

Legislation Text

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Amending Title 19 of The Philadelphia Code, entitled "Finance, Taxes and Collections," by adding a new Chapter 19-4100, entitled "Sugar-Sweetened Beverage 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.

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CHAPTER 19-4100. SUGAR-SWEETENED BEVERAGE 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 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.

(2) Distributor. Any person who supplies sugar-sweetened beverage to a dealer.

(3) Sugar-sweetened beverage.

(a) Any non-alcoholic beverage that lists as an ingredient:

(.1) any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or

(.2) any form of artificial sugar substitute, including stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame.

(b) Any non-alcoholic syrup or other concentrate that is intended to be used in the preparation of a beverage and that lists as an ingredient:

(.1) any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or

(.2) any form of artificial sugar substitute, including stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame.

(c) Notwithstanding subsections (a), (b), and (c) sugar-sweetened beverages shall not include:

(.1) Baby formula.

(.2) Any beverage that meets the statutory definition of “medical food” under the Orphan Drug Act, 21 U.S.C. § 360ee(b)(3), as amended.

(.3) Any product, more than fifty percent (50%) of which, by volume, is milk.

(.4) Any product more than fifty percent (50%) of which, by volume, is fresh fruit, vegetables or a combination of the two, added by someone other than the customer.

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

(.6) Any syrup or other concentrate that the customer himself or herself combines with other ingredients to create a beverage.

(d) Examples of 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.

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

§ 19-4102. Distributor Registration; Purchases from Registered Distributors.

(1) No dealer may sell at retail, or hold out or display for sale at retail, any sugar-sweetened beverage acquired by the dealer on or after January 1, 2017, unless:

(a) The sugar-sweetened beverage was acquired by the dealer from a registered distributor; and

(b) The dealer has complied with the notification requirements of § 19-4104; and received confirmation from the registered distributor of such notification, as well as confirmation that the distributor is a registered distributor, all in form prescribed by the Department.

(2) Upon application by any distributor in form prescribed by the Department, the Department shall issue a certificate of registration to a distributor, regardless whether the distributor does or does not do business in the City. Registration by a distributor 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 the Sugar-Sweetened Beverage Tax.

(1) Effective January 1, 2017, and thereafter, a tax is imposed upon each of the following: the supply of

any sugar-sweetened beverage to a dealer; the acquisition of any sugar-sweetened beverage by a dealer; the delivery to a dealer in the City of any sugar-sweetened beverage; and the transport of any sugar-sweetened beverage into the City by a dealer. The tax is imposed only when the supply, acquisition, delivery or transport is for the purpose of the dealer's holding out for retail sale within the City the sugar-sweetened beverage or any beverage produced therefrom. 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 rates:

(a) For sugar-sweetened beverages under § 19-4101(3)(a), one and one-half cents (\$.015) per fluid ounce.

(b) For syrups and other concentrates under § 19-4101(3)(b), the rate per ounce of syrup or other concentrate that yields one and one-half cents (\$.015) per fluid ounce on the resulting beverage, prepared to the manufacturer's specifications. Upon a determination that the application of these rates to any particular product is unfair or unreasonable, the Department is authorized to issue regulations imposing the tax at an alternate rate on that particular product, to approximate as closely as possible the rate set forth in subsection (a).

(3) All bills or invoices created by or for a registered distributor in connection with the acquisition of sugar-sweetened beverages by a dealer from that registered distributor, shall separately indicate the total volume of beverages under § 19-4101(3)(a); and, with respect to syrups or other concentrates under § 19-4101(3)(b), the total volume of beverages that may be prepared from such syrups or other concentrates when prepared to manufacturer specifications.

§ 19-4104. Notification of Dealer Status.

(1) Effective January 1, 2017, no dealer shall accept any sugar-sweetened beverage from a registered distributor, for purpose of holding out for retail sale in the City such sugar-sweetened beverage or any beverage produced therefrom, without first notifying the registered 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 maintain copies of any notices provided to a registered distributor, as provided in Code § 19-506.

(2) Upon receipt of notification pursuant to subsection (1) above, no registered 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.

§ 19-4105. Liability for Payment of Tax.

(1) The tax shall be paid to the City by the registered distributor; and the dealer shall not be liable to the City for payment of the tax; so long as the registered 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 sugar-

sweetened beverage 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 registered 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 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 any portion of this Chapter cannot be applied to a distributor with respect to any transaction or class of transactions, then any dealer that holds out for retail sale in the City sugar-sweetened beverages supplied through those transactions shall be liable to the City for the tax on those sugar-sweetened beverages.

§ 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:

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

(.1) The amount of sugar-sweetened beverage (separately for fluid and syrup) supplied by the registered distributor to any dealer.

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

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

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

(3) The Department is charged with enforcement and collection of this tax and is empowered to promulgate and enforce reasonable regulations for its enforcement and collection.

§ 19-4107. Waivers.

(1) Upon a showing of extraordinary circumstances, where distribution channels would make purchase of sugar-sweetened beverage from a registered 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.

(2) The Department shall grant a waiver to any dealer that elects to register as if it were a distributor and agrees to assume all of the obligations of a distributor with respect to the dealer's acquisition of any sugar-sweetened beverage, including payment of the tax to the Department.

§ 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 registered distributor or without proper notification to a registered 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.

SECTION 3. The provisions of this Ordinance are severable, and if any provision, application, section or subsection is held illegal, such illegality shall not affect the remaining provisions. It is the legislative intent of the Council that this Ordinance would have been adopted if such illegal provision had not been included and any illegal application had not been made. To the extent any illegality can be eliminated by severing one or more provisions, applications, sections or subsections of this Ordinance, it is the intent of the Council that such provision should be severed, so that the remainder of the Ordinance, without the severed provisions, remains valid and enforceable.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.