the comptroller.

24 (d) On January 1 of each year, the comptroller shall
25 increase the rate of the tax prescribed by Subsection (c) or in
26 effect the preceding year, whichever is greater, by a percentage
27 equal to the percentage increase in the most recent annual revised

1 Consumer Price Index for All Urban Consumers, as published by the
2 federal Bureau of Labor Statistics of the United States Department
3 of Labor.

4 Sec. 164.053. TAX IMPOSED ON SWEETENED BEVERAGE SYRUP. (a)
5 A tax is imposed on the sale to a retailer of sweetened beverage
6 syrup in this state.

7 (b) A tax is imposed on the importation into this state of
8 sweetened beverage syrup for sale in this state to the ultimate
9 consumer.

10 (c) Except as provided by Subsection (d), the rate of the
11 tax imposed by this section is one cent for the greater of:

12 (1) each ounce or fractional part of an ounce of
13 sweetened beverage that may be produced from the syrup by following
14 the manufacturer's directions; or

15 (2) each ounce or fractional part of an ounce of
16 sweetened beverage actually produced by the retailer, as determined
17 by the comptroller.

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

25 Sec. 164.054. EXEMPTION FROM TAX. The tax imposed by this
26 chapter does not apply to:

27 (1) sweetened beverages that:

1 (A) the comptroller determines are unsalable; or
2 (B) this state is prohibited from taxing under
3 federal law; or

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

7 Sec. 164.055. IMPACT OF TAX. The ultimate consumer or user
8 in this state bears the impact of the tax imposed by this chapter.
9 If another person pays the tax, the amount of the tax is added to the
10 price to the ultimate consumer or user.

11 Sec. 164.056. PAYMENT OF TAX. (a) The manufacturer,
12 distributor, wholesaler, or other person selling sweetened
13 beverages, sweetened beverage syrup, or sweetened beverage powder
14 in this state to a retailer or importing sweetened beverages,
15 sweetened beverage syrup, or sweetened beverage powder for sale in
16 this state to the ultimate consumer shall pay the tax imposed by
17 this chapter.

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

21 Sec. 164.057. REPORTS. On or before the 25th day of each
22 month, the person responsible for paying the tax under this chapter
23 shall file with the comptroller a report stating:

24 (1) the volume of sweetened beverages, sweetened
25 beverage powder, and sweetened beverage syrup sold in this state to
26 retailers;

27 (2) the volume of sweetened beverages, sweetened

beverage powder, and sweetened beverage syrup imported into this state for sale in this state to the ultimate consumer; and

(3) any other information required by the comptroller.

Sec. 164.058. RECORDS. (a) The person responsible for paying the tax under this chapter shall keep a complete record of:

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

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

(3) any other information required by the comptroller.

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

SUBCHAPTER C. SALES PERMITS

Sec. 164.101. SALES PERMITS. (a) The comptroller shall issue to an applicant who qualifies under Section 164.102 a separate permit for each place of business in this state.

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

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

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

Sec. 164.102. APPLICATION FOR PERMIT. (a) A person desiring to sell to a retailer, or import for sale in this state to the ultimate consumer, sweetened beverages, sweetened beverage

powder, or sweetened beverage syrup shall file with the comptroller an application for a permit for each place of business.

(b) The application must:

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

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

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

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

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

SUBCHAPTER D. PENALTIES

Sec. 164.151. INTEREST ON DELINQUENT TAX. A tax imposed by this chapter that is delinquent draws interest as provided by Section 111.060.

Sec. 164.152. PENALTY. (a) A person who is responsible for paying the tax imposed by this chapter and who fails to file a report as required by this chapter or does not pay the tax when it is due forfeits to the state a penalty of 25 percent of the amount of the delinquent tax.

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

SUBCHAPTER E. DISPOSITION OF REVENUE

Sec. 164.201. DISPOSITION OF REVENUE. The revenue from the tax imposed by this chapter shall be deposited to the credit of the general revenue fund.

SECTION 2. Not later than December 1, 2013, the comptroller

1 of public accounts shall adopt rules necessary for the
2 implementation and administration of Chapter 164, Tax Code, as
3 added by this Act.

4 SECTION 3. Chapter 164, Tax Code, as added by this Act,
5 applies to a sweetened beverage, sweetened beverage powder, or
6 sweetened beverage syrup sold in this state or imported into this
7 state on or after January 1, 2014. A sweetened beverage, sweetened
8 beverage powder, or sweetened beverage syrup sold or imported
9 before January 1, 2014, is governed by the law in effect when the
10 sweetened beverage, sweetened beverage powder, or sweetened
11 beverage syrup was sold or imported, and that law is continued in
12 effect for that purpose.

13 SECTION 4. (a) Except as provided by Subsection (b) of this
14 section, this Act takes effect January 1, 2014.

15 (b) Section 2 of this Act takes effect September 1, 2013.