

## Pennsylvania Supreme Court upholds Philadelphia soda tax

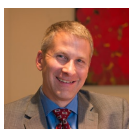


David M. Kall | Thursday, July 19, 2018

In a [divided 4-2 ruling](#), the Pennsylvania Supreme Court on Wednesday upheld a controversial 1.5% soda tax that the City of Philadelphia levied on beverage distributors for sugary drinks. We have been following the developments, first with [public debate](#) surrounding the nation's first soda tax in a major city and, subsequent to enactment, as the [litigation has worked its way](#) through lower Pennsylvania courts.

The Court's majority opinion settles the challenge to the local soda tax on the basis that it violates Pennsylvania law as "double taxation" duplicative of the retail sales and use tax. In affirming the lower Pennsylvania courts, the Supreme Court held the soda tax is not duplicative of the retail sales tax imposed on consumers because the incidence of the tax is on beverage distributors rather than consumers. Pennsylvania Supreme Court Justice David Wecht's [dissenting opinion](#) challenged this characterization, arguing the majority's reasoning is a "convenient fiction." Even though the legal incidence of the tax is on the distributor, he wrote, the economic incidence of the tax is passed on to the consumer as a practical matter.

The soda tax debate now returns to the court of public opinion. [The Philadelphia Enquirer is reporting](#) the soda tax will likely be a hot button issue in the 2019 race for Mayor of Philadelphia. The tax revenue raised through the tax had been on hold during the litigation, but it will now be deployed for educational initiatives including community schools and additional opportunities for pre-K education. The City expects to raise \$78 million from the tax in the current fiscal year, with that number to decline should the tax discourage sugary beverage consumption.



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