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HOUSE BILL 2137

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State of Washington

52nd Legislature

1991 Regular Session

By Representatives Wang, Holland, Ebersole, Ballard, Appelwick, Fraser, McLean, May, Winsley, Phillips, Peery, Bowman and Miller. Read first time February 27, 1991. Referred to Committee on Revenue.

1 AN ACT Relating to excise taxes on carbonated beverages and syrups;  
2 amending RCW 82.64.010, 82.64.020, and 82.64.030; adding new sections  
3 to chapter 82.64 RCW; creating a new section; repealing RCW 82.64.040;  
4 prescribing penalties; providing an effective date; and declaring an  
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 82.64.010 and 1989 c 271 s 505 are each amended to  
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (1) "Carbonated beverage" has its ordinary meaning and includes any  
12 nonalcoholic liquid intended for human consumption which contains  
13 carbon dioxide, whether carbonation is obtained by natural or  
14 artificial means.

1           (2) (~~"Possession" means the control of a carbonated beverage or~~  
2 ~~syrup located within this state and includes both actual and~~  
3 ~~constructive possession. "Actual possession" occurs when the person~~  
4 ~~with control has physical possession. "Constructive possession" occurs~~  
5 ~~when the person with control does not have physical possession.~~  
6 ~~"Control" means the power to sell or use a carbonated beverage or syrup~~  
7 ~~or to authorize the sale or use by another.~~

8           (3) ~~"Previously taxed carbonated beverage or syrup" means a~~  
9 ~~carbonated beverage or syrup in respect to which a tax has been paid~~  
10 ~~under this chapter. A "previously taxed carbonated beverage" includes~~  
11 ~~carbonated beverages in respect to which a tax has been paid under this~~  
12 ~~chapter on the carbonated beverage or on the syrup in the carbonated~~  
13 ~~beverage.~~

14           (4)) "Syrup" means a concentrated liquid which is added to  
15 carbonated water to produce a carbonated beverage.

16           ((5)) Except for terms defined in this section, the definitions  
17 in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

18           **Sec. 2.** RCW 82.64.020 and 1989 c 271 s 506 are each amended to  
19 read as follows:

20           (1) A tax is imposed on (~~the privilege of possession~~) each sale  
21 at wholesale of a carbonated beverage or syrup in this state. The rate  
22 of the tax shall be equal to eighty-four one-thousandths of a cent per  
23 ounce for carbonated beverages and seventy-five cents per gallon for  
24 syrups. Fractional amounts shall be taxed proportionally.

25           (2) Moneys collected under this chapter shall be deposited in the  
26 drug enforcement and education account under RCW 69.50.520.

27           (3) Chapter 82.32 RCW applies to the tax imposed in this chapter.  
28 The tax due dates, reporting periods, and return requirements

1 applicable to chapter 82.04 RCW apply equally to the tax imposed in  
2 this chapter.

3 **Sec. 3.** RCW 82.64.030 and 1989 c 271 s 507 are each amended to  
4 read as follows:

5 The following are exempt from the tax imposed in this chapter:

6 (1) ~~((Any successive possession of a previously taxed carbonated  
7 beverage or syrup. If tax due under this chapter has not been paid  
8 with respect to a carbonated beverage or syrup, the department may  
9 collect the tax from any person who has had possession of the  
10 carbonated beverage or syrup. If the tax is paid by any person other  
11 than the first person having taxable possession of a carbonated  
12 beverage or syrup, the amount of tax paid constitutes a debt owed by  
13 the first person having taxable possession to the person who paid the  
14 tax.~~

15 (2) ~~Any carbonated beverage or syrup that is transferred to a point  
16 outside the state for use outside the state.~~

17 (3) ~~Any possession of a carbonated beverage or syrup where the  
18 first possession occurred before July 1, 1989)) Sales of carbonated  
19 beverages or syrups to persons who purchase for the purpose of resale  
20 at wholesale.~~

21 (2) Sales of carbonated beverages or syrups in respect to which a  
22 tax on the privilege of possession was paid before the effective date  
23 of this act.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.64 RCW  
25 to read as follows:

26 (1) The tax imposed in this chapter shall be paid by the retailer  
27 to the wholesaler, and each wholesaler shall collect from the retailer  
28 the full amount of the tax payable in respect to each taxable sale.

1 (2) The tax required by this chapter to be collected by the  
2 wholesaler shall be stated separately from the selling price in any  
3 sales invoice or other instrument of sale.

4 (3) The tax required by this chapter, to be collected by the  
5 wholesaler, shall be deemed to be held in trust by the wholesaler until  
6 paid to the department, and any wholesaler who appropriates or converts  
7 the tax collected to his or her own use or to any use other than the  
8 payment of the tax to the extent that the money required to be  
9 collected is not available for payment on the due date as prescribed in  
10 this chapter is guilty of a gross misdemeanor.

11 (4) In case any wholesaler fails to collect the tax herein imposed  
12 or having collected the tax, fails to pay it to the department in the  
13 manner prescribed by this chapter, whether such failure is the result  
14 of his or her own acts or the result of acts or conditions beyond his  
15 or her control, he or she shall, nevertheless, be personally liable to  
16 the state for the amount of the tax.

17 (5) The amount of tax, until paid by the retailer to the wholesaler  
18 or to the department, shall constitute a debt from the retailer to the  
19 wholesaler and any wholesaler who fails or refuses to collect the tax  
20 as required with intent to violate the provisions of this chapter or to  
21 gain some advantage or benefit, either direct or indirect, and any  
22 retailer who refuses to pay any tax due under this chapter is guilty of  
23 a misdemeanor.

24 (6) Where a retailer has failed to pay to the wholesaler the tax  
25 imposed by this chapter and the wholesaler has not paid the amount of  
26 the tax to the department, the department may, in its discretion,  
27 proceed directly against the retailer for collection of the tax, in  
28 which case a penalty of ten percent may be added to the amount of the  
29 tax for failure of the retailer to pay the same to the wholesaler,  
30 regardless of when the tax may be collected by the department; and all

1 of the provisions of chapter 82.32 RCW, including those relative to  
2 interest and penalties, shall apply in addition; and, for the sole  
3 purpose of applying the various provisions of chapter 82.32 RCW, the  
4 fifteenth day of the month following the tax period in which the  
5 purchase was made shall be considered as the due date of the tax.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.64 RCW  
7 to read as follows:

8 (1) To the extent technically and economically feasible, each  
9 retailer may separately state the amount of carbonated beverage tax on  
10 the customer cash register receipt provided to the consumer by the  
11 retailer when making a retail sale of carbonated beverages.

12 (2) Each retailer at a retail store with a sales and storage area  
13 totaling more than four thousand square feet shall separately state the  
14 amount of carbonated beverage tax in all advertising of carbonated  
15 beverages, and on the shelf labels of the retail store. The separate  
16 statement shall be accomplished by stating one or more of the  
17 following:

18 (a) The price of the carbonated beverage and the words "Washington  
19 carbonated beverage tax" or "WA carbonated beverage tax."

20 (b) The price of the carbonated beverage, the amount of the  
21 applicable carbonated beverage tax, and the words "Washington  
22 carbonated beverage tax" or "WA carbonated beverage tax."

23 (c) The price of the carbonated beverage, the amount of the  
24 applicable carbonated beverage tax, the words "Washington carbonated  
25 beverage tax" or "WA carbonated beverage tax", and the total of these  
26 two amounts.

27 (3) Any retailer who violates this section is guilty of a  
28 misdemeanor.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 82.64 RCW  
2 to read as follows:

3        (1) Each manufacturer shall clearly indicate on every carbonated  
4 beverage container sold or offered for sale in this state by that  
5 manufacturer the words "Washington carbonated beverage tax" or "WA  
6 carbonated beverage tax" by either printing or embossing the beverage  
7 container or by securely affixing a clear and prominent stamp, label,  
8 or other device to the beverage container.

9        (2) The department may require that any carbonated beverage  
10 container intended for sale in this state be printed, embossed,  
11 stamped, labeled, or otherwise marked with a universal product code or  
12 similar machine-readable indicia.

13        (3) No person shall offer to sell or sell to a consumer a  
14 carbonated beverage container that has not been labeled as required by  
15 this section. Any person who violates this section is guilty of a  
16 misdemeanor.

17        (4) Any refillable carbonated beverage container sold or offered  
18 for sale is exempt from this section. However, a manufacturer may  
19 affix to a refillable carbonated beverage container any message deemed  
20 appropriate by the manufacturer relating to the tax imposed in this  
21 chapter.

22        NEW SECTION.    **Sec. 7.**        RCW 82.64.040 and 1989 c 271 s 508 are  
23 each repealed.

24        NEW SECTION.    **Sec. 8.**        The amendatory sections and repealers of  
25 this act shall not be construed as affecting any existing right  
26 acquired or liability or obligation incurred under those sections as  
27 they existed before this act or under any rule or order adopted under

1 those sections, nor as affecting any proceeding instituted under those  
2 sections.

3 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and shall take  
6 effect July 1, 1991.