

**Citizens. Secretaries of the Executive Panel of the Senate of the Republic of the Hon.  
Congress of the Union**

**P r e s e n t:**

**MARCELA TORRES PEIMBERT, SILVIA GUADALUPE GARZA GALVÁN, GABRIELA CUEVAS BARRÓN, LUIS FERNANDO SALAZARFERNÁNDEZ, JUAN CARLOS ROMERO HICKS, FRANCISCO SALVADOR LÓPEZ BRITO, MARTÍN OROZCO SANDOVAL, LUZ MARÍA BERISTAIN, MARIO MARTÍN DELGADO CARRILLO, SOFÍO RAMÍREZ HERNÁNDEZ,** Senators of the Republic for the 62<sup>nd</sup> Legislature of the Congress of the Union, and members of the Parliamentary Groups of the *Partido Acción Nacional* [National Action Party] and the *Partido de la Revolución Democrática* [Party of the Democratic Revolution], based on Article 71, fraction II of the Political Constitution of the United Mexican States; as well as Articles 8, numeral 1, fraction I, 164, numeral 1, 169 and 172 of the Rules of the Senate of the Republic, we submit for the consideration of this Sovereign Entity the following

**INITIATIVE WITH DRAFT DECREE WHEREBY THE LAW OF THE SPECIAL TAX ON PRODUCTION AND SERVICES IS AMENDED AND VARIOUS PROVISIONS ARE APPENDED,** as follows:

#### **Explanation of the Case**

This initiative is submitted with the support of the following deputies (37 in total):

**Eberto Neblina Vera, Fernando Rodríguez Doval, Gabriel de Jesús Cárdenas Guízar, Juan Carlos Uribe Padilla, José Ángel González Serna, Juan Carlos Muñoz Márquez, Karina Labastida Sotelo, María Conception Ramírez Diez Gutiérrez, Eufrosina Cruz Mendoza, Enrique Alejandro Flores, Martha Leticia Sosa Govea, Ramón Antonio Sampayo Ortiz, Carlos Alberto García González, Juan Pablo Adame**

**Alemán, María Teresa Jiménez Esquivel, Omar Antonio Barboa Becerra, Leslie Pantoja Hernández, María Isabel Ortiz Mantilla, José de Jesús Oviedo Herrera, Andrés de la Rosa Anaya, Alicia Conception Ricalde Magaña, Mario Alberto Dávila Delgado, Alberto Díaz Trujillo, Glafiro Salinas Mendiola, Julio César Lorenzini Rangel , José Guillermo Anaya Gómez, Marcelo de Jesús Torres Cofiño, *Fernando* Rodríguez Doval, of the Parliamentary Group of the Partido Acción National, Laura Barrera Fortoul, Francisco Javier Fernández Clamont, of the Parliamentary Group of the Partido Revolucionario Institucional, Rosario Pariente Gavito, Rubén Acosta Montoya, Bárbara Romo Fonseca, Felipe Arturo Cámara, Ruth Zavaleta Salgado, Analilia Garza Cadena, of the Parliamentary Group of the Partido Verde Ecologista de Mexico and Roberto López González of the Parliamentary Group of the Partido de la Revolution Democrática.**

(Signatures are attached)

#### **A. Constitutional Foundation.**

The right to the protection of Health, as one of the social rights with content involving services by definition, implies that the State must perform a series of positive actions (of doing) that seeks to safeguard the health of its people, or otherwise, to restore it when it has been impaired. Accordingly, Article 4 of the Constitution, insofar as it provides that “*Every person has the right to the protection of health (...)*,” states that “***the legislator, in implementing the demarcation of the individual spheres required by rights of protection, comprises a decisive part of the legal system, and thereby, an essential part of social life***” [1], wherefore he is obliged to establish laws that permit such protection, which cannot be only linked to access to health services, but also to creating the conditions for the public, in the normal conduct of its activities, to be able to see the aforesaid fundamental right protected.

It is on these grounds that the protection of health is one of the fundamental tasks of democratic States, and represents one of the key elements of the welfare State, by obliging it to create public policies to put it into practice, including, for instance, those involving taxation.

In this regard, it is necessary to bear in mind what is meant by Health, since all actions of the State should, as already noted, tend towards maintaining it. Accordingly, health involves, according to what is stated by the International Conference on Primary Health Care, *“the state of complete physical, mental, and social wellbeing, and not only the absence of afflictions or diseases (...),”* hence all laws issued by the legislative branch should contribute to its maintenance and protection.

The foregoing, moreover, is confirmed by what is set forth in Paragraph 56 of General Observation 14 on Article 12 of the International Covenant on Economic, Social and Cultural Rights, issued by the UN Committee of Economic, Social and Cultural Rights, which establishes that **States must adopt framework legislation to give greater effectiveness to the national strategy that they must enunciate to make the right to health a reality.** [2]

Similarly, and at the inter-American level, we note that the American Declaration of the Rights and Duties of Man recognizes (Article XI) that *“every person has the right to have his health preserved by sanitary and social measures concerning nourishment, clothing, housing and medical care, corresponding to the level allowed by public resources and those of the community.”*

As can be observed, the creation of laws permitting the actual protection of health cannot be solely construed as being linked to health matters, but rather to others as well, such as taxation, particularly with the intention of establishing taxes that, on one hand, inhibit behaviors that are

harmful to health and, on the other hand, when they are enacted, generate funds to meet the expenditures for their care.

Moreover, the Supreme Court of Justice of the Nation has thus understood the right to the protection of health, in holding that this is *“a social responsibility that the State, society and the interested parties indissolubly share, based on criteria of ability to pay taxes, and redistribution of income.”* [3]

Hence the thought that establishing taxes that make it possible to execute such functions should be seen as a policy of State, that is, tax policy with an eminently social purpose, in this case, associated with the right to health and its protection.

#### **B. The Special Tax on Production and Services, as a tax with fiscal and extrafiscal purposes concerning public health.**

The obligation of the State to meet public expenditures, among them, those associated with the protection of health, constitutes an essential task, not only to make the right to health effective, but also to create conditions allowing for its protection. Accordingly, the need to establish taxes to generate revenue in order to pay for such expenditures and, in tandem with this, to inhibit behaviors harmful to health, is a fundamental tool. All the more so if we consider that our country requires greater tax resources, especially non-petroleum resources (to avoid being subject to their volatile behavior) in order to enable it to bear these and other costs.

So it is that considering an increase in indirect taxes, such as the Special Tax on Production and Services, which by definition has the function of raising funds, and which also makes it possible to fulfill an extra-fiscal purpose, depending on the target of the levy, such as inhibiting

the consumption of certain products that can cause a public health problem (such as soda, or beverages with high sugar content, for example), proves to be an appropriate mechanism for achieving the indicated objectives, that is, achieving a higher intake of tax income and preventing the consumption of products that are harmful to the country's public health.

Furthermore, this is a tax that is easy for the fiscal authorities to collect, administer, manage and control, since the way it is collected is done through a few taxpayers, which helps with tax management.

In this light, the levying of the Special Tax on Production and Services on soda and sugared beverages would not only allow for greater collection to defray the public expenditures of the Federation, federal institutions and municipalities, (given that the tax in question is participatory and directly assessed), but it would also be an instrument to inhibit the consumption of such beverages, since it has been proven that an increase in their price has a direct bearing on reducing their consumption (this is a product with an elastic demand in economic terms).

### **C. Overweight and obesity as a Public Health problem in Mexico.**

In Mexico, overweight and obesity represent one of the greatest public health problems, considering that 39.05% of the population is overweight and 32.15% subject to obesity, substantially increasing the risk of suffering diseases such as diabetes and cancer.

In this regard, according to the 2012 National Survey of Health and Nutrition, children of school age (of both sexes), from 5 to 11 years old, exhibited a combined national prevalence of overweight and obesity of 34.4% in 2012, with 19.8% overweight and 14.6% subject to obesity, whereas for adults the combined prevalence is 73% for women and 69.4% for men.

These public health problems have as one of their central causes the consumption of soda, since Mexico is the main consumer of such beverages in the world. Our country consumes an average of 163 liters of soda per person per year, which is 40% higher than the consumption of an average American (118 liters). [4]

According to data of the 2010 National Survey of Household Income and Expenditures, conducted by the National Institute of Statistics and Geography, in 2010, Mexican families' expenditures on non-alcoholic beverages (including sodas) accounted for 5.7% of expenditures on food and beverages. Mexican households allocated the same amount of money to sodas as they did to beef and veal. [5]

According to Stephanie Seneff, researcher at the Massachusetts Institute of Technology, a serving of 500 milliliters of soda contains 220 calories, without contributing any kind of nutrients. This volume of soda contains 60 grams of sugar, which is equivalent to 12 spoonfuls of sugar. [6]

According to the article, "Ounces of Prevention — The Public Policy Case for Taxes on Sugared Beverages," published by Dr. Kelly Brownell and Dr. Thomas Friedman in the *New England Journal of Medicine*, the probability of a child's being obese increases 60% for each serving of soda (of 227 ml) that it consumes per day, at the same time that the probability increases of suffering from diabetes and other diseases associated with being overweight. [7]

In the case of women, consumption of a daily portion of soda increases the risk of heart disease by 23%, which goes up by 35% for those who consume two or more servings a day [8] Another study conducted in 2009 by the University of California in Los Angeles demonstrates that adults

who consume soda occasionally are 15% more likely to suffer from overweight and obesity. This figure goes up to 27% if consumption is of one or more servings a day. The study also indicates that in children and adolescents, overweight and obesity are associated with a higher cardiovascular risk, high cholesterol, high blood pressure and diabetes, among others [9]

The Center for Research on Health and Nutrition of the Secretary of Health states that the increase in the consumption of soda causes an increase in cases of diabetes and early obesity in Mexican children and youth because they are beverages prepared with sucrose, glucose and fructose, which affect the pancreas and can easily get into the blood, becoming part of the tissue and turning into fat. [10]

According to David L. Katz, specialist in internal and preventive medicine and Director of Yale University's Prevention Research Center, consumption of sugar in excess can prove harmful in any of its forms (sucrose, fructose, etc.), and provides only empty calories, which contribute to weight increase, hormonal imbalance, insulin resistance and diabetes. [11]

The increase in the prevalence of overweight and obesity on a global scale is closely linked to a tendency to increase the ingestion of hypercaloric foods rich in fat and sugars, including sodas and sugared beverages, which contain few vitamins, minerals or other nutrients. [12]

Furthermore, obesity and overweight have a high cost for Mexico, not only because 8 out of every 10 deaths in the country are caused by chronic non-transmittable diseases related with these afflictions [13], but also because of the growing cost it represents for the public health system.

In Mexico, the total cost of overweight individuals and obesity doubled from 2000 to 2008, going from \$35.429 billion pesos to at least \$67.345 billion pesos. It is estimated that this expenditure will go up to \$150.86 billion pesos in 2017, equivalent to five times the budget for UNAM in 2012 (\$32 billion pesos). [14]

Similarly, the estimated indirect cost for the loss of productivity due to premature death caused by obesity came to \$25 billion pesos in 2008, which has an annual growth of 13.51%. If this problem is not solved through programs and public policies for prevention and reduction of obesogenic factors, this cost will reach \$73 billion pesos in 2017, equivalent to the GDP of states such as Nayarit and Colima, which will affect approximately 68 thousand families per year. [15]

According to the study "Impact of the change in consumption of sugared beverages on caloric intake in children and adolescents," of the National Center for Biotechnology Information in the United States, the replacement of sugared beverages by products without energy is related to the reduction in caloric intake, so that it represents a key strategy for eliminating excess calories and preventing obesity. The results of this study indicate that for each additional service (230 milliliters) of sugared beverages, keeping other beverages constant, there is an increase of 106 kcal per day. On the other hand, no net increase was seen in total energy consumption in the case of water (8 kcal/d). The study concludes that replacing a sugared beverage with water would help to reduce caloric intake by 235 calories per day. [16]

Liquids have an absolute lack of dietetic compensation, which suggests that the organism does not register the ingestion of energy from beverages to then regulate the appetite and the intake of food. From 1999 to 2006 energy consumption from beverages doubled for all age groups.

Consumption of beverages with sugar and low nutrient content (sodas, juices, “*aguas frescas*” and coffee with sugar) is recommended only occasionally and in small servings, since they provide excessive calories and zero, or only very slight nutritional benefit. Given the low satiation produced by these beverages, their net effect is an increase in the consumption of energy and therefore, obesity. [17]

Nutritionist Guadalupe Elsa Quijano Romo, head of Nutrition at the General Hospital in Zone No. 26 of the Mexican Institute of Social Security (IMSS), located in Mexico City, confirms that empty calories do not help human growth or development, and only turn into a health risk. Moreover, she affirms that due to the high consumption of empty calories that occurs in Mexico we have become one of the countries with the highest level of obesity in the world, without overlooking the fact that the population with chronic degenerative diseases (of long duration that become worse over time), such as diabetes (an increase in the concentration of blood sugar due to the organism’s inability to use it), hypertension (high blood pressure), hyperlipidemia (high levels of fat in the blood) and circulatory problems increase permanently. [18]

**D. The Special Tax on Production and Services on sodas and sugared beverages as an instrument for raising revenue and inhibiting behaviors harmful to public health.**

Because of the situation described in the previous item, and considering the constitutional foundations noted, as well as the feasibility of using fiscal policy instruments such as establishment of tax payment, the aim is to endow the State through the present Initiative with greater resources to deal with expenditures in the health sector deriving from overweight and obesity, and therefore, to have the means to provide medical care to those affected, and to discourage the consumption of sodas and sugared beverages, as a measure of an extrafiscal nature.

This kind of tax gives governments the opportunity to seek a public good (public health) and also benefit the treasury (with higher tax revenues).

In this light, by extension, the assertions contained in the judgment handed down by the First Chamber of the Supreme Court of Justice of the Nation in settling Protection in Review 1088/2007 prove applicable, condensed as the following thesis of Jurisprudence:

***“PRODUCTION AND SERVICES. THE EXTRAFISCAL PURPOSE SOUGHT IN IMPOSING A HIGHER RATE OF TAXATION ON BULK PROCESSED TOBACCO IS DIFFERENT AND INDEPENDENT FROM THE PREROGATIVE OF THE CONGRESS TO IMPOSE A SPECIAL RELATED TAX.***

*Article 73, fraction VII, of the Political Constitution of the United Mexican States sets forth the prerogative of the Congress of the Union to levy the necessary taxes to cover public expenditures, on the basis of which the tax on the sale and importation of the goods is indicated in the Law of the Special Tax on Production and Services. Now then, through the Decree published in the Official Diary of the Federation on December 27, 2006, the legislature established a higher tax on tobacco processed in bulk in relation to other products, for the purpose of discouraging its consumption, that is to say, the measure in question did not fulfill the purpose of all taxes to contribute to public expenditures, but rather the extrafiscal purpose consisting of discouraging the consumption of a product harmful to health, which is different and independent of the prerogative of the Congress of the Union to levy the respective tax, **for although the special tax on production and services has the purpose of raising revenues, it is different owing to the fact that it seeks to discourage tobacco consumption, which is achieved through the imposition of a high rate, not by the tax in and of itself.**”*

By the same token, also by extension, the theses set forth below are applicable for their illustrative effects:

“PAYMENT OF TAXES. EXTRAFISCAL PURPOSES.

In addition to the revenue-raising purpose that taxes have to defray the public expenditures of the Federation, States and Municipalities, they can also serve in an ancillary fashion as effective instruments to promote such financial, economic and social policies as the State may have an interest in pursuing, guiding, channeling, encouraging or discouraging certain activities or social practices, depending on whether or not they are deemed useful to the harmonious development of the country, as long as they do not violate the guiding constitutional principles of taxation.

“PAYMENT OF TAXES. EXTRAFISCAL PURPOSES CANNOT JUSTIFY THE VIOLATION OF ARTICLE 31, FRACTION IV, POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES.

The existence of an extrafiscal purpose, the latter being understood as an objective other than the raising of revenue which it is sought to achieve through the establishment of a particular tax, cannot be converted into an isolated element to justify the violation of the principles of legality, proportionality, equity and allocation towards public expenditures as enshrined by Article 31, fraction IV of the Constitution. Extrafiscal purposes are exclusively other elements that the body conducting oversight must analyze to determine the constitutionality, or lack thereof, of a particular precept.”

Hence the legislature's prerogative to establish taxes and promulgate, among other things, laws that prove indispensable to channeling and fomenting the country's economic development, as well as to achieve a more just distribution of wealth. It needs to be specified that extrafiscal purposes are achieved not solely through the establishment of taxes, but also through exemptions.

Indeed, the extrafiscal purpose sought, and that justifies the establishment of the tax proposed below, is intended to bring about a reduction in the consumption of soda and sugared beverages, and thereby, a reduction in all public costs that are associated with health.

#### E. Content of the Initiative

Accordingly, through the present Initiative, essentially the following is proposed: i) to establish a tax on soda and sugared beverages, and ii) to determine that the tax revenues collected under this heading are to be allocated to defray expenditures caused by the diseases resulting from their consumption, through the National Health System, without impairment to what is set forth in the Law of Fiscal Coordination.

The proposals in question are set forth in detail below:

##### **I. Establishment of the tax.**

It is deemed necessary to apply a special *ad valorem* tax of 20% on the price of sale to the general public of any of the following beverages and products to produce beverages that are sweetened with sugars, and therefore have a caloric content: carbonated natural and mineral waters; sodas; concentrates, powders, syrups; essences or extracts of flavors, which upon

being diluted make it possible to obtain sodas, since, as noted, the content of the latter in such beverages is one of the main causes of overweight and obesity.

In this regard, in addition to the definition proposed for soda, the definition of “sugars” is put forward in accordance with what is established in **OFFICIAL MEXICAN STANDARD NOM-051-SCFI/SSA1-2010, GENERAL LABELING SPECIFICATIONS FOR FOOD AND NON-ALCOHOLIC BEVERAGES PRIOR TO PACKAGING – COMMERCIAL AND HEALTH INFORMATION** (*NORMA OFICIAL MEXICANA NOM-051-SCFI/SSA1-2010, ESPECIFICACIONES GENERALES DE ETIQUETADO PARA ALIMENTOS AND BEBIDAS NO ALCOHÓLICAS PREENVASADOS INFORMACION COMERCIAL Y SANITARIA*), with the aim of clearly indicating what is the purpose of the tax.

Furthermore, it is necessary to mention that this tax also finds support in what is established in Article XX, sub-paragraph b, of the General Agreement on Tariffs and Trade (GATT), which states that:

*“(...) no provision of this Agreement [GATT] shall be construed in such a way as to prevent any party from adopting or applying measures: (...)*

*b) necessary to protect the health and life of people and animals, or to preserve plant life; (...).”*

The foregoing is so, since the explanation and justification for the tax measure being proposed is to protect public health in Mexico, in light of the context described in the respective chapter of this initiative, such that it should not be taken as a measure that goes against international commitments entered into by our country. Furthermore, the measure applies to all sodas, according to the definition proposed, as well as beverages containing sugar, regardless of the type of the latter.

In this sense, while the main objective of the tax on soda and sugared beverages is to discourage the consumption of these products because they are related to an increase in rates of overweight and obesity, the revenue that could be raised with the proposed tax, according to Dr. Arantxa Colchero, Research in Medical Sciences at the National Institute of Public Health, [19], taking as a base the proposed rate for each liter of soda, would help to diminish the consumption of such products from 163.3 liters per person per year to 120.9 liters.

It should be remembered that the demand for soda in Mexico is elastic, so that to increase taxes would discourage the consumption of these products and strengthen the country's revenue-raising capacity.

According to the Doctor cited earlier, the tax would bring in close to \$22.861 billion pesos, which would enable the government to allocate funds to the health sector, or else to introduce drinking water fountains in schools and public spaces, as well as to implement programs against obesity and overweight. [20]

According to Dr. Colchero, the tax would help to reduce the prevalence of diabetes in the country by 12%, as well as curtailing by 26% the costs of new cases of diabetes in the next 10 years. This would reduce the direct cost of medical care for obesity-related diseases from \$42 billion pesos to \$35 billion pesos.

Furthermore, the tax does not involve a disproportionate financial burden for lower income families, since the expenditure on soda as a proportion of expenditures on food is similar when breaking down information by income quintile, reducing the consumption of these products in the same proportion.

Now then, considering the aforementioned incorporation of new goods to the special tax on production and services, such as soda, natural or mineral water, etc., that contain any type of sweetener, and as long as they are applied on an *ad-valorem* basis, as is the case for the goods taxed by the Law we are considering, it is necessary to incorporate said concepts into the mechanics of credit application established in the Law of the Special Tax on Production and Services, so that appropriate measures are proposed to achieve the respective adjustments.

Furthermore, to establish a tax such as the one proposed is not at all at odds with the Mexican system of taxation, considering that from 2002 to 2006 there was a similar tax in effect in Mexico, which was withdrawn because it was deemed to be incompatible with the Agreements of the World Trade Organization, in providing that the tax in question was only paid on sodas and other beverages sweetened with high fructose, a situation which in the case before us does not occur, since the tax applies to all beverages sweetened with sugars in general, without making any distinction as to the type of sugar.

Regardless of the foregoing, it should be emphasized that the Supreme Court of Justice of the Nation itself considered the aforesaid tax to be constitutional. [21]

By the same token, international experience supports a proposal such as the one being made, considering that taxes such as the one before us exist in various countries in a variety of forms. The countries are Rumania, France, Greece, Hungary, Finland, Denmark and Algeria, as well as the State of New York in the United States America.

Based on the arguments set forth, it is proposed to incorporate the aforementioned tax into the Law of the Special Tax on Production and Services.

## **II. Allocation of the tax to special public expenditures.**

On the other hand, and as far as the extrafiscal purpose of the tax before us is concerned, it is estimated that, although there is a revenue-raising purpose in the reform under consideration, its extrafiscal purpose is more important, insofar as it makes it possible to adopt measures to combat overweight and obesity, as well as the diseases they produce, through the design of a tax policy that inhibits the consumption of sugared beverages.

In this context, the proposed reform makes it possible to provide the State with greater resources to enable the health sector to deal with expenditures that cause overweight and obesity, considering that the latter is one of the main preventable causes of various diseases, as well as to continue or implement new programs for the prevention, control and treatment of such ailments, or else, to finance plumbing infrastructure projects to provide greater access to potable water.

Because of this, and considering that the cost generated by ailments associated with overweight and obesity is very high for the State, it is estimated that it will be necessary to allocate the extraordinary resources that would be generated by the proposed reform to cover these costs.

This would not involve any violation of a constitutional order, since the Supreme Court of Justice of the Nation has established through jurisprudence that tax payments allocated to special public expenditures do not violate Article 31, fraction IV, of our Constitution.

This is observed in Jurisprudence 106/99, of the Plenary of the Supreme Court of Justice of the Nation, which appeared in the Judicial Seminary of the Federation and its Gaceta X, November of 1999, page 26, and states:

**“TAX PAYMENTS. THOSE ALLOCATED TOWARDS PAYMENT OF A SPECIAL PUBLIC EXPENDITURE DO NOT VIOLATE ARTICLE 31, FRACTION IV, OF THE CONSTITUTION.**

*In establishing the aforementioned constitutional precept that taxes should be allocated towards the payment of public expenditures of the Federation, as well as the Federal District or the State and Municipality where the taxpayer resides, it does not require that the product of the tax collection in question should go into a common fund where it is mixed with other taxes and loses its origin, but rather the prohibition of its being allocated towards payment of expenditures that are not assigned towards providing the functions and services that the State should provide for the collective. Therefore, **if the product of the tax collection is allocated towards the payment of a special public expenditure that directly benefits the collective, this not only does not infringe, but actually faithfully respects what is set forth in Article 31, fraction IV, of the Federal Constitution.***

Indeed, it is considered congruent to have greater fiscal resources that can be channeled towards the spending categories that directly combat overweight and obesity, given the public health problem that it represents in our country, in this case, through the National Health System, without impairment to what is set forth in the Law of Fiscal Coordination.

Furthermore, in its ruling on Action of Unconstitutionality 29/2008, the Plenary of the Supreme Court of Justice of the Nation established that:

**“... the guarantee to the governed that the taxes they pay will be allocated towards covering public expenditures compels the State in collecting them to apply them to cover collective social or public needs, through specific expenditures or general expenditures,**

*according to the economic reasoning of Article 31, fraction IV, of the Federal Constitution, which guarantees that they are not to be allocated to satisfy private or individual needs, but rather those in the collective, community, social and public interest that the said Constitution indicates, since according to the principle of efficiency – which is intrinsic to public expenditures - choosing the allocation of a resource must essentially be done with a view to fulfilling the obligations and aspirations that the Constitution describes in this context.*

*So that a payment of taxes will be unconstitutional when it is allocated to cover exclusively individual needs, for it is logical that in applying it to satisfy social needs, it is understood that it also covers the penury or deprivation of certain individuals, but it cannot work the other way, because it is obvious that if only the needs of one person are addressed, this could not bring as a result a collective or social benefit; (...)*”

In this regard, it issued the Plenary Jurisprudence No. 15/2009, whose heading and text establish the following:

***PUBLIC EXPENDITURES. THE PRINCIPLE OF RELATIVE FISCAL JUSTICE GUARANTEES THAT TAX COLLECTION SHOULD NOT BE ALLOCATED TO SATISFY PRIVATE OR INDIVIDUAL NEEDS.***

***The principle of fiscal justice to the effect that taxes that are paid are to be allocated towards covering public expenditures compels the State in collecting them to apply them to cover collective social or public needs, through specific expenditures or general expenditures, according to the economic reasoning of Article 31, fraction IV, of the Political Constitution of the United Mexican States, which guarantees that they are not to***

***be allocated to satisfy private or individual needs, but rather those in the collective, community, social and public interest that the said Constitution indicates , since according to the principle of efficiency – which is intrinsic to public expenditures - choosing the allocation of a resource must essentially be done with a view to fulfilling the obligations and aspirations that the Constitution describes in this context. So that a payment of taxes will be unconstitutional when it is allocated to cover exclusively individual needs, for it is logical that in applying it to satisfy social needs, it is understood that it also covers the penury or deprivation of certain individuals, but it cannot work the other way, because it is obvious that if only the needs of one person are addressed, it could not bring as a result a collective or social benefit; (...)***

Now then, with respect to this proposal, that is to say, to allocate funds collected for the Special Tax on Production and Services applicable to soda and sugared beverages, to cover expenditures incurred by care for ailments such as overweight and obesity, as well as the diseases that derive from them, it is deemed necessary to state that it also does not infringe the financial autonomy of federal entities, since the funds that will have this specific allocation will be those that result after applying both the direct allocation as well as the shareable amount thereof, in accordance with the Law of Fiscal Coordination.

In other words, no “label” is being proposed for the funds that would apply to them by legal provision, and that would alter the freedom of expenditure held by federal entities, political territories and municipalities, but rather it would operate only at the Federal level, with the funds that belong to the Federation, where they would be allocated to fulfill the stated objective.

Accordingly, and based on what is set forth in Articles 71, fraction II of the Political Constitution of the United Mexican States; as well as Articles 8, numeral 1, fraction I, 164 numeral 1, 169

and 172 of the Rules of the Senate of the Republic, we submit for the consideration of the plenary of the Chamber of the Senators, the following draft:

### Decree

**Whereby Articles 2º, fraction II, sub-paragraph A), 4, second and fourth paragraphs, 5-A, first paragraph, and 19, fractions II, third paragraph, VIII, X, XI and XIII are amended; a sub-paragraph I) and a final paragraph is added to Article 2º, fraction I, and a fraction XVIII to Article 3, of the Law of the Special Tax on Production and Services, to read as follows:**

**Sole Article.** Articles 2º, fraction II, sub-paragraph A), 4, second and fourth paragraphs, 5-A, first paragraph, and 19, fractions II, third paragraph, VIII, X, XI and XIII are amended; a sub-paragraph I) and a final paragraph is added to Article 2º, fraction I, and a fraction XVIII to Article 3, of the Law of the Special Tax on Production and Services, to read as follows:

**Article 2. - ...**

**I....**

**Sub-paragraphs A) to H) ...**

**I) Sodas, mineralized waters, concentrates, powders, syrups, essences or extracts of flavors, that upon being diluted make it possible to obtain sodas.....20%**

**II....**

A) Commission, mediation, agency, representation, brokering, consignment and distribution for the purpose of the sale of the goods indicated in sub-paragraphs A), B), C), **F) and I)** of fraction I of this Article. In these cases, the applicable rate will be that which corresponds to sale in the national territory of the good in question pursuant to the terms that this law provides for such

purpose. The tax shall not be paid when the services referred to in this sub-paragraph are the reason for the sales of goods, wherefore payment of this tax shall not be required, pursuant to the terms of Article 8 thereof.

### **Sub-paragraphs B) to C)**

### **Article 3. ...**

### **Fractions I to XVII**

**XVIII. Sodas, non-fermented beverages, made with water, carbonated water, extracts or essences of fruits, flavorizer, or with any other raw material, carbonated or without carbonation, which may contain citric acid, benzoic acid or sorbic acid, or their sales as preservatives, sweetened with sugars.**

**Sugars are understood to refer to all monosaccharides and disaccharides present in such beverages.**

**Fruit juices and nectars are not considered to be soda. For such purposes, fruit juices and nectars are understood to be those that have at least 20% fruit juice or pulp or 2° brix of solids coming from the same fruit.**

### **Article 4. ...**

...

Assessment of the tax to the taxpayer shall only be undertaken for the acquisition of the goods referred to in sub-paragraphs A), **F) and I)** of fraction I of Article 2 of this Law, as well as that paid by the taxpayer himself when importing the goods referred to in sub-paragraphs A), C), D), E), **F) and I)** of the said fraction, whenever it can be accredited pursuant to the terms of the aforesaid Law.

...

Accreditation consists in the tax being subject to a tax credit for the amount that proves applicable for the values indicated in this Law, at the rates referred to in fraction I, sub-paragraphs A), **F) and I)** of Article 2 thereof, or of that which results from applying the rates referred to in Articles 2, fraction I, sub-paragraph C), second and third paragraphs and 2-C of this Law. Accreditable tax is understood to refer to an amount equivalent to that of the special tax on production and services actually collected from the taxpayer or any actual tax that has been paid on importation, exclusively under the circumstances referred to in the second paragraph of this Article, in the appropriate month.

...

#### **Fractions I to V**

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...

Article 5-A. Manufacturers, producers, packagers or importers, that through commission agents, mediators, agents, representatives, brokers, consignees or distributors, sell the goods referred to in sub-paragraphs A), B), C), **F) and I)** of fraction I of Article 2 of this Law, shall be obliged to withhold the tax against the payment due for them, and report it through a declaration that they shall submit to the authorized offices, pursuant to what is set forth in the first paragraph of

Article 5 of this Law. When the payments are included in the amount of the sale for which this tax is paid, no withholding shall be done, and they shall not be considered payers of this tax for such activities.

...

#### **Article 19. ...**

...

II. Issuing proof of payment without the express, separate collection of the tax established in this Law, except when dealing with the sale of the goods referred to in sub-paragraphs A), **F) and I)** of fraction I of Article 2 of this Law, as long as the purchaser is in turn a taxpayer of this tax for said goods and requests it in such capacity.

...

Taxpayers who sell the goods referred to in sub-paragraphs A), F) and I) of fraction I of Article 2 of this Law, who expressly and separately collect the tax established herein, must ensure that the data concerning the name, title or company name of the person to whom they are issued, **matches** the registration with which said person proves that he is a taxpayer of the special tax on production and services for such goods. Furthermore, the aforesaid taxpayers must provide the Bureau of Tax Administration on a quarterly basis in April, July, October and January of the year in question with a list of the persons who in the quarter previous to the current one are declared to have had the special tax on production and services collected expressly and separately, pursuant to the terms of this fraction, as well as the amount of the tax collected in such operations and such information and documentation as the Bureau of Tax Administration may indicate in rules of a general nature.

...

...

### **Fraction III to VII**

VIII. Taxpayers for the goods referred to in sub-paragraphs A), B), C), **F) and I)** of fraction I of Article 2 of this Law, who are obliged to pay the special tax on production and services referred to herein, must provide the Bureau of Tax Administration, on a quarterly basis, in April, July, October and January of the year in question, with information on their 50 main clients and providers for the quarter immediately preceding the one in which they make their declaration with respect to such goods.

With regard to taxpayers who sell or import table wines, they should fulfill this obligation on a semiannual basis, in January and July of each year.

...

...

### **Fraction IX...**

X. Manufacturers, producers or packagers of alcohol, denatured alcohol and uncrystalizable honeys, beverages with alcoholic content, beer, processed tobaccos, energy beverages, concentrates, powders and syrups for preparing energy beverages, **sodas, mineralized waters, concentrates, powders, syrups, essences or extracts of flavors, that on being diluted make it possible to obtain sodas**, must undergo a physical control of the volume manufactured, produced or packaged, as the case may be, as well as reporting quarterly, in April, July, October and January of the year in question a monthly reading of the registers for each one of the devices used for maintaining such control, in the quarter immediately preceding the one in which the parties makes their declaration.

...

XI. Importers or exporters of the goods referred to in sub-paragraphs A), B), C),

**F) and I)** of fraction I of Article 2 of this Law, must be listed in the register of sectorial importers and exporters, as the case may be, under the charge of the Secretary of the Treasury and Public Credit.

**XII...**

XIII. Taxpayers for the goods referred to in sub-paragraphs A), **F) and I)** of fraction I of Article 2 of this Law, who are obliged to pay the special tax on production and services, must provide the Bureau of Tax Administration on a quarterly basis in April, July, October and January of the year in question, with the sale price for each product, the amount and volume thereof, transacted in the quarter immediately preceding.

...

**Fractions XIV to XXII...**

#### **Transitory Provisions**

**Sole Provision.** This Decree shall enter into force on the day following its publication in the *Diario Oficial de la Federación*.

Mexico City, Federal District, December 4, 2012.

**Very truly yours,**

**Sen. Marcela Torres Peimbert**

**Sen. Silvia Guadalupe Garza Galván Sen. Gabriel Cuevas Barrón**

**Luis Fernando Salazar Fernández Sen. Martín Orozco Sandoval**

**Sen. Juan Carlos Romero Hicks Sen. Francisco Salvador López Brito**

**Sen. Luz María Beristain Navarrete Sen. Sofío Ramírez Hernández**

**Sen. Mario Martín Delgado Carrillo**

[1] Alexy, Robert. Teoría de los derechos fundamentales, trad. Carlos Bernal Pulido, 2<sup>a</sup> ed., Centro de Estudios Políticos y Constitucionales, Madrid, 2008, p. 404

[2] In this regard, it is necessary to distinguish between the “right to health” and the “right to its protection,” considering that although it can be a merely theoretical distinction, the content of the first is greater than that of the second, insofar as the former encompasses “The right of every person to enjoy the highest possible level of physical and mental health” (Article 12.1 of the Covenant on Economic, Social and Cultural Rights), whereas the latter encompasses the measures that ensure its being put in to practice (Article 12.2).

[3] Jurisprudencia 136/2008, Novena Época, Pleno de la Suprema Corte de Justicia de la Nación, appearing in the *Semanario Judicial de la Federación y su Gaceta XXVIII*, October 2008, page 61, whose heading states: “HEALTH. THE RIGHT TO ITS PROTECTION PURSUANT TO ARTICLE 4, PARAGRAPH THREE, OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES, IS A SOCIAL RESPONSIBILITY.”

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[8] Ibid, p. 8.

[9] Babey, Susa H. et. al. (September of 2009). Bubbling Over: Soda Consumption and its Link to Obesity in California. UCLA Center for Health Policy Research. Retrieved from: <http://www.publichealthadvocacy.org/bubblingover.html>

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[11] Katz, David L. (July 25, 2012). Are We Sugar Crazy? Retrieved from: <http://health.usnews.com/health-news/blogs/eat-run/2012/07/25/are-we-sugar-crazy>

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[13] World Health Organization. (2011). Noncommunicable Diseases Country Profiles 2011. WHO: France, p. 124.

[14] Secretaría de Salud México. (January 2010). Acuerdo Nacional para la Salud Alimentaria: Estrategia contra el sobrepeso y la obesidad. México DF, p. 11.

[15] Secretaría de Salud México. (January 2010). Acuerdo Nacional para la Salud Alimentaria: Estrategia contra el sobrepeso y la obesidad. México DF, p. 11.

[16] Wang, YC. et. al. (April 2009). Impact of change in sweetened caloric beverage consumption on energy intake among children and adolescents. National Center for Biotechnology Information. Retrieved from: <http://www.ncbi.nlm.nih.gov/pubmed/19349562>

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[18] (2012). Calorías vacías. Retrieved from: <http://www.saludymedicinas.com.mx/centros-de-salud/obesidad/consejosalimenticios/calorias-vacias-el-pan-nuestro-de-cada-dia.html>

[19] (October 23, 2012). Lecture: “Ganancias en salud asociadas a una política fiscal saludable sobre bebidas azucaradas”. Forum “Análisis de la Política Pública para el Control de la Obesidad”, held at Instituto Tecnológico Autónomo de México (ITAM).

[20] (October 23, 2012). Lecture: “Ganancias en salud asociadas a una política fiscal saludable sobre bebidas azucaradas”. Forum “Análisis de la Política Pública para el Control de la Obesidad”, held at Instituto Tecnológico Autónomo de México (ITAM).