

---

ENGROSSED SUBSTITUTE HOUSE BILL 2137  
CORRECTED COPY

---

State of Washington

52nd Legislature

1991 Regular Session

By House Committee on Revenue (originally sponsored by Representatives Wang, Holland, Ebersole, Ballard, Appelwick, Fraser, McLean, May, Winsley, Phillips, Peery, Bowman and Miller).

Read first time March 11, 1991.

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

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

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

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

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

14       (2) (~~"Possession" means the control of a carbonated beverage or~~  
15 ~~syrup located within this state and includes both actual and~~

1 ~~constructive possession.—"Actual possession" occurs when the person~~  
2 ~~with control has physical possession.—"Constructive possession" occurs~~  
3 ~~when the person with control does not have physical possession.~~  
4 ~~"Control" means the power to sell or use a carbonated beverage or syrup~~  
5 ~~or to authorize the sale or use by another.~~

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

12 ((4)) (3) "Syrup" means a concentrated liquid which is added to  
13 carbonated water to produce a carbonated beverage.

14 ((5)) (4) Except for terms defined in this section, the  
15 definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this  
16 chapter.

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

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

24 (2) A tax is imposed on each sale at retail of a carbonated  
25 beverage or syrup in this state. The rate of the tax shall be equal to  
26 the rate imposed under subsection (1) of this section.

27 (3) Moneys collected under this chapter shall be deposited in the  
28 drug enforcement and education account under RCW 69.50.520.

1       ~~((3))~~ (4) Chapter 82.32 RCW applies to the ~~((tax))~~ taxes imposed  
2 in this chapter. The tax due dates, reporting periods, and return  
3 requirements applicable to chapter 82.04 RCW apply equally to the  
4 ~~((tax))~~ taxes imposed in this chapter.

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

7       The following are exempt from the ~~((tax))~~ taxes imposed in this  
8 chapter:

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

18       (2) Any carbonated beverage or syrup that is transferred to a point  
19 outside the state for use outside the state. The department shall  
20 provide by rule appropriate procedures and exemption certificates for  
21 the administration of this exemption.

22       (3) ~~((Any possession of a carbonated beverage or syrup where the  
23 first possession occurred before July 1, 1989))~~ Any sale of trademarked  
24 carbonated beverage or syrup by any person to a person who is licensed  
25 by the owner of the trademark to manufacture, distribute, or sell such  
26 trademarked carbonated beverage or syrup.

27       (4) Any sale of carbonated beverage or syrup in respect to which a  
28 tax on the privilege of possession was paid under this chapter before  
29 the effective date of this act.

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

3        (1) The tax imposed in RCW 82.64.020(1) shall be paid by the buyer  
4 to the wholesaler and each wholesaler shall collect from the buyer the  
5 full amount of the tax payable in respect to each taxable sale, unless  
6 the wholesaler is prohibited from collecting the tax from the buyer  
7 under the Constitution of this state or the Constitution or laws of the  
8 United States.    Regardless of the obligation to collect the tax from  
9 the buyer, the wholesaler is liable to the state for the amount of the  
10 tax.    The buyer is not obligated to pay or report the tax imposed in  
11 RCW 82.64.020(1) to the department.

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

15        (3) Any wholesaler who fails or refuses to collect tax under this  
16 section, with intent to violate the provisions of this chapter or to  
17 gain some advantage or benefit, either direct or indirect, is guilty of  
18 a misdemeanor.

19        (4) The amount of tax required to be collected under this section  
20 shall constitute a debt from the buyer to the wholesaler until paid by  
21 the buyer to the wholesaler.

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

24        (1) Each retailer at a retail store with a sales and storage area  
25 totaling more than four thousand square feet may:

26        (a) Include in all print advertising of carbonated beverages a  
27 notice with the statement specified in subsection (2) of this section.

28        (b) Post shelf notices with the statement specified in subsection  
29 (2) of this section.    Shelf notices shall be provided by the

1 wholesaler, and shall be posted by the wholesaler or the retailer next  
2 to each price label on the carbonated beverage shelves of the retail  
3 store.

4 (2) Each notice under this section shall state: "Price includes  
5 (amount) Washington Drug Fund Tax." In the notice, "(amount)" shall be  
6 replaced with the specific amount of the tax imposed under this chapter  
7 upon the quantity of carbonated beverage for which the price is stated.

8 (3) This section does not apply to the sale, advertising, or shelf  
9 display of:

10 (a) Syrups;

11 (b) Carbonated beverages sold through vending machines;

12 (c) Carbonated beverages dispensed into open containers;

13 (d) Carbonated beverages sold by a wholesaler who is prohibited  
14 under RCW 66.28.010 from having a direct or indirect financial interest  
15 in any retail business.

16 NEW SECTION. **Sec. 6.** The taxes imposed in this act are  
17 intended to raise revenue for the enforcement of the drug laws of the  
18 state. It is the policy of the state to actively combat the problem of  
19 drug abuse by aggressive enforcement of the state's drug laws and by  
20 extensive promotion of public education programs designed to increase  
21 public and consumer awareness of the state's drug problem and its  
22 enforcement measures. Pursuant to this policy, the retailers and  
23 wholesalers subject to the provisions of this chapter are authorized  
24 and encouraged to agree on procedures for posting notices under section  
25 5 of this act.

26 **Sec. 7.** RCW 82.64.040 and 1989 c 271 s 508 are each amended to  
27 read as follows:

1 (1) Credit shall be allowed, in accordance with rules of the  
2 department, against the taxes imposed in this chapter for any  
3 carbonated beverage or syrup tax paid to another state with respect to  
4 the same carbonated beverage or syrup. The amount of the credit shall  
5 not exceed the tax liability arising under this chapter with respect to  
6 that carbonated beverage or syrup.

7 (2) For the purpose of this section:

8 (a) "Carbonated beverage or syrup tax" means a tax:

9 (i) That is imposed on the (~~act or privilege of possessing~~) sale  
10 at wholesale of carbonated beverages or syrup and that is not generally  
11 imposed on other activities or privileges; and

12 (ii) That is measured by the volume of the carbonated beverage or  
13 syrup.

14 (b) "State" means (i) a state of the United States other than  
15 Washington, or any political subdivision of such other state, (ii) the  
16 District of Columbia, and (iii) any foreign country or political  
17 subdivision thereof.

18 NEW SECTION. **Sec. 8.** The amendatory sections of this act  
19 shall not be construed as affecting any existing right acquired or  
20 liability or obligation incurred under those sections as they existed  
21 before this act or under any rule or order adopted under those  
22 sections, nor as affecting any proceeding instituted under those  
23 sections.

24 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and shall take  
27 effect June 1, 1991.