AN ACT

AMENDING SECTION 42-1101, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; RELATING TO TAX ON BEVERAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-1101, Arizona Revised Statutes, is amended to read:

42-1101. Application

This article and chapter 2 of this title apply generally to the administration of income tax, withholding tax, transaction privilege tax, telecommunication services excise tax, county excise taxes and any other privilege excise tax administered by the department, severance tax, use tax, luxury tax, tax on water use, and jet fuel excise tax and SUGAR-SWEETENED BEVERAGES TAX and use tax.

Sec. 2. Title 42, chapter 5, Arizona Revised Statutes, is amended by adding article 10, to read:

ARTICLE 10. SUGAR-SWEETENED BEVERAGES

42-5451. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "DEALER" MEANS A PERSON THAT ENGAGES IN THE BUSINESS OF SELLING SUGAR-SWEETENED BEVERAGES FOR RETAIL, INCLUDING RETAIL STORES, RESTAURANTS, STREET VENDORS, VENDING MACHINE OWNERS AND DISTRIBUTORS THAT ENGAGE IN RETAIL SALES.

2. "DISTRIBUTOR" MEANS A PERSON THAT SUPPLIES SUGAR-SWEETENED BEVERAGES TO A DEALER.

3. "SUGAR-SWEETENED BEVERAGE":
   (a) INCLUDES:
       (i) ANY NONALCOHOLIC BEVERAGE THAT LISTS AS AN INGREDIENT ANY FORM OF CALORIC SUGAR-BASED SWEETENER OR ANY FORM OF ARTIFICIAL SUGAR SUBSTITUTE.
       (ii) ANY NONALCOHOLIC SYRUP OR OTHER CONCENTRATE THAT IS INTENDED TO BE USED IN THE PREPARATION OF A BEVERAGE AND THAT LISTS AS AN INGREDIENT ANY FORM OF CALORIC SUGAR-BASED SWEETENER OR ANY FORM OF ARTIFICIAL SUGAR SUBSTITUTE.
   (b) DOES NOT INCLUDE:
       (i) BABY FORMULA.
       (ii) MEDICAL FOOD, AS DEFINED BY THE ORPHAN DRUG ACT (21 UNITED STATES CODE SECTION 360ee(b)(3)).
       (iii) ANY PRODUCT OF WHICH MORE THAN FIFTY PERCENT, BY VOLUME, IS MILK.
       (iv) ANY PRODUCT OF WHICH MORE THAN FIFTY PERCENT, BY VOLUME, IS FRESH FRUIT OR VEGETABLES, OR BOTH, ADDED BY SOMEONE OTHER THAN THE CONSUMER.
       (v) UNSWEETENED DRINKS TO WHICH A CONSUMER CAN ADD, OR REQUEST A SELLER TO ADD, SUGAR AT THE POINT OF SALE.
       (vi) ANY SYRUP OR OTHER CONCENTRATE THE CONSUMER COMBINES WITH OTHER INGREDIENTS TO CREATE A BEVERAGE.
42-5452. Distributor registration; purchases from registered
distributors; waivers; penalties

A. On application, in a form and manner prescribed by the
department, the department shall issue a certificate of registration to a
distributor.

B. A dealer may not sell at retail, or hold out or display for sale
at retail, any sugar-sweetened beverage unless:
1. The sugar-sweetened beverage was acquired by the dealer from a
registered distributor.
2. The dealer has complied with the notification requirements of
section 42-5454 and received from the registered distributor confirmation
of the notification and confirmation that the distributor is registered,
in a form prescribed by the department.

C. On a showing of extraordinary circumstances, if distribution
channels would make the purchase of any sugar-sweetened beverage from a
registered distributor substantially impracticable, the department may
grant a full or partial waiver to a dealer from the requirements of
subsection B of this section. In that case and during the pendency of any
application for a waiver under this subsection, the dealer shall pay the
tax due under this article directly to the department, in a manner and
using forms prescribed by the department. The department may require an
annual demonstration of continuing extraordinary circumstances in order to
maintain a waiver.

D. The department shall grant a waiver to any dealer that elects to
register as if the dealer were a distributor and agrees to assume all of
the obligations of a distributor with respect to the dealer's acquisition
of the sugar-sweetened beverage, including payment of the tax to the
department.

E. In imposing the penalties prescribed by chapter 1 of this title,
each separate sale, transaction or delivery of a product in violation of
this section constitutes a separate offense. A distributor that violates
this section more than once in any twenty-four-month period is subject to
suspension of registration for such a period of time as the department
considers to be appropriate.

42-5453. Imposition and rate of tax

A. From and after December 31, 2017, a tax is imposed on:
1. The supply of any sugar-sweetened beverage to a dealer.
2. The acquisition of any sugar-sweetened beverage by a dealer.
3. The delivery of any sugar-sweetened beverage to a dealer.
4. The transport of any sugar-sweetened beverage into this state by
a dealer.

B. The tax is imposed only if the supply, acquisition, delivery or
transport is for the purpose of the dealer's holding out for retail sale
in this state the sugar-sweetened beverage or any beverage produced from
sugar-sweetened beverage or syrup.
C. THE TAX IS IMPOSED AT THE FOLLOWING RATES:
1. FOR ANY NONALCOHOLIC BEVERAGE THAT LISTS AS AN INGREDIENT ANY FORM OF CALORIC SUGAR-BASED SWEETENER OR ANY FORM OF ARTIFICIAL SUGAR SUBSTITUTE, ONE AND ONE-HALF CENTS PER FLUID OUNCE.
2. FOR ANY NONALCOHOLIC SYRUP OR OTHER CONCENTRATE THAT IS INTENDED TO BE USED IN THE PREPARATION OF A BEVERAGE AND THAT LISTS AS AN INGREDIENT ANY FORM OF CALORIC SUGAR-BASED SWEETENER OR ANY FORM OF ARTIFICIAL SUGAR SUBSTITUTE, ONE AND ONE-HALF CENTS PER FLUID OUNCE OF THE RESULTING BEVERAGE, PREPARED TO THE MANUFACTURER'S SPECIFICATIONS.

D. ALL BILLS OR INVOICES CREATED BY OR FOR A REGISTERED DISTRIBUTOR IN CONNECTION WITH THE ACQUISITION OF SUGAR-SWEETENED BEVERAGES BY A DEALER FROM THAT REGISTERED DISTRIBUTOR SHALL SEPARATELY STATE THE TOTAL VOLUME OF BEVERAGES FOR THE PURPOSES OF SUBSECTION C, PARAGRAPH 1 OF THIS SECTION AND OF BEVERAGES THAT MAY BE PREPARED FROM SYRUPS OR CONCENTRATES FOR THE PURPOSES OF SUBSECTION C, PARAGRAPH 2 OF THIS SECTION.

42-5454. Notification of dealer status
A. A DEALER MAY NOT ACCEPT ANY SUGAR-SWEETENED BEVERAGE FROM A REGISTERED DISTRIBUTOR FOR THE PURPOSE OF HOLDING THE SUGAR-SWEETENED BEVERAGE OR A BEVERAGE PRODUCED FROM SUGAR-SWEETENED SYRUP OUT FOR RETAIL SALE WITHOUT FIRST NOTIFYING THE REGISTERED DISTRIBUTOR THAT THE DEALER IS SUBJECT TO THIS ARTICLE. THE NOTICE MAY BE IN THE FORM OF A SALE FOR RESALE EXEMPTION LETTER UNDER SECTION 42-5009 OR IN SUCH OTHER FORM AS THE DEPARTMENT PRESCRIBES. EACH DEALER SHALL MAINTAIN COPIES OF NOTICES IT PROVIDES TO A REGISTERED DISTRIBUTOR.

B. ON RECEIVING NOTIFICATION PURSUANT TO SUBSECTION A OF THIS SECTION, A REGISTERED DISTRIBUTOR MAY NOT SUPPLY ANY SUGAR-SWEETENED BEVERAGE TO THE DEALER WITHOUT AT THE SAME TIME PROVIDING TO THE DEALER:
1. CONFIRMATION OF NOTIFICATION.
2. A RECEIPT DETAILING, IN A FORM PRESCRIBED BY THE DEPARTMENT, THE AMOUNT OF SUGAR-SWEETENED BEVERAGE SUPPLIED IN THE TRANSACTION AND THE AMOUNT OF TAX DUE ON THE TRANSACTION.

42-5455. Liability for tax; payment; distribution
A. THE REGISTERED DISTRIBUTOR SHALL PAY THE TAX DUE UNDER THIS ARTICLE. THE DEALER IS NOT LIABLE FOR PAYMENT OF THE TAX IF THE REGISTERED DISTRIBUTOR HAS RECEIVED FROM THE DEALER THE NOTIFICATION UNDER SECTION 42-5454 THAT THE RECIPIENT IS A DEALER.

B. IN ADDITION TO ANY OTHER PENALTIES PRESCRIBED BY THIS ARTICLE, A DEALER THAT FAILS TO PROVIDE NOTIFICATION PRESCRIBED BY SECTION 42-5454 AND A DEALER THAT SELLS, HOLDS OUT FOR SALE OR DISPLAYS FOR SALE AT RETAIL ANY SUGAR-SWEETENED BEVERAGE IN VIOLATION OF SECTION 42-5452, SUBSECTION B IS LIABLE FOR PAYMENT OF ANY TAX DUE UNDER THIS ARTICLE AND SHALL FILE RETURNS WITH THE DEPARTMENT AS REQUIRED BY THIS ARTICLE.

C. IF A DEALER IS ALSO A REGISTERED DISTRIBUTOR, NO ADDITIONAL TAX IS DUE ON THE SUPPLY OF THE SUGAR-SWEETENED BEVERAGE TO ANOTHER DEALER IF THE TAX HAS ALREADY BEEN IMPOSED ON THE SUPPLY OR DELIVERY TO THE
DEALER-DISTRIBUTOR OR THE ACQUISITION OF THE BEVERAGE BY THE
DEALER-DISTRIBUTOR.

D. THE TAX IS DUE AND PAYABLE TO THE DEPARTMENT UNDER THIS ARTICLE
WITHIN THIRTY DAYS AFTER THE END OF EACH CALENDAR QUARTER. EACH
REGISTERED DISTRIBUTOR SHALL FILE A RETURN WITH THE PAYMENT OF TAX, IN A
FORM PRESCRIBED BY THE DEPARTMENT, SHOWING:
1. THE AMOUNT OF SUGAR-SWEETENED BEVERAGE SUPPLIED BY THE
DISTRIBUTOR TO ANY DEALER, SEPARATELY ACCOUNTING FOR BOTH FLUID AND SYRUP.
2. THE AMOUNT OF TAX DUE ON THE SUGAR-SWEETENED BEVERAGE.

E. THE DEPARTMENT SHALL DEPOSIT ALL MONIES COLLECTED PURSUANT TO
THIS ARTICLE IN THE STATE GENERAL FUND. FROM THOSE MONIES, THE
LEGISLATURE SHALL ANNUALLY APPROPRIATE:
1. FIFTY PERCENT OF THE ANNUAL REVENUES FOR DISTRICT ADDITIONAL
ASSISTANCE AS PROVIDED BY SECTION 15-961.
2. FIFTY PERCENT OF THE ANNUAL REVENUES TO THE DEPARTMENT OF HEALTH
SERVICES FOR PROGRAMS RELATED TO NUTRITION AND PHYSICAL ACTIVITY.

42-5456. Administration; rules
A. THE DEPARTMENT SHALL ADMINISTER, ENFORCE AND COLLECT THE TAX
IMPOSED BY THIS ARTICLE.
B. THE DEPARTMENT MAY REQUIRE REGISTERED DISTRIBUTORS AND DEALERS
TO SUBMIT ANY INFORMATION, IN ADDITION TO THAT REQUIRED BY THIS ARTICLE,
AS NECESSARY TO ACCOMPLISH THE DUTIES PRESCRIBED BY THIS ARTICLE.
C. THE DEPARTMENT SHALL ADOPT RULES AS NECESSARY TO DEFINE
SUGAR-SWEETENED BEVERAGES CONSISTENT WITH SECTION 42-5451 TO CLARIFY AND
REFINE THE INCLUSION OR EXCLUSION OF PARTICULAR PRODUCTS. THE DEPARTMENT
MAY EXCLUDE PARTICULAR PRODUCTS WITH RESPECT TO WHICH, BECAUSE OF THEIR
INGREDIENTS OR FOR OTHER ADMINISTRATIVE OR HEALTH-RELATED REASONS,
EXCLUSION IS CONSISTENT WITH SOUND PUBLIC POLICY AND THE PURPOSES OF THIS
ARTICLE.

Sec. 3. Requirements for enactment; two-thirds vote
Pursuant to article IX, section 22, Constitution of Arizona, this
act is effective only on the affirmative vote of at least two-thirds of
the members of each house of the legislature and is effective immediately
on the signature of the governor or, if the governor vetoes this act, on
the subsequent affirmative vote of at least three-fourths of the members
of each house of the legislature.