Pennsylvania: Philadelphia's sugar sweetened beverage tax comes under attack

David M. Kall | Thursday, September 29, 2016

In June, the City of Brotherly Love became only the second city in the U.S. to tax sugary drinks. Our subsequent article described the details of the 1.5 cents per fluid ounce tax on the distribution of such beverages, effective January 1, 2017, and Philadelphia Mayor Jim Kenney's plan for the revenue.

Philadelphia has published some important dates, and other information, on its website, in light of the law's pending effective date:

- The tax will be due by the 20th of each month for the prior month;
- The first payment will be due February 20, 2017, for distribution activity in January 2017;
- Registration will be available online in November 2016;
- Only dealers of sweetened beverages are required to pay the tax.

As soon as the measure became law, the beverage industry promised to sue, and now it has. As has been widely reported, the American Beverage Association and other plaintiffs, like City View Pizza, John's Roast Pork, Metro Beverage of Philadelphia, Day's Beverages, the Pennsylvania Beverage Association, the Philadelphia Beverage Association, and the Pennsylvania Food Merchants Association, filed their lawsuit in the Philadelphia Court of Common Pleas and in the Pennsylvania Supreme Court on September 14, 2016.

Key arguments that the lawsuit makes are the following:

- The state sales tax preempts the new sugary beverages tax;
- The new law violates a pre-existing state law requiring similar products to be taxed at the same rate;
- The tax, which would be imposed on food stamp purchases through the Supplemental Nutrition Assistance Program (SNAP), violates state and federal rules.

The e-news site BillyPenn quoted the lawsuit as further contending that the tax "will meaningfully diminish the everyday purchasing power of Philadelphia residents – particularly those on a limited or fixed income – and will put the City's small businesses that sell soft drinks at a material competitive disadvantage relative to comparable businesses just outside the City's borders."

The site also quoted a Teamsters representative, who stated that his organization "strongly support[s] the legal action taken to defend the workers who depend on the beverage industry to support their families, local businesses who will lose customers as they're forced to dramatically increase the price of their products and the majority of Philadelphians who have clearly explained they do not want to see their grocery bills rise."

Even so, the City of Philadelphia released a statement in response to the lawsuit declaring that it is "ready and prepared to vigorously defend this legislation and to protect the historic investment planned for Philadelphia's neighborhoods and education system. We have always been confident that the Sweetened Beverage Tax was a proper exercise of City Council's authority and that it will be upheld in Court."

Reuters, however, pointed out that the American Beverage Association won a similar lawsuit in 2013, pursuant to which the group successfully blocked New York City's plan to keep large sugary drinks out of restaurants. And it is currently litigating in a comparable issue in San Francisco, where lawmakers want to require warning labels on advertisements, like billboards.

Philadelphia's Mayor Kenney planned to use the anticipated $91 million tax revenue to pay for pensions, schools, and investments in community infrastructure and energy efficiency. In the City's statement, he maintained that "it is repugnant that the multi-billion-dollar soda industry would try to take away these educational and community programs from the hundreds of thousands of Philadelphians who need them."

Even if the lawsuit was no surprise, the Mayor criticized the plaintiffs for attempting to rob pre-K, community schools and improved parks, rec centers and libraries of the fair shot they deserve. In the end, he has "no doubt" that the City will be successful in defeating the lawsuit.

David M. Kall

Team member bio