

**STATUS:****S6644** DUANE No Same as

Tax Law

TITLE....Relates to imposing a state sales and compensating use tax surcharge on certain beverage products

01/21/10 REFERRED TO INVESTIGATIONS AND GOVERNMENT OPERATIONS

**SUMMARY:**

DUANE

Amd SS171-a &amp; 1817, add Art 10 SS220 - 223, Tax L; amd SS54 &amp; 92-dd, St Fin L

Relates to imposing a state sales and compensating use tax surcharge on certain beverage products.

**BILL TEXT:****STATE OF NEW YORK**

6644

**IN SENATE**

January 21, 2010

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the state finance law, in relation to imposing a state excise tax on sweetened beverage manufacturers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 171-a of the tax law, as amended  
2 by section 1 of part R of chapter 60 of the laws of 2004, is amended to  
3 read as follows:

4 1. All taxes, interest, penalties and fees collected or received by  
5 the commissioner or the commissioner's duly authorized agent under arti-  
6 cles nine (except section one hundred eighty-two-a thereof and except as  
7 otherwise provided in section two hundred five thereof), nine-A,  
8 twelve-A (except as otherwise provided in section two hundred eighty-  
9 four-d thereof), **ten**, thirteen, thirteen-A (except as otherwise provided  
10 in section three hundred twelve thereof), eighteen, nineteen, twenty  
11 (except as otherwise provided in section four hundred eighty-two there-  
12 of), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight  
13 (except as otherwise provided in section eleven hundred two [~~or~~], eleven  
14 hundred three thereof), twenty-eight-A, thirty-one (except as otherwise  
15 provided in section fourteen hundred twenty-one thereof), thirty-two,  
16 thirty-three and thirty-three-A of this chapter shall be deposited daily  
17 in one account with such responsible banks, banking houses or trust  
18 companies as may be designated by the comptroller, to the credit of the  
19 comptroller. Such an account may be established in one or more of such  
20 depositories. Such deposits shall be kept separate and apart from all

21 other money in the possession of the comptroller. The comptroller shall  
22 require adequate security from all such depositories. Of the total  
23 revenue collected or received under such articles of this chapter, the  
24 comptroller shall retain in the comptroller's hands such amount as the  
25 commissioner may determine to be necessary for refunds or reimbursements  
26 under such articles of this chapter [~~and article ten thereof~~] out of  
27 which amount the comptroller shall pay any refunds or reimbursements to

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 which taxpayers shall be entitled under the provisions of such articles  
2 of this chapter [~~and article ten thereof~~]. The commissioner and the  
3 comptroller shall maintain a system of accounts showing the amount of  
4 revenue collected or received from each of the taxes imposed by such  
5 articles. The comptroller, after reserving the amount to pay such  
6 refunds or reimbursements, shall, on or before the tenth day of each  
7 month, pay into the state treasury to the credit of the general fund all  
8 revenue deposited under this section during the preceding calendar month  
9 and remaining to the comptroller's credit on the last day of such  
10 preceding month, (i) except that the comptroller shall pay to the state  
11 department of social services that amount of overpayments of tax imposed  
12 by article twenty-two of this chapter and the interest on such amount  
13 which is certified to the comptroller by the commissioner as the amount  
14 to be credited against past-due support pursuant to subdivision six of  
15 section one hundred seventy-one-c of this [~~chapter~~] article, (ii) and  
16 except that the comptroller shall pay to the New York state higher  
17 education services corporation and the state university of New York or  
18 the city university of New York respectively that amount of overpayments  
19 of tax imposed by article twenty-two of this chapter and the interest on  
20 such amount which is certified to the comptroller by the commissioner as  
21 the amount to be credited against the amount of defaults in repayment of  
22 guaranteed student loans and state university loans or city university  
23 loans pursuant to subdivision five of section one hundred seventy-one-d  
24 and subdivision six of section one hundred seventy-one-e of this [~~chap-~~  
25 ter] article, (iii) and except further that, notwithstanding any law,  
26 the comptroller shall credit to the revenue arrearage account, pursuant  
27 to section ninety-one-a of the state finance law, that amount of over-  
28 payment of tax imposed by article nine, nine-A, twenty-two, thirty,  
29 thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any  
30 interest thereon, which is certified to the comptroller by the commis-  
31 sioner as the amount to be credited against a past-due legally enforcea-  
32 ble debt owed to a state agency pursuant to paragraph (a) of subdivision  
33 six of section one hundred seventy-one-f of this article, provided,  
34 however, [~~he~~] the comptroller shall credit to the special offset fiduci-  
35 ary account, pursuant to section ninety-one-c of the state finance law,  
36 any such amount creditable as a liability as set forth in paragraph (b)  
37 of subdivision six of section one hundred seventy-one-f of this article,  
38 (iv) and except further that the comptroller shall pay to the city of  
39 New York that amount of overpayment of tax imposed by article nine,  
40 nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-  
41 three of this chapter and any interest thereon that is certified to the  
42 comptroller by the commissioner as the amount to be credited against  
43 city of New York tax warrant judgment debt pursuant to section one  
44 hundred seventy-one-l of this article, (v) and except further that the  
45 comptroller shall pay to a non-obligated spouse that amount of overpay-  
46 ment of tax imposed by article twenty-two of this chapter and the inter-  
47 est on such amount which has been credited pursuant to section one  
48 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-  
49 one-e, one hundred seventy-one-f or one hundred seventy-one-l of this  
50 article and which is certified to the comptroller by the commissioner as  
51 the amount due such non-obligated spouse pursuant to paragraph six of  
52 subsection (b) of section six hundred fifty-one of this chapter; and  
53 (vi) the comptroller shall deduct a like amount which the comptroller  
54 shall pay into the treasury to the credit of the general fund from  
55 amounts subsequently payable to the department of social services, the  
56 state university of New York, the city university of New York, or the

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1 higher education services corporation, or the revenue arrearage account  
2 or special offset fiduciary account pursuant to section ninety-one-a or  
3 ninety-one-c of the state finance law, as the case may be, whichever had  
4 been credited the amount originally withheld from such overpayment, and  
5 (vii) with respect to amounts originally withheld from such overpayment  
6 pursuant to section one hundred seventy-one-1 of this article and paid  
7 to the city of New York, the comptroller shall collect a like amount  
8 from the city of New York.

9 § 2. The tax law is amended by adding a new article 10 to read as  
10 follows:

11 ARTICLE 10

12 POINT OF MANUFACTURER EXCISE TAX ON SWEETENED BEVERAGES

13 Section 220. Definitions.

14 221. Imposition of excise tax.

15 222. Payment of excise tax.

16 223. Exemptions.

17 § 220. Definitions. For purposes of this article, the term:

18 1. "Bottle" means any closed or sealed glass, metal, paper, plastic,  
19 or any other type of container regardless of the size or shape of such  
20 container.

21 2. "Bottled soft drinks" means any and all nonalcoholic beverages,  
22 whether carbonated or not, such as soda water, ginger ale, all drinks  
23 commonly referred to as cola, lime, lemon, lemon-lime and other flavored  
24 drinks, fruit juice when any plain or carbonated water, flavoring or  
25 syrup is added, or any and all preparations commonly referred to as  
26 "soft drinks" of whatever kind, which are closed and sealed in glass,  
27 paper, or any other type of container, envelope, package, or bottle,  
28 whether manufactured with or without the use of any syrup. The term  
29 "bottled soft drinks" shall not include fluid milk to which no flavoring  
30 has been added, or natural undiluted fruit juice or vegetable juice.

31 3. "Distributor, manufacturer, or wholesale dealer" means any person  
32 who receives, stores, manufactures, bottles or sells bottled soft  
33 drinks, soft drink syrups, simple syrups, or powders or base products  
34 for mixing, compounding or making soft drinks for sale to retail deal-  
35 ers, other manufacturers, wholesale dealers or distributors for resale  
36 purposes.

37 4. "Infant or toddler formula" means any product, whether sold in  
38 liquid or powder form, that is intended by its manufacturer for consump-  
39 tion by infants or toddlers that is commonly referred to as infant or  
40 toddler formula.

41 5. "Milk" means natural liquid milk regardless of animal source or  
42 butterfat content; or natural milk concentrate, whether or not reconsti-  
43 tuted, regardless of animal source or butterfat content or dehydrated  
44 natural milk whether or not reconstituted.

45 6. "Milk product" means any liquid that has milk as the predominant  
46 ingredient by weight in accordance with the regulations of the United  
47 States food and drug administration.

48 7. "Milk substitute" means any liquid that is soy-based and is  
49 intended by its manufacturer as a substitute for milk.

50 8. "Natural undiluted fruit juice" means the liquid resulting from the  
51 pressing of fruit with or without sweetener being added, or the liquid  
52 resulting from the reconstitution of natural fruit juice concentrate by  
53 the restoration of water to dehydrated natural fruit juice with or with-  
54 out sweetener being added.

55 9. "Natural undiluted vegetable juice" means the liquid resulting from  
56 the pressing of vegetables with or without sweetener being added or the

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1 liquid resulting from the reconstitution of natural vegetable juice  
2 concentrate by the restoration of water to dehydrated natural vegetable  
3 juice with or without sweetener being added.

4 10. "Non-alcoholic beverage" means and includes all beverages not  
5 subject to tax under article eighteen of this chapter.

6 11. "Place of business" means any place where soft drinks, syrups,  
7 simple syrups, powder or base products are manufactured or any place  
8 where bottled soft drinks, soft drink syrup, simple syrup, soft drink  
9 powder or other soft drink base product or any other item assessed under  
10 this article are received.

11 12. "Powder", "base product" or "other base" means a solid mixture of  
12 basic ingredients used in making, mixing or compounding soft drinks by  
13 mixing the powder or other base with water, ice, syrup, high fructose  
14 corn syrup, or simple syrup, fruits, vegetables, fruit juice, vegetable  
15 juice, or any other product suitable to make a soft drink.

16 13. "Retailer" or "retail dealer" means any person other than a  
17 manufacturer, distributor or wholesaler, who receives, stores, mixes,  
18 compounds or manufactures any soft drink and sells or otherwise  
19 dispenses the same to the ultimate consumer.

20 14. "Sale" means the transfer of title or possession for a valuable  
21 consideration of tangible personal property regardless of the manner by  
22 which the transfer is accomplished. When a retailer is also acting as a  
23 wholesaler or distributor, the duty to report and pay the excise tax  
24 imposed by this article arises when the property is transferred to a  
25 retail store for sale to the ultimate consumer as reflected by the  
26 records of the excise tax payer.

27 15. "Simple syrup" means the making, mixing, compounding, or manufac-  
28 turing, by dissolving sugar and water or any other mixtures that will  
29 create simple syrup to which may or may not be added concentrates or  
30 extracts.

31 16. "Soft drink" means any nonalcoholic beverage, whether naturally or  
32 artificially flavored, whether carbonated or not, sold for human  
33 consumption including, but not limited to, soda water, ginger ale, all  
34 drinks commonly referred to as cola, lime, lemon, lemon-lime and other  
35 flavored drinks, including any fruit or vegetable drink containing  
36 seventy percent (70%) or less natural fruit juice, natural vegetable  
37 juice, and all other drinks and beverages commonly referred to as soft  
38 drinks but not including coffee or tea unless the coffee or tea is  
39 bottled as a liquid for sale.

40 17. "Syrup" means the liquid mixture of basic ingredients used in  
41 making, mixing or compounding soft drinks by mixing the syrup with  
42 water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable  
43 juice, or any other product suitable to make a complete soft drink.

44 18. "Sweetener" means sugar only, artificial or natural, which singu-  
45 larly flavors the taste of a natural undiluted fruit juice or natural  
46 undiluted vegetable juice.

47 § 221. Imposition of excise tax. 1. On and after October first, two  
48 thousand ten, an excise tax is hereby imposed and shall be paid by every  
49 distributor, manufacturer or wholesale dealer to be calculated as  
50 follows:

51 (a) ten dollars per gallon for each gallon of soft drink syrup or  
52 simple syrup sold or offered for sale in the state;

53 (b) one dollar and fifty cents per gallon for each gallon of bottled  
54 soft drinks sold or offered for sale in the state; or

55 (c) one dollar and fifty cents for each gallon of soft drink which may  
56 be produced from each package or container by following the manufactur-

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1 er's directions in the case in which a package or container of powder or  
2 other base product other than a syrup or simple syrup is sold or offered  
3 for sale in the state. This excise tax applies when the sale of the  
4 powder or other base is sold to a retailer for sale to the ultimate  
5 consumer after the liquid soft drink is produced by the retailer.

6 2. Any person manufacturing or producing within this state any bottled  
7 soft drink or soft drink syrup for sale within this state and any  
8 distributor, wholesaler or retail dealer or any other person who  
9 is the original consignee of any bottled soft drink or soft drink syrup  
10 manufactured or produced outside this state, or who brings such drinks  
11 or syrups into this state, shall be liable for the excise tax imposed  
12 under this section. The excise tax hereby imposed shall not be collected  
13 more than once in respect to any bottled soft drink or soft drink syrup  
14 manufactured, sold, used, or distributed in this state.

15 § 222. Payment of excise tax. This excise tax shall be paid by the  
16 distributor, wholesaler, or manufacturer when the syrup, powder or base  
17 product or soft drink is sold. The excise tax levied by this article  
18 shall be paid by a retailer who purchases syrups, powder or  
19 base products or soft drinks from an unlicensed distributor, wholesaler  
20 or manufacturer. These aforementioned parties subject to pay this excise  
21 tax shall pay it monthly to the comptroller in a format to be specified  
22 by the commissioner.

23 § 223. Exemptions. The following are exempted from the excise tax  
24 imposed by this article:

25 1. Syrups, simple syrups, powder, base products, or soft drinks sold  
26 to the federal government;

27 2. Syrups, simple syrups, powder, base products, or soft drinks  
28 exported from the state by a distributor, manufacturer, or wholesale  
29 dealer;

30 3. Any powder or base product used in preparing coffee or tea;

31 4. Any frozen, freeze-dried, or other concentrate to which only water  
32 is added to produce a nonalcoholic beverage containing more than ten  
33 percent natural fruit juice or natural vegetable juice;

34 5. Any nonalcoholic beverage containing more than seventy percent  
35 natural fruit juice or natural vegetable juice;

36 6. Any product, whether sold in liquid or powder form, that is  
37 intended by its manufacturer for consumption by infants and that is  
38 commonly referred to as infant or toddler formula;

39 7. Water to which no flavoring, whether artificial or natural, has  
40 been added and that has not been artificially carbonated;

41 8. Any product, whether sold in liquid or powder form, that is  
42 intended by its manufacturer for use as a dietary supplement or for  
43 weight reduction;

44 9. Any powder or base product that is intended by its manufacturer to  
45 be sold and used to domestically mix soft drinks by the ultimate consum-  
46 er; and

47 10. Any product containing milk or milk products.

48 § 3. Subparagraph 15 of paragraph j of subdivision 1 of section 54 of  
49 the state finance law, as added by chapter 430 of the laws of 1997, is  
50 amended to read as follows:

51 (15) article twenty-eight of the tax law, **except taxes, penalties and**  
52 **interest imposed by article ten of the tax law;**

53 § 4. Subdivisions (d) and (h) of section 1817 of the tax law, as  
54 amended by section 30 of subpart I of part V-1 of chapter 57 of the laws  
55 of 2009, are amended to read as follows:

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1 (d) Any person (1) who willfully fails to charge separately [~~the~~] any  
2 tax or taxes imposed under article twenty-eight of this chapter or to  
3 state any such tax or taxes separately on any bill, statement, memoran-  
4 dum or receipt issued or employed by [~~him~~] such person upon which the  
5 tax is required to be stated separately as provided in subdivision (a)  
6 of section eleven hundred thirty-two of this chapter; or (2) who shall  
7 refer or cause reference to be made to any such tax or taxes in a form  
8 or manner other than that required by such article twenty-eight, shall  
9 be guilty of a misdemeanor.

10 (h) The penalties provided for in this section shall not preclude  
11 prosecution pursuant to the penal law with respect to the willful fail-  
12 ure of any person to pay over to the state any sales tax imposed by  
13 section eleven hundred four, eleven hundred five, eleven hundred seven,  
14 eleven hundred eight or eleven hundred nine of this chapter or by any  
15 local law adopted by any city or county pursuant to article twenty-nine  
16 of this chapter, whenever such person has been required to collect and  
17 has collected any such sales tax. In any such prosecution under the  
18 penal law, a person who has been required to collect and has collected  
19 any such tax shall be deemed to have acted in a fiduciary character with  
20 respect to the state or a political subdivision thereof, and the tax or  
21 taxes collected shall be deemed to have been entrusted to such person by  
22 the state or a political subdivision thereof.

23 § 5. Subdivisions (a) and (b) of section 92-dd of the state finance  
24 law, as amended by section 125-c of part C of chapter 58 of the laws of  
25 2009, are amended to read as follows:

26 (a) On and after April first, two thousand five, such fund shall  
27 consist of the revenues heretofore and hereafter collected or required  
28 to be deposited pursuant to paragraph (a) of subdivision eighteen of  
29 section twenty-eight hundred seven-c, and sections twenty-eight hundred  
30 seven-j, twenty-eight hundred seven-s and twenty-eight hundred seven-t  
31 of the public health law, subdivisions (b) and (c) of section four  
32 hundred eighty-two and article ten of the tax law and required to be  
33 credited to the tobacco control and insurance initiatives pool, subpara-  
34 graph (0) of paragraph four of subsection (j) of section four thousand  
35 three hundred one of the insurance law, section twenty-seven of part A  
36 of chapter one of the laws of two thousand two and all other moneys  
37 credited or transferred thereto from any other fund or source pursuant  
38 to law.

39 (b) The pool administrator under contract with the commissioner of  
40 health pursuant to section twenty-eight hundred seven-y of the public  
41 health law shall continue to collect moneys required to be collected or  
42 deposited pursuant to paragraph (a) of subdivision eighteen of section  
43 twenty-eight hundred seven-c, and sections twenty-eight hundred seven-j,  
44 twenty-eight hundred seven-s and twenty-eight hundred seven-t of the  
45 public health law, and shall deposit such moneys in the HCRA resources  
46 fund. The comptroller shall deposit moneys collected or required to be  
47 deposited pursuant to subdivisions (b) and (c) of section four hundred  
48 eighty-two and article ten of the tax law and required to be credited to  
49 the tobacco control and insurance initiatives pool, subparagraph (0) of  
50 paragraph four of subsection (j) of section four thousand three hundred  
51 one of the insurance law, section twenty-seven of part A of chapter one  
52 of the laws of two thousand two and all other moneys credited or trans-  
53 ferred thereto from any other fund or source pursuant to law in the HCRA  
54 resources fund.

55 § 6. This act shall take effect on the one hundred eightieth day after  
56 it shall have become law, and shall apply to sales and charges made,



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1 uses occurring and services rendered on and after such date, in accord-  
2 ance with applicable transitional provisions in the tax law; provided,  
3 however, that the amendments to subdivisions (a) and (b) of section  
4 92-dd of the state finance law made by section five of this act shall  
5 take effect April 1, 2010.

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**SPONSORS MEMO:**

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S6644

**SPONSOR:** DUANE

**TITLE OF BILL:**

An act to amend the tax law and the state finance law, in relation to imposing a state excise tax on sweetened beverage manufacturers

**PURPOSE:**

This bill would impose an excise on sweetened beverage manufacturers.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill would amend Tax Law § 171-a(1) to provide for the disposition of the taxes, interest, and penalties collected under the new tax structure.

Section 2 of the bill would create a new Tax Law Article 16 entitled, "Point of Manufacturer Excise Tax on Sweetened Beverages". This new article imposes an excise tax at the following rates on: (1) syrups or simple syrups, for which the tax rate would be \$10.00 per gallon; (2) bottled soft drinks, for which the tax rate would be \$1.50 per gallon; and powders or base products, for which the tax rate would be \$1.50 per gallon of soft drink that is produced from each package or container by following the manufacturer's directions. The new article also provides for certain exemptions.

Sections 3 and 4 make certain changes to the tax law relating to the new excise.

Section 5 provides for the effective date.

**JUSTIFICATION:**

The average American consumes approximately thirty five gallons of non-diet soda each year. Sweetened beverages have become a major source of obesity and linked to diabetes, heart disease and dental problems. One



new study estimates that twenty-four million Americans now suffer from diabetes--more than four times the number in 1980. The total direct and indirect cost to Americans caused by diabetes is approximately \$218,000,000,000 each year--an average of \$1,900 per American household. Diabetes also contributes to the deaths of more than two hundred thousand Americans.

**EXISTING LAW:**

None.

**LEGISLATIVE HISTORY:**

New bill.

**FISCAL IMPLICATIONS:**

To be determined.

**EFFECTIVE DATE:**

This act shall take effect in 180 days after it shall have become law.

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