

House Bill 2644

Sponsored by Representative GREENLICK (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes excise tax on sale of sugar-sweetened beverages and concentrates. Allows local governments to impose taxes on sugar-sweetened beverages or concentrates and provides for agreements between local governments and Department of Revenue for implementation of taxes. Establishes Sugar-Sweetened Beverage Tax Fund for purpose of distributing proceeds of tax. Establishes Health Promotion Fund to support programs designed to reduce and prevent obesity. Transfers proceeds of tax to Health Promotion Fund, Department of Human Services, Department of Education and General Fund.

Applies to sugar-sweetened beverages and concentrates sold on or after January 1, 2012.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the taxation of sugar-sweetened beverages; appropriating money; prescribing an effective
3 date; and providing for revenue raising that requires approval by a three-fifths majority.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in this section and sections 2 to 8 of this 2011 Act:**

6 (1)(a) **"Base product" means a solid mixture of ingredients that is combined with one or**
7 **more other ingredients, including but not limited to water, ice, syrup, simple syrup, fruits,**
8 **vegetables, fruit juice, vegetable juice and carbon dioxide or other gas, to make a sugar-**
9 **sweetened beverage.**

10 (b) **"Base product" does not include any of the following:**

11 (A) **A product sold in powder or other nonliquid form that is used solely in preparing**
12 **coffee or tea and that does not contain added caloric sweetener.**

13 (B) **A product sold in powder form for consumption by infants and commonly referred**
14 **to as infant formula.**

15 (C) **A product sold in powder form for use in weight reduction.**

16 (D) **A product that contains milk, a milk product or a milk substitute.**

17 (2) **"Caloric sweetener" means a caloric substance suitable for human consumption that**
18 **is perceived as sweet and includes, but is not limited to, sucrose, fructose, glucose, other**
19 **sugars and concentrates.**

20 (3) **"Concentrate" means a syrup, simple syrup or other base product that is intended for**
21 **preparing a sugar-sweetened beverage.**

22 (4) **"Concentrate manufacturer" means a person that manufactures concentrate for sale**
23 **in this state.**

24 (5) **"Container" means a closed or sealed container made of glass, metal, paper, plastic**
25 **or any other material, regardless of the size or shape of the container.**

26 (6) **"Dietary aid" means a liquid product that is intended for use as:**

27 (a) **A replacement for a daily meal for the purpose of weight reduction;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (b) An oral nutritional therapy in cases where caloric and dietary nutrients cannot be
2 absorbed from food or metabolized;

3 (c) A source of necessary nutrition used due to a medical condition; or

4 (d) An oral electrolyte solution for infants and children formulated to prevent dehy-
5 dration.

6 (7) "Distributor" means a person that:

7 (a) Imports or causes to be imported into this state for use, distribution, bottling, stor-
8 age or sale any sugar-sweetened beverage or concentrate; or

9 (b) Bottles sugar-sweetened beverages or concentrates.

10 (8) "Doing business in this state" includes:

11 (a) Maintaining, occupying or using in this state, permanently or temporarily, directly
12 or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of
13 distribution, sales or sample room or place, warehouse or storage place or any other place
14 of business.

15 (b) Having a representative, agent, salesperson, canvasser or solicitor operating in this
16 state under the authority of the distributor or its subsidiary for the purpose of selling, de-
17 livering or taking orders for sugar-sweetened beverages or concentrates.

18 (9) "Milk" means natural liquid milk, regardless of animal source or butterfat content,
19 and natural milk concentrate and dehydrated natural milk, regardless of animal source or
20 butterfat content and whether or not reconstituted.

21 (10) "Milk product" means a liquid that has milk as the predominant ingredient by weight
22 in accordance with the regulations of the United States Food and Drug Administration.

23 (11) "Milk substitute" means a liquid that is plant-based and is intended by its manufac-
24 turer as a substitute for milk.

25 (12) "Natural fruit juice" means the original liquid resulting from the pressing of fruit.

26 (13) "Natural vegetable juice" means the original liquid resulting from the pressing of
27 vegetables.

28 (14) "Nonalcoholic beverage" means a beverage that contains less than one-half of one
29 percent alcohol by volume.

30 (15) "Simple syrup" means a mixture of sugar and water.

31 (16)(a) "Sugar-sweetened beverage" means:

32 (A) Any nonalcoholic beverage that is intended for human consumption and that contains
33 caloric sweetener; and

34 (B) All drinks and beverages commonly referred to as cola, ginger ale, lime, lemon,
35 lemon-lime, root beer, soda, soda pop or soft drinks.

36 (b) "Sugar-sweetened beverage" does not include any of the following:

37 (A) Beverages sweetened solely with noncaloric sweeteners.

38 (B) Beverages consisting of water and 100 percent natural fruit juice or 100 percent na-
39 tural vegetable juice, with no added caloric sweetener.

40 (C) Any product sold in liquid form for consumption by infants and commonly referred
41 to as infant formula.

42 (D) Water that is not carbonated and to which no substance has been added except for
43 minerals and noncaloric flavoring agents.

44 (E) Any product containing milk, a milk product or a milk substitute.

45 (F) Any dietary aid.

1 (17) "Sugar-sweetened beverage manufacturer" means a person that bottles, cans or
 2 otherwise fills containers with sugar-sweetened beverages, or imports sugar-sweetened
 3 beverages in containers.

4 (18) "Syrup" means a liquid mixture of ingredients that is combined with water, simple
 5 syrup, ice, fruits, vegetables, fruit juice, vegetable juice, another base product or any other
 6 product to make a sugar-sweetened beverage.

7 **SECTION 2.** (1) An excise tax is imposed at the first sale in this state of a sugar-
 8 sweetened beverage or concentrate by a distributor, sugar-sweetened beverage manufacturer
 9 or concentrate manufacturer doing business in this state. The tax is calculated as follows:

10 (a) For a sugar-sweetened beverage sold to a retailer for sale in this state to a consumer,
 11 at a rate of \$0.005 per ounce.

12 (b) For concentrate sold to a retailer for sale in this state to a consumer, either as
 13 concentrate or as a sugar-sweetened beverage derived from that concentrate, at a rate of
 14 \$0.005 per ounce for each gallon of sugar-sweetened beverage produced from the concentrate.
 15 For purposes of calculating the tax, the volume of sugar-sweetened beverage produced from
 16 the concentrate shall be the larger of the largest volume resulting from use of the concen-
 17 trate according to the manufacturer's instructions or the volume actually produced by the
 18 retailer, as reasonably determined by the Department of Revenue.

19 (2) The tax amounts set forth in this section shall be adjusted annually on or before July
 20 1 by the Department of Revenue in an amount equal to the increase for the previous calendar
 21 year in the Consumer Price Index (Portland area -- all items) as published by the Bureau of
 22 Labor Statistics of the United States Department of Labor for the Portland, Oregon area.

23 (3) A retailer that sells to a consumer sugar-sweetened beverages or concentrate on
 24 which the tax imposed under subsection (1) of this section has not been paid is liable for the
 25 tax at the time of the sale to the consumer.

26 **SECTION 3.** The following shall be exempt from the tax imposed under section 2 of this
 27 2011 Act:

28 (1) Sugar-sweetened beverages and concentrates sold to the United States Government;
 29 and

30 (2) Sugar-sweetened beverages and concentrates sold expressly for resale or consumption
 31 outside this state.

32 **SECTION 4.** (1) The Department of Revenue shall collect the tax imposed under section
 33 2 of this 2011 Act, which shall be due and payable to the department quarterly on or before
 34 the last day of the month next succeeding each quarterly period.

35 (2) The department may by rule adopt procedures for the administration of the tax im-
 36 posed under section 2 of this 2011 Act.

37 (3) Any person that is liable for the tax imposed by section 2 of this 2011 Act shall, on
 38 or before the last day of the month next succeeding each quarterly period, return to the
 39 department a statement containing the name of the business and each place of business, and
 40 the quantity of sugar-sweetened beverage or concentrate subject to the tax imposed by sec-
 41 tion 2 of this 2011 Act and sold in the preceding quarter. The statement shall be under oath
 42 of a person with legal authority to bind the person liable for the tax and shall contain any
 43 other information required by the department, along with the tax due.

44 **SECTION 5.** Except as otherwise provided in sections 2 to 8 of this 2011 Act or where the
 45 context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and

1 examination of returns, periods of limitation, determination of and notices of deficiencies,
 2 assessments, liens, delinquencies, claims for refund and refunds, conferences, appeals to the
 3 Oregon Tax Court, stays of collection pending appeal, confidentiality of returns and the
 4 penalties relative thereto, and the procedures relating thereto, shall apply to the determi-
 5 nations of taxes, penalties and interest under sections 2 to 8 of this 2011 Act.

6 **SECTION 6.** (1) Sections 2 to 8 of this 2011 Act are not intended to preempt any local
 7 government from enacting any law, rule, regulation or ordinance that taxes the manufac-
 8 ture, distribution or sale of sugar-sweetened beverages or concentrates.

9 (2) The Department of Revenue may enter into agreements with local governments for
 10 the collection, enforcement, administration and distribution of local taxes imposed by local
 11 governments upon the manufacture, distribution or sale of sugar-sweetened beverages or
 12 concentrates.

13 **SECTION 7.** (1) All proceeds received by the Department of Revenue from the tax im-
 14 posed under section 2 of this 2011 Act shall be credited to the Sugar-Sweetened Beverage Tax
 15 Fund established in section 10 of this 2011 Act.

16 (2) The Department of Revenue shall distribute:

17 (a) 40 percent of the proceeds received to the Department of Human Services for pur-
 18 poses of financing healthy nutrition programs in schools and communities;

19 (b) 20 percent of the proceeds received to the Health Promotion Fund established in
 20 section 9 of this 2011 Act;

21 (c) 20 percent of the proceeds received to the Department of Education for purposes of
 22 financing physical education programs;

23 (d) 10 percent of the proceeds received to the Department of Human Services for pur-
 24 poses of financing community-based public health activities; and

25 (e) After the payment of refunds and administrative costs, the remainder of the proceeds
 26 received to the General Fund.

27 **SECTION 8.** (1) The Director of the Department of Revenue is authorized to enter into
 28 a sugar-sweetened beverage tax refund agreement with the governing body of any Indian
 29 reservation in Oregon. The agreement may provide for a mutually agreed upon amount as a
 30 refund to the governing body of any tax collected under sections 2 to 8 of this 2011 Act in
 31 connection with the sale of sugar-sweetened beverages and concentrates to Indians on the
 32 Indian reservation, or the use, storage or consumption of sugar-sweetened beverages and
 33 concentrates by Indians on the Indian reservation. This provision is in addition to other laws
 34 allowing tax refunds.

35 (2) There are continuously appropriated to the director, from the Sugar-Sweetened
 36 Beverage Tax Fund established in section 10 of this 2011 Act, the amounts necessary to make
 37 the refunds provided by subsection (1) of this section.

38 **SECTION 9.** The Health Promotion Fund is established in the State Treasury, separate
 39 and distinct from the General Fund. Moneys in the Health Promotion Fund are continuously
 40 appropriated to the Oregon Health Authority and shall be expended to support statewide
 41 evidence-based practices and programs that use environmental, policy, educational and other
 42 public health approaches to reduce and prevent obesity in this state. The authority shall by
 43 rule adopt methods for the allocation of moneys from the fund.

44 **SECTION 10.** The Sugar-Sweetened Beverage Tax Fund is established in the State
 45 Treasury, separate and distinct from the General Fund. Moneys in the Sugar-Sweetened

1 Beverage Tax Fund are continuously appropriated to the Department of Revenue for the
2 purpose of making the distributions and refunds under sections 7 and 8 of this 2011 Act.

3 SECTION 11. Sections 1 to 8 of this 2011 Act apply to sugar-sweetened beverages and
4 concentrates sold on or after January 1, 2012.

5 SECTION 12. This 2011 Act takes effect on the 91st day after the date on which the 2011
6 session of the Seventy-sixth Legislative Assembly adjourns sine die.

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