



THE EXCISE TAX COLLECTION ON
BEVERAGE SELLING MACHINE

BY
MR. NITINAI VPATTANANUNTAKUL

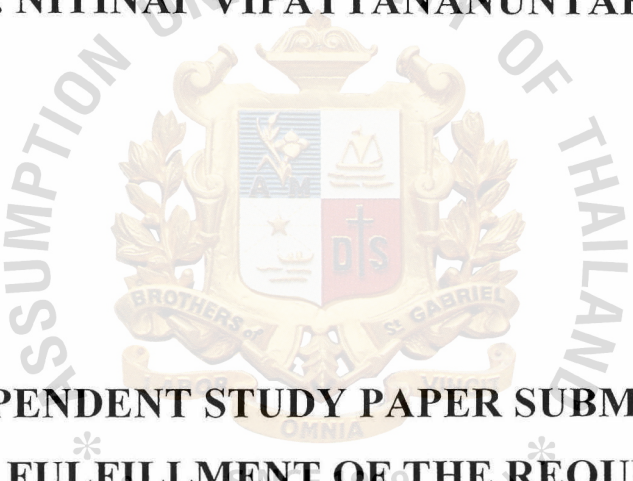
AN INDEPENDENT STUDY PAPER SUBMITTED IN
PARTIAL FULFILLMENT OF THE REQUIREMENT
FOR THE DEGREE OF MASTER OF LAWS
(TAXATION LAW)

GRADUATE SCHOOL OF LAW
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Author : Mr.Nitinai Vipattananuntakul
Major : Master of Laws (Taxation Law)
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ABSTRACT

The objective of this paper is to study the problem regarding the collection of Excise Tax on beverage selling machine. The word “beverage selling machine” is contained in Excise Tariff Act for more than 30 years but the law yet to provide the clear definition of beverage selling machine and defines its as an industrial plant. This is cause a problem in practice for excise officers. It has only the opinion from excise officer to decide what will be considered as beverage selling machine. The following question is the excise officer has no legal principle to decide whether which machine should be considered as beverage selling machine.

The methodology used in this research is documentary. According to the study and analysis, it is found that they are taxed on syrup or concentrate which use for producing the beverage. This is not fair for sellers as the law dose not care how the beverage is produced because it has been taxed from the main material of that product.

It is recommended that Thailand should adapt the principle of syrup tax or soft drink tax from United States as a guideline for amend beverage tax in Thailand to solve this problem and repeal the word beverage selling machine.

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I wish to note my deep appreciation and respect to Assoc.Prof.Nattapong Posakabutra, my advisor and committee who devotes himself to my academic progress. This independent study would not be accomplished without his guidance, patience, and support. He has enhanced my research skill and provided me with priceless research opportunities. Thank you very much Assoc. Prof. Nattapong for your tireless effort and understanding.

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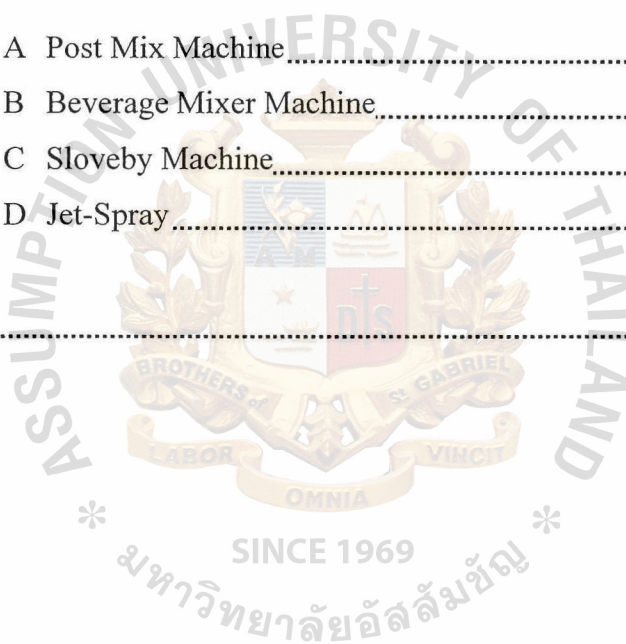


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Chapter 1

Introduction

1.1 Background and General Statement of the Problem

Beverage tax is the responsibility of the Excise Department which collects tax from commodities. The Excise Department has collected taxes from beverages since B.E. 2495. The purpose of collecting taxes at first was to control the nonalcoholic beverage which were packed and sealed in containers but did not include water, mineral water, beverages without carbon dioxide gas and beverages which a producer produced for their own retail sales which does not preserve the quality with chemicals, milk and beverage which the Minister has notified in the Government Gazette. At that time, the beverage industrial in Thailand have supplied seal containers for beverage within the country and no need to import from other country. Therefore, Excise Department needs to collect beverage tax on seal containers to replace tax collect from the commodities which import from other country.

There are two ways to collect taxes by Beverage Tax Act B.E. 2495. The first is using stamp duty and second is sealing container. The producer has the liability to pay tax when taking commodities out of the industrial plant. However, in a case of import beverage, tearing stamp duty at the containers is needed to be done before processing through customs by the importer.

In year 2509, beverage tax act B.E. 2495 and Beverage act (No.2) B.E. 2504 were being replaced by Beverage Tax Act B.E. 2509. The definition and administration of collecting and controlling tax from beverage in sealed containers has been revised in the new beverage tax act.

The Beverage Tax Act B.E. 2509 has given the definition of beverage as meaning that which is used as beverage without mixing and there is no alcohol, whether with or without carbon dioxide gas packed in containers and sealed, such as sweetened drink, fruit juice, soda water but does not include the followings:

1. water or mineral water in the natural state,
2. beverage, which the producer has produced for their own retail sale, which does not contain carbon dioxide gas and does not preserved the quality with chemicals,
3. milk without any mixture,
4. beverage under 1 and 3 with any mixture that the Minister has notified as exempt in the Government Gazette.

In the year B.E. 2527 the government issued the Excise Tax Act B.E. 2527 and Excise Tariff Tax Act B.E. 2527 and repealed Beverage Tax Act B.E. 2509 including any laws which were used to collect the beverage tax. After the Excise Tariff Tax Act was changed it was the first time that the word “Beverage” has been given in the definition in the new Excise Tariff Tax Act. The definition of beverage is included drink which is made, packed, or obtained from beverage selling machine. Moreover, Excise department also has the responsibility to control and collect tax for beverage which does not packed and sealed in containers.

Furthermore, beverage selling machines are deemed to be industrial plants and the owner or manager or the person who is responsible for the operation and the sales of those beverages will responsible for accounting and reporting as follow:

1. Register beverage selling machine is needed to be addressed.
2. Any transaction of pension off and transfer beverage selling machine is required to be stated in the report and is entitled to be given to officer within 15 days from the day that pension off or transfer is processed.
3. The logo of registration in beverage selling machine is needed to be easily seen.

The definition of beverage selling machine does not being stated in the Excise Tax Act B.E. 2527. However, the definition of beverage selling machine has not being stated clearly. Director General of the Excise Department is the only person who has authority to interpret the meaning of beverage selling machine. The interpretation must be publicized in the Government Gazette to the public. Due to the absent of interpretation of character in beverage selling machine to the public, this issue has been raised. The only explanation of beverage selling machine that has

been given from the excise officer is the selling machine which produces the products in the same way as producing the beverage in the industrial plant.

1.2 Hypothesis of the Study

The Excise Tax Act B.E. 2527 had been defined the meaning of industrial plant as the place for the production of commodities and including beverage selling machine. Without the clear definition or clarification of beverage selling machine, the excise department is unable to clearly identify which type of beverage selling machine should be taxed on. Thai excise tax should examine and adapt their principle of syrup tax as a guideline in collecting tax for syrup and concentrate in Thailand.

1.3 Objectives of the Study

1. To study the concept and principle of law collection excise tax on beverage
2. To study the United State of America law regarding syrup tax
3. To analysis the problem of the word beverage selling machine
4. To suggest solutions in enhancing clear definition of beverage selling machine

1.4 Study Methodology

This paper is developed based on documents in both Thai and English languages in the text books and others documentary methodology such as Excise tax Act B.E.2527, Excise Tariff Act B.E.2527, website, journals, articles, theses and researches.

1.5 Scope of the Study

This paper puts emphasis on the study of the natures, concepts and principle of the Excise Tax Act and Excise Tariff Tax Act under Thai law and foreign law. Moreover, it should analyze the problem, and provide the solutions and recommendations to treat the problem.

In addition, this paper is focused on the phrase “beverage selling machine” in order to prove and support the hypothesis.

1.6 Expectation of the Study

1. To know the problem of collecting Excise Tax in “Beverage Selling Machine”
2. To understand the natures, concepts and principle of the Excise Tax Act and Excise Tariff Tax Act B.E. 2527 on beverage selling machine
3. To understand the natures, concepts and principle of the Excise Tax on beverage under foreign law
4. To recommend the suitable solutions for the problem of collecting excise taxes on beverage selling machine

Chapter 2

Development, Concept and Principle of Law

Collection Excise Tax on Beverage

2.1 Principle of Good Taxation

Taxation has been a much discussed subject in the literature on economics. Many authors have put forward views of what qualifies as “good taxation” and what constitutes undesirable tax policy. Consensus on these issues has changed over time, depending upon historical circumstances and the prevailing mode of economic thinking.

The question is “Do we have generally accepted taxation principles?” According to Ronald Dworkin, a principle is a standard that is to be observed because it is a requirement of justice or fairness or some other dimension of morality. Westberg argues that “principles may provide the supporting argument, but do not require a certain solution to a legal problem. They may even conflict with one another”.

It is widely agreed upon in public finance that a tax system should be designed according to the principles of neutrality, efficiency, certainty, simplicity, effectiveness, fairness and flexibility. Each of these terms requires a definition and a description of the context in which it is to be used. Some of these principles may also be contradictory. Even if not all of them have the rank of general principles, they are valuable expressions of a code of conduct for tax authorities. In practice, it is difficult to pursue all principles simultaneously as a variety of trade-offs exists among them.

The good excise tax collection has the same character as general tax collection. The good tax collection has to follow the economics and social conditions of the world as it is respectively developed. Taxation takes part and plays an important role. The principle of good tax collection is divided into four characters as follows:

2.1.1 Economic Neutrality

International tax neutrality policies are economic theories believed to enhance economic efficiency as an international tax policy matter. The basic assumption of all international tax neutrality theories is that capital is perfectly mobile and that labor and land are perfectly immobile. The baseline of the classic tax neutrality analysis seeking to maximize global economic efficiency is a non-tax world in which investment and other business decisions are considered economically most efficient.¹

In the economic system, it is believed that the right to choice of the consumers and the competition of the product and service manufacturers lead to using resources in the most effective way and it makes the living standard of people's level to be in the most suitable level. The tax collection by the government must be the most economic neutral character because the tax collection has preliminary results to limit the consumption or the manufacturing of the private sector equal to amount of collected taxes. The increase of consumption and the manufacturing is equal to amount of government expenses in the process, the consumption of people and the manufacturing of the private sector will be affected. The good tax collection should therefore have a minimal impact.

The first impact is the effect on the consumer's selection. Supposing there is no tax collection, people will use products and services in the suitable and appropriate level. For example the consumption of meat and fish in the most economical cost, if there is tax collection from one of the products, such as fish, the consumption of the fish will be decreased because people will consume other products. The symmetry of selection will not be in the suitable level. The result will not be the same, if there is a collected tax from both products the consumption by consumers is in the appropriate level. However, if the selection of consumption is in the inappropriate level in the social perspective such as excessive consumption of inebriant, the tax can be used as a tool to limit the consumption or force the selection of the consumption to be more suitable.

¹ Shaheen Fadi, "International Tax Neutrality," Virginia Tax Review 22 (June 2007): p.5.

The second impact is the effect on the decision in factors of production especially in the part of the labor. If the collections of taxes in various occupations are different, it will affect the decision of the laborer to change his career to differ from when there was no tax or neutral tax. As for the investor, if the tax is not neutral, it will cause the investor to choose his industrial investment different from industry in consistent with the economics conditions.

The third impact is the effect on the manufacturing process in the selection of labor or machines in choosing new materials in production. For example, if the tax system gives more benefits to machines than labor at the time of unemployment crisis, the suitable level of the proportion between machines and labors will be changed. If the state collects taxes from one material but does not collect tax from another material which replaceable by the previous product, it will make the entrepreneurs choose the latter material which may be improper.

The fourth impact is the effect on business organization. If the government collects income taxes or other taxes from certain kinds of businesses different from the others entrepreneurs have to choose the kind of business organization which gives the most benefits. Notwithstanding that the selection of business organization does not give economical benefits at all. For example, at present, there are establishments in a large number of juristic partnerships in the country because the tax collection of juristic partnerships is different from individual income tax.²

2.1.2 Fairness

What properties of a tax system make it “fair”? Some of the principles that are involved are already reflected in various provisions of the excise tax act. Key ideas that form the foundation for fairness are³:

² Vit Tantayakul, Law of Taxation (Bangkok: Rungsin Publishing, 2525), p. 23-24.

³ John Andrews and James Henderson, “Tax Fairness: A Real Solution to the Budget Crisis”, Publication A01, Massachusetts Coalition for Healthy Communities, (April 4, 2003) p.4.

1. The tax burden should be related to ability to pay.

This is reflected in taxes that are applied as a percentage of income. Such a concept goes back to the ancient practice of giving a tithe to a church, where each member of a congregation offers 10% of their income to support the community,

2. Income that is earned by actual labor should be taxed less than that which is acquired merely by the ownership of wealth.

This rewards the labor that is actually producing wealth in the economy, and it protects workers against exploitation.

3. The basic portion of a taxpayer's income that is needed for bare survival should be taxed very little if at all.

This is reflected in the granting of personal exemptions and deductions that shield the first portion of income.

The fairness in taxation defines “the collecting of taxes from equal persons in equal amounts and collecting of taxes from different person in the different amounts by the suitable differences”. The problem in studying the fairness is to consider which measurements or which differences should be a tool to measure fairness. In case of a difference, the character of differences is considered to be proper for tax collection.

The measurements of equality or the differences for the purpose of tax collection on a fair basis are varied by ages and time. It is acceptable that the measurement must relate to taxes. Otherwise the collection of taxes will be freely done. Beard tax enacted by Tsar Peter of Russia or the height or ages in collecting taxes in Thailand which is used for a period of time was considered to be relevant or fair at that time but it does not relate to taxes and is not a proper measurement at this time. At present, the measurement of equality or the differences should be considered on two things which are the equality or the differences in receiving Benefit Basis received from the state (Benefit Basis) and Ability of the taxpayers (Ability Basis).

The collecting of taxes by considering on the Benefit Basis similar to commercial principle is encouraged so that it will help people use public services

economically. In practice, there are some kinds of taxes such as gasoline tax which directly relates to direct benefits in receiving services from using the road. Local maintenance tax relates to municipal services in local area, collected water supply taxes by the number of liter quantities. It is a tax because supplying water is considered to be the duty of the state. Tax is collected on basis of benefits received.

However, tax collection by using benefit principle has several problems which cannot be used in most of the tax collection. Firstly, most of the services provided by State for people cannot be sold directly to individuals such as, maintaining peace or justice. Aforesaid benefits could not be determined to whom the benefit is provided and how much is its value. Secondly, although some services may be measured on monetary benefit to the receiver but the received benefits are mainly composed of social benefits. For example, providing education is necessary for all people in every status. Collection of the tuition fees for commercial purpose will discriminate against the poor to receive education equal to people who have better financial status. It contradicts to benefits of the society. Therefore, at present, the measurement of the equality or the difference for fairness is the ability to pay tax. In other words, it is economical status.

The rest of the problem is “which measurement will be used to measure the ability to pay taxes or to measure economical status which consists of 3 aspects, namely property, income and expense.”

1. Property in possession of Each Person

It is the economical power measurement of the individual in exploiting benefits from property such as leasing, loan, for sale, or expensde. Some individual don't have property and cannot exploit these benefits. Therefore, there are many forms of tax which were collected from property such as, Local Maintenance Tax, Property and Land Tax and Automobile Tax.

2. Income

It is the measurement of the individual's ability for a period of time. Due to the regular income, the measurement which uses the income to evaluate the ability has an advantage over measurement using property to evaluate because regular income can be spent without shrinking the possessed property. On the contrary, an individual who has only property but is without a regular income, in

case a large sum of taxes are collected may have to sell his/her property. Therefore, the income tax base is more stable than tax base collected from property.

3. Expense

It is a tool to measure the consumption of the individual. It measures how much the individual spends on products, services and national resources. In economical senses, the consumers who use products and services a lot have a better economical status than the consumers who did not use the products and services. In some countries, they collect taxes from total expense during the year the same as a progressive rate in income tax.

2.1.3 Productivity

The amount of tax which can be collected more or less is usually based on the rate of tax but is also based upon these three conditions as follow:

1. The Character of Tax Base

In case the collected tax has a wide base which covers a large number of taxpayers or the taxable activities, it can be collected in the larger amount than the narrow tax base. Therefore, the collection of income tax from each taxpayer is not high in average but it generates revenue more than other taxes which are collected in a progressive rate because the number of taxpayers in other tax rates is not large. For that reason, to collect tax from things which have been widely used by users will generate more revenues than collecting tax from luxury things, which has few users.

2. Size of Tax Base

If any certain taxes can be collected in large amounts from each taxpayer because each taxpayer has a duty to pay tax in a large amount arising from his large business, materials or services which have high value. Even taxpayers are few but tax can be collected in a large amount for example mineral royalty which are collected from limited ore diggers will generate great income, at the time that the mineral is in the good prize.

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3. The Flexibility of Tax Base

When there is a new form of tax collection or increase of tax rate, if the tax base significantly shrinks because of fewer taxpayers, decreasing of a tax rate or other reasons, it is called an elastic tax base. If the new form of tax collection or increasing of tax rate does not shrink at all, it is called inelastic tax base.

The tax which is most relevant to flexibility of tax base is the collection of tax from products and services because the aforesaid tax is likely to increase the price of the products. The augmentation of the product price result decreases the number of consumers so the tax base shrinks. The significance or minimal of the shrinkage depends on some factors for example: first, it has to consider whether the product is easy to be replaced. If the tax collection causes the increase of the price of the products, the consumers may alternatively choose other products which are tax free instead. The aforesaid tax collection is very elastic. Secondly, the necessity of the products, if the taxed product is very necessary, the tax base is inelastic for example, the collecting of tax from oil or staple foods. Thirdly it has to consider whether the tax value of the product is the main part of consumer's expenses. For some products, even the price is increased by the tax collection but the price is low when comparing it to the total incomes or expenses of taxpayers. The tax collection does not decrease the consumption such as collecting tax from salt or fish sauce.

2.1.4 Efficiency in Tax Collection

Efficiency in tax collection is to fully collect the tax by using the lowest expense. The character of efficiency is very important because the expense in tax collection is either the use of production factor or resources. If the expense is overspent, it should be spent in other fields which generate more benefits. Furthermore, if the collection is inefficient, the other good characters of tax system will perish. Especially, the fairness intended in Tax Law won't be accomplished.

The efficiency in tax collection depends on three important factors as follows:

1. Character of Tax Law

Tax law, which fully enables the tax collection, should be easily comprehended and not ambiguous. The establishment of taxpayers and tax base have to be clear to prevent any dispute. Methods of tax payment should not be too complicated and prevent unnecessary expenses for taxpayers.

2. The Environment Propagandizes to Comply with Tax Law

Appropriated environment to comply with tax law, in other words, the environment without allurements for tax evasion, this is apart from the law. It requires various environment characters. First, the action of a person who is a leader of the country and well-known person for the people, if aforementioned, people can be a role model for the people, there will be no ground to claim that they follow the action of these leaders. Second, Government expenses affect the public; contribute to creating faith in the sacrificed money by paying taxes. Third, economical progress of the nation is very important. If the industry and business is prosperous, there will be a necessity in the usage of large amounts of labor and forming a large organization. It requires strict control in an internal financial. Tax evasion is more difficult to commit than the level of economy which has small entrepreneur operated by one person or one family.

3. The Efficiency of Tax Collection Officials

The efficiency of tax collection officials is made by formatting organizations and good working methods like any other government officials. Only problem is how the government should set the size of the organization and to set the appropriate expense. Saving too much on officials and expenses will cost more damages in finance than saving it because the tax evasion openly occurs. General principles in determining the expense of tax collection, government should spend to the last amount of money equal to the income they made. This is the most appropriate level of spending money for the government. However, in practice, it is very difficult to determine the most appropriate level.

2.2 Structure of Excise Tax

2.2.1 Tax Payer

Under section 7 of Excise Tax Act, the industrial operator or service operator or the importer of commodities or other persons specified under this Act as the person having responsibility to pay tax shall be responsible for paying tax according to the ad valorem or specifics of commodities, at the rate prescribed in the law relating to excise tax as applied during the time of liability to pay tax.⁴

From above it can separate the persons who are liable to excise tax under section 7 of Excise Tax Act in 4 types and section 4 has given the definitions as follow:

1. Industrial operator means the owner or manager or the person responsible for the operation of the industrial plant.
2. Service operator means the owner or manager or the person responsible for the operation of the service place.
3. Importer means the person who brings in commodities under the law on customs.
4. Other persons specified under this Act

2.2.2 Tax Base

Tax base can separate in 2 types as follow:

1. Base on value (AD VALOREM) section 8

1) In the case of commodities produced in the country, the value shall be based upon the ex-factory price including the excise due paid.

2) In the case of services, the value shall be based upon the income received or deemed to be received for the operation of service including the excise tax due to be paid.

3) In the case of imported commodities, the value shall be based upon the CIF price plus import duty, fees under law on investment promoted and tax

⁴ Prapas Kong-ied, "Excise Tax," Lecture note, Assumption University, 2009. (unpublished manuscript).

and other fees specified in the Royal Decree excluding value added tax specified in chapter 4 title 2 of the Revenue Code including the excise tax due to be paid.

Excise Tax calculation⁵

Excise Tax = value * tax rate

Or formula excise tax = (ex-factory price + excise tax +
Ministry of Interior tax) * tax rate

2. Base on Quantity (Specific) Section 9

The commodities which are based on quantity shall be based upon weight or quantity except:

1) In the case of food, if it uses liquid for benefit to conserve food, it shall be based on the weight include liquid to calculate tax.

2) In case of containers and seals for sale, if it shows the quantity of goods, the director of excise department consider on that quantity.

Excise Tax calculation

Excise Tax = quantity * tax rate

2.2.3 Tax Rate

Excise tax rate has defined in the Excise Tariff Act which is separated in thirteen parts as follow:

1. Petroleum and petroleum products
2. Beverage
3. Electronic appliances
4. Adelaide glass crystal and other glass crystal
5. Car
6. Yacht
7. Fragrances products and cosmetics
8. Others commodities
 - 1) Carpets and other textile for floor which are made from fur
 - 2) Motorcycles

⁵ Prapas Kong-ied, Excise Tax.

- 3) Marble and granite
- 4) Battery
- 5) Goods that have impact on the atmosphere
- 9. Entertainment and leisure activities
 - 1) Nightclubs and disco theques
 - 2) Turkish baths
- 10. Gambling businesses
 - 1) Racecourses
 - 2) Revenue of lottery
- 11. Businesses that have an effect on environment
 - 1) Golf courts
- 12. Businesses that get permission or concession from the government
 - 1) Telecommunication businesses
- 13. Other service as determined by Royal Decree

Its also has other Act to collect excise tax; there are the Liquor Act, Tobacco Act and Cards Act.

2.2.4 Tax Exemption, Deduction and Refund Tax

Tax exemption, deduction and refund can be separate in eight categories as follows⁶:

1. Imported commodities classified as commodities exempted from customs duty in chapter 4 of customs Tariff shall also be exempted from excise tax by basing upon the same principles and conditions as prescribed under the law on customs tariff under section 99.⁷

2. Exemption or refunds for exported commodities comply to principles, procedures and conditions as specified under the Ministerial Regulations. Export includes taking commodities into duty free zone or places.

⁶ Prapas Kong-ied, Excise Tax.

⁷ Section 99 Excise Tax Act B.E.2527 The imported commodities classified as commodities exempted from customs Tariff are also exempt in this Act by base same as law on custom tariff.

3. The industrial operators have the right to receive tax refunds or exemptions from Excise Department under section 102⁸ if they are in condition as follow:

1) The commodities which have been donated to the public as charity means you return the benefit to the society so this activity will get the right to exemptions or refund excise tax from Excise Department.

2) The commodities which have been donated as public benefit to support a state agency so it can help the state agency have more efficiency to protect, serve and give more confidence to the public.

3) The commodities which have been sold to the United Nations or diplomatic conventions are also exempted or refundable as this has the objective to make a good relationship to the other country.

4) Fuel or fuel product filled in the aircraft or vessel of capacity more than five hundred ton gross upwards and custom officer allow to travel abroad.

⁸ Section 102 Excise Tax Act B.E. 2527 The industrial operator shall have right to receive tax refund or exempt tax as follow:

1. Commodities specified under the Ministerial Regulation, which has been donated to the public as charities through the authority in the central, province or local authority or through the public organization which the Minister has specified by publishing in the Government Gazette.

2. The commodities specified in the Ministerial Regulation which have been donated as public benefit to the authorities in the central, provincial or local authority or to the public organization specified by the Minister by publishing in the Government Gazette.

3. The commodities which have been sold to the person who has privilege according to the obligation which Thailand has with the United Nations or according to the international law or according to the international contract or diplomatic convention.

4. Fuel and fuel products filled in the aircraft or vessel of capacity from five hundred ton gross upwards which the customs official has released for travel abroad.

4. Based on section 102bis⁹ the service operator shall be exempted from excise tax for revenue from revenue derived from services specified in the Ministerial Regulation that is donated to government organization both in federal and local governments or donated to charitable organization.

5. For the benefit of the economy of the Kingdom or for the happiness of the public, the minister by the approval of the cabinet shall have authority to announce a reduction or exemption of tax for any commodities or services.¹⁰

6. The industrial operator shall be entitled to receive a tax refund on the tax paid for the commodities specified in the Ministerial Regulation, if it can be proved that such commodities have been damaged or deteriorated so that they cannot be used, such as battery and beverage.¹¹

7. The commodities which have been imported and tax has been paid if exported, the tax shall be refunded to the importer according to the principles, procedures and conditions at the same ratio for the refund of the import duty under the law on customs.¹²

8. Any industrial operator who shall wish to receive a tax allowance for commodities specified under the Ministerial Regulation by taking the amount of tax under this Act already paid for the commodities used as raw material or part of the commodities in the production and deduct from the amount of tax to be paid for those commodities by submitting the application and complying with the principles, procedures and conditions as specified.¹³

⁹ Section 102bis Excise Tax Act B.E. 2527 The service operator shall have right to exemption in the case as follow:

1. Services specified in the Ministerial Regulation that is donated revenue to people for charitable organizations.

2. Services specified in the Ministerial Regulations that is donated revenue to government organizations both in federal and local.

¹⁰ Section 103 Excise Tax Act B.E. 2527.

¹¹ Section 104 Excise Tax Act B.E. 2527.

¹² Section 105 Excise Tax Act B.E. 2527.

¹³ Section 101 Excise Tax Act B.E. 2527.

2.3 History of Collection Excise Tax and Beverage Tax

In the past, excise tax was not very important because the government expense was little. Also, the government received enough money from other sources such as from tributes, war reparations, and other properties. Excise tax was collected in forms of objects, slaves, pets, and ownerships of some businesses. The collection of excise taxes in the past was different from today's, that is, it was collected from people who had properties used for their own consumption but not from sellers or producers.

However, nowadays the excise tax is collected from industrial plants that produce goods for sale. And some goods required the state to collect the excise tax because the state needs more revenue in order to pay for public services. Also, when industrial expansion increases, the industrial development allows producers to produce goods faster and in higher quantity. So, the excise tax is collected more and more conveniently. Because of these reasons, the excise tax is popular in many countries and some countries move from collecting taxes from consumers to collect from industrial producers to have more convenience and to save more expenses from the collection. So, since the 19th century the excise tax is very important in the country's taxation.

Thailand started collecting beverages tax in the year 2495 only the beverage which is packed in containers and sealed¹⁴. Beverage which producer has produced for own retail sale which does not seal containers are not subject to beverage tax.

¹⁴ Section 3 Beverage Act B.E. 2495 "Beverage" means sweetened drink, juice, soda water or other that normal canned drinks without mixing anything else and there is no alcohol, whether with or without carbon dioxide only packed in containers and sealed but do not include:

1. water without mixing anything except to make it pure or clean,
2. mineral water in the natural state,
3. beverage which does not contain carbon dioxide and does not preserve the quality with chemicals, heat or cold and the producer is produced for own retail sale only,
4. milk,

Later the development of beverage containers made from paper or plastic that can be sealed by machinery occurred from beverage industrial plant. For this reason the beverage Act was amended in B.E.2504. This defined 3 things to collecting beverage tax.¹⁵

In the year 2509 beverage tax was amended and it was the first time that assigned the Excise department to collect beverage tax by Beverage Tax Act B.E. 2509 and gave the new definition of “beverage”¹⁶ to specify which beverage products are subject to tax. There are some beverages that were exempt for excise tax such as drinking water, mineral water, beverages which are produced for own retail sale and milk. They still use stamp duty to show that it has already paid tax.

Then in the year 2515 the beverage tax Act B.E.2509 was amended again by the revolution and gave the new definition of “beverage” in section 4 meaning that which is used as beverage without mixing and there is no alcohol, whether with or

5. other beverages which are similar to 1-4 the minister has notified exempt in Government Gazette.

¹⁵ Section 5 Beverage Tax Act B.E. 2504 To collect beverage tax by the rate set at the end of this Act by any of the following:

1. beverage stamp,
2. seal containers,
3. calculate quantity of containers which are use to pack beverage in case of difficulty or can not put stamp on containers

¹⁶ Section 4 Beverage Tax Act B.E. 2509 “Beverage” means that which is used as beverage without mixing and there is no alcohol, whether with or without carbon dioxide gas packed in containers and sealed, such as sweetened drink, fruit juice, soda water but does not include:

1. water or mineral water in the natural state,
2. beverage which the producer has produced for own retail sales which does not contain carbon dioxide gas and does not preserve the quality with chemicals,
3. milk without any mixture,
4. Beverages under 1 and 3 with any mixture that the Minister has notified exempt in Government Gazette.

without carbon dioxide gas packed in containers and sealed, such as sweetened drink, fruit juice and soda water shall be meant to include beverages made or packed or obtained from the beverage selling machine, no matter how it is sold even though not packed in containers and sealed but not including water or mineral water in the natural state, beverage which the producer has produced for own retail sales which does not contain carbon dioxide gas and does not preserve the quality with chemicals, milk without any mixing and beverage which the minister has notified in the government gazette.

The revolutionary gave the reason that the Beverage Tax Act which currently was in use did not have provisions for collecting beverage tax whether made or packed or obtained from the beverage selling machines except beverages which were packed in containers and sealed were properly subjected to beverage tax.

Later they corrected the law to control the products which must have excise tax paid together and became Excise Tax Act 2527, that assigned the structure of management of collecting excise taxes and in the Excise Tariff Act assigned the types of goods and tax rates.

Current beverage taxation still continues to comply with Excise Tax Act B.E. 2527 and Excise Tariff Tax B.E. 2527. The excise tax collection rate of 20 per cent by value of goods, or 0.37 baht per unit volume enacted in 2534 has a lower tax rate and excise tax exemption¹⁷ for beverage made from fruits or vegetables cultivated in Thailand. Ingredients as defined by Excise Department has received approval from the General Excise Department and will exempt the excise tax, not included on sealed containers or from the sale of beverages.

Fruit juices or vegetable juices of any manufactures which have ratio of ingredients lower than specified by Excise Department, they must pay excise tax but it has been decreased from 20 per cent by value of the price to 4 percent by value of goods or based on volume not exceeding 440 cc, from the existing tax of Baht 0.45 per unit was reduced to 0.11 baht. The fruit juice products or vegetables juices will get more benefit more than other beverages which still have to pay the excise tax at 20 percent of the price value because governments want to promote the beverage

¹⁷ Notification of the Ministry of Finance Decrease Rate and Exempt Excise Tax (No. 27) Dated 30 December 2534.

industry and fruit juice pack in containers to compete with beverages imported from overseas.

2.4 Concept of Collection Excise Tax and Beverage Tax

2.4.1 The Role of Excise Tax

1. Collecting excise tax is a source of government income. Apart from controlling the consumption product and unnecessary entertainment spots, excise tax is a source of government income. The excise department collected tax income in the year of 2552 in the amount of 291,221.20 million baht.

2. The Role in Economic Development

1) The excise tax takes part in the income distribution because excise tax is collected from extravagant products and services. The consumers of aforementioned products and services earn high income so they should pay tax for expensive products and services.

2) The excise tax encourages saving money. In other words, collecting tax from the size of the vehicle engine for the consumer who has a car with an unnecessary size of the engine is liable for higher tax rate. For example, the tax collection from a car which has cylinder capacity over 3,000 cc. or engine power over 220 horsepower will be collected at 48 percent of the value. The objective of increasing the price is for reducing the consumption. Eventually, it will encourage savings.

3) The excise tax takes part in supporting and encouraging the development in certain fields of industry such as juice or vegetable beverage. In the past, the aforesaid beverage is taxable the same as the carbonate beverage or stimulant beverage but the Ministry of Finance exempted the provided vegetable or juice beverage from the excise tax. With this reason, it encourages the processing

industry in the field of agriculture products and it gives advantages to consumers to acquire healthy and quality beverages.

4) The excise tax takes part in supporting the production for replacing imports and encouraging the exports. It helps in petrochemical industrial investment and solution in the country by exempting oil excise tax and certain oil product such as Napta, Kerosene, Natural Gas Liquid (N.G.L), and Liquid Petroleum Gas (L.P.G.). They are raw materials for plastic production and chemical productions including reduction of excise tax rate for Gasohol (Gasohol is a mixture of Gasoline and ethanol). It can reduce the import of Methyl Tertiary Butyl Ether (MTBE) and it helps cane and cassava farmers selling agriculture products at higher prices.

5) The excise tax plays an important role in supporting the distribution of financial power from the center to local administration because the excise department collected taxes or allocated excise taxes for Ministry of Interior. It is based on excise tax collections.

6) The excise tax takes part in supporting the exports by refunding or exempting the excise tax for the products which are exported outside the country for flexibility in exports and for the purpose of improving the law. The excise exemption for the raw material can be a component in manufacturing the product for export so the Thai product can compete in international markets.

3. The Role in Social Development and Environmental Protection

1) The excise tax is instrument in reducing health hazards, for example, collecting tobacco tax in the high rate helps reduce consumption. It compensates the expenses which the government and society has to pay for taking care of the patient who is smoking.

2) The administration in excise department, especially alcohol products, tobacco, card which endanger health and moral, controls the product and

the distribution for limiting the consumption. It provides that the alcohol manufacturer has to declare the formula and the liquor process to the excise department for approval before manufacturing. It is for consumer protection by having quality and standard product.

3) In the field of environmental protection, the excise tax rate is reduced for the battery which is the raw material or the recycle component. The excise tax collection from 4 strokes motorcycle creates less pollution which destroys the ozone in the atmosphere. The tax reduction encourages people to choose product which reduces the pollution in the atmosphere. Taxpayers, the industrial entrepreneurs, the importer, tax rate, the duty of the industrial entrepreneur, the registration, the industrial entrepreneur has a duty to file a application for excise tax registration with in 30 days before the dated of production.

Year (October-September)	Revenue (million Baht)	Revenue change	Compare
2552	291,221.20	+12,908.72	+4.64 %
2551	278,312.48	-8,918.87	-3.11 %
2550	287,231.35	+13,135.68	+4.79 %
2549	274,095.67	-5,229.76	-1.90 %
2548	279,395.43	+33,071.73	+ 13.43 %

Table 1 Excise Department Revenue in Past Five Years

The reasons why excise tax should be collected are as follow:

1. Some consumption expenditure can show the taxation ability better than all consumption expenditure which means that excise tax collected for disperse tax upon the good consume in consume ability to pay tax.
2. To punish the person who consumes those goods to be a taxpayer, this is the way to reduce the consumption of goods that have resulted in a loss to the public.
3. To spread out the tax burden, it related between consumption and benefits from the government. So what products that get a special benefit from state should receive more tax burden such as cars.

4. During the war or inflation, tax may be used as a tool for reducing the use of some products in order to get the best benefit possible.

2.4.2 Excise Tax Collection from Luxury Products

It is difficult to impose fairly an excise tax on luxury products, because deciding what products are luxuries or what products are needed for living depends on many conditions of social, economic and era, such as taxation on incense or the fragrance. These products are not necessary to most of the people, so the consumers who want to use incense or the fragrances must accept excise tax increase. The consumers who are wealthy will not consider the tax burden. But for the fragrance of incense used in the food industry is not a luxury. So incense that is used in the food industry will not be subjected to excise tax.

The taxation of luxuries is essential for developing countries. Otherwise the result from the development will be used on wasteful luxury products. It will make a country lack capital to develop other industries. Some products can be changed in time. In the past, radios or televisions were luxury products and subject to excise tax but nowadays they have turned into necessary products and not subject to excise tax anymore because the information or media from radio and television are necessary for everyone.

2.4.3 Excise Tax Collection on the Goods that Effect to Health and against to Moral

Almost every country in the world are expected to collect excise tax on liquor because the alcohol goods have bad effects on health and are against moral, but they have been drunk since ancient times. Every party, celebration or meeting also served alcohol and other beverages.

The reason that the government has to collect excise tax from tobacco and liquor is so the government can ensure the revenue and get it in a fast way from the consumer. If the government uses the policy to ban the people from producing liquor and tobacco, it will make them smuggle it and bad results to the country revenue too.

2.4.4 Excise Tax Collection from Goods Which Get the Benefit Based from Government

Every country that uses excise tax to collect the tax on the petroleum and petroleum products, including cars and motorcycles, their government has to use that revenue to build the republic services and make more benefits to the public. It is necessary to build roads to make it comfortable transportation. Most people who get the convenience from this are car's users. That is why cars, petroleum and petroleum products are subject to excise tax.

2.4.5 Excise Tax Collection from the Provided Rule

The principle of excise tax collection for certain kinds of business entrepreneurs is considered by the government to cause a huge burden to the government in public service management such as building a wastewater treatment pond and building an instrument for waste treatment. The income is used by the government to preserve and protect from environmental degradation and pollution.

Aforementioned principle is based on the proverb that "the person who causes the pollution is responsible to treat the pollution or the person who destroys the environment is responsible to bring it back to the original condition". The government should provide a tax burden to the person who destroys the environment in the field of industrial reproduction. Thailand should adopt this principle by collecting excise tax from packaging manufacturers, such as glass bottle manufacturers and plastic bottle manufacturers because this kind of packaging causes problems in collection and elimination which is the liability for every local administration. The expense of waste elimination is a big amount. Hence, it is proper to collect excise tax on aforesaid products. Moreover, at present, the government collects tax on the refrigerant. Refrigerant users are deemed to be the persons who destroy the ozone atmosphere. They are liable for depleting the ozone atmosphere.

2.4.6 Ideas and Objectives of Taxation on Beverage

The first product that paid excise tax was liquor or beverages which has alcohol content. In the past they did not collect tax on beverages because at that time Thailand did not have a beverage industry which could seal in containers as in the

present. Most of the beverages in the past had to be imported from other countries and paid the custom tax. So when beverage industries which can seal containers opened in Thailand the quantity of import beverage were decreased a lot that made the custom department get less tax. It made the government lose a lot of revenue so the idea was to tax beverages without alcohol and produced in Thailand occurred to replace that loss revenue.

From the aforementioned principle, it can be concluded that excise tax collection for the products or services should have characters as follows:¹⁸

1. The products and services that are extravagant or unnecessary in living such as perfume, air conditioners, yacht, night club, golf, etc.
2. The products and services that harm the consumer's health and morals such as alcohol, tobacco, cards, etc.
3. The products and services that have to be controlled or limited the consumption by the government such as racecourses, energy drinks, and carbonate drinks.
4. The products and services that receive the special benefits from government investment such as car, motorcycle, gasoline and gasoline products. These products receive benefits from using the road.
5. The products and services that destroy the environment and cause toxic pollution such as batteries and ozone- depleting substances.
6. In case of emergency and necessity, the government may need to increase its income such as in the state of war or relieving the poverty of people or use in other special occasions. Excise tax may be collected for certain services or products.

2.5 The Principle of Law Concerning on Beverage Excise Tax

2.5.1 The Meaning of Beverage in Excise Tariff Act

Since the imposition of the Beverage Tax in the year 2495 to present, nature's beverage products are required to pay excise tax and the government

¹⁸ Jittada Thanasopon, "Excise Tax," (LL.M. Thesis, Graduate School, Dhurakij Pundit University, 2545), p.5.

continues to use the same criteria by focusing on beverages which are sealed in containers. Although Excise Tariff Act 2527 that set up the type of product, it continue to give definitions of "Beverage" as something used as beverage without mixing and no alcohol, whether with or without carbon dioxide gas packed in containers and sealed such as mineral water, sweetened drinks, fruit juices, vegetable juices and soda water etc. and shall be meant to include beverages which made or containing from beverage selling machine, no matter how it is sold even though they have not packed into containers and seal but does not include:

1. Water or mineral water in the natural state.
2. Distilled water or filtered water without any mixture.
3. Beverage which the producer has produced for their own retail sales which does not contain carbon dioxide gas and does not preserve the quality with chemicals.
4. Milk and other milk with or without other mixtures according to the standard specified in law on food.
5. Beverages which the Minister has specified in the Government Gazette.

From the provisions of a law, we can separate an element of the word "beverage " in accordance with Excise Tariff Act as follows ;

1. It must be those who normally use a beverage without mixing anything, and consumers generally drink immediately without using that beverage to contaminate other things such as fruit juice, sparkling water or milk while drinking. The nature generally available immediately drinkable must not be mixed is considered to be "Beverage". So, the meaning of beverage in Excise Tariff Act is relied on the behavior of consumers whether typically consumers can drink immediately or not this have to consider the fact as case by case basis.

2. Beverage must not have alcohol mixed in because if there is alcohol mixed with it would be the meaning of the word "Liquor" in Liquor Act. If that beverage has liquor mixed with it, it will not be considered as beverage in Excise Tariff Act.

3. If a beverage with or without carbon dioxide can be immediately consumed, it shall be considered as a beverage by Excise Tariff Act.

4. Packed in containers and sealed will be required a flexible packaging container and seal it tight all the time and it must be close-fitting, or any which way when the opening must be split, destroyed or converted into processing of container or seal it without the condition may continue in the same body. That it will be hold as beverage and Ministerial Regulations No. 19 (Year 2530) issued under all excise tax Act 2527 with characteristics that show the meaning of tax determined indication of tax. Industrial goods carrier will have to register. It must be one of the followings:

1) seal containers

(1) Lid crimped or screwed in when the product should be loosen or spiraled out.

(2) Lids or corks that seal the container which sealed in the same way and the lid or cork. When the product must then be separated or lost or damaged original and no longer available

2) Container which can be sealed without the Seal pursuant to 1).

When the product is used, the container must be separated, ruined, transmuted and it can not be used again. From the provision of the law, it places importance on the definition. The word “Sealed” means the seal of a container and seal of package. It is the method of preserved food to last longer. Therefore, it is considered to be a “drink” pursuant to Categories of Excise Tax Rate Act B.E.2527. If the drink is not sealed, it will not be considered to be the drink according to Categories of Excise Tax Rate Act B.E. 2527, for example, the drink sealed with plastic and rubber band the bottle of the drink with bottle cap which is not sealed, and when the bottle cap is opened, the bottle cap can be reused again. Usually, the drink which container is not sealed is ready to drink beverage because it is easily putrid.

5. Any drink which is made or contained or derived from the dispensing beverage machine in any way, even though it is not contained and sealed.

The meaning of “beverage selling machine” is not defined in Categories of Excise Tariff Act B.E. 2527, was not defined. Hence, it is still a problem to consider that which machine is a beverage selling machine and which is not a beverage selling machine. Only the Director-General of the Excise Department has an authority to interpret the meaning of beverage selling machine and the

interpretation must be publicized in the Government Gazette¹⁹ for the public to acknowledge. However, the beverage selling machine still has a problem in practice because the Director-General of the Excise Department does not interpret the character of the beverage selling machine and publicized in the Government Gazette for public acknowledgement. There is only the opinion of the excise officer. In this regard, they provide that “beverage selling machine” is a selling machine which produces the products in the same way as producing the beverage in the industrial plant, for example, using the syrup concentration mixes with the selling machine for being the beverage. Even the drinks obtained from dispensing beverage machine are not sealed with package, it is considered to be the drink pursuant to Excise rate tax act B.E. 2527 because it covers any of the drink made, contained or derived from the dispensing beverage machine.

In this respect, the beverage, which shall be considered as beverage pursuant to the meaning of categories of Excise Tariff Act B.E. 2527 must consider the crucial requirement from the strict interpretation of the written legislature. It can not be interpreted without the law, it can not be interpreted with equity principle, it can not be interpreted with the presumption, it can not add the meaning of the law, and it can not be implicitly interpreted²⁰. It must be alphabetically interpreted with the law. If it is not defined as the beverage, it should not be expanded by interpretation or freely interpreted, using presumption, implicitly interpreted. It can only be interpreted by the word in Excise Tariff Act B.E.2527.

There are exceptions which consider that the following drinks are not a drink pursuant to the law:

¹⁹ Section 5 Excise Tariff Act B.E. 2527 The director of excise department is empowered to interpret the attachment of this Excise Tax Rate Act which is declared by the gazette.

The interpretation in the first paragraph is not retroactive

The interpretation shall consider the principle which was declared by the gazette.

²⁰ Permboon Kaewkeaw, The Manual of Tax Revenue (Bangkok: Vinyuchon Co., 2544) p.18.

1. Water or Mineral water is the drinking water, filtered water which is distributed in the market or mineral water must be mineral from the real natural resource not mineral from bringing drinking water through the filter with a mineral water production which is artificial mineral water. The artificial mineral water considered a legal drink not is the exception such as space excise tax but must pay the price. Sell mineral water is equal to a price equal to drinking water such as natural mineral water brand on Aura. The analysis of the Excise Department is considered mineral not equal to the natural mineral water with dissolved substances by the Excise Department has set because the sales price is equal to the price of water. Drink consumers. Excise Department has not deferred excise tax collection.

2. Water filtration or distillation water for drinking without garnish but if the drinking or cooking liquor which flavor by adding color to use for drinking, that drink will not be exempted.

3. The beverage maker has made for itself for retail sales. The carbon dioxide can not be issued with the site Mike. All quality and not with a chemical such exceptions include beverage experience as a restaurant or coffee shop. Beverage production as consumers want or in the school, cafeteria with drinks included in bottle large leaves such as coconut water, orange water, lemon water ice black coffee black tea, green water, red water, cold drinks are important must have no carbon footprint from the site and each object must not be mixed together if the object can be mixed or gas carbon contamination on site such beverages while the production itself especially for retail. The meaning of the Copyright Act 2527 the excise tax rate range of practical facts. Officers can not go check production processes of all operators that have produced fruit juice or water without the use of vegetable waste materials mixed together because the production of juice, water and vegetables to retail in general have long been done. Also purpose of law is to tax cases, beverage manufacturers have made for themselves with this particular retailer. There are practical problems in that. Manufacturers to produce beverages and the beverage packaging such a cool place to keep fruit juice not to be rotten. If a beverage manufacturer, beverage refrigerator to put in the Excise Department are not considered beverages such as drinks by law. If beverage manufacturers. Bring drink made for retail. This self-contained place with a cool box for beverages enters. The

Excise Department has considered the drink a beverage will be produced even legal to drink themselves especially retail.

4. Milk and other milk with or without other mixture according to the standards set forth in the law on food. Drink milk whether fresh or a garnish of fresh milk allowed the Food and Drug Administration are not considered as beverage.

5. Beverages which the Minister specified in the Government Gazette. The other beverage exception, it is under the power of Minister of Finance to review and announced in the Government Gazette to be deemed such beverages. In practice there are still not have announcement of the Minister of Finance to require which type of beverage are not considered a beverage under this exception.

Beverage follows (5) are not considered as beverage and not legally considered "goods" under Excise Tariff Act. Manufacturers have not follow on any notification of the Excise Department.

2.5.2 The Meaning of Beverage Selling Machine

Thailand has been using the word beverage selling machine since the year 2515 by the revolutionary proclamation no.161 by amending the Beverage Tax Act B.E. 2509 in which the definition on the word "Beverage" in section 4 is added to include the beverage made or contained or derived from beverage selling machines. The reason was given that Beverage Tax Act at that time had no provision concerning collecting tax for beverage which is made or contained or derived from beverage selling machine. This kind of beverage, if it is in the contained or sealed condition, shall be taxable pursuant to the beverage tax law. Because Categories of the Excise Tariff Act B.E. 2527 does not provide the definition of "beverage selling machine" it will cover all characters but it does provide the definition of industrial factory to include beverage selling machine. The owner or manager or other people who are responsible for the operation on selling beverages from the beverage selling machines are deemed to be industrial operators. They shall have the duty to file an application for registration excise tax including carrying on daily account concerning income, expense, raw material, distribution account and paying excise tax pursuant to

provided rate.²¹ In the present, the tax is collected for beverages which are made or packed or obtained from beverage selling machines at 11.32 baht per liter, at the rate of 20 percent of the value so tax is 2.26 baht per liter.²²

2.5.3 Standard, Procedures and Conditions of Beverage Taxation

The beverage products are under the authority and control of the Excise Department. The person who is responsible to pay tax is the industrial operator or importer and pays tax upon ad valorem or specific.²³

The first step beverage industrial operators or importers are responsible for to be registered within 30 days before production begins. If the industrial operator carries many industrial plants they have to separate requests for each industrial plant. The meaning of industrial plants under excise law is the place for use in the production of the commodities including the area of such places so it may be a residential area or rental of a small cottage farm Central time and shall means to include the beverage selling Machine.

If the industrial operator or importer has an industrial plant located in Bangkok, they have to submit the register request to Director-General of Excise Department. If industry plants are located in other provinces they have to submit the register requests to the Excise office at the other provinces.

In the case of beverage selling machines which are deemed to be an industrial plant the owner or manager who is responsible in selling beverages that are made or obtained from beverage selling machines will be an industrial operator too.

²¹ Section 26 Excise Tax Act B.E.2527 Industrial Operators or Service Operators who have industrial plants or service places located in Bangkok submit the excise register request to Director-General of Excise Department.

If an industrial Operator or Service Operator who has an industrial plant or service place located in other provinces they must submit the excise register request to the Excise Office where the industrial plant or service place is located.

²² Wannawat Karunanon, "Excise tax on beverage," *Excise Today* 6 (January-February, 2551), p. 28.

²³ Section 7 Excise Tax Act B.E. 2527.

They also have a liability to register and submit the report of workday and weekend time of industrial plant to the excise department.

When they get the excise registration, they have to show it at the industrial plant or place on the beverage selling machine where it is easy for the officers to check. If the industrial operator or importer is not following that instruction, they may be find by the officer under section 151.²⁴

2.5.4 Beverage Tax Rate

Excise Department has calculated tax rate in two ways

1. Based on value (Ad Valorem) means based on price of the products.
2. Based on quantity (Specific) means calculated from units of products but for beverage will use content or cubic meter.

The Excise Department will calculate tax on all bases then whichever base is higher the excise department will tax on that base. This is the way the excise department uses to calculate excise tax on the taxpayer. The beverage tax rate is show as follows:

²⁴ Section 151 Excise Tax Act B.E. 2527 Who does not follow the section 28, 29 paragraph 1, 36, 37 paragraph 1 must be find not over 4,000 Baht.

Items	Ceiling Rate		Applied Rate	
	Ad Valorem	Specific THB/unit	Ad Valorem	Specific THB/unit
Part 2. Beverage				
02.01 Soda water, Artificial mineral water and sparkling water without sugar or other sweet substances and cook flavor	25	Baht 0.77/440 cc.	25	Baht 0.77/440 cc.
02.02 Mineral water and sparkling water which add sugar or other sweet substances or cook flavor and other beverages including from beverage selling machine	20	Baht 0.45/440 cc.	20	Baht 0.37/440 cc.
02.03 Fruit juices and vegetable juices including from beverage selling machine	20	Baht 0.45/440 cc.	20	Baht 0.37/440 cc.
- Fruit juices which have ratio specified by Excise Department	20	Baht 0.45/440 cc.	-	Exempt

Table 2 Table of Beverage Tax Rate

Ex1. The example of calculating excise tax, in case of domestic products

A company produces beverage in 10000 bottles, each bottle is 500 cc. the ex-factory price including excise tax and Ministry of Interior tax is 8 baht, excise tax rate on value 20 percent and excise tax on quantity which is not more than 440 cc. will charge 0.37 baht another 440 cc. will count as 440 cc.

1. Calculate on value

$$\begin{aligned}\text{Excise Tax} &= \text{value} * \text{tax rate} \\ &= (10000 * 8) * 20/100 \\ &= 16000 \text{ baht}\end{aligned}$$

$$\begin{aligned}\text{Ministry of Interior tax} &= 16000 * 10/100 \\ &= 1600 \text{ baht}\end{aligned}$$

2. Calculate on quantity

$$\begin{aligned}\text{One bottle 500 cc.} &= 440 \text{ cc.} + 60 \text{ cc.} \\ &= \text{first 440 cc. is one unit and another 60cc. will} \\ &\text{assume as one unit}\end{aligned}$$

$$\begin{aligned}&= 2 \text{ units} \\ \text{Excise Tax} &= \text{quantity} * \text{tax rate} \\ &= 10000 * 2 * 0.37 \\ &= 7400\end{aligned}$$

$$\begin{aligned}\text{Ministry of Interior tax} &= 7400 * 10/100 \\ &= 740 \text{ baht}\end{aligned}$$

From the above, calculated tax on value is higher than calculated on quantity so excise department will tax the taxpayer on value base plus 10 percent tax for Ministry of Interior.

So total tax is $16000 + 1600 = 17600$ baht, tax will cost 1.76 baht per bottle

Ex2. The example of calculated excise tax, in the case of imported products

AB Company limited imports the Happy drink in the amount of 10,000 bottles in the 1,000 cc. container. The C.I.F price is 40,000 baht (the price includes product + transportation cost + insurance cost) the import duty cost is in amount of 8,000 baht. Special tax duty is 800 baht. The excise tax rate is 20 percent of the product value and the excise tax rate is 0.37 per 440 cc. quantity. The fraction of 440 c.c. is considered to be 440 cc.

1. Calculate on value

Excise tax = (CIF + import tax + other tax not include VAT) * tax rate / 1-(1.1* tax rate)

$$= (40000 + 8000 + 800) * (20/100) / 1 - (1.1 * (20/100))$$

$$= 9760 / 0.78$$

Excise tax = 12512.82 baht

Ministry of Interior tax = 12512.82 * 10/100

$$= 1251.28 \text{ baht}$$

2. Calculate on quantity

Quantity of bottles = 1000 cc.

First 440cc. = 2.27 unit another 120 cc. will assume as one unit

$$= 3 \text{ units}$$

Excise tax = quantity * tax rate

$$= 10000 * 3 * 0.37$$

$$= 11100 \text{ baht}$$

Ministry of Interior tax = 11100 * 10/100

$$= 1110 \text{ baht}$$

From the above, calculated tax on value is higher than calculated on quantity so, excise department will tax on value base plus 10 percent tax for Ministry of Interior.

Total tax is 12512.80 + 1251.28 = 13764.10 baht, tax will cost 1.38 baht per bottle

Year	Revenue (Million Baht)	Revenue change	compare
2552	12,185.94	-204.73	-1.65 %
2551	12,390.67	+655.37	+5.58 %
2550	11,735.30	+970.36	+9.01 %
2549	10,764.94	+659.23	+6.52 %
2548	10,105.71	+767.74	+8.22 %

Table 3 Beverage Tax Revenue in Past Five Years

2.5.5 Excise Tax Exemption for Beverage

For public good and health, to give confidence to consumer and integrated tax collection to have transparent and fair standards for development of economic and social sustainability. Excise Department issues the notification²⁵ which has specified regulations and conditions of exemption on beverage tax on fruit juices and vegetable juices to industrial operator or importer. This notification has given the definition of “Beverage of fruit juice and vegetable juice” to mean beverage of fruit juice and vegetable juice which is made from fruits or vegetables without carbon dioxide gas and shall not be a beverage which mixes energy substances such as Taurine, Inositol or glucoronolactone.²⁶

Beverage of fruit juice and vegetable juice will get exemption as follows²⁷:

1. Beverage which has name and ratio specified in the list below this notification.
2. Beverage which has color and flavor the same as the fruit and vegetable.

The industrial operator and importer who have the rights to be exempt and want to get that right have to follow the instructions as specified in Excise Tax Act B.E.2527.

The taxpayers who have the rights to be exempt have to show the details on containers and/or seal and/or label as follows²⁸:

1. Industrial operator name or importer name.
2. The address of industrial plant or office of importer.
3. Name of the beverage of fruit juice and vegetable juice must be the same as fruit and vegetable used to produce that beverage.
4. Trademark.

²⁵ Notification of Excise Department in Regulations and Conditions of Exemption of Beverage Tax on Fruit Juice and Vegetable Juice Dated 29 January 2551.

²⁶ Notification of Excise Department Dated 29 January 2551 (no.2).

²⁷ Notification of Excise Department Dated 29 January 2551 (no.3).

²⁸ Notification of Excise Department Dated 29 January 2551 (no.5).

5. Beverage main ingredient (percent per content).
6. Net content.
7. Production date and expiration date.

Beverage of fruit juice and vegetable juice which is made or packed from beverage selling machines have to show details the same as 1 - 5 on beverage selling machine. In case of export beverage the name of distributor as use in detail 1-2.



Chapter 3

Excise Tax in the United States of America

3.1 Federal Excise Tax in the United States of America

Excise Tax in the United States is imposed on the consumption of specific commodities and distributions of these commodities as well. The rate at which Excise Taxes are imposed on imported commodities and locally made commodities may not be the same. The Excise Tax rate imposed on these two types of commodities vary subject to certain factors.²⁹

Excise tax, sometimes called an excise duty, is a type of tax. In the United States, the term "excise" means: (A) any tax other than a property tax or capitation (i.e., an indirect tax, or excise, in the constitutional law sense), or (B) a tax that is simply called an excise in the language of the statute imposing that tax (an excise in the statutory law sense, sometimes called a "miscellaneous excise"). An excise under definition (A) is not necessarily the same as an excise under definition (B). Excise taxes are often seen as a tax on items like gasoline, tobacco and alcohol (sometimes referred to as sin taxes). The tax may be a flat amount for a certain quantity of the item (for example, the state of Arkansas charges 59 cents for a pack of 20 cigarettes).³⁰

The United States Code is the codification by subject matter of the general and permanent laws of the United States. It is divided by broad subjects into 50 titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives. The U.S. Code (U.S.C.) does not include regulations issued by executive branch agencies, decisions of the Federal courts, treaties, or laws enacted by State or local governments. The U.S.C. has provided excise taxes in title 26

²⁹ EconomyWatch, "US Excise Tax", At <http://www.economywatch.com/tax/united-states/excise.html>. (last visited 9 September 2009).

³⁰ Answers.com, "Excise tax in the United States", At <http://www.answers.com/topic/excise-tax-in-the-united-states#>. (last visited 9 September 2009).

subtitle D and E³¹ but it just give the overall image of excise taxes. Therefore, Internal Revenue Service (IRS) by Department of the Treasury has issued Publication 510 to explain more detail in some parts of excise taxes. This publication is separated into three parts, the first part is fuel taxes and fuel tax credits and refunds, second is excise taxes other than fuel taxes and the third is quarterly filling information.

From U.S.C. and publication 510 there does not have provide or explain about soft drink tax or syrup tax this can show that federal government did not collection excise tax on soft drink or syrup tax. Then which state want to tax on soft drink or syrup they can issue a law to enforce in their state.

In the United State there are many state collect tax from unhealthy foods. We undertook a review of state tax laws. We identified 19 states and cities that levy such taxes. These taxes apply to soft drinks, candy, chewing gum, or snack foods (potato chips, pretzels, and others) (Table 1). Taxes may be levied at the wholesale or retail level and may be levied in terms of a fixed tax per volume of product or as a percentage of sales prices.³²

³¹ U.S. Code Title 26 Internal revenue code

Subtitle D -Miscellaneous excise taxes

Subtitle E -Alcohol, tobacco, and certain other excise taxes

³² Michael F. Jacobson and Kelly D. Brownell, "Small Taxes on Soft Drinks and Snack Food to Promote Health," American Journal of Public Health 90:6 (June 2000): p.854.

Table 1—Current Soft Drink and Snack Food Taxes

State or Locality	Year Enacted or Effective	Sales or Other Tax Specifically Applied; Representative Foods Taxed	Annual Income (\$)	Use of Revenues/Notes
Arkansas	1992	\$0.21 per gal of liquid soft drink; \$2 per gal of soft drink syrups	40 435 799	Funds Medicaid; tax also approved on a ballot initiative in November 1993
California	1933	Sales tax (7.25%) on soft drinks	218 000 000 (estimate)	General funds
Chicago	1993	Distributors pay 3% on sales of containers, 9% on syrups	8 218 975	General funds
District of Columbia	1993	Sales tax (5.75%) on snack foods, soft drinks	4 000 000	General funds
Illinois	Mid-1980s	Full sales tax (6.25%) on soft drinks (other foods taxed at 1%–2%)	69 000 000	General funds
Indiana	1963	Sales tax (5%) on candy, gum, soft drinks, bottled water, dietary supplements	43 000 000	General funds
Kentucky	1972	Sales tax (6%) on candy, gum, soft drinks	34 000 000	General funds
Maine	1991	Sales tax (5.5%) on snack foods, soft drinks, carbonated water, ice cream, toaster pastries	14 600 000 (state's estimate of snack food items added under 1991 law)	General funds
Minnesota	1982	Sales tax (6.5%) on candy, carbonated drinks, fruit drinks (not containing any fruit juice), chewing gum, single-serve ice cream	45 000 000 (estimate)	General funds
Missouri	1962	\$0.003 per gal of soft drinks produced	400 000–500 000	General funds (for health department inspections of bottling plants)
New Jersey	1966	Sales tax (6%) on candy, carbonated soft drinks	67 000 000	General funds
New York	1965	Sales tax (7.5%, includes average of 3.5% for local jurisdictions) on soft drinks, candy, confectionary, fruit drinks with less than 70% natural fruit juices	203 000 000 (state's estimate)	General funds
North Dakota	1985	Sales tax (5%) on candy, chewing gum, carbonated beverages, soft drinks with less than 70% fruit juice, powdered drink mixes	5 000 000 (estimate)	General funds
Rhode Island	1984	\$0.04 per case (24 12-oz cans) of soft drinks, soda water, mineral water, beer paid by wholesaler	700 000	General funds (but originally earmarked for environmental management, litter control)
Tennessee	1963	1.9% (increased in 1981 from 1.5%) of gross receipts from soft drinks and soft drink ingredients paid by manufacturers and bottlers	11 600 000	21% for highway litter control (beginning in 1981)
Texas	~1961	Sales tax (6.25%) on carbonated and noncarbonated packaged soft drink beverages, diluted juices, candy	160 000 000 (state's estimate for soft drinks only); 56 000 000 (estimate for candy)	General funds
Virginia	1977	Small excise tax on wholesalers and distributors based on total sales of carbonated soft drinks	93 000	Litter control and recycling fund
Washington	1989	\$1 per gal of syrup	9 500 000	Violence prevention and drug enforcement
West Virginia	1951	\$0.01 per half-L of carbonated and noncarbonated soft drinks, fruit drinks, and chocolate milk and \$0.80 per gal of syrups paid by manufacturers or wholesalers	12 539 000	West Virginia University medical, dental, and nursing schools

Note. Data were derived from state and local tax departments and from the *State Tax Handbook* (Chicago, Ill: Commerce Clearing House). Estimates were provided by the Center for Science in the Public Interest (except where otherwise noted) based on prorated national sales of soft drinks and candy.

Table 4 Current Soft Drink and Snack Food Taxes

3.2 State Laws

3.2.1 Washington State Law Code on Syrup Tax (Formerly Carbonated Beverage Tax)

This section explains the carbonated beverage syrup tax (syrup tax). The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state, for use in producing carbonated beverages that are sold at wholesale or retail in this state. The syrup tax is in addition to all other taxes.³³

The Revised Code of Washington (RCW) is the compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed. It does not include temporary laws such as appropriations acts. The official version of the RCW is published by the Statute Law Committee and the Code Reviser.

1. The Meaning of Carbonated Beverage Syrup

Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. "Syrup"³⁴ includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage. "Carbonated beverage"³⁵ includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide. Examples include soft drinks, mineral

³³ Section 458-20-255 Carbonated Beverage Syrup Tax, Washington Administrative Code (WAC).

³⁴ Section 82-64-010(3) Revised Code of Washington (RCW)

"Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

³⁵ Section 82.64.010(1) Revised Code of Washington (RCW)

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

waters, seltzers, and fruit juices, if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

2. Tax Point, When Is Syrup Tax Imposed and How Is It Determined?

Syrup tax is imposed on the wholesale³⁶ or retail³⁷ sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

3. Tax Base and Tax Rate

Syrup used in making carbonated beverages. Syrup is defined as a concentrated liquid to which carbonated water is added to produce a carbonated beverage. The tax is imposed on wholesale or retail sales of such syrup within the state.

The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally. The rate of wholesale and retail are the same rate at 1 dollar per gallon.

The syrup tax should be reported and paid when the frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department.

³⁶ Section 82.64.020 (1) RCW A tax is imposed on each sale at wholesale of syrup in this state. The rate of the tax shall be equal to one dollar per gallon. Fractional amounts shall be taxed proportionally.

³⁷ Section 82.64.020 (2) RCW A tax is imposed on each sale at retail of syrup in this state. The rate of the tax shall be equal to the rate imposed under subsection (1) of this section.

4. Taxpayer

This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

1) A wholesaler³⁸ making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64³⁹ Revised Code of Washington (RCW), or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler⁴⁰. Except as provided in subsection 5, 2), (2) of this section, the buyer is not obligated to pay or report the syrup tax to the department.

2) A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the

³⁸ Section 82.64.050 (1) RCW The tax imposed in RCW 82.64.020(1) shall be paid by the buyer to the wholesaler and each wholesaler shall collect from the buyer the full amount of the tax payable in respect to each taxable sale, unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States. Regardless of the obligation to collect the tax from the buyer, the wholesaler is liable to the state for the amount of the tax. The tax imposed in RCW 82.64.020(2) shall be paid by the retailer. The buyer is not obligated to pay or report to the department the taxes imposed in RCW 82.64.020.

³⁹ Chapter 82.64 Syrup Tax (formerly carbonated beverage tax) RCW.

⁴⁰ Section 82.64.050 (4) RCW The amount of tax required to be collected under this section shall constitute a debt from the buyer to the wholesaler until paid by the buyer to the wholesaler.

department. Except as provided in subsection 5, 2), (2) of this section, the buyer is not obligated to pay or report the syrup tax to the department.

5. Tax Exemptions on Syrup Tax

This subsection provides information on exemptions from the syrup tax which are

1) Previously taxed syrup

Any successive sale of previously taxed syrup is exempt.⁴¹ "Previously taxed syrup"⁴² is syrup on which tax has been paid under chapter 82.64 RCW.

(1) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(2) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other

⁴¹ Section 82.64.030 (1) RCW Any successive sale of a previously taxed syrup.

⁴² Section 82.64.010 (2) RCW "Previously taxed syrup" means syrup in respect to which a tax has been paid under this chapter.

document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(3) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(4) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(5) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see 6 of this section). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

2) Syrup transferred out-of-state

Any syrup that is transferred to a point outside the state for use outside the state is exempt.⁴³ The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

⁴³ Section 82.64.030 (2) RCW Any syrup that is transferred to a point outside the state for use outside the state. The department shall provide by rule appropriate procedures and exemption certificates for the administration of this exemption.

(1) Required documentation. The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information.

(2) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. Buyers providing exemption certificates for exported syrup agree to become liable for tax and any associated penalties and interest on syrup that is not exported.

(3) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in 2, 1) of this subsection. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(4) Persons who make sales of syrup to persons outside this state must keep the proofs required by Washington Administrative Code (WAC) 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

3) Taxation prohibited under the United States Constitution

Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt.

4) Wholesale sales of trademarked syrup to bottlers

Any wholesale sale of trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked syrup within a specific geographic territory is exempt.⁴⁴

6. Syrup Tax Credits.

1) B&O tax credit for syrup tax paid. Chapter 245, Laws of 2006 (SSB 6533) provided a B&O tax credit effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.020, has been paid. The tax credit is a percentage of the syrup tax paid.

(1) How much is the credit? For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer is equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit is fifty percent. From July 1, 2008, through June 30, 2009, the credit is seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(2) When can the credit be taken? The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned. See 2)(2)b, (3) of this subsection for record documentation and retention.

⁴⁴ Section 82.64.030 (3) RCW Any sale at wholesale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked syrup within a specified geographic territory.

2) Credit for syrup tax paid to another state. Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(1) What is a state? For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(2) What is a syrup tax? For purposes of the syrup tax credit, "syrup tax" means a tax that is:

- a. Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and
- b. Measured by the volume of the syrup.

(3) How and when to claim the credit. Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

7. Sales Tax Rate in Washington State

Washington sales tax is monitored on a monthly basis for proposed changes to the state sales tax rate and when tax rate changes will take effect⁴⁵. Washington is one of seven states without income taxes, individual or corporate. The biggest source of state revenue is the general sales and use tax, set at 6.5% with local sales taxes adding on 0.5% to 2.4%. Food and prescription drugs are exempted. The state also imposes a full array of excise taxes covering motor fuels, tobacco products, insurance premiums, public utilities, alcoholic beverages, amusements, pari-mutuels, and other selected items.⁴⁶

These retail sales rates are provided in Section 82.08.020 (1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price. Retail sales tax is Washington's principal tax source. Businesses making retail sales in Washington collect sales tax from their customer.⁴⁷

Here is some more helpful information to understand retail sales tax:

1. Generally, a retail sale is the sale of tangible personal property. It is also the sale of services such as installation, repair, cleaning, altering, improving, construction, and decorating. Other services include improving real or personal property, amusement and recreational activities, lawn maintenance, and physical fitness activities.

2. Retail sales tax includes the state and local components of the tax.

3. Sales tax amounts collected are considered trust funds and must be remitted to the Department of Revenue.

4. The seller is liable to the Department of Revenue for sales tax, whether or not it is collected.

⁴⁵ State Sales Tax Database, "Washington Sales Tax," At http://www.taxrates.com/sample_wa.htm. (last visited 16 September 2009).

⁴⁶ City-data.com, "Washington Taxation," At <http://www.city-data.com/states/Washington-Taxation.html>. (last visited 16 September 2009).

⁴⁷ Department of Revenue Washington State, "Retail Sales Tax," At <http://dor.wa.gov/content/FindTaxesAndRates/RetailSalesTax/>. (last visited 16 September 2009).

5. Use tax is paid by the consumer when the retail sales tax was not collected by the seller/service provider.

6. Businesses that make a purchase for resale must provide a resale certificate to the seller. If not, the seller must charge the buyer retail sales tax on the total purchase.

7. Businesses also pay the retail sales tax on purchases of items for their own use (such as supplies or equipment) that will not be resold in the regular course of business.

From this section it show that Washington State collected a tax on each retail sale

8. Exemptions on Sales of Food and Food Ingredients

There are some sections that give an exemption on sales of food and food ingredients but in the case of syrup which mixes with carbonated beverages will be in the meaning of soft drink. So that beverage will not get exemptions under RCW 82.08.0293

1) The tax levied by RCW 82.08.020 shall not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

- (1) "Alcoholic beverages,"
- (2) "Tobacco,"

2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements.

Follow by RCW 82.08.0293(2)(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

From the above section it means that soft drinks which are made from syrup mixed with carbonated beverages will be in the meaning of soft drink under section 82.08.0293(2)(c). So soft drinks will not get the benefit from exemption and shall be subject to syrup tax first and then sale tax.

3.2.2 West Virginia State Law Code on Soft Drink Tax

The Legislature enacted the "Soft Drink Tax" in 1951 to pay for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing in West Virginia. At the time the Legislature imposed the tax, there was a heated dispute over the site of the facility. The West Virginia Code has given the definition of soft drink syrups and powders in chapter 11 article 19 soft drink tax section 11-19-1(5) is that soft drink syrups and powders shall include the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit, milk or any other product suitable to make a soft drink, among such syrups being such products as coca cola syrup, chero cola syrup, pepsi cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as cool aid, oh boy drink, tip top, miracle aid and all other similar products.⁴⁸

The "soft drink tax" is an excise tax levied upon "the sale, use, handling or distribution of bottled soft drinks, syrups and powder bases prepared for mixing soft drinks whether manufactured within or without West Virginia."

The term "bottled soft drink"⁴⁹ ultimately was interpreted to include any soft-drink type of beverage provided in any type of container. The law

⁴⁸ Section 11-19-1(5) West Virginia Code Chapter 11 Taxation Article 19 Soft Drink Tax.

⁴⁹ Section 11-19-1(1) West Virginia Code "Bottled soft drinks" shall include any and all nonalcoholic beverages, whether carbonated or not, such as soda water,

specifically exempts fluid milk with no added flavoring and natural undiluted fruit juices. Moreover, the Tax Department has broadly interpreted the term "soft drink syrups and powders" as said in the above paragraphs.

Currently, the tax on bottled soft drinks is 1 cent on each 16.9 fluid ounces (or 1 cent on each half liter). The tax on soft drink syrup is 80 cents on each gallon (or 84 cents on each four liters). The tax on dry mixture for making soft drinks, such as Kool-Aid, is 1 cent on each ounce (or 1 cent on each 28.35 grams) this has specific in Section 11-19-2 Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.⁵⁰

For the purpose of providing revenue for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing of West Virginia University, an excise tax is hereby levied and imposed on and after midnight of the last day of June, one thousand nine hundred fifty-one, upon the sale, use, handling or distribution of all bottled soft drinks and all soft drink syrups, whether manufactured within or without this state, as follows

1. On each bottled soft drink, a tax of one cent on each sixteen and nine-tenths fluid ounces, or fraction thereof, or on each one-half liter, or fraction thereof contained therein.
2. On each gallon of soft drink syrup, a tax of eighty cents, and in like ratio on each part gallon thereof, or on each four liters of soft drink syrup a tax of eighty-four cents, and in like ratio on each part four liters thereof.
3. On each ounce by weight of dry mixture or fraction thereof used for making soft drinks, a tax of one cent or on each 28.35 grams, or fraction thereof, a tax of one cent.

ginger ale, coca cola, lime cola, peps cola, doctor pepper, root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper, or any other type of container, envelope, package or bottle, whether manufactured with or without the use of any syrup. The term "bottled soft drinks" shall not include fluid milk to which no flavoring has been added, or natural undiluted fruit juice or vegetable juice.

⁵⁰ Rob Capehart, "The Soft Drink Tax," The State Journal (22 March 2007).

Any person manufacturing or producing within this state any bottled soft drink or soft drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup manufactured or produced outside this state, or who brings such drinks or syrups into this state, shall be liable for the excise tax hereby imposed. The excise tax hereby imposed shall not be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured, sold, used or distributed in this state

All revenue collected by the commissioner under the provisions of this article, less such costs of administration as are hereinafter provided for, shall be paid by him into a special medical school fund, which is hereby created in the state treasury, to be used solely for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing, as otherwise provided by law.

West Virginia has the distinction of being the first US state to enact a sales tax. It currently stands at 6%. The sales tax on food currently stands at 3%. Effective January 1, 2006, the sales tax on food was lowered to 5%, and on July 1, 2007, it was lowered further to 4%. The sales tax on food was again lowered to 3% on July 1, 2008

3.2.3 Arkansas Soft Drink Tax Act

A tax on soft drinks in Arkansas in 1992 was supposed to help fund the state's Medicaid program. Arkansas Soft Drink Tax Act was defined in Arkansas Code title 26 subtitle 5 chapter 57 subchapter 9

1. Soft Drink Tax is levied upon:

1) the sale⁵¹ in this state of soft drinks⁵², syrups⁵³, simple syrups⁵⁴, powders and base products⁵⁵ by a manufacturer, wholesaler or distributor⁵⁶ to a retailer⁵⁷ or other purchaser; and,

⁵¹ Section 26-57-902(12) Arkansas Soft Drink Tax Act “Sale” means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished. When a

retailer is also acting as a wholesaler or distributor, the duty to report and pay the tax imposed by this subchapter arises when the property is transferred to a retail store for sale to the ultimate consumer, as reflected by the records of the taxpayer.

⁵² Section 26-57-902(14) Arkansas Soft Drink Tax Act “Soft drink” means any nonalcoholic beverage sold for human consumption including, but not limited to, the following: soda water, ginger ale, all drinks commonly referred to as cola, lime, lemon, lemon-lime, and other flavored drinks, whether naturally or artificially flavored, including any fruit or vegetable drink containing ten percent (10%) or less natural fruit juice, natural vegetable juice, and all other drinks and beverages commonly referred to as soft drinks, but not including coffee or tea unless the coffee or tea is bottled as a liquid for sale.

⁵³Section 26-57-902(15) Arkansas Soft Drink Tax Act “Syrup” means the liquid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

⁵⁴Section 26-57-902(13) Arkansas Soft Drink Tax Act “Simple syrup” means a mixture of sugar and water.

⁵⁵Section 26-57-902(10) Arkansas Soft Drink Tax Act “Powder” or “other base” means a solid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the powder or other base with water, ice, syrup or simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

⁵⁶Section 26-57-902(4) Arkansas Soft Drink Tax Act “Distributor, manufacturer, or wholesale dealer” means any person who receives, stores, manufactures, bottles, or sells bottled soft drinks, soft drink syrups, simple syrups, or powders, or base products for mixing, compounding, or making soft drinks for sale to retail dealers, other manufacturers, wholesale dealers, or distributors for resale purposes.

⁵⁷Section 26-57-902(11) Arkansas Soft Drink Tax Act “Retailer” or “retail dealer” means any person, other than a manufacturer, distributor, or wholesaler, who receives, stores, mixes, compounds, or manufactures any soft drink and sells or otherwise dispenses the same to the ultimate consumer.

2) 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 follows⁵⁸:

- 1) Two dollars (\$2.00) per gallon of soft drink syrup or simple syrup;
- 2) Twenty-one cents (\$0.21) per gallon of bottled soft drinks;
- 3) 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 drinks⁵⁹, 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

⁵⁸ Section 26-57-904 Arkansas Soft Drink Tax Act

(a) There is hereby levied and there shall be collected a tax upon every distributor, manufacturer, or wholesale dealer, to be calculated as follows:

- (1) Two dollars (\$2.00) per gallon for each gallon of soft drink syrup or simple syrup sold or offered for sale in the State of Arkansas;
- (2) Twenty-one cents (21¢) per gallon for each gallon of bottled soft drinks sold or offered for sale in the State of Arkansas;

(3) Where a package or container of powder or other base product, other than a syrup or simple syrup, is sold or offered for sale in Arkansas, and the powder is for the purpose of producing a liquid soft drink, then the tax on the sale of each package or container shall be equal to twenty-one cents (21¢) for each gallon of soft drink which may be produced from each package or container by following the manufacturer's directions. This tax applies when the sale of the powder or other base is sold to a retailer for sale to the ultimate consumer after the liquid soft drink is produced by the retailer.

⁵⁹ Section 26-57-902(2) Arkansas Soft Drink Tax Act "Bottled soft drinks" means any complete, ready to consume, nonalcoholic drink, whether carbonated or not, commonly referred to as a soft drink, contained in any bottle.

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.

3.2.4 Chicago Soft Drink Tax

In the city of Chicago, the State of Illinois also has a tax called “Chicago Soft Drink Tax Ordinance”

The term “soft drink” means any finished, ready-to-use, nonalcoholic drink that is contained in a closed or sealed bottle, can, carton, or container of any size. The soft drink can be carbonated or not. For purposes of the Chicago Soft Drink Tax, the term soft drink applies to the same items as those defined under Illinois Sales Tax guidelines, except that fountain drinks are not included.⁶⁰

Some examples of soft drink include:

- soda water,
- carbonated water,
- colas,
- drinks containing less than 50 percent natural fruit or vegetable

juice and

- nonalcoholic beer.

Soft drinks do not include

- fountain drinks,
- noncarbonated water,
- coffee,
- tea,
- infant formula,
- milk or milk products and
- drinks containing 50 percent or more natural fruit or vegetable juice.

⁶⁰ Illinois Department of Revenue, Publication 116 Chicago Soft Drink Tax, June 2005.

Soft Drink Tax, the city of Chicago imposes a 3%⁶¹ tax on gross receipts from the retail sale of soft drinks. This tax is collected by the Department on behalf of the city. A “soft drink” is use non-alcoholic drink in a closed or sealed bottle, can, carton, or other container, but does not include milk, fountain drink, or drink containing 50% more natural fruit or vegetable juice. Chicago municipal Code section 3-45-020⁶² has given the definition about fountain drinks. Retail sellers of

⁶¹ Article 2 section 3-45-040 Chicago Soft Drink Tax Imposed

Pursuant to Section 8-11-6(b) of the Illinois Municipal Code, as amended, a tax is imposed on all persons engaged in the business of selling soft drinks other than fountain soft drinks at retail in the city. The rate of the tax shall be three percent of the gross receipts from sales of soft drinks other than fountain soft drinks made in the course of such business.

⁶² Article 1 section 3-45-020 Chicago Soft Drink Tax Definitions

When any of the following words or terms are used in this chapter, they shall have the meaning ascribed to them in this section:

- A. “City” means the City of Chicago, Illinois.
- B. “City department” means the department of revenue of the city.
- C. “Director” or “director of revenue” means the director of revenue of the city.
- D. “Fountain soft drink” means any soft drink that is prepared by a retail seller by mixing soft drink syrup or concentrate with water, by hand or through a soft drink dispensing machine, at or near the point and time of sale to retail purchasers.
- E. “Soft drink” has the meaning set forth in Section 2-10 of the Illinois Retailers' Occupation Tax Act, as may be amended from time to time, except that this term shall not be limited to drinks contained in a closed or sealed bottle, can, carton or container.
- F. “Illinois Retailers' Occupation Tax Act” means the Retailers' Occupation Tax Act, as amended, 35 ILCS 120/1, et seq.
- G. “Retail seller” or “retailer” means any person that engages in the business of selling fountain soft drinks in the city.

fountain drinks are taxed at 9% of their cost price for the purchase of soft drink syrup and concentrate⁶³.

The Fountain Soft Drink Tax applies to businesses that sell soft drink syrup to retailers located in Chicago or retailers selling fountain soft drinks in the City of Chicago where the tax was not remitted to the distributor.

H. "Sale at retail" means any transfer of ownership or title for valuable consideration to a purchaser for the purpose of use or consumption, and not for the purpose of resale.

I. "Soft drink dispensing machine" means a device which mixes soft drink syrup or concentrate with water and dispenses the resulting mixture into an open container as a ready to drink soft drink.

J. "Soft drink supplier" or "supplier" means any person that sells soft drink syrup or concentrate to retail sellers for the purpose of resale as fountain soft drinks.

⁶³ Article 3 section 3-45-060 Chicago Soft Drink Tax Imposed- Fountain Soft Drinks

Pursuant to Section 8-11-6(b) of the Illinois Municipal Code, as amended, a tax is imposed on all persons engaged in the business of selling fountain soft drinks at retail in the city. The rate of the tax shall be nine percent of the cost price of the fountain soft drinks sold at retail in the city.

For purposes of this section, "cost price" means the consideration paid by a retail seller for the purchase of soft drink syrup or concentrate which is designed to be further mixed with water before it is consumed as a soft drink, valued in money, whether paid in money or otherwise, including cash, credits and services, determined without any deduction on account of any of the soft drink supplier's costs or other expenses.

State or Locality	Paid by
Washington	Wholesalers
West Virginia	Manufacturers, wholesalers, and retail dealers or any other original consignee of soft drinks or soft drink syrup
Arkansas	Distributors, manufacturers, wholesale dealers
Chicago	Retail dealers

Table 5 This Table Show Who Pay Soft Drink Tax and Syrup Tax



Chapter 4

Analysis of the Problems of Beverage Selling Machine in Thailand

4.1 The Problem of the Definition of Beverage Selling Machine

The word “beverage selling machine” was first provided in the revolutionary proclamation no.161 on 5 June B.E.2515 by amending the Beverage Tax Act B.E. 2509 in which the definition on the word “Beverage” in section 4 is added to include the beverage made or contained or derived from beverage selling machine. The reason was given that the Beverage Tax Act at that time has no provision concerning collecting tax for a beverage which is made or contained or derived from a beverage selling machine. This kind of beverage, if it is in the contained or sealed condition, it shall be taxable pursuant to beverage tax law.

Because Categories of Excise Tax Rate Act B.E. 2527 does not provide the definition of “beverage selling machine”, it will cover to any characters but it does provide the definition of industrial factory to include beverage selling machine. The owner or manager or other people who are responsible for the operation on selling beverage from the beverage selling machine will be deemed as an industrial operator. They shall have the duty to file an application for registration of excise tax including carrying on a daily account concerning income, expense, raw material, distribution account and paying excise tax pursuant to provided rate. In the present, the tax is collected for beverage which is made or packed or obtained from beverage selling machine at 11.32 baht per liter, at the rate of 20 percent of the value so tax is 2.26 baht per liter.

The meaning of beverage selling machine, according to Categories of Excise Tariff Act B.E. 2527 does not provide the definition of beverage selling machine. therefore, it is still a problem to consider the definition of beverage selling machine which will be taxed in accordance with the law. Only the Director-General of the Excise Department has an authority to interpret the meaning of beverage selling

machine and the interpretation must be publicized in the Government Gazette⁶⁴ for the public to acknowledgement. In practice, the Director-General of the Excise Department does not interpret the character of the beverage selling machine and publicize in the Government Gazette for the public to acknowledge. There is only the opinion of the excise officer who decides whether which beverage selling machine can be taxed or not. They provided that the “beverage selling machine” is a selling machine which produces the products in the same way as producing the beverage in the industrial plant, for example, using the syrup concentration mixed with the selling machine (Post – Mixed Machine used for producing sparkling water) as the beverage. Even the drinks obtain from dispensing beverage machine are not sealed with a package, it is considered to be a drink pursuant to Excise rate tax act B.E. 2527 because it covers any of the drinks made , contained or derived from the dispensing beverage machine.

The beverage which is deemed to be the beverage pursuant to the meaning of Categories of Excise Tariff Act B.E. 2527 must consider the crucial requirement from the strict interpretation in the written legislation. It can not be interpreted without the law, it can not be interpreted with the equity principle, it can not be interpreted with the presumption, it can not add the meaning of the law, and it can not be implicitly interpreted⁶⁵. It must be alphabetically interpreted with the law. If it is not defined as the beverage, it should not be expanded by interpretation or freely interpreted, using presumption, implicitly interpreted. It can only be interpreted by the word in Excise Tariff Act B.E.2527.

Nowadays, the Excise Department still has not given the definition of beverage selling machine in Excise Tax Act. The Excise Tariff Act section5 allows the Director-General of Excise Department to have the right to give the meaning in

⁶⁴ Section 5 Excise Tariff Act B.E. 2527 The director of excise department is empowered to interpret the attachment of this Excise Tax Rate Act which is declared by the gazette.

The interpretation in the first paragraph is not retroactive

The interpretation shall consider the principle which was declared by the gazette.

⁶⁵ Permboon KaewKeaw, The Manual of Tax Revenue, p.18.

Excise Tariff Tax, so if the Director-General still has not explained the clear definition of the beverage selling machine, this problem will cause a lot of problems in practice to the excise officer because the officer can not give the clear answer to people whether what type of machine will be deemed as beverage selling machine. Currently, the officers have to decide which machine will be deemed as beverage selling machine by themselves. Sometimes, their opinion or interpretation may be against section 5 of Excise Tariff Tax Act and may be guilty.

4.2 The Problems of Specific Kinds of Beverage Selling Machine

From the information study concerning beverage selling machine in Thailand, it is found that the beverage selling machine can be divided into three characters. The principles of the aforesaid beverage selling machine have different systems as follows:

1. Post-Mix system is a sparkling water dispensing machine. The machine can produce every type of the carbonated beverage such as Coke, Pepsi, Sprite, and Soda etc. The character of this machine is composed of concentrated syrup, the carbonic gas tank or the carbonic injection machine and clean water. The machine consists of a cooler and pump machine for vacuum the syrup which is the concentration in demanded flavor. The clean water will be mixed with carbonic gas. The outcome is the ready to drink carbonic beverage. It operates by pushing the demanded flavors button.

2. Ice slushy system is a beverage machine which turns the juice or syrup into small ice crystals. The machine consists of a special cooler which quickly turns the syrup into ice crystals. When the consumers want this kind of beverage, they only lever the front switch. The small ice crystal beverage which is ready to be consumed will flow from the machine.

3. Jet Spray system is the syrup or juice dispensing machine. It consists of a cooler machine and plastic vase containing the prepared syrup or juice with no carbon dioxide. There will be no production or any process from this machine because the cooler machine keeps the juice from being expired or rotten. When the

consumers want the beverage, they just push the switch for opening or closing. The syrup or the juice will flow.

4.2.1 Problem of Post Mix Machine or Fountain Drinks to be beverage selling machine

The beverage selling machine in the first character is deemed to be a beverage selling machine by considering that the machine can produce the beverage. It makes the concentrated syrup mix with water and carbonic gas turns them into carbonate beverage. If the aforesaid beverages are contained and sealed in the containers, it shall be deemed as the beverage which is taxable. It is consistent with the objective of the definition “beverage” pursuant to Categories of Excise Tax Rate Act B.E.2527. The law provides that “... Shall include the beverage made or contained or derived from beverage selling machines even if the method of sales are not in contained or sealed condition.

Therefore, the excise department has considered the character of this machine and ruled that the machine is a “beverage selling machine” and is not accorded with objective of the law which is to collect tax for the contained and sealed beverage. The excise tax shall be paid even if the mentioned beverage is produced without container or seal for the fairness of the industrial entrepreneurs who produced the same kind of beverage. So when the beverage selling machine is deemed as an industrial plant under section 4, actually post mix machine⁶⁶ is not similar or same as an industrial plant because when the industrial plant produces commodities such as carbonated beverages they will use the beverage mixer machine⁶⁷ which is much bigger than the post mix machine and can produce a lot of commodities. This machine also can not stop while producing the commodities because it will effect the commodities and cost of the commodities but post mix machine can dispense the beverage anytime, just put a cup at the dispense valve.

⁶⁶ See appendix A.

⁶⁷ See appendix B.

This Beverage mixer machine is used for producing all carbonated beverages (water, syrup, and CO₂ mixing), for example lemon, Coca Cola, fruit's juice and so on. It is the main equipment in the whole beverage production line.

The difference between post mix machine and beverage mixer machine	
Post Mix Machine	Beverage Mixer Machine
Can dispense at anytime	While producing can not stop machine
Many types of beverage in machine	Have to produce each type
Can dispense one glass	Have to produce a lot to save cost

Table 6 The Difference between Post Mix Machine and Beverage Mixer Machine

Nowadays, the Excise department collects tax from post mix machines by registering the post mix machine and collecting tax on volume of beverage which the machine has dispensed at rate of 2.26 baht per liter.

4.2.2 Problem of Ice Sloveby Machine⁶⁸

As for the beverage selling machine in the second character, it is the machine which turns the syrup or juice into small ice crystals. By the nature of this machine, it is capable of making syrups or juice which is already flavored. It has no carbonic gas mixture in the small ice crystals. The syrup or the juice in this machine, if the manufacturer sells it for retail, shall not be deemed as beverage. By the reason that the beverage is produced by the manufacturer, it does contain neither carbonate nor preservative. In addition, by the nature of this kind of beverage, it normally can not instantly be consumed because of the icing condition.

The director of excise tax department ruled that the beverage which has the nature of ice crystals shall not be considered as “beverage” under the second part

⁶⁸ See appendix C.

of Excise tax rate in Categories of Excise Tax Rate Act B.E. 2527 which was amended by Categories of Excise Tax Rate B.E.2534 (no.3).⁶⁹

The researcher has an opinion that the sloveby machine and the jet spray machine are similar working. There is only the cooler that is not the same because the sloveby machine has a larger cooler than the jet spray machine to cause beverage in vase to become small ice crystals. If the owner put the same beverage in these two machines the machine can not change taste, color or smell of the beverage into another. As a result, sloveby machine is not deemed to be beverage selling machine and is against the principle of good taxation in fairness. It is not fair for the operators who owns these two types of machines.

4.2.3 Problem of Jet- Spray⁷⁰

Jet Spray is a clear glass vase. It has the cooler as the component for preserving the juice from being rotten. It can contain the flavored juice or vegetable juice and it has no mixture of carbonate. For the convenience in retail distribution to the consumers, if the juice or fresh vegetable beverage contained or derived from the aforementioned machine and contained or sealed in the containers, there is no requirement to file a written application for excise tax exemption. It shall not be taxed.

The Excise department had considered and ruled that the Jet Spray was deemed to be a beverage selling machine. The industrial entrepreneur is required to register the beverage selling machine. They shall have the duty to pay excise tax because the excise department considered it as the industrial factory. By the reason that when tea, coffee powder in the large containers is put into the beverage bin and the beverage was sold from the bin, it is deemed to be contained beverage or the beverage derived from beverage selling machine pursuant to Categories of Excise Tax Rate Act B.E.2527. This matter is the selling of contained beverage or beverage derived from the beverage selling machine. It is not the case of production for their

⁶⁹ Ruling of Excise Department No.433/2538 the Excise Tariff Act schedule concerning icing product. Dated on 4 December B.E.2538 (declared in the Royal Gazette general announcement 112 chapter100 dated on 14 December B.E.2538).

⁷⁰ See appendix D.

own retail selling in particular according to subsection 3 of the definition on “beverage”.⁷¹

The aforesaid matter became a problem to entrepreneurs who sell foods and beverages in general. A large number of entrepreneurs are not aware that the mentioned Jet Spray is deemed to be a beverage selling machine. The entrepreneurs who sell juice or vegetable juice from the machine have to register with the local Excise office. They have to pay the excise tax if they do not file a written application for excise tax exemption because selling beverage such as tea, coffee and juice, on which the entrepreneurs produce for retail selling is not deemed to be the beverage pursuant to Categories of Excise Tax Rate Act. The entrepreneurs neither register the Excise Tax. In addition, the selling of general beverage is not required to carry on a daily account and the monthly statement and declaring raw material in production and distribution of the product. They neither file a monthly statement to the local excise office nor notify the normal working hours and the holiday to the local excise office.

In the case of the beverage selling machine in the third character which is syrup or juice dispensing machine. The nature of the machine does not produce, make or transform anything to process the beverage. It is just a cooler machine which has a tank containing flavored beverage. Furthermore, this kind of beverage does not contain carbonate mixture. If the manufacturers sell the flavored beverage in retail, it shall not be deemed to be “the beverage” which is taxable. If the manufacturer keeps the flavored beverage in the refrigerator or cooler and distributes the beverage to the consumers, the refrigerators or the coolers shall not be deemed as beverage selling machine.

In the case of the beverage is made or derived from juice or fresh vegetable, it is currently exempted by excise tax law. The manufacturers do not have to file an application for tax exemption to the director general of the excise department. It does not have to produce in the mixture ratio provided by the excise department. Moreover, if the manufacturer produces the juice or vegetable beverage for particular sale in retail, the beverage shall not be deemed as “the beverage” pursuant to the law.

⁷¹ Ruling of Excise Department, No. KK 0709/27394 dated on 31 June 2536.

If the manufacturer contains the juice or vegetable beverage which has the third character (Jet Spray), in the present, it is deemed to be juice or vegetable derived from the beverage selling machine. They have to register the beverage selling machine because it is considered as an industrial factory. The entrepreneurs are required to pay for the excise tax. They shall also have the obligation to carry on daily account and report the statement of dispensing of the raw material and report the sale statement.

The ruling of the excise tax concerning syrup or fruit dispensing machine deemed to be a selling beverage machine affects the unusual result. Any manufacturer keeping the syrup or juice in the refrigerator or cooler to keep it in the low temperature and prevent it from being rotten, in the same way as syrup or fruit dispensing machine in the third character, the excise department shall not consider the refrigerator or the cooler as the selling beverage machine.

If the beverage selling machine is only the equipment for selling the beverage for example, refrigerator or cooler which has a slot for keeping the juice from becoming putrid, the aforementioned machine can not mix the syrup concentration for producing the beverage by itself. As mentioned, the researcher has an opinion that the jet spray machine can not be considered as a beverage selling machine because it does not produce the beverage from the mentioned cooler.

However, vending machine should also be included for taxation same as other three kinds of beverage machines that have been mentioned earlier. The reason which has been given by excise department was that the beverage itself has already been taxed before transporting out from its industrial plant.

Chapter 5

Conclusion and Recommendation

5.1 Conclusion

The phrase “beverage selling machine” was first provided in the year 2515 by amending the beverage tax Act B.E.2509 by revolutionary proclamation and gave the new definition of “beverage” in section 4 which means that something which is used as beverage without mixing and there is no alcohol, whether with or without carbon dioxide gas packed in containers and sealed, such as sweetened drink, fruit juice, soda water and shall mean to include beverage made or packed or obtained from the beverage selling machine, no matter how it is sold even though not packed in containers and sealed but not included water or mineral water in the natural state. These include the beverage which the producer has produced for his own retail sales, which does not contain carbon dioxide and does not preserve the quality with chemicals, milk without any mixing, and also the beverage which the minister has notified in the government gazette.

Then in the year 2534 the definition of beverage was amended again as “Beverage” which means that it is used as a beverage without mixing and there is no alcohol, whether with or without carbon dioxide gas packed in containers and sealed, such as mineral water, sweetened drink, fruit juice, vegetable juice, soda water, and shall be meant to include beverages made or packed or obtained from the beverage selling machine, no matter how it is sold even though not packed in containers and sealed, with the exception of the following:

1. water or mineral water in the natural state.
2. distilled water or filtered water for drinking without any mixture.
3. beverage which the producer has produced for his own retail sales which does not contain carbon dioxide gas and does not preserve the quality with chemicals.
4. milk and other milk with or without other mixture according to the standard specified in law on food.
5. beverage which the Minister has notified in the Government Gazette.

This definition has been used until present and it still has the word beverage selling machine inside. The word beverage selling machine has been provided in excise law for more than 30 years until present but the Excise Department has never provided the definition of “beverage selling machine” to cover any characters but it does provide the definition of industrial factory to include beverage selling machine.

In present days, Excise Department collects beverage tax on that which was made or packed or obtained from beverage selling machines at 11.32 baht per liter, at the rate of 20 percent of the value so tax is 2.26 baht per liter.

There is still a problem to consider whether such equipments will be considered as beverage selling machine or not. Only the Director of the Excise Department has the authority to interpret the meaning of dispensing beverage machine and the interpretation must be publicized in the Gazette⁷² for the public acknowledgement. However, in practice there is still a problem with the beverage selling machine because the director of the excise department does not interpret the character of the beverage selling machine and publicize in the gazette for public to acknowledgement. There is only the opinion of the government official. They provided that “beverage selling machine” is a selling machine which produces the products in the same way as producing the beverage in the industrial factories, for example, using the concentrate syrup mixes with the drinks in the selling machine (Post – Mixed Machine using for produce Soda). Even the drinks obtained from the beverage selling machines which is not sealed in a package. It is considered to be the drink pursuant to Excise rate tax act B.E. 2527 because it covers all of the drinks made, contained or derived from the beverage selling machine.

Therefore, the excise department has considered the character of this machine and ruled that the machine is a “beverage selling machine” and will be taxed. Nevertheless, such consideration may conflict with the objective of the law which is to collect tax for the contained and sealed beverage. The excise tax shall be imposed

⁷² Section 5 Excise Tax Rate Act B.E. 2527 The director of excise department is empowered to interpret the attachment of this Excise Tax Rate Act which is declared by the gazette.

The interpretation in the first paragraph is not retroactive

The interpretation shall consider the principle which was declared by the gazette.

even if the mentioned beverage is produced without a container or seal for the fairness of the industrial entrepreneurs who produced the same kind of beverage.

From the principle in collecting tax, the first, and most important principle is the fairness together with collecting excise tax principle. It emphasizes on collecting extravagant products or products useless to the public. The law wants to control and limit certain kinds of consumable products especially carbonated beverages.

Washington, USA provides syrup tax to collect tax on the wholesale or retail sales of syrup sale within this State. The rate of wholesale and retail are the same rate at 1 dollar per gallon. In USA there are about 19 States collecting taxes from unhealthy foods such as soft drinks, candy, chewing gum, or snack foods. Every state will issue their own law to use in their state, so the tax rate will not be the same and also tax will not be collected the same on all goods. The state will collect tax from syrup or concentrate which is use to produce a carbonated beverage. This style of collecting taxes in the USA can tell us that they do not focus on how the beverage was produced but they focus on how much syrup or concentrate you have bought. Tax officers will tax on volume of quantity. With this method they can collect tax more completely than the method used in Thailand because if the owner of the machine does not register the machine, a tax officer will not know about it.

5.2 Recommendation

From the analysis there are two ways to solve the problem as follow:

5.2.1 The Definition of the Phase Beverage Selling Machine

Nowadays, Thailand does not have the definition of a “beverage selling machine” in the Excise Tax Act. So, it is recommended that Thailand should provide the definition in order to explain what machine should be deemed as a beverage selling machine or should not be deemed as a beverage selling machine. The Excise Department must give the clear definition in the meaning of beverage selling machine which eases the relevant persons to understand.

In section 4 of the Excise Tax Act, it gives the meaning of an industrial plant including beverage selling machine, which is not fair for the owner of beverage

selling machine because the meaning of a beverage selling machine is not clear. So, the law should not include beverage selling machine as an industrial plant, it will not be right; industrial plant is industrial plant which should be separated from the beverage selling machine and already has been explained in the Chapter 4.

In this respect, the Government should issue an Emergency Decree to revise the collateral Excise Tax Act in section 4 to give the definition of a beverage selling machine and amend the meaning of an industrial plant by cutting the words “including beverage selling machine”.

5.2.2 Syrup Tax Collection Should Be Issued in Thailand

From the analysis, we should consider taking the principles of syrup tax in the United States and adapt to use in Thailand by collecting tax on syrup or concentrated drink-mixer. Government should cut off and stop using the phrase “beverage selling machine”. Then, adds the syrup tax in Excise Tariff Act part 2 beverage by providing the definition of syrup and should use the United State’s law as a guideline that researcher has written in chapter 3.

This method will help department collect more taxes and it is easier to control the tax more than in the past and no need to waste time to find out which restaurants, groceries or any places have own the beverage selling machine and have already registered and paid tax or not. The officers will have more time to pay attention to other products so it means government does not have to add more officers in this matter. As David R. Shorton said, “Instead of taxing tobacco in the hopes of gaining revenue for a cash-starved budget, I suggest we look at a real gold mine of revenue - soft drinks! The supply of tobacco-addicted consumers is limited and hopefully diminishing. The number of consumers of soft drinks, defined as carbonated and corn syrup sweetened beverages is almost universal and growing. A levy of a few cents per liter for soft drinks would generate a steady stream of revenue”.⁷³ Soft drink taxes provide a dual benefit; they could drive down soft drink consumption and generate revenue for much-needed health programs.

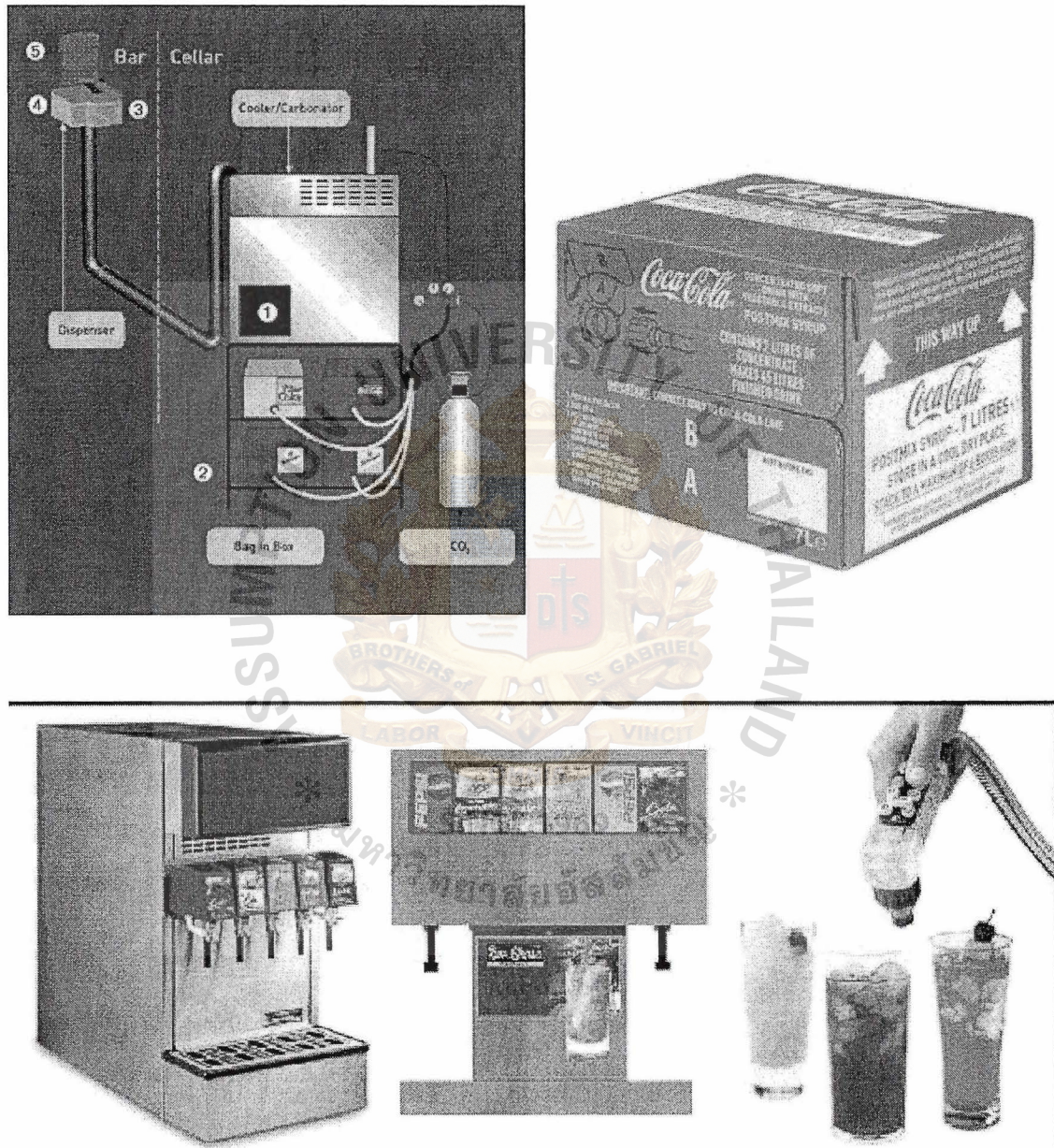
⁷³ David R. Shorton, Rise Soft Drink Tax (United States: Deseret News Publishing Co.) At http://findarticles.com/p/articles/mi_qn4188/is_20090130/ain31310453/?tag=content;col1. (last visited 20 October 2009).



Appendices

Appendix B

Post mix machine



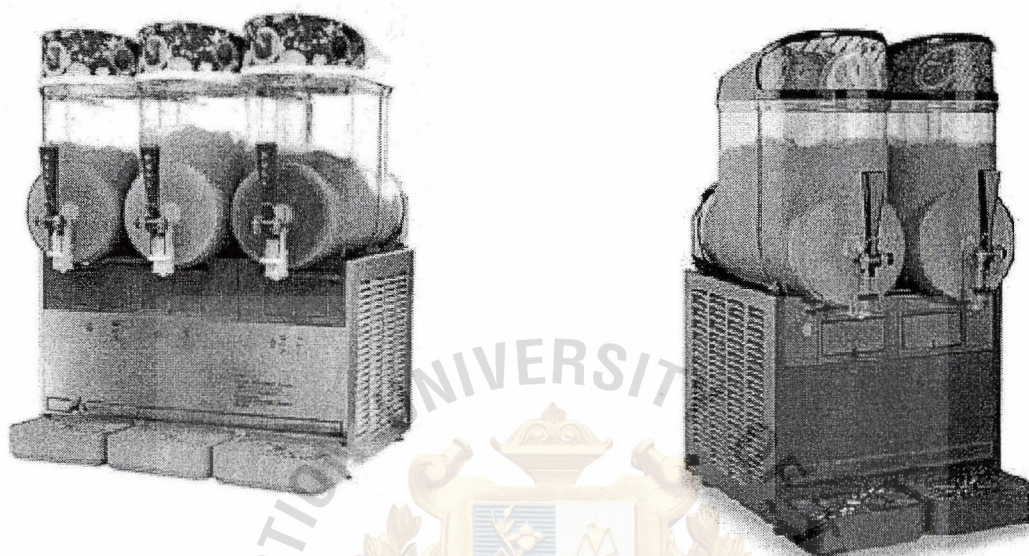
Appendix C

Beverage mixer machine



Appendix D

Sloveby machine



Appendix E

Jet-spray



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