WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 2649

By Delegate Hornbuckle

[Introduced February 23, 2021; Referred to the Committee on Finance]

A BILL to amend and reenact §11-19-1 and §11-19-2 of the Code of West Virginia, 1931, as amended, all relating to the tax on soft drinks; modifying the tax to only cover sugary drinks; modifying the tax to two cents per ounce; redistributing the revenue generated to all three medical schools in the state; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. SOFT DRINKS TAX.

§11-19-1. Definitions.

As used in this article:

(1) “Bottled soft drinks” shall include any and all nonalcoholic beverages, whether carbonated or not, which are intended for human consumption and contain any added caloric sweetener, ~~such as soda water, ginger ale, coca cola, lime cola, pepsi cola, doctor pepper, root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated water, flavoring or syrup is added, or any and all preparations commonly referred to as “soft drinks” of whatever kind~~ which are closed and sealed in glass, paper, or any other type of container, envelope, package, or bottle, whether manufactured with or without the use of any syrup. The term “bottled soft drinks” shall not include beverages sweetened solely with noncaloric sweeteners; water, carbonated or not, to which no caloric sweetener has been added; fluid milk to which no flavoring has been added; or natural undiluted fruit juice or vegetable juice.

(2) “Natural undiluted fruit juice” shall mean the original liquid resulting from the pressing of fruit, ~~with or without sweetener being added~~ or the liquid resulting from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice. ~~with or without sweetener being added~~

(3) “Natural undiluted vegetable juice” shall mean the original liquid resulting from the pressing of vegetables ~~with or without sweetener being added~~ or the liquid resulting from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice. ~~with or without sweetener being added~~

(4) “Caloric sweetener” shall mean any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, or other sugars. “Caloric sweetener” excludes noncaloric sweeteners. For purposes of this definition, “caloric” means a substance which adds calories to the diet of a person who consumes that substance. ~~sugar only, artificial or natural, which singularly flavors the taste of a natural undiluted fruit juice or natural undiluted vegetable juice~~

(5) “Soft drink syrups and powders” shall include the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing, or compounding soft drinks by the mixing thereof with one or more other ingredients, including without limitation, carbonated or plain water, ice, fruit, milk, or any other product suitable to make a soft drink, ~~among such syrups being such products as coca cola syrup, chero cola syrup, pepsi cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders~~ sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants, or similar places as well as those syrups and powder bases prepared for the purpose of domestically mixing soft drinks.  ~~such as kool aid, oh boy drink, tip top, miracle aid and all other similar products.~~

~~(6) “Simple syrup” shall mean the making, mixing, compounding or manufacturing, by~~

~~dissolving sugar and water or any other mixtures that will create simple syrup to which~~

~~may or may not be added concentrates or extracts~~

~~(7)~~ (6) “Person” shall mean and include an individual, firm, partnership, association, ~~or~~ corporation~~.~~, or any other legal entity.

~~(8)~~ (7) “Wholesale dealer” includes only those persons who sell any bottled soft drink or soft drink syrup to retail dealers for the purpose of resale.

~~(9)~~ (8) “Retail dealer” includes every person other than a wholesale dealer who sells or otherwise dispenses bottle soft drinks, or mixes, makes, compounds, or manufactures ~~mixing, making, compounding or manufacturing~~ any drink from a soft drink syrup or powder base, or a person selling such syrup or powder.

~~(10)~~ (9) “Distributor” shall mean any person who receives, stores, manufactures, bottles, produces, distributes, and/or purchases for sale to retail dealers any bottled soft drink or soft drink syrup or powder, whether or not that person also sells such products to consumers.

~~(11)~~ (10) “Commissioner” means the State Tax Commissioner, and where the meaning of the context requires, all deputies and employees duly authorized by him.

§ 11-19-2. Excise tax on bottled soft drinks, syrups and powders ~~dry mixtures~~; disposition thereof.

(a) For the purpose of providing revenue for the construction, maintenance and operation of ~~a~~ four-year ~~school~~ schools of medicine, dentistry and nursing ~~of~~ in West Virginia ~~University~~ an excise tax is hereby levied and imposed ~~on and after midnight of the last day of June, one thousand nine hundred fifty one~~ upon the sale, use, handling or distribution of all bottled soft drinks and all soft drink syrups and powders, whether manufactured within or without this state. ~~as follows:~~

(b) Effective July 1, 2021, bottled soft drinks and soft drink syrups and powders will be taxed as follows:

(1) Bottled soft drinks shall be taxed at a rate of two cents per fluid ounce.

(2) Soft drink syrups and powders shall be taxed at a rate of two cents per ounce of soft drink produced from that syrup or powder. For purposes of calculating the tax, the volume of soft drink produced from syrups or powders shall be the larger of:

(A) The largest volume resulting from use of the syrups or powders per any manufacturer’s instructions, or

(B) The volume actually produced by the retail dealer, as reasonably determined by the commissioner.

~~(1) On each bottled soft drink, a tax of one cent on each sixteen and nine-tenths fluid ounces, or fraction thereof, or on each one-half liter, or fraction thereof contained therein.~~

(2) On each gallon of soft drink syrup, a tax of eighty cents, and in like ratio on each part ~~gallon thereof, or on each four liters of soft drink syrup a tax of eighty-four cents, and in like ratio on each part four liters thereof.~~

~~(3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks, a tax of one cent or on each 28.35 grams, or fraction thereof, a tax of one cent~~

(C) Any person manufacturing or producing within this state any bottled soft drink or soft drink syrup for sale within this state and any distributor, wholesale dealer, or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup manufactured or produced outside this state, or who brings such drinks or syrups into this state, shall be liable for the excise tax hereby imposed. The excise tax hereby imposed shall not be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured, sold, used, or distributed in this state.

(D) All revenue collected by the commissioner under the provisions of this article, less such costs of administration as are hereinafter provided for, shall be paid by him into a special medical school fund, which is hereby created in the State Treasury, to be disbursed as follows: ~~used solely for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing, as otherwise provided by law~~

(i) The first $18 million collected shall be for the continued use of a four-year school of medicine, dentistry and nursing at West Virginia University;

(ii) From the remaining revenue, $5 million shall be for the use of the school of medicine at Marshall University; and

(iii) From any remaining revenue, $3 million shall be for the use of the West Virginia School of Osteopathic Medicine.

(iv) Any excess proceeds up to $55 million shall be directed by supplemental appropriation for teachers’ pay raises and annually distributed in accordance with §18A-4-5c of this code; and the remainder of any revenue collected shall be deposited in the General Revenue Fund of the State.

NOTE: The purpose of this bill is to change the structure of the tax on bottled soft drinks and soft drink syrups and powders to only cover soft drinks with added caloric sweeteners, increase the rate to two cents per ounce, and to rededicate the proceeds to all three medical schools in the state.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.