

Soft Drink Tax Regulation 1993-8

Amended 04/2008

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

A. DEFINITIONS

1. "Bottle" means any closed or sealed glass, metal, paper, plastic or other type container regardless of its size or shape. A paper or plastic cup with a removable lid is not a "bottle" for purposes of this regulation.
2. "Bottled soft drink" means any complete, ready-to-consume non-alcoholic 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. "Director" means the director of the Department of Finance and Administration or his authorized agent.
6. "Distributor, manufacturer or wholesaler" means any person who receives, stores, manufactures, bottles or sells bottled soft drinks, soft drink syrups, simple syrups, or powders or base products to retail dealers, or to other manufacturers, wholesalers or distributors for resale.
7. "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. A retailer in this state who purchases soft drinks, syrups, simple syrups, powders or base products from an unlicensed distributor, manufacturer or wholesaler.
8. "Milk" means natural liquid milk or natural milk concentrate regardless of animal source or butter fat content; or dehydrated natural milk whether reconstituted or not.
9. "Milk product" means milk, cream, butter, cheese, ice cream, skim milk, condensed milk or other milk derivative as defined by Ark. Code Ann. §20-59-201(2).

10. "Natural fruit juice" means the original liquid from pressing fruit, or the reconstitution of natural fruit juice concentrate or dehydrated natural fruit juice.
11. "Natural vegetable juice" means the original liquid resulting from pressing vegetables, or the reconstitution of natural vegetable juice concentrate or dehydrated natural vegetable juice.
12. "Non-alcoholic beverage" means and includes all beverages not subject to tax under Ark. Code Ann. §3-7-104.
13. "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.
14. "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. "Simple syrup" means a mixture of sugar and water.
17. "Soft drink" means any non-alcoholic beverage sold for human consumption including ready-to-drink coffee and tea sold in bottles, cans or other sealed containers and "diet" or low-calorie soft drinks. "Soft drink" does not include products used solely for coloring or flavoring other beverages. Examples of such products include lime and lemon juice, bitters, and clam juice. Examples of a "soft drink" include, but are not limited to:
 - a. soda water, Club soda, seltzer water and any other water to which carbonation has been added by the manufacturer or bottler;
 - b. ginger ale;

- c. all soft drinks commonly referred to as colas such as Coke, Pepsi, Dr. Pepper, Mr. Pibb, Tab, and RC Cola, and including decaffeinated, sugarless or "diet" soft drinks;
 - d. artificially or naturally flavored drinks of ten percent (10%) or less natural fruit or vegetable juice, including grape soda, cherry soda, root beer, strawberry soda, lime soda, limeade, lemon soda, lemonade, lemon-lime soda, orange soda, orangeade, flavored water, Mountain Dew, 7-Up, Sprite, CountryTime, Crystal Lite, Clearly Canadian, and including decaffeinated, sugarless or "diet" soft drinks;
 - e. low-alcohol or non-alcoholic beer, ale and wine;
 - f. ready-to-drink liquid mixes to which an alcoholic beverage may be added to produce beverages such as margaritas, pina coladas, Tom Collins, and daiquiris;
 - g. chocolate-flavored sodas or drinks which contain either natural or artificial flavoring and which do not contain milk or milk products.
18. "Syrup" means any liquid mixture of basic ingredients used to make, mix or compound soft drinks with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice or any other product suitable to make a complete soft drink. "Syrups" include mixtures to which water and alcohol may be added to produce a margarita, pina colada, Tom Collins, daiquiri or other similar beverage.

B. GENERAL INFORMATION

1. Every licensee must obtain a license from the Director for each place of business owned or operated by the licensee in this state. The license shall be conspicuously displayed within the place of business.
2. Every licensee required to collect and remit tax shall file a tax report and remit the tax to the Director on or before the 15th of each month following the month in which the taxable sale or purchase was made on forms prescribed by the Director.
3. A licensee who as a single entity acts as both a retailer and a distributor may report and remit the tax on the 15th 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.

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

C. SOFT DRINK TAX

1. A tax is levied upon:

- a. the 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,
- b. the purchase by a retailer in this state of soft drinks, syrups, simple syrups, powders and base products from an unlicensed manufacturer, wholesaler or distributor.

2. The tax is imposed upon and shall be paid by each licensee and may be passed on to the retailer or other purchaser.

3. The rate of tax shall be as follows:

- a. Two dollars (\$2.00) per gallon of soft drink syrup or simple syrup;
- b. Twenty-one cents (\$0.21) per gallon of bottled soft drinks;
- c. Twenty-one cents (\$0.21) 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.

4. 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.

E. EXEMPTIONS

1. The following transactions are exempt from the soft drink tax:

- a. sales to the United States Government or its agencies.

- b. sales by a distributor, wholesaler or manufacturer for export from this state, including sales to an Arkansas retailer for delivery outside of this state.
- c. the sale of any powder or base product which when mixed with water or other liquid produces coffee or tea. Examples include powdered instant tea and coffee, whether caffeinated, decaffeinated or herbal. Loose or bagged tea leaves, coffee beans, and loose or bagged ground coffee are not "powders or base products" subject to the tax.
- d. 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. Examples include frozen concentrated orange juice, apple juice, or grape juice.
- e. the sale of any soft drink containing more than ten percent (10%) natural fruit or vegetable juice.
- f. 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. Sales to a retailer are not exempt.
- g. the sale of any liquid or powder that is manufactured solely for consumption by infants and commonly called "infant formula." Examples include Enfamil, Isomil, SMA, Prosobee, Similac, and Nursoy.
- h. the sale of any liquid or powder that is manufactured for use solely as a dietary supplement or for weight reduction.
- i. sales of bottled water to which no flavoring, whether artificial or natural, or carbonation has been added.
- j. 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. This exemption applies to sales of powders to:
 - (1) retail businesses who purchase the powder for resale to customers, such as grocery stores, health food stores and convenience stores. 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 delicatessens, grills, and fountains.

(2) entities that purchase the powder for mixing and in-house consumption or as part of a service provided to customers, and not for resale. Examples include hospitals, nursing homes, rehabilitation centers, daycares, and churches. 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.

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 bars, restaurants, and fast-food restaurants.

k. the sale of any product which has been prepared by the manufacturer with milk or milk products.

2. There is no exemption from soft drink tax for soft drinks, syrups, simple syrups, powders or base products a) donated by a licensee to churches, schools, clubs, charitable organizations or other organizations, or b) distributed free of charge by a licensee for promotional or other purposes at political fund-raisers, rallies, sporting events, civic group meetings or other similar gatherings.

Signed this _____ day of _____, 2008.

Richard A. Weiss, Director
Arkansas Department of Finance
and Administration

Tim Leathers
Commissioner of Revenue