



City of Philadelphia

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

BILL NO. 160508

Introduced May 19, 2016

Councilmember Reynolds Brown

**Referred to the
Committee of the Whole**

AN ORDINANCE

Amending Title 19 of The Philadelphia Code, entitled "Finance, Taxes and Collections," by adding a new Chapter 19-4100, entitled "Non-reusable beverage container Tax," under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 19 of The Philadelphia Code is hereby amended as follows:

TITLE 19. FINANCE, TAXES AND COLLECTIONS.

* * *

CHAPTER 19-4100. NON-REUSABLE BEVERAGE CONTAINER TAX.

§ 19-4101. Definitions. In this Chapter, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Dealer. Any person engaged in the business of selling at retail within the City beverages in non-reusable beverage containers, including but not limited to restaurants; retail stores; street vendors; owners and operators of vending machines; and distributors who engage in retail sales.*

(2) *Distributor. Any person who supplies a non-reusable beverage container to a dealer, for retail sale.*

(3) *Beverage.*

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(a) Any of the following:

(.1) Any soft drink, whether or not carbonated, including: cola, ginger ale, root beer, or sarsaparilla.

(.2) Any soda water, carbonated water, natural or artificial mineral water, natural or spring water, or flavored water;

(.3) Any natural or artificial ready-to-drink tea;

(.4) Any natural or artificial ready-to-drink coffee;

(.5) Any natural or artificial fruit juice;

(.6) Any natural or artificial vegetable juice;

(.7) Any energy drink.

(b) Notwithstanding subsection (a), beverage shall not include:

(.1) Baby formula;

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

(.3) Any nondairy, milk-substitute products, such as soy milk, hazelnut or other nut milk, rice or other grain milk, and the like.

(c) The Department is authorized to promulgate regulations to clarify the inclusion or exclusion of particular products; and to exclude particular products with respect to which, because of their ingredients or other administrative or health-related reasons, exclusion would be consistent with sound public policy and the purposes of this Ordinance.

(4) Non-reusable beverage container. “Non-reusable beverage container” means an individual, separate, and sealed glass, metal, or plastic bottle, can, jar, or carton, not ordinarily collected from consumers for refilling, that contains a beverage of more than seven (7) fluid ounces, and that is intended for consumption off premises.

(5) Supply. “Supply” shall mean to sell, distribute, transfer or supply.

§ 19-4102. Distributor Licenses; Purchases from Licensed Distributors.

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(1) *No dealer may sell at retail, or hold out or display for sale at retail, any beverage in a non-reusable beverage container, acquired by the dealer on or after January 1, 2017, unless:*

(a) *The non-reusable beverage container was purchased by the dealer from a licensed distributor; and*

(b) *The dealer complied with the notification requirements of § 19-4104; 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.*

(2) *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 income and receipts tax to the payment of business income and receipts tax.*

§ 19-4103. *Imposition and Rate of Non-Reusable Beverage Container Tax.*

(1) *Effective January 1, 2017, and thereafter, a tax is imposed upon each of the following: the supply of any non-reusable beverage container to a dealer; the acquisition of any non-reusable beverage container by a dealer; and the delivery to a dealer in the City of any non-reusable beverage container. The tax is to be paid as provided in § 19-4105 (liability for payment of tax) and § 19-4107 (waivers).*

(2) *The tax authorized by this Section shall be assessed at the following rate:*

(a) *Fifteen cents (\$.15) per non-reusable beverage container.*

(3) *The tax shall be set out as a separate line item on any bills or invoices provided by a licensed distributor to a dealer.*

§ 19-4104. *Notification of Dealer Status.*

(1) *No dealer shall accept any beverage contained in a non-reusable beverage container 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, so long as such certificate clearly indicates that the dealer is located in Philadelphia; or in such other form as the Department may provide. Every dealer shall*

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maintain copies of any notices provided to a licensed distributor, as provided in Code § 19-506.

(2) Upon receipt of notification pursuant to subsection (1) above, no licensed distributor shall supply any non-reusable beverage container to a dealer without providing to the dealer, contemporaneously, (i) confirmation of notification; and (ii) a receipt detailing the amount of non-reusable beverage containers supplied in the transaction and the amount of tax owing on such transaction; all in form satisfactory to the Department.

§ 19-4105. *Liability for Payment of Tax.*

(1) The tax shall be paid to the City by the licensed distributor; and the dealer shall not be liable to the City for payment of the tax; so long as the licensed distributor has received from the dealer notification pursuant to § 19-4104(1) that the recipient is a dealer.

(2) In addition to any penalties provided hereunder, a dealer who fails to provide the notification required by § 19-4104(1); and a dealer who sells at retail, or holds out or displays for sale at retail, any non-reusable beverage container in violation of § 19-4102(1), shall be liable to the City for payment of any tax owing under this Chapter, and shall file returns with the Department in form prescribed by the Department.

(3) Where a dealer is also a licensed distributor, no additional tax shall owe on the supply of any non-reusable beverage container by such dealer/distributor to another dealer if the tax already has been imposed on the supply or delivery of the beverage to the dealer/distributor or the acquisition of the beverage by the dealer/distributor.

(4) In the event a court of competent jurisdiction rules in a decision from which no further appeal lies that a licensed distributor is not liable to the City for the tax with respect to any transaction or class of transactions, then the dealer to which the licensed distributor supplied the beverages associated with such transactions shall be liable to the City for the tax.

§ 19-4106. *Administration.*

(1) 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:

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(a) *Every licensed distributor shall file with the Department a return setting out, in form satisfactory to the Department:*

(.1) *The amount of non-reusable beverage containers supplied by the licensed distributor to any dealer.*

(.2) *The amount of tax owing on account of such non-reusable beverage containers.*

(b) *Every licensed distributor shall pay to the Department such amounts as shown on the return or otherwise required by this Chapter.*

(2) *The Department may require licensed distributors and dealers to submit such other information as the Department deems necessary for proper administration of this tax.*

§ 19-4107. *Waivers.*

(1) *Upon a showing of extraordinary circumstances, where distribution channels would make purchase of non-reusable beverage containers 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 § 19-4102(1). 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.*

§ 19-4108. *Penalties.*

(1) *In addition to any other penalties provided under this Title, a violation of § 19-4102(1) (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 § 1-109; and each separate sale, transaction or delivery shall constitute a separate offense. A person who violates § 19-4102(1) more than one time in any twenty-four (24) month period shall be subject to suspension of his or her commercial activity 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.

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Explanation:

Italics indicate new matter added.