

FIZZY LIZZY LLC



Testimony before NYS Senate Standing Committee on Health

January 22, 2010

Introduction

What is Fizzy Lizzy?

2009 Proposed Soda Tax

Most *carbonated* beverages would have been taxable, i.e.:

Soda

Juice spritzers containing < 70% juice

Exceptions: diet soda, seltzers (plain & flavored), juice spritzers with > 70 calories

Most *non-carbonated* beverages would have been tax-exempt:

100% Juice

Tea

Coffee

Cocoa

Sports Drinks

Milk

Why 2009 Tax Was Arbitrary

Beverage	Calories	Sugars	Tax Status
Fizzy Lizzy*	103	24	Taxable
Snapple Lemon Iced Tea	150	35	Not Taxable
Red Bull	166	38	Not Taxable
Starbucks Frappucino	227	39	Not Taxable
Welch's Grape Juice	255	62	Not Taxable

What Should NYS Do?

Use criteria that are:

- Measurable
- Objective
- Consistent with nutrition science

Not:

- Arbitrary
- Based on categories alone (don't pull a Rhode Island!)
- Ineffective

Primary Criteria

Calories

Intrinsic Nutrients*

* Does the food contain valuable, clinically-documented *intrinsic* nutrients (such as calcium and/or vitamin C) and if so, what is the % DV (daily value) of the nutrient in the serving size?

Common Exceptions for Intrinsic Nutrients

	Milk	100% OJ	Coke
Calories	150	165	140
Calcium	30% DV	4% DV	-
Vitamin C	-	100% DV	-

Note: All values are for 12 oz.

Cardinal Rule

Exceptions are okay so long as the criteria defining them are consistently applied.

e.g. Cannot exempt 100% juice because it is intrinsically nutritious and tax an unsweetened 50% juice that is equally nutritious simply because it's been carbonated and/or diluted.

Tax them both or not at all.

Secondary Criteria

Sweeteners

Caloric sweeteners (conventional and organic)

- 40 types of added sugar are now being used in processed food. Examples include corn syrup, cane sugar, white grape juice, honey, brown sugar, and agave.

Non-caloric sweeteners (natural and artificial)

- Natural includes Stevia
- Artificial includes Aspartame, Sucralose, and Saccharin

Numerous studies have shown a correlation between drinking diet soda and *gaining* weight. In addition, diet soft drinks have no vitamins, minerals or protein and replace nutritious beverages in one's diet

Note: I am not including total sugars as a criteria because sugars tend to go up in tandem with calories. The same can be said for sweeteners, however I have designated sweeteners as a criteria since they are proxies for processed food containing high amounts of salt, sugar, and fat.

Possible Guideline – Level 1

- Calories: Up to 120 per 12 ounces
- Sweeteners: All sweeteners allowed
- Exceptions: Unsweetened Milk

Taxed

Juice with > 120 cal/12 oz.
Energy Drinks with > 120 cal/12 oz.
Soda*
Energy drinks
Coffee with > 120 cal/12 oz.
Tea with > 120 cal/12 oz.
Flavored Milk

Not Taxed

Grapefruit Juice, Tomato Juice
Water and Seltzer (plain and flavored)
Fizzy Lizzy (all flavors)
Unflavored Milk
All Diet Beverages
Coconut Water
Gatorade
Vitamin H2O
Honest Tea

*i.e. Defined as any carbonated beverage containing any form of sweetener. Is a carbonated juice considered a soda? It depends. I would propose that where carbonated juices contain more filler juice (white grape juice, apple juice and/or pear juice) than characterizing juice, the filler juice is tantamount to a sweetener and the beverage is therefore a soda. Where there is less filler juice than characterizing juice, the filler juice does not act mainly as a sweetener and the beverage is therefore not considered a soda.

Possible Guideline – Level 2

- Calories: Up to 100 per 12 ounces
- Sweeteners: Only *non-caloric* sweeteners allowed
- Product must meet both criteria above
- Exceptions: Unsweetened Milk

Taxed

Juice with > 100 cal/12 oz.
Energy Drinks with > 100 cal/12 oz.
Soda*
Energy drinks
Coffee with > 100 cal/12 oz.
Tea with > 100 cal/12 oz.
Flavored Milk
Gatorade
Vitamin H2O
Honest Tea
Fizzy Lizzy (5 out of 8 flavors)

Not Taxed

Grapefruit Juice, Tomato Juice
Water and Seltzer (plain and flavored)
Fizzy Lizzy (3 out of 8 flavors)
Unflavored Milk
All Diet Beverages
Unsweetened Coconut Water

*i.e. Defined as any carbonated beverage containing any form of sweetener. Is a carbonated juice considered a soda? It depends. I would propose that where carbonated juices contain more filler juice (white grape juice, apple juice and/or pear juice) than characterizing juice, the filler juice is tantamount to a sweetener and the beverage is therefore a soda. Where there is less filler juice than characterizing juice, the filler juice does not act mainly as a sweetener and the beverage is therefore not considered a soda.

Possible Guideline – Level 3

- Calories: Up to 80 per 12 ounces
- Sweeteners: None
- Product must meet both criteria above
- Exceptions: Unflavored Milk

Taxed

Juice with > 80 cal/12 oz.

Energy Drinks

Soda*

Energy drinks

Coffee with >80 cal

Tea with >80 cal

Flavored milk

All Diet Beverages

Gatorade

Vitamin H2O

Fizzy Lizzy (all flavors)

Not Taxed

Tomato Juice

Water and Seltzer (plain and flavored)

Unflavored Milk

Ito En Tea

Unsweetened Coconut Water

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Pitfalls

- Many packaged beverages would pass the test based on 12 ounces but are sold in larger containers and in those containers, have excessive calories (e.g. Gatorade and Vitamin H₂O)
- Many beverages are sold unpackaged (such as sodas at McDonald's and frappuccinos at Starbucks)
- Why penalize beverages like 100% juice that contain lots of vitamins and not tax other foods that contribute to obesity?