

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

S

1

SENATE BILL 797

Short Title: Soft Drink Tax/School Breakfast.

(Public)

Sponsors: Senator Kinnaird.

Referred to: Finance.

April 3, 2003

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

Whereas, the Center for Science in the Public Interest reports that soft drinks promote tooth decay because they bathe the teeth of frequent consumers in sugar water for long periods of time during the day, and that an analysis of data from 1971-74 found

1 a strong correlation between the frequency of between-meal consumption of soft drinks
2 and tooth decay; and

3 Whereas, the additional revenue generated by a tax on soft drinks could be
4 used to fund education; Now, therefore,

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 2B of Chapter 105 of the General Statutes is reenacted
7 and reads as rewritten:

8 "Article 2B.

9 "Soft Drink Tax.

10 **"§ 105-113.41. Short title.**

11 This Article ~~shall be known and cited as~~ is the "Soft Drink Tax Act."

12 **"§ 105-113.42. Purpose of Article.**

13 It is the purpose of this Article to provide a source of additional revenue ~~which shall~~
14 ~~be applied to the general fund of the State.~~ for the General Fund.

15 **"§ 105-113.44. Definitions.**

16 The following definitions apply in this Article:

- 17 (1) Base product. = The compound mixture or basic ingredients to which
18 liquid milk or another liquid is added to complete a soft drink. The
19 term includes a powder, a simple syrup, a chocolate syrup, other
20 syrups, and a concentrate.
- 21 (2) Bottled. = In a closed container of any kind.
- 22 (3) Distributor. = A person who makes bottled soft drinks or base products
23 or who acquires bottled soft drinks or base products for sale to a
24 wholesale dealer or a retail dealer.
- 25 (4) Juice. = Any of the following:
- 26 a. The liquid that results from pressing fresh fruit or fresh
27 vegetables.
- 28 b. The concentrate produced by dehydrating a liquid described in
29 ~~subpart a.~~ sub-subdivision a. of this subdivision.
- 30 c. The liquid that results from adding water to a concentrate
31 described in ~~subpart b.~~ sub-subdivision b. of this subdivision.
- 32 (5) Milk. = Any of the following:
- 33 a. Liquid milk, regardless of butterfat content.
- 34 b. The powder produced by dehydrating liquid milk.
- 35 c. The liquid that results from adding water to dehydrated liquid
36 milk.
- 37 (6) Natural. – Without added ingredients of any kind other than vitamins,
38 minerals, or ingredients extracted from an item and later returned to
39 the item during the manufacturing process. Added ingredients include
40 sugar, salt, preservatives, coloring, carbonation, and artificial
41 flavoring.
- 42 (7) Person. – Defined in G.S. 105-228.90.
- 43 (8) Powder. = Crystals, granules, tablets, and other dry products.

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

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

(a) Bottled Soft Drinks. – An excise tax ~~at the applicable rate provided in the 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¢

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

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

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

- (1) ~~The applicable per ounce rate in the table below~~ rate of three cents (3¢) an ounce if the dry base product is not converted into a syrup or 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¢

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

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

"§ 105-113.46. Exemptions.

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

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

14 **"§ 105-113.47. Registration of certain exempt bottled soft drinks and juice**
15 **concentrates.**

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

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

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

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

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

40 (d) Effect. – Registration as an exempt item applies prospectively to sales of the
41 registered bottled soft drink or registered juice concentrate made on or after the date of
42 registration. Registration does not relieve a person of liability for taxes due on sales
43 made before the date an item is registered.

44 **"§ 105-113.50. Soft drink licenses required.**

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

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

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

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

14 **"§ 105-113.50A. Local taxation.**

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

20 **"§ 105-113.51. Liability for and payment of excise taxes.**

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

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

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

43 A distributor or a wholesale dealer to whom a soft drink certificate of liability is
44 presented must accept the certificate. A soft drink certificate of liability is considered to

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

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

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

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

15 **"§ 105-113.52. Tax reduction and discount.**

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

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

32 **"§ 105-113.53. Bonds.**

33 The Secretary may require a distributor, a wholesale dealer, or a retail dealer to
34 furnish a bond in an amount that adequately protects the State from loss if the
35 distributor or dealer fails to pay taxes due under this Article. A bond shall be
36 conditioned on compliance with this Article, shall be payable to the State, and shall be
37 in the form required by the Secretary. The Secretary shall proportion a bond amount to
38 the anticipated tax liability of the distributor, wholesale dealer, or retail dealer. The
39 Secretary shall periodically review the sufficiency of bonds required of distributors,
40 wholesale dealers, and retail dealers and shall increase the amount of a required bond
41 when the amount of the bond furnished no longer covers the anticipated tax liability of
42 the distributor or dealer. The Secretary shall decrease the amount of a required bond
43 when the Secretary determines that a smaller bond amount will adequately protect the
44 State from loss.

1 **"§ 105-113.57. Records required of ingredients received.**

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

8 **"§ 105-113.58. Records of sales, inventories, and purchases to be kept.**

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

13 **"§ 105-113.63. ~~Rules and regulations.~~Rules.**

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

17 **"§ 105-113.64. Disposition of tax proceeds. ~~General administrative provisions of~~**
18 **Revenue Act applicable.**

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

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

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