

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS75197-LYx-72 (3/13)

Short Title: Soft Drink Tax/School Breakfast.

(Public)

Sponsors: Senator Kinnaird.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO LEVY A THREE-CENTS PER CONTAINER TAX ON SOFT DRINKS
TO PROVIDE FUNDS FOR EDUCATION.

Whereas, in 1942, the American Medical Association's (AMA) Council on Foods and Nutrition stated that "From the health point of view it is desirable especially to have restriction of such use of sugar as is represented by consumption of sweetened carbonated beverages and forms of candy which are of low nutritional value"; and

Whereas, the U.S. Department of Agriculture (USDA) defines soft drinks as of "minimal nutritional value"; and

Whereas, Americans now drink twice as much soft drink per person as they did 25 years ago – according to statistics from the Beverage Marketing Corp., annual soft drink consumption was 22.4 gallons per person in 1970; in 1998, it was 56.1 gallons per person; and

Whereas, consumption of too much soft drink, which contains phosphorus (phosphoric acid), can lower the level of calcium in the blood; and

Whereas, increased consumption of sugar, including soft drinks, has been linked to the dramatic rise in obesity and type II diabetes; and

Whereas, type II diabetes, which used to be known as "adult onset" diabetes, is now frequently diagnosed in children; and

Whereas, in 1999, the Washington Post reported that doctors say soft drinks have been pushing milk out of teenage diets and making girls more likely candidates for osteoporosis when they are older; and

Whereas, a 1999 report in the Journal of the American Dietetic Association on the nutritional consequences of soft drink consumption among children and adolescents concluded that policies that limit children's access to soft drinks at day care centers and schools should be promoted; and

- 1 (7) Person. – Defined in G.S. 105-228.90.
 2 (8) Powder. = Crystals, granules, tablets, and other dry products.
 3 (9) Retail dealer. = A person who sells bottled soft drinks or base products
 4 to the ultimate consumer or who makes soft drinks from base products
 5 and sells the soft drinks to the ultimate consumer.
 6 (10) Sale. = A transfer, a trade, an exchange, or a barter, in any manner or
 7 by any means, with or without consideration.
 8 (11) Secretary. ~~The Secretary of Revenue.~~ – Defined in G.S. 105-228.90.
 9 (12) Soft drink. = A beverage that is not an alcoholic beverage, as defined
 10 in G.S. 105-113.68.
 11 (13) Wholesale dealer. = A person who sells bottled soft drinks or base
 12 products to another for resale.

13 **"§ 105-113.45. Excise taxes on soft drinks and base products.**

14 (a) Bottled Soft Drinks. – An excise tax ~~at the applicable rate provided in the~~
 15 ~~following table~~ of three cents (3¢) is levied on each bottled soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	3/4¢
From 7/1/97 until 6/30/98	1/2¢
After 7/1/98	1/4¢

20 (b) Repealed by Session Laws 1991, c. 689, s. 276.

21 (c) Liquid Base Products. – An excise tax ~~at the applicable per gallon rate~~
 22 ~~provided in the table below~~ of three dollars (\$3.00) a gallon or fraction thereof is levied
 23 on each individual container of a liquid base product. The tax applies regardless of
 24 whether the liquid base product is diverted to and used for a purpose other than making
 25 a soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	75¢
From 7/1/97 until 6/30/98	50¢
After 7/1/98	25¢

30 (d) Dry Base Products. – An excise tax is levied on each individual container of a
 31 dry base product at:

- 32 (1) ~~The applicable per ounce rate in the table below~~ rate of three cents
 33 (3¢) an ounce if the dry base product is not converted into a syrup or
 34 other liquid base product before it is used to make a soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	3/4¢
From 7/1/97 until 6/30/98	1/2¢
After 7/1/98	1/4¢

- 39 (2) The rate that would apply under subsection (c) to the resulting liquid
 40 base product if the dry base product is converted into a liquid base
 41 product before it is used to make a soft drink.

42 (e) Repealed by Session Laws 1991, c. 689, s. 276.

43 **"§ 105-113.46. Exemptions.**

1 The taxes imposed by this Article do not apply to an item that is listed in this section
2 and, if the item is a bottled soft drink or a juice concentrate included in subdivision (3)
3 or (3a), is registered with the Secretary in accordance with G.S. 105-113.47:

- 4 (1) Repealed by 1996, Second Extra Session, c. 18, s. 15.4(a).
- 5 (2) A bottled soft drink that contains milk.
- 6 (3) Natural juice.
- 7 (3a) Juice that would be natural if it did not contain sugar.
- 8 (4) Natural water.
- 9 (5) A base product used to make a bottled soft drink subject to tax under
10 this Article.
- 11 (6) Coffee or tea in any form.
- 12 (7) A bottled soft drink or base product sold outside the State.
- 13 (8) A bottled soft drink or base product sold to the federal government.
- 14 (9) A base product for domestic use that either contains milk or, according
15 to directions on the base product's container, requires milk to be added
16 to make a soft drink.

17 **"§ 105-113.47. Registration of certain exempt bottled soft drinks and juice**
18 **concentrates.**

19 (a) Requirement. – To be exempt from the tax imposed by this Article, the
20 following items must be registered with the Secretary as an exempt item:

- 21 (1) Repealed by 1996, Second Extra Session, c. 18, s. 15.4(b).
- 22 (2) A natural juice bottled soft drink.
- 23 (3) A natural juice concentrate.
- 24 (4) A juice concentrate or juice bottled soft drink that would be natural if
25 it did not contain sugar.

26 (a1) Application. – To register an item as exempt, the person who controls the
27 brand name or formula of the item must file an application for registration with the
28 Secretary on a form provided by the Secretary. An application must include an affidavit
29 stating the complete and itemized formula by volume of the bottled soft drink or juice
30 concentrate that is the subject of the application.

31 (b) Determination. – The Secretary shall determine whether a bottled soft drink
32 or a juice concentrate for which an application for registration is filed meets the criteria
33 for exemption. To make the determination, the Secretary or a representative of the
34 Secretary may require the person who filed the registration application for the item or
35 anyone who sells the item in this State to provide a sample of the item and may have the
36 sample analyzed by a chemist to verify the accuracy of the submitted formula.

37 (c) No Disclosure. – Except as required by law or allowed under this subsection,
38 the Secretary or an agent or employee of the Secretary may not disclose part or all of the
39 formula of an item for which an application for registration is filed. The Secretary may
40 disclose whether an item meets the exemption criteria and the Attorney General or other
41 legal representative of the State may examine the formula for an item if the grant or
42 denial of an exemption for the item is challenged.

43 (d) Effect. – Registration as an exempt item applies prospectively to sales of the
44 registered bottled soft drink or registered juice concentrate made on or after the date of

1 registration. Registration does not relieve a person of liability for taxes due on sales
2 made before the date an item is registered.

3 **"§ 105-113.50. Soft drink licenses required.**

4 (a) Distributors and Wholesale Dealers. – Distributors and wholesale dealers
5 shall obtain for each place of business a continuing soft drink ~~license for which a fee of~~
6 ~~twenty five dollars (\$25.00) shall be paid.~~license. For the purpose of this subsection,
7 "place of business" means any place where a distributor makes bottled soft drinks or
8 base products or any place where a distributor or a wholesale dealer receives or stores
9 non-tax-paid bottled soft drinks or non-tax-paid base products.

10 (b) Repealed by Session Laws 1991, c. 689, s. 279.

11 (c) Retail Dealers. – Retail dealers shall obtain for each place of business a
12 continuing soft drink ~~license for which a fee of five dollars (\$5.00) shall be paid.~~
13 license. For the purpose of this subsection, "place of business "means any place where a
14 retail dealer receives non-tax-paid bottled soft drinks or non-tax-paid base products or
15 makes bottled soft drinks or base products.

16 (d) Repealed by Session Laws 1991, c. 689, s. 279.

17 **"§ 105-113.50A. Local taxation.**

18 Except as authorized by G.S. ~~105-102.5(e), 153A-152 or G.S. 160A-211~~, a county or
19 city may not levy a privilege license tax upon the business of bottling, manufacturing,
20 producing, purchasing, selling at wholesale or retail, jobbing, consigning, using,
21 shipping, or distributing for the purpose of sale within this State bottled soft drinks or
22 base products.

23 **"§ 105-113.51. Liability for and payment of excise taxes.**

24 (a) Liability. – The distributor, wholesale dealer, or retail dealer who first
25 distributes, sells, consumes, or otherwise handles bottled soft drinks or base products in
26 this State is liable for the tax imposed by this Article. A distributor, wholesale dealer, or
27 retail dealer who brings into this State a bottled soft drink or base product made outside
28 the State is the first person to handle the bottled soft drink or base product in this State.
29 A distributor, wholesale dealer, or retail dealer who is the original consignee of a bottled
30 soft drink or base product that is made outside the State and is shipped into the State is
31 the first person to handle the bottled soft drink or base product in this State.

32 Presentation of a soft drink certificate of liability to a distributor or a wholesale
33 dealer releases the distributor or wholesale dealer from liability under this subsection.
34 Subsection (b) of this section governs who is liable when a soft drink certificate of
35 liability is presented.

36 (b) Soft Drink Certificate of Liability. – A distributor, a wholesale dealer, or a
37 retail dealer may apply to the Secretary for a soft drink certificate of liability. A
38 distributor, a wholesale dealer, or a retail dealer who has a soft drink certificate of
39 liability may purchase non-tax-paid bottled soft drinks or non-tax-paid base products
40 from a distributor or a wholesale dealer by presenting the certificate to the distributor or
41 wholesale dealer. Presentation of the certificate to a distributor or a wholesale dealer
42 authorizes the distributor or wholesale dealer to sell non-tax-paid bottled soft drinks or
43 non-tax-paid base products to the person who presents the certificate; it releases the

1 distributor or wholesale dealer from liability for any tax due on the sale and transfers the
2 liability to the person who presents the certificate.

3 A distributor or a wholesale dealer to whom a soft drink certificate of liability is
4 presented must accept the certificate. A soft drink certificate of liability is considered to
5 have been presented to a distributor or a wholesale dealer when the person to whom it is
6 issued gives a copy of it to the distributor or wholesale dealer. When a person presents a
7 soft drink certificate of liability to a distributor or a wholesale dealer, it indicates the
8 person's intent that the certificate apply to all future sales to the person by the distributor
9 or wholesale dealer. Once presented, a soft drink certificate of liability remains in effect
10 until the person who presented the certificate gives the distributor or wholesale dealer to
11 whom it was presented written notice that the certificate no longer applies.

12 (c) Monthly Report. – The taxes levied by this Article are payable when a report
13 is required to be filed. A report is due on a monthly basis. A monthly report covers sales
14 and other activities occurring in a calendar month and is due within 15 days after the
15 end of the month covered by the report. A report shall be filed on a form provided by
16 the Secretary and shall contain the information required by the Secretary.

17 (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 32.

18 (e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 16.

19 **"§ 105-113.52. Tax reduction and discount.**

20 (a) Tax Reduction. – The tax on the first 15,000 gross of bottled soft drinks sold
21 at wholesale on or after October 1 of each year by a distributor or wholesale dealer who
22 is liable for the tax and who files a timely report under G.S. 105-113.51 is one-half the
23 amount stated in G.S. 105-113.45. The tax reduction does not apply to bottled soft
24 drinks acquired by the distributor or wholesale dealer in a sale in which the distributor
25 or wholesale dealer presented a soft drink certificate of liability, and it does not apply to
26 sales made by a distributor or wholesale dealer who is not licensed as required by this
27 Article. When reporting tax due on bottled soft drinks to which this reduced rate applies,
28 a distributor or wholesale dealer shall pay the reduced amount.

29 (b) Discount. – A distributor, a wholesale dealer, or a retail dealer who is liable
30 for the excise taxes on bottled soft drinks or base products and who files a timely report
31 under G.S. 105-113.51 may deduct from the amount due with the report a discount of
32 four percent (4%). This discount covers losses due to spoilage and breakage, expenses
33 incurred in preparing the records and reports required by this Article, and the expense of
34 furnishing a bond. The discount does not apply to taxes paid at the rate set in subsection
35 ~~(a)~~ (a) of this section.

36 **"§ 105-113.53. Bonds.**

37 The Secretary may require a distributor, a wholesale dealer, or a retail dealer to
38 furnish a bond in an amount that adequately protects the State from loss if the
39 distributor or dealer fails to pay taxes due under this Article. A bond shall be
40 conditioned on compliance with this Article, shall be payable to the State, and shall be
41 in the form required by the Secretary. The Secretary shall proportion a bond amount to
42 the anticipated tax liability of the distributor, wholesale dealer, or retail dealer. The
43 Secretary shall periodically review the sufficiency of bonds required of distributors,
44 wholesale dealers, and retail dealers and shall increase the amount of a required bond

1 when the amount of the bond furnished no longer covers the anticipated tax liability of
2 the distributor or dealer. The Secretary shall decrease the amount of a required bond
3 when the Secretary determines that a smaller bond amount will adequately protect the
4 State from loss.

5 **"§ 105-113.57. Records required of ingredients received.**

6 Every person engaged in the business of making bottled soft drinks or base products
7 shall keep a record of the ingredients purchased to make the bottled soft drinks or base
8 products and shall retain invoices on the purchases for at least three years. The records
9 shall show the quantity of ingredients purchased, the date received, and the name of the
10 person from whom they were received. The records shall be open at all times for
11 inspection by the Secretary or a representative of the Secretary.

12 **"§ 105-113.58. Records of sales, inventories, and purchases to be kept.**

13 Every distributor, wholesale dealer, and retail dealer shall keep accurate records of
14 the distributor's or dealer's purchases, inventories, and sales of bottled soft drinks and
15 base products. These records shall be kept for three years and shall be open at all times
16 for inspection by the Secretary or an authorized representative of the Secretary.

17 **"§ 105-113.63. ~~Rules and regulations.~~Rules.**

18 The Secretary is ~~hereby authorized and directed to make all reasonable rules and~~
19 ~~regulations necessary for the efficient administration and enforcement of this Article,~~
20 ~~not inconsistent with the provisions of~~ may adopt rules to implement this Article.

21 **"§ 105-113.64. Disposition of tax proceeds. ~~General administrative provisions of~~
22 ~~Revenue Act applicable.~~**

23 ~~All provisions of Article 9 of Subchapter I of Chapter 105 of the General Statutes,~~
24 ~~not inconsistent herewith, are hereby made applicable to this Article.~~

25 The Secretary shall credit the net proceeds of the tax levied in this Article quarterly
26 to the State Board of Education. Subject to appropriation by the General Assembly, the
27 State Board of Education shall use these funds to provide breakfast without charge to all
28 kindergarten and first grade students in the public schools and shall use any remaining
29 funds for similar programs. Any excess not used for these purposes reverts to the
30 General Fund at the end of each fiscal year."

31 **SECTION 2.** This act becomes effective July 1, 2003.