

## Pennsylvania: Court dismisses lawsuit seeking to invalidate Philadelphia's new soda tax



David M. Kall | Thursday, December 29, 2016

In June, Philadelphia passed the [Sugar-Sweetened Beverage Tax](#), also known as the Philadelphia Beverage Tax (PBT), effective January 1, 2017. The PTBT imposes a 1.5 cents tax per fluid ounce on the distribution of certain sugar filled beverages, as well as reporting requirements on the amounts sold and taxes due. Just a few months later, the beverage industry, and others, filed a lawsuit challenging the new law.

As we [described](#) at the time, the plaintiffs, which are a combination of consumers, retailers, distributors, and trade associations, such as the American Beverage Association, 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, argued the following:

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

Last week, the Philadelphia County Court of Common Pleas [dismissed](#) the suit in its entirety, addressing each of the arguments individually.

### Pre-emption

The court explained that the pre-emption doctrine establishes a priority for laws enacted by the various levels of government. Local legislation may not allow what Commonwealth law prohibits, nor can local legislation prohibit that which Commonwealth law permits. The question in this case was whether the Commonwealth's sales and use tax, set forth in the Sterling Act, pre-empts the PBT.

The Sterling Act prohibits double taxation when two government units seek revenue from a tax or fee on the same thing. That said, the Sterling Act does not prohibit a tax by a political subdivision on one aspect of a business's operations when a Commonwealth taxes a different aspect of that firm.

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Citing the language of the PBT itself, along with longstanding legal precedent, the court concluded that the PBT is not a duplicate of the sales and use tax. The court reasoned that the PBT is a tax on the distribution of certain beverages that distributors and dealers must pay, whereas the sales and use tax is imposed on the consumer, at retail. Therefore, the tax applies to two different transactions, on different measures (volume versus retail price), and is paid by different taxpayers. Thus, pre-emption does not apply.

## SNAP

The crux of the plaintiffs' position with respect to SNAP, the federally funded program that helps an individual or family buy nutritious food, is that the Food Stamp Act of 1977 prohibits a state from receiving funds for SNAP unless it agrees to refrain from taxing certain grocery items.

Rejecting the plaintiffs' arguments, the court pointed out again that the PBT is not a tax that the consumer pays. It therefore dismissed this argument as well.

## Uniformity

Finally, the court addressed the plaintiffs' allegations that the PBT violates the Uniformity Clause of the Pennsylvania Constitution, which requires that every tax "operate alike on the classes of things or property subject to it." The idea is to prevent a taxing formula that produces "arbitrary, unjust or unreasonably discriminatory results" by requiring that all taxpayers in a given class be treated uniformly, without regard to the amount involved.

In its analysis, the court noted that Uniformity Clause does not require "absolute equality and perfect uniformity in taxation, and any doubts as to the constitutionality of [a] statute are to be resolved in favor of upholding the statute." Recognizing that the PBT is a 1.5 cents per ounce tax on distributors of the defined beverages such that its "manner and measure of calculating the tax is uniformly applied to distributors," the court concluded that there is no disparate treatment within the "distributor class" with respect to the PBT's formula and rate of taxation.

For all of these reasons, the court declared the PBT to be lawful.

## What's next for beverage taxes?

After the election, we [discussed](#) several other beverage tax laws that voters approved, in Albany, Oakland, and San Francisco, California, and Boulder, Colorado. Now, a lawmaker in Massachusetts, Rep. Ray Khan, wants to pass a state-wide soda tax, reported [WBUR](#). She hopes that public acceptance of taxes on marijuana will lead to the same with respect to sugar. Similarly, with the recent passage of soda taxes elsewhere, along with "accumulating evidence" of sugar's dangers, there is possibility, especially when the objective is not imposition of a new tax, but simply to remove the sales tax exemption that currently applies to soda in the Bay State.

The jury is still out on the efficacy of soda taxes. A December report by the Tax Policy Center, [The Pros and Cons of Taxing Sweetened Beverages Based on Sugar Content](#), concluded that taxation is feasible, but consideration of the goal, whether to raise revenue or decrease sugar consumption for health reasons, is important when crafting the legislation.



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