

Title 26. Taxation

Chapter I. Generally, Department of Finance and Administration

Subchapter F. Miscellaneous Taxes

Part 161. Soft Drink Tax

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Amended 04/2008"

"These rules are promulgated for the enforcement and administration of Act 7 of 1992 (2nd Ex. Sess.)."

"Signed this 6th day of June, 2008"

Subpart 1. Generally

26 CAR § 161-101. Definitions.

As used in this part:

(1)(A) "Bottle" means any closed or sealed glass, metal, paper, plastic, or other type container regardless of its size or shape.

(B) A paper or plastic cup with a removable lid is not a "bottle" for purposes of this part;

(2) "Bottled soft drink" means any complete, ready-to-consume, nonalcoholic drink, whether carbonated or not;

(3) "Diet soft drink" means any low-calorie or sugarless soft drink that is not manufactured and sold as a dietary supplement or for weight reduction;

(4) "Dietary supplement" means any liquid or powder manufactured for weight gain or maintenance;

(5) "Distributor, manufacturer, or wholesaler" means any person who receives, stores, manufactures, bottles, or sells bottled soft drinks, soft drink syrups, simple syrups, powders, or base products to retail dealers or to other manufacturers, wholesalers, or distributors for resale;

(6) "Licensee" means a:

(A) Distributor, manufacturer, or wholesaler who sells soft drinks, syrups, simple syrups, powders, or base products to retail dealers within Arkansas; and

(B) Retailer in this state who purchases soft drinks, syrups, simple syrups, powders, or base products from an unlicensed distributor, manufacturer, or wholesaler;

(7) "Milk" means:

(A) Natural liquid milk or natural milk concentrate regardless of animal source or butter fat content; or

(B) Dehydrated natural milk whether reconstituted or not;

(8) "Milk product" means milk, cream, butter, cheese, ice cream, skim milk, condensed milk, or other milk derivative as defined by Arkansas Code § 20-59-201(2);

(9) "Natural fruit juice" means the:

(A) Original liquid from pressing fruit; or

(B) Reconstitution of:

(i) Natural fruit juice concentrate; or

(ii) Dehydrated natural fruit juice;

(10) "Natural vegetable juice" means the:

(A) Original liquid resulting from pressing vegetables; or

(B) Reconstitution of:

(i) Natural vegetable juice concentrate; or

(ii) Dehydrated natural vegetable juice;

(11) "Nonalcoholic beverage" means and includes all beverages not subject to tax under Arkansas Code § 3-7-104;

(12) "Place of business" means any place where soft drinks, syrups, simple syrups, powders, or base products are manufactured, held for wholesale distribution, received for sale, or sold in this state;

(13) "Powder" or "other base" means a solid mixture of basic ingredients used to make, mix, or compound soft drinks with water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product to make a complete soft drink;

(14) "Retailer" or "retail dealer" means any person, except a manufacturer, distributor, or wholesaler, who purchases soft drinks, syrups, simple syrups, powders, or base products for sale in this state to the ultimate consumer;

(15) "Sale" means the transfer of possession for a valuable consideration of tangible personal property;

(16) "Secretary" means the Secretary of the Department of Finance and Administration or his or her authorized agent;

(17) "Simple syrup" means a mixture of sugar and water;

(18)(A) "Soft drink" means any nonalcoholic beverage sold for human consumption including:

(i) Ready-to-drink coffee and tea sold in:

(a) Bottles;

(b) Cans; or

(c) Other sealed containers; and

(ii) "Diet" or low-calorie soft drinks.

(B)(i) "Soft drink" does not include products used solely for coloring or flavoring other beverages.

(ii) Examples of such products include:

(a) Lime and lemon juice;

(b) Bitters; and

(c) Clam juice.

(C) Examples of a "soft drink" include, but are not limited to:

(i) Soda water, club soda, seltzer water, and any other water to which carbonation has been added by the manufacturer or bottler;

(ii) Ginger ale;

(iii) All soft drinks:

(a) Commonly referred to as colas such as:

(1) Coke;

(2) Pepsi;

(3) Dr. Pepper;

(4) Mr. Pibb;

(5) Tab; and

(6) RC Cola; and

(b) Including decaffeinated, sugarless, or "diet" soft drinks;

(iv) Artificially or naturally flavored drinks of ten percent (10%) or less natural fruit or vegetable juice, including:

(a) Grape soda;

(b) Cherry soda;

(c) Root beer;

(d) Strawberry soda;

(e) Lime soda;

(f) Limeade;

(g) Lemon soda;

(h) Lemonade;

(i) Lemon-lime soda;

(j) Orange soda;

(k) Orangeade;

(l) Flavored water;

(m) Mountain Dew;

(n) 7UP;

(o) Sprite;

(p) Country Time;

(q) Crystal Light;

(r) Clearly Canadian; and

(s) Decaffeinated, sugarless, or "diet" soft drinks;

(v) Low-alcohol or nonalcoholic beer, ale, and wine;

(vi) Ready-to-drink liquid mixes to which an alcoholic beverage may be added to produce beverages such as:

- (a) Margaritas;
- (b) Piña coladas;
- (c) Tom Collinses; and
- (d) Daiquiris; and

(vii) Chocolate-flavored sodas or drinks which:

- (a) Contain either natural or artificial flavoring; and
- (b) Do not contain milk or milk products; and

(19)(A) "Syrup" means any liquid mixture of basic ingredients used to make, mix, or compound soft drinks with:

- (i) Water;
- (ii) Simple syrup;
- (iii) Ice;
- (iv) Fruits;
- (v) Vegetables;
- (vi) Fruit juice;
- (vii) Vegetable juice; or
- (viii) Any other product suitable to make a complete soft drink.

(B) "Syrups" include mixtures to which water and alcohol may be added to produce a:

- (i) Margarita;
- (ii) Piña colada;
- (iii) Tom Collins;
- (iv) Daiquiri; or
- (v) Other similar beverage.

Authority. Arkansas Code § 26-18-301.

26 CAR § 161-102. General information.

(a)(1) Every licensee must obtain a license from the Secretary of the Department of Finance and Administration for each place of business owned or operated by the licensee in this state.

(2) The license shall be conspicuously displayed within the place of business.

(b) Every licensee required to collect and remit tax shall file a tax report and remit the tax to the secretary on or before the fifteenth of each month following the month in which the taxable sale or purchase was made on forms prescribed by the secretary.

(c) A licensee who as a single entity acts as both a retailer and a distributor may report and remit the tax on the fifteenth of each month following the month in which the soft drinks, syrups, powders, or base products were withdrawn from the licensee's inventory and delivered to the licensee's retail outlets in Arkansas.

(d) The soft drink tax shall be administered in accordance with the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

Authority. Arkansas Code § 26-18-301.

26 CAR § 161-103. Soft drink tax.

(a) A tax is levied upon the:

(1) Sale in this state of soft drinks, syrups, simple syrups, powders, and base products by a manufacturer, wholesaler, or distributor to a retailer or other purchaser; and

(2) Purchase by a retailer in this state of soft drinks, syrups, simple syrups, powders, and base products from an unlicensed manufacturer, wholesaler, or distributor.

(b) The tax is:

(1) Imposed upon and shall be paid by each licensee; and

(2) May be passed on to the retailer or other purchaser.

(c) The rate of tax shall be as follows:

(1) Two dollars (\$2.00) per gallon of soft drink syrup or simple syrup;

(2) Twenty-one cents (21¢) per gallon of bottled soft drinks; and

(3) Twenty-one cents (21¢) per gallon of soft drink which may be produced from a package or container of powder or base product by following the manufacturer's directions.

(d) If bottled soft drinks, syrups, simple syrups, powders, or base products ("products") are sold to a retailer with a place of business in an Arkansas city or unincorporated town which is divided by a state line from an incorporated city or town in an adjoining state and which has a population less than the population in the adjoining city, then the tax imposed on the licensee shall be at the same rate as imposed in the adjoining state on similar sales, provided that the products are delivered to the retailer within the boundaries of the city or town to be held for sale in the city or town to the ultimate consumer.

Authority. Arkansas Code § 26-18-301.

26 CAR § 161-104. Exemptions.

(a) The following transactions are exempt from the soft drink tax:

(1) Sales to the United States Government or its agencies;

(2) Sales by a distributor, wholesaler, or manufacturer for export from this state, including sales to an Arkansas retailer for delivery outside of this state;

(3)(A) The sale of any powder or base product which when mixed with water or other liquid produces coffee or tea.

(B) Examples include powdered instant tea and coffee, whether:

(i) Caffeinated;

(ii) Decaffeinated; or

(iii) Herbal.

(C) Loose or bagged tea leaves, coffee beans, and loose or bagged ground coffee are not "powders or base products" subject to the tax;

(4)(A) The sale of any frozen concentrate or freeze-dried concentrate to which only water is added to produce a soft drink containing more than ten percent (10%) natural fruit or vegetable juice.

(B) Examples include frozen concentrated:

- (i) Orange juice;
- (ii) Apple juice; or
- (iii) Grape juice;

(5) The sale of any soft drink containing more than ten percent (10%) natural fruit or vegetable juice;

(6)(A) Sales of soft drinks, syrups, simple syrups, powders, or base products by a distributor, manufacturer, or wholesaler to a licensed distributor, manufacturer, or wholesaler if the purchaser's license number is clearly shown on the invoice.

(B) Sales to a retailer are not exempt;

(7)(A) The sale of any liquid or powder that is manufactured solely for consumption by infants and commonly called "infant formula".

(B) Examples include:

- (i) Enfamil;
- (ii) Isomil;
- (iii) SMA;
- (iv) Prosobee;
- (v) Similac; and
- (vi) Nursoy;

(8) The sale of any liquid or powder that is manufactured for use solely as a dietary supplement or for weight reduction;

(9) Sales of bottled water to which no flavoring, whether artificial or natural, or carbonation has been added;

(10)(A) Sale of any powder or other base product solely intended by the manufacturer to be sold for the purpose of domestically mixing soft drinks by the ultimate consumer.

(B) This exemption applies to sales of powders to:

(i)(a) Retail businesses that purchase the powder for resale to customers, such as:

- (1) Grocery stores;

- (2) Health food stores; and
- (3) Convenience stores.

(b) This exemption also applies to retail businesses that purchase the powder for both resale and for mixing and sale of soft drinks to the public, such as stores which operate:

- (1) Delicatessens;
- (2) Grills; and
- (3) Fountains; and

(ii)(a) Entities that purchase the powder for mixing and in-house consumption or as part of a service provided to customers, and not for resale.

(b) Examples include:

- (1) Hospitals;
- (2) Nursing homes;
- (3) Rehabilitation centers;
- (4) Daycares; and
- (5) Churches.

(c) This exemption also applies to sales to entities which purchase the powder for both in-house consumption and retail sale, such as hospitals and nursing homes which operate cafeterias open to the public.

(d) This exemption does not apply to the sale of powders to entities that are solely in the business of selling prepared food and beverages to customers, such as:

- (1) Bars;
- (2) Restaurants; and
- (3) Fast-food restaurants; and

(11) The sale of any product which has been prepared by the manufacturer with milk or milk products.

(b) There is no exemption from soft drink tax for soft drinks, syrups, simple syrups, powders, or base products:

- (1) Donated by a licensee to:

- (A) Churches;
 - (B) Schools;
 - (C) Clubs;
 - (D) Charitable organizations; or
 - (E) Other organizations; or
- (2) Distributed free of charge by a licensee for promotional or other purposes

at:

- (A) Political fundraisers;
- (B) Rallies;
- (C) Sporting events;
- (D) Civic group meetings; or
- (E) Other similar gatherings.

Authority. Arkansas Code § 26-18-301.