



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 110478

Introduced June 2, 2011

**Councilmember Tasco
(By Request)***

**Referred to the
Committee of the Whole**

AN ORDINANCE

Amending Chapter 19-1800 of The Philadelphia Code, entitled "School Tax Authorization," by adding a new Section 19-1807, entitled "Authorization of Sugar-Sweetened Beverage Tax," under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 19-1800 of The Philadelphia Code is hereby amended as follows:

CHAPTER 19-1800. SCHOOL TAX AUTHORIZATION.

* * *

§19-1807. Authorization of Sugar-Sweetened Beverage Tax.

(1) Definitions. In this Chapter, the following words and phrases shall have the meanings given to them in this Section, unless the context clearly indicates otherwise:

(a) Board. Board of Education of the School District of Philadelphia.

(b) Dealer. Any person engaged in the business of selling sugar-sweetened beverage for retail sale within the City, including but not limited to restaurants; retail stores; street vendors; owners and operators of vending machines; and Distributors who engage in retail sales.

(c) Distributor. Any person who supplies sugar-sweetened beverage to a Dealer.

*Information on file in Room 402 City Hall.

City of Philadelphia

BILL NO. 110478 continued

(d) Sugar-sweetened beverage.

(.1) Any non-alcoholic beverage which lists any form of caloric sugar-based sweetener, including but not limited to sucrose, glucose or high fructose corn syrup, as a listed ingredient.

(.2) Any syrup which lists any form of caloric sugar-based sweetener, including but not limited to sucrose, glucose or high fructose corn syrup, as a listed ingredient, and which is intended to be mixed with water to prepare a non-alcoholic beverage.

(.3) Notwithstanding subsections (.1) and (.2), sugar-sweetened beverages shall not include:

(A) Baby formula.

(B) Any product, the primary ingredient of which is milk.

(C) Unsweetened drinks to which a purchaser can add, or can request that a seller add, sugar, at the point of sale.

(.4) Sugar-sweetened beverages include, but are not limited to, soda; non-100%-fruit drinks; sports drinks; flavored water; energy drinks; pre-sweetened coffee or tea; and non-alcoholic beverages intended to be mixed into an alcoholic drink.

(.5) The Department of Public Health is authorized to promulgate regulations to clarify the inclusion or exclusion of particular products.

(e) Supply. Sell, distribute, transfer or supply.

(2) Distributor Licenses; Purchases from Licensed Distributors. If the Board imposes the tax authorized by subsection (3) hereof, then the following shall apply:

(a) No Dealer may sell at retail, or hold out or display for sale at retail, any Sugar-Sweetened Beverage acquired by the Dealer after October 1, 2011, unless:

(.1) The Sugar-Sweetened Beverage was purchased by the Dealer from a Licensed Distributor; and

City of Philadelphia

BILL NO. 110478 continued

(.2) The Dealer complied with the notification requirements of subsection (4); and received confirmation from the Licensed Distributor of such notification, as well as confirmation that the Distributor is a Licensed Distributor, all in form prescribed by the Department.

(b) Upon application by any Distributor in form prescribed by the Department of Licenses and Inspections, the Department of Licenses and Inspections shall issue a Distributor License to a Distributor, regardless whether the Distributor does or does not do business in the City. Acquisition of such license shall not subject a Distributor otherwise not liable for payment of business privilege tax to the payment of business privilege tax.

(3) Imposition and Rate of the Sugar-Sweetened Beverage Tax.

(a) The Board is authorized to impose an excise tax, effective October 1, 2011, upon the supply of any sugar-sweetened beverage to a Dealer; and upon the acquisition of any sugar-sweetened beverage by a Dealer. The tax is to be paid as provided in subsection (5) (liability for payment of tax) and subsection (8) (waivers).

(b) The tax authorized by this Chapter shall be assessed at the following rates:

(.1) Two cents (\$.02) per ounce of beverage, except for beverage supplied in the form of syrup.

(.2) Eighteen cents (\$.18) per ounce of syrup.

(.3) The foregoing rates shall be subject to adjustment, as follows: The rate for each calendar year (or such other accounting year allowed by the Department) commencing on or after January 1, 2013, shall be certified by the Director of Finance to the Department no later than the immediately preceding December 15. The Director shall calculate the rate by multiplying the rates set forth, respectively, in subsections (.1) and (.2), above, by the CPI Multiplier. The CPI Multiplier shall equal the ratio of the most recently published Consumer Price Index for All Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, United States Department of Labor, Bureau of Labor Statistics ("CPI"), on December 15 to the CPI on December 15, 2011. The rate shall be expressed in dollars per ounce, rounded to the nearest one-thousandth of a dollar (three decimal places).

(c) The tax shall be set out as a separate line item on any bills or invoices provided by a Licensed Distributor to a Dealer.

City of Philadelphia

BILL NO. 110478 continued

(4) *Notification of Dealer Status.* If the Board imposes the tax authorized by subsection (3) hereof, then the following shall apply:

(a) *No Dealer shall accept any sugar-sweetened beverage from a Licensed Distributor without first notifying the Licensed Distributor that such Dealer is a Dealer subject to this Chapter. Notice shall be provided in the form of a Commonwealth of Pennsylvania sale for purpose of resale exemption certificate; or in such other form as the Department may provide. Every Dealer shall maintain copies of any notices provided to a Licensed Distributor.*

(b) *Upon receipt of notification pursuant to subsection (a) above, no Licensed Distributor shall supply any sugar-sweetened beverage to a Dealer without providing to the Dealer, contemporaneously, (i) confirmation of notification; and (ii) a receipt detailing the amount of sugar-sweetened beverage supplied in the transaction and the amount of tax owing on such transaction; all in form satisfactory to the Department.*

(5) *Liability for payment of tax.*

(a) *The tax shall be paid by the Licensed Distributor; and the Dealer shall not be liable for payment of the tax; so long as the Licensed Distributor has received from the Dealer notification pursuant to subsection (4)(a) that the recipient is a Dealer.*

(b) *In addition to any penalties provided hereunder, a Dealer who fails to provide the notification required by subsection (4)(a) above; and a Dealer who sells at retail, or holds out or displays for sale at retail, any sugar-sweetened beverage in violation of subsection (2)(a), above, shall be liable for payment of any tax owing under this Chapter, and shall file returns with the Department in form prescribed by the Department.*

(c) *Where a Dealer is also a Licensed Distributor, no additional tax shall be owing on the supply of any sugar-sweetened beverage by such Dealer/Distributor to another Dealer if the tax already has been imposed on the supply of the beverage to the Dealer/Distributor or the acquisition of the beverage by the Dealer/Distributor.*

(6) *Administration.* If the Board imposes the tax authorized by subsection (3) hereof, then the following shall apply:

(a) *For each calendar quarter, no later than thirty days after the close of the quarter, or at such other times as the Department shall require:*

(.1) *Every Licensed Distributor shall file with the Department a return setting out, in form satisfactory to the Department:*

City of Philadelphia

BILL NO. 110478 continued

(A) The amount of sugar-sweetened beverage (separately for fluid and syrup) supplied by the Licensed Distributor to any Dealer.

(B) The amount of tax owing on account of such sugar-sweetened beverage.

(.2) Every Licensed Distributor shall pay to the Department such amounts as shown on the return or otherwise required by this Chapter.

(b) The Department may require Licensed Distributors and Dealers to submit such other information as the Department deems necessary for proper administration of this tax.

(8) Waivers. Upon a showing of extraordinary circumstances, where unique distribution channels would make purchase of sugar-sweetened beverage from a Licensed Distributor substantially impracticable, the Department, in its discretion, may grant a full or partial waiver to a Dealer from the provisions of subsection (2)(a). In such case, as well as during the pendency of any application for waiver under this subsection, the tax shall be paid directly by the Dealer to the Department, in such manner and using such forms as the Department shall prescribe. The Department may require an annual demonstration of continuing extraordinary circumstances in order to continue a waiver.

(8) Penalties. In addition to any other penalties provided under this Title, a violation of subsection (2)(a) (sale of product purchased from other than a Licensed Distributor or without proper notification to a Licensed Distributor) shall constitute a Class II Offense under Section 1-109; and each separate sale, transaction or delivery shall constitute a separate offense. A person who violates subsection (2)(a) more than one time in any twenty-four (24) month period shall be subject to suspension of his or her business privilege license for such period of time as the Department of Licenses and Inspections deems appropriate.

SECTION 2. This Ordinance shall be effective immediately, and any tax imposed pursuant to this Ordinance shall apply in addition to any other applicable tax imposed under this Title.

City of Philadelphia

BILL NO. 110478 continued

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.