
HOUSE BILL No. 1164

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8-12; IC 6-8.1-1-1; IC 12-15-44

Synopsis: Nonnutritive beverage tax. Imposes a tax of: (1) \$2 per gallon of syrup or simple syrup used to make nonnutritive beverage; (2) \$0.105 per gallon of bottled nonnutritive beverage; or (3) \$0.105 per gallon of powder based nonnutritive beverage; on a distributor, manufacturer, or wholesaler of nonnutritive beverages. Establishes and deposits tax revenue in the long term care continuum fund. Requires the office of Medicaid policy and planning to administer the fund. Provides that money in the fund is used to pay for certain Medicaid services.

Effective: July 1, 2004.

Summers

January 20, 2004, read first time and referred to Committee on Human Affairs.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

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HOUSE BILL No. 1164



A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]:

4 **Chapter 12. Nonnutritive Beverage Tax**

5 **Sec. 1. As used in this chapter, "bottle" means a closed or sealed**
6 **glass, metal, paper, plastic, or other type of container of any size or**
7 **shape.**

8 **Sec. 2. As used in this chapter, "bottled nonnutritive beverage"**
9 **means a complete, ready to consume, nonnutritive beverage**
10 **contained in a bottle.**

11 **Sec. 3. As used in this chapter, "department" refers to the**
12 **department of state revenue.**

13 **Sec. 4. As used in this chapter, "nonnutritive beverage" means**
14 **a nonalcoholic, naturally or artificially sweetened beverage sold for**
15 **human consumption. The term includes the following:**

- 16 (1) **Ginger ale.**
- 17 (2) **Seltzer.**



- 1 **(3) Soda or soda pop.**
- 2 **(4) Tonic water.**
- 3 **(5) All drinks commonly referred to as cola, lemon, lime, or**
- 4 **lemon-lime.**
- 5 **(6) Fruit drinks containing less than ten percent (10%)**
- 6 **natural fruit juice.**
- 7 **(7) Vegetable drinks containing less than ten percent (10%)**
- 8 **natural vegetable juice.**
- 9 **(8) Other drinks commonly referred to as soft drinks, soda, or**
- 10 **soda pop, including diet soft drinks, diet soda, or diet soda**
- 11 **pop.**
- 12 **Sec. 5. As used in this chapter, "person" includes an association,**
- 13 **a corporation, a fiduciary, an individual, a limited liability**
- 14 **company, a partnership, or a sole proprietorship.**
- 15 **Sec. 6. As used in this chapter, "powder" means a solid mixture**
- 16 **of basic ingredients used in making, mixing, or compounding**
- 17 **nonnutritive beverages.**
- 18 **Sec. 7. As used in this chapter, "retailer" means a person that:**
- 19 **(1) is not a vendor; and**
- 20 **(2) sells nonnutritive beverages, powder, or syrup to an**
- 21 **ultimate consumer.**
- 22 **Sec. 8. As used in this chapter, "simple syrup" means a mixture**
- 23 **of sugar and water.**
- 24 **Sec. 9. As used in this chapter, "syrup" means the liquid**
- 25 **mixture of basic ingredients used in making, mixing, or**
- 26 **compounding nonnutritive beverages.**
- 27 **Sec. 10. As used in this chapter, "vendor" means a distributor,**
- 28 **manufacturer, or wholesaler who manufactures, bottles, sells,**
- 29 **barters, exchanges, receives, stores or distributes nonnutritive**
- 30 **beverages, simple syrup, syrup, or powder for resale purposes to:**
- 31 **(1) retailers; or**
- 32 **(2) other distributors, manufacturers, or wholesalers.**
- 33 **Sec. 11. (a) Except as provided in section 12(b) of this chapter,**
- 34 **an excise tax known as the nonnutritive beverage tax is imposed on**
- 35 **each sale of syrup, simple syrup, powder, or bottled nonnutritive**
- 36 **beverage to a retailer in Indiana.**
- 37 **(b) The amount of the tax imposed under this section is**
- 38 **determined as follows:**
- 39 **(1) Two dollars (\$2) per gallon of syrup or simple syrup.**
- 40 **(2) Ten and one-half cents (\$0.105) per gallon of bottled**
- 41 **nonnutritive beverage.**
- 42 **(3) For a package or container of powder, ten and one-half**

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1 cents (\$0.105) per gallon of nonnutritive beverage that may be
2 produced from the package or container by following the
3 manufacturer's directions.

4 (c) The nonnutritive beverage tax is imposed on a vendor at the
5 time of each transaction described in subsection (a) and is payable
6 according to the procedures set forth in section 13 of this chapter.

7 (d) The nonnutritive beverage tax is a listed tax for purposes of
8 IC 6-8.1.

9 Sec. 12. (a) The nonnutritive beverage tax does not apply to the
10 following:

11 (1) A solid mixture of ingredients used to prepare coffee or
12 tea.

13 (2) Water that does not contain calories or natural or
14 artificial sweetener.

15 (3) Milk, milk products, or beverages that contain soy, rice, or
16 similar milk substitutes.

17 (4) A liquid or powder based product used as a meal
18 replacement.

19 (5) A product intended for consumption by infants.

20 (6) A powder intended for the purpose of mixing nonnutritive
21 beverages by the ultimate consumer.

22 (7) Nonnutritive beverages, syrup, simple syrup, or powder
23 sold to the federal government.

24 (8) Nonnutritive beverages, syrup, simple syrup, or powder
25 exported from Indiana by a distributor, manufacturer, or
26 wholesaler.

27 (9) A frozen or freeze dried concentrate to which only water
28 is added to produce a beverage containing at least ten percent
29 (10%) natural fruit or vegetable juice.

30 (10) A beverage containing at least ten percent (10%) natural
31 fruit or vegetable juice.

32 (b) The tax imposed under this chapter applies to the sale of
33 powder only if the powder is sold to a retailer that uses the powder
34 to produce a nonnutritive beverage for sale to an ultimate
35 consumer.

36 Sec. 13. Not later than the fifteenth day of each month, a vendor
37 shall do the following:

38 (1) File a return with the department on a form prescribed by
39 the department. The form must require the vendor to provide
40 the following information as applicable:

41 (A) Name, address, and telephone number of:

42 (i) the vendor; and

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- 1 (ii) the retailer to whom nonnutritive beverages, syrup,
- 2 simple syrup, or powder were sold.
- 3 (B) Numbers and dates of invoices for sales of nonnutritive
- 4 beverages, syrup, simple syrup, and powder.
- 5 (C) Prices of nonnutritive beverages, syrup, simple syrup,
- 6 or powder that were sold to the retailer.
- 7 (D) The quantities of the nonnutritive beverages, syrup,
- 8 simple syrup, or powder sold to the retailer.
- 9 (2) Remit to the department an amount equal to:
- 10 (A) the amount of tax imposed under this chapter for
- 11 which the vendor is liable for the immediately preceding
- 12 month; minus
- 13 (B) the amount determined under section 14 of this
- 14 chapter.

15 **Sec. 14.** A vendor who timely complies with section 13 of this
 16 chapter may deduct and retain from the tax imposed under section
 17 11 of this chapter a collection allowance equal to one percent (1%)
 18 of the amount of the vendor's tax liability for the immediately
 19 preceding month. The department may reduce the collection
 20 allowance of a vendor who fails to timely comply with section 13 of
 21 this chapter by an amount that does not exceed the lesser of:

- 22 (1) ten percent (10%) of the collection allowance; or
- 23 (2) fifty dollars (\$50).

24 **Sec. 15.** The department shall refund to a vendor the amount of
 25 taxes remitted under section 13 of this chapter for nonnutritive
 26 beverages, syrup, simple syrup, or powder that is:

- 27 (1) returned to the vendor; or
- 28 (2) destroyed by the vendor in the presence of an employee or
- 29 agent of the department.

30 **Sec. 16.** The taxes collected under this chapter shall be deposited
 31 in the long term care continuum fund established by IC 12-15-44-2.

32 **Sec. 17.** A vendor who knowingly:

- 33 (1) makes a false statement in a return under section 13 of this
- 34 chapter;
- 35 (2) fails to pay the tax for which the vendor is liable under this
- 36 chapter; or
- 37 (3) otherwise fails to comply with this chapter;

38 commits a Class B misdemeanor. However, the offense is a Class
 39 D felony if it is committed with intent to evade the tax imposed
 40 under this chapter or to defraud the state.

41 **Sec. 18.** A vendor who fails to comply with IC 6-8.1-5-4 commits
 42 a Class B misdemeanor.

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1 SECTION 2. IC 6-8.1-1-1, AS AMENDED BY P.L.192-2002(ss),
 2 SECTION 140, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2004]: Sec. 1. "Listed taxes" or "taxes" includes
 4 only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the
 5 riverboat admissions tax (IC 4-33-12); the riverboat wagering tax
 6 (IC 4-33-13); the gross income tax (IC 6-2.1) (repealed); the utility
 7 receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5);
 8 the adjusted gross income tax (IC 6-3); the supplemental net income
 9 tax (IC 6-3-8) (repealed); the county adjusted gross income tax
 10 (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county
 11 economic development income tax (IC 6-3.5-7); the municipal option
 12 income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the
 13 financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the
 14 alternative fuel permit fee (IC 6-6-2.1); the special fuel tax
 15 (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax
 16 collected under a reciprocal agreement under IC 6-8.1-3; the motor
 17 vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax
 18 (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the
 19 cigarette tax (IC 6-7-1); **the nonnutritive beverage tax (IC 6-8-12);**
 20 the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the
 21 wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5);
 22 the malt excise tax (IC 7.1-4-5); the petroleum severance tax
 23 (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various county
 24 food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13
 25 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and
 26 hazardous chemical inventory form fee (IC 6-6-10); the penalties
 27 assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and
 28 penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the
 29 underground storage tank fee (IC 13-23); the solid waste management
 30 fee (IC 13-20-22); and any other tax or fee that the department is
 31 required to collect or administer.

32 SECTION 3. IC 12-15-44 IS ADDED TO THE INDIANA CODE
 33 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2004]:

35 **Chapter 44. Long Term Care Continuum Fund**

36 **Sec. 1. As used in this chapter, "fund" refers to the long term**
 37 **care continuum fund established by section 2 of this chapter.**

38 **Sec. 2. (a) The long term care continuum fund is established to**
 39 **pay the state's share of certain Medicaid services provided under**
 40 **Title XIX of the federal Social Security Act.**

41 **(b) The fund consists of money deposited in the fund under:**

42 **(1) IC 6-8-12; and**

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(2) subsection (d).
(c) The office of Medicaid policy and planning shall administer the fund.

(d) The treasurer of state shall invest money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) The expenses of administering the fund shall be paid from money in the fund.

(f) Money in the fund at the end of a fiscal year does not revert to the state general fund but remains in the fund to be used for the purposes set forth in this section.

(g) Money in the fund is annually appropriated to the office of Medicaid policy and planning for the purposes set forth in section 3 of this chapter.

Sec. 3. Money in the fund shall be used to pay the state's share of Medicaid services provided under Title XIX of the federal Social Security Act as follows:

- (1) Eighty percent (80%) to be divided as follows:
 - (A) Sixty-seven percent (67%) for community and home care services for the aged and physically disabled.
 - (B) Thirty-three percent (33%) for community and home care services for the developmentally disabled.
- (2) Twenty percent (20%) for long term care services considered appropriate by the office of Medicaid policy and planning. Money may be used under this subdivision to pay for services described in subdivision (1).

Sec. 4. Money in the fund must be used to supplement state spending for Medicaid services provided under Title XIX of the federal Social Security Act that are described in section 3 of this chapter. Notwithstanding any other law, the money in the fund may not be used to reduce or replace the amount of state money from the state general fund or any other source used after December 31, 2003, to reimburse the providers of Medicaid services under Title XIX of the federal Social Security Act that are described in section 3 of this chapter.

Sec. 5. All federal financial participation that is obtained due to an expenditure under section 3 of this chapter shall be expended for Medicaid services under Title XIX of the federal Social Security Act that are described in section 3 of this chapter.

SECTION 4. [EFFECTIVE JULY 1, 2004] IC 6-8-12, as added by this act, applies to a sale of a nonnutritive beverage, syrup, simple

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1 **syrup, or powder occurring after June 30, 2004.**

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