

SENATE BILL NO. 433
INTRODUCED BY D. RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN EXCISE TAX ON SOFT DRINKS; PROVIDING THAT THE TAX BE PAID BY SOFT DRINK BOTTLERS AND IMPORTERS; PROVIDING THAT THE TAX BE PAID ON EACH UNIT OF SOFT DRINK; PROVIDING FOR THE ADMINISTRATION OF THE TAX; PROVIDING FOR A PENALTY; PROVIDING THAT THE COLLECTIONS OF THE TAX BE USED TO FUND SERVICES FOR OLDER MONTANANS, MEDICAID SERVICES, AND STUDENT ASSESSMENT REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

- (1) "Bottler" means a person who manufactures soft drinks in the state.
- (2) "Importer" means a person who imports soft drinks into the state for domestic consumption.
- (3) (a) "Soft drink" means a nonalcoholic beverage that contains natural or artificial sweeteners.
(b) The term does not include a beverage that contains milk or milk products, soy, rice, or similar milk substitutes or that contains greater than 50% vegetable or fruit juice by volume.
- (4) "Unit of soft drink" means:
 - (a) one container, such as a can or bottle, sealed by a bottler, that contains soft drink; or
 - (b) each 12 fluid ounces contained in a bulk container used to supply soft drinks to a drink fountain.

NEW SECTION. **Section 2. Soft drink tax -- rate -- report -- vendor allowance.** (1) Each bottler or importer shall pay to the department an excise tax of 5 cents for each unit of soft drink manufactured or imported by the bottler or importer.

(2) A bottler or importer shall report to the department at the end of each calendar quarter the number of units of soft drink bottled or imported during the quarter. A bottler or importer may deduct from the number of units of soft drink bottled or imported the number of units that the bottler or importer exported from the state and the number of units that were unsalable and destroyed or returned to the bottler or importer. The report is due within 30 days following the end of the calendar quarter and must be accompanied by a payment in an amount

equal to the tax required to be collected under this section, less the vendor allowance provided in subsection (3).

(3) A bottler and importer may withhold from payment of the tax imposed by this section an amount equal to 4% of the payment to reimburse the bottler or vendor for the expense of collecting the tax. The allowance may not be withheld from a delinquent payment.

NEW SECTION. Section 3. Bottler and importer registration. A person may not manufacture soft drinks in this state or import soft drinks into this state for the purposes of consumption of the soft drink in the state unless the person has registered with the department as a soft drink bottler or importer. The registration must be made on forms supplied by the department at no charge. The registration must be renewed annually by a date established by the department.

NEW SECTION. Section 4. Unlawful sales. (1) A person may not sell or offer to sell soft drinks that were not manufactured or imported by registered bottlers or importers with the intent to evade the tax imposed by [section 3].

(2) Violation of this section is a misdemeanor punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months.

NEW SECTION. Section 5. Audits -- records -- penalty and interest. (1) The department may audit the books and records of any bottler or importer to ensure that the proper amount of tax imposed by [section 2] has been paid. An audit may be done on the premises of the bottler or importer or at any other convenient location.

(2) The penalty and interest provisions of 15-1-216 apply to the reporting and payment of the tax imposed by [section 2].

(3) The department may conduct an investigation pursuant to 15-1-301 to ensure proper payment of the tax imposed by [section 2].

(4) A dispute between a bottler or importer and the department is subject to the uniform dispute review procedure established in 15-1-211.

NEW SECTION. Section 6. Disposition of tax. The collections from the tax imposed in [section 2], less any refunds, must be deposited in the state special revenue fund to the credit of:

(1) the office of public instruction for assessment requirements of nonpublic and home school students,

as required by [section 1, Senate Bill No. 276]; and

(2) the department of public health and human services for the use of the department in providing:

(a) services for older Montanans, either directly or through area agencies on aging, including services identified under 52-3-504, in-home services, services for grandparents taking care of grandchildren, respite care, ombudsman services, prevention of elder abuse, family caregiver services, and transportation services; and

(b) medicaid coverage.

NEW SECTION. **Section 7. Coordination instruction.** If Senate Bill No. 276 is not passed and approved, then [section 6(1)] is void.

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 6].

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 10. Applicability.** [This act] applies to soft drinks bottled or imported into the state after June 30, 2003.

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