
SUBSTITUTE HOUSE BILL 2137

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, and 82.64.030; adding new sections
3 to chapter 82.64 RCW; creating new sections; 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))~~) (3) "Syrup" means a concentrated liquid which is added to
15 carbonated water to produce a carbonated beverage.

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

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

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

26 (2) A tax is imposed on each sale at retail of a carbonated
27 beverage or syrup in this state. The rate of the tax shall be equal to
28 the rate imposed under subsection (1) of this section. The tax imposed
29 under this subsection is intended to operate solely as a compensating

1 tax applied to retail sales of carbonated beverages or syrups that have
2 not been previously taxed under subsection (1) of this section.

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

5 ~~((3))~~ (4) Chapter 82.32 RCW applies to the tax imposed in this
6 chapter. The tax due dates, reporting periods, and return requirements
7 applicable to chapter 82.04 RCW apply equally to the tax imposed in
8 this chapter.

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

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

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

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

23 ~~(3) Any possession of a carbonated beverage or syrup where the~~
24 ~~first possession occurred before July 1, 1989))~~

25 (2) Sales of carbonated beverages or syrups to a licensee under a
26 licensing agreement for the manufacture, distribution, or sale of a
27 trademarked soft drink product.

1 (3) Sales of carbonated beverages or syrups in respect to which a
2 tax on the privilege of possession was paid under this chapter before
3 the effective date of this act.

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

6 (1) The tax imposed in RCW 82.64.020(1) shall be paid by the buyer
7 to the wholesaler, and each wholesaler shall collect from the buyer the
8 full amount of the tax payable in respect to each taxable sale. The
9 buyer is not obligated to pay or report the tax imposed in RCW
10 82.64.020(1) to the department.

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

14 (3) The tax required to be collected by the wholesaler shall be
15 deemed to be held in trust by the wholesaler until paid to the
16 department, and any wholesaler who appropriates or converts the tax
17 collected to his or her own use or to any use other than the payment of
18 the tax to the extent that the money required to be collected is not
19 available for payment on the due date as prescribed in this chapter is
20 guilty of a gross misdemeanor.

21 (4) If any wholesaler fails to collect tax under this section, or
22 having collected tax, fails to pay it to the department in the manner
23 prescribed by this chapter, whether such failure is the result of his
24 or her own acts or the result of acts or conditions beyond his or her
25 control, he or she shall, nevertheless, be personally liable to the
26 state for the amount of the tax. Any wholesaler who fails or refuses
27 to collect the tax as required with intent to violate the provisions of
28 this chapter or to gain some advantage or benefit, either direct or
29 indirect, is guilty of a misdemeanor.

1 (5) The amount of tax required to be collected under this section
2 shall constitute a debt from the buyer to the wholesaler until paid by
3 the buyer to the wholesaler.

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

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

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

10 (b) Post shelf notices with the statement specified in subsection
11 (2) of this section. Shelf notices shall be provided by the
12 wholesaler, and shall be posted by the wholesaler or the retailer next
13 to each price label on the carbonated beverage shelves of the retail
14 store.

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

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

22 (a) Syrups;

23 (b) Carbonated beverages sold through vending machines;

24 (c) Carbonated beverages dispensed into open containers;

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

1 NEW SECTION. **Sec. 6.** The tax imposed in this act is intended
2 to raise revenue for the enforcement of the drug laws of the state. It
3 is the policy of the state to actively combat the problem of drug abuse
4 by aggressive enforcement of the state's drug laws and by extensive
5 promotion of public education programs designed to increase public and
6 consumer awareness of the state's drug problem and its enforcement
7 measures. Pursuant to this policy, the retailers and wholesalers
8 subject to the provisions of this chapter are authorized and encouraged
9 to agree on procedures for posting notices under section 5 of this act.

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

12 NEW SECTION. **Sec. 8.** The amendatory sections and repealers of
13 this act shall not be construed as affecting any existing right
14 acquired or liability or obligation incurred under those sections as
15 they existed before this act or under any rule or order adopted under
16 those sections, nor as affecting any proceeding instituted under those
17 sections.

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