

HOUSE No. 2701

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to establish a wellness trust..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1

2 There shall be established on the books of the commonwealth a Wellness Trust, which
3 shall be a distinct fund for the purpose of supporting improved access for all residents to fresh,
4 healthy, local food and exercise and other activities to prevent chronic disease and promote
5 health, prioritizing communities with a disproportionate burden of obesity and chronic disease.
6 This fund shall not be subject to further appropriation.

7 The commissioner of public health shall administer the Wellness Trust, in consultation
8 with other state entities where relevant to the goals stated above.

9 There shall be credited to the Wellness Trust fifty percent of the proceeds from Section 2
10 and 3 of this act. The monies shall be expended solely for the purpose described herein.

11 Section 2

12 The following chapter shall be inserted into the general laws of the commonwealth after
13 chapter 65C

Chapter 65D.

Section 1. Minimally Nutritious Snack Foods Tax

Definitions

“minimally-nutritious snack foods” shall mean any item that is ordinarily sold for consumption without further preparation and does not meet the most recent Institute of Medicine standards for high school students.

Tax rate

There is hereby levied and there shall be collected a 10% tax on the wholesale cost of sales of non-nutritious snack food as defined in this section.

This tax shall be paid by distributors, manufacturers, wholesale dealers, or retailers who purchase minimally nutritious snack foods from an unlicensed distributor, wholesaler or manufacturer. The tax shall be paid monthly to the commissioner of the department of revenue in a format to be specified by the commissioner.

Section 2 Sweetened Beverage Tax

(a) Definitions. As used in this chapter, terms shall have the following meanings, unless the context indicates otherwise:

(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 soft drink contained in any bottle.

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

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

(5) "Natural fruit juice" means the original liquid resulting from the pressing of fruit or the liquid resulting from the reconstitution of natural fruit juice concentrate or the liquid resulting from the restoration of water to dehydrated natural fruit juice.

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

(7) "Non-alcoholic beverage" means and includes all beverages not subject to tax under M.G.L. Chapter 64h, section 2.

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

(9) "Powder" or "other base" means a solid mixture of basic ingredients used in making, mixing or compounding soft drinks by mixing the powder or other base with water, ice, syrup or

55 simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make
56 a complete soft drink.

57 (10) "Retailer" or "retail dealer" means any person other than a manufacturer, distributor
58 or wholesaler, who receives, stores, mixes, compounds or manufacturers any soft drink and sells
59 or otherwise dispenses the same to the ultimate consumer.

60 (11) "Sale" means the transfer of title or possession for a valuable consideration of
61 tangible personal property regardless of the manner by which the transfer is accomplished. When
62 a retailer is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed
63 by this act arises when the property is transferred to a retail store for sale to the ultimate
64 consumer as reflected by the records of the taxpayer.

65 (12) "Simple syrup" means a mixture of sugar and water.

66 (13) "Soft drink" means any non-alcoholic beverage sold for human consumption
67 including, but not limited to, the following: soda water, ginger ale, all drinks commonly referred
68 to as cola, lime, lemon, lemon-lime and other flavored drinks whether naturally or artificially
69 flavored, including any fruit or vegetable drink containing fifty percent (50%) or less natural
70 fruit juice, natural vegetable juice, and all other drinks and beverages commonly referred to as
71 soft drinks but not including coffee or tea unless the coffee or tea is bottled as a liquid for sale.

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

75 (b.). Licenses

All distributors, wholesalers or manufacturers of soft drinks whether located within or without the commonwealth of Massachusetts, who sell or offer syrups, simple syrups, powders or base products, or soft drinks for sale to retail dealers within the commonwealth of Massachusetts shall obtain a license for the privilege of conducting such business within Massachusetts from the department of agricultural resources.

(1) Any retailer who purchases syrups, simple syrups, powders or base products, or soft drinks from an unlicensed manufacturer, wholesaler or distributor shall obtain a license for the privilege of conducting such business from the commissioner of the department of agricultural resources.

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

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

(c) . Tax rate

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

(1) 8% of the cost

i. per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the commonwealth of Massachusetts.

ii. per gallon for each gallon of bottled soft drinks sold or offered for sale in the commonwealth of Massachusetts.

iii. for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions in the case in which a package or container of powder or other base product other than a syrup or simple syrup is sold or offered for sale in Massachusetts. This tax applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer.

(d.) Retailer tax

(1) Any retailer or retail dealer who purchases bottled soft drinks, soft drink syrup, simple syrup, powder or base product from an unlicensed distributor, manufacturer or wholesale dealer, shall be liable for the tax levied in subsection (c.) of this Act on those purchases.

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

(e.) Exemptions

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

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

(2) Syrups, simple syrups, powders or base products, or soft drinks exported from the State of Massachusetts by a distributor, wholesaler or manufacturer.

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

116 (4) Any frozen concentrate or freeze dried concentrate to which only water is added to
117 produce a soft drink containing more than fifty percent (50%) natural fruit juice or natural
118 vegetable juice.

119 (5) Any soft drink containing more than fifty percent (50%) natural fruit juice or natural
120 vegetable juice.

121 (6) Syrups, simple syrups, powders or base products, or soft drinks sold by one
122 distributor, wholesaler or manufacturer to another distributor, wholesaler or manufacturer who
123 holds a license issued by the commissioner of agricultural resources under the provisions of this
124 act as a distributor, wholesaler or manufacturer provided that the license number of the
125 distributor, wholesaler, manufacturer to whom the soft drink is sold is clearly shown on the
126 invoice for the sale which is claimed to be exempt. This exemption shall not apply to any sale to
127 a retailer.

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

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

132 (9) Water to which no flavoring, whether artificial or natural, nor carbonation has been
133 added.

134 (10) Any powder or other base product which is intended by the manufacturer to be sold
135 and used for the purpose of domestically mixing soft drinks by the ultimate consumer.

136 (11) Any product containing milk or milk products.

137 (f.) Tax payment

138 This tax shall be paid by the distributor, wholesaler, or manufacturer when the syrup,
139 powder or base product or soft drink is sold. The tax levied by this act shall be shall be paid by a
140 retailer who purchases syrups, powder or base products or soft drinks from an unlicensed
141 distributor, wholesaler or manufacturer. These aforementioned parties subject to pay this tax
142 shall pay it monthly to the commissioner of the department of revenue in a format to be specified
143 by the commissioner.