

MEMORANDUM

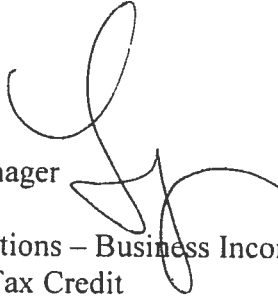
City of Philadelphia

Date: 6/19/18

TO: Marcel S. Pratt, City Solicitor

FROM: Lynda Yerkov, Records Operations Manager

SUBJECT: Advertisement of Proposed New Regulations – Business Income and Receipts
Tax- Section 511 – Healthy Beverages Tax Credit



The above Regulations promulgated by the Department of Revenue were received in the Department of Records on 5/16/18 for filing and advertising.
Inasmuch as there were no requests for hearings, these Regulations became effective 6/18/18.

CC: Frank Breslin, Revenue Commissioner
Joseph F. Procopio Jr., Manager, Technical Staff
Marisa Waxman, First Deputy Revenue Commissioner
Tilahun Afessa, Director of Policy

Article V of the Business Income and Receipts Tax Regulations is being amended to add a new section, *Section 511*, entitled *Healthy Beverages Tax Credit*. This new section is a result of City Council Bill No. 160552 (enacted on June 20, 2016) that provides, starting in Tax Year 2017, a tax credit under certain terms and conditions to encourage certain merchants to carry *Healthy Beverages* in their stores.

CITY OF PHILADELPHIA
BUSINESS INCOME AND RECEIPTS TAX REGULATIONS
TABLE OF CONTENTS

ARTICLE I
SECTION 101. DEFINITIONS

ARTICLE V
CREDITS

SECTION 501. CREDITS FOR CONTRIBUTIONS TO COMMUNITY DEVELOPMENT
CORPORATIONS AND NONPROFITS INTERMEDIARIES

SECTION 510. DISTRESSED BUSINESS TAX CREDIT

SECTION 511. HEALTHY BEVERAGES TAX CREDIT

A. Definitions.

1. Qualifying Merchant A Qualifying Merchant shall meet the following requirements for classification under the North American Industry Classification System ("NAICS") Codes Sections:

- a. Convenience Food Stores (NAICS 44512). This industry comprises establishments known as convenience stores or food marts (except those with fuel pumps) primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks;
- b. Other Specialty Food Stores (NAICS 44529). This industry comprises establishments primarily engaged in retailing specialty foods (except meat, fish, seafood, fruits and vegetables, confections, nuts, popcorn, and baked goods) not for immediate consumption and not made on the premises. Dairy products stores, Spice stores, Gourmet food Stores and Soft Drink / Water (i.e. bottled) stores are included in this classification;

- c. Gasoline Stations with Convenience Stores (NAICS 44711). This industry comprises establishments primarily engaged in retailing automotive fuels combined with the retail sales of a limited line of merchandise, such as milk, bread, soft drinks and snacks in a convenience store setting ; and
- d. Limited-Service Restaurants (NAICS 722513). This industry comprises establishments primarily engaged in providing food service (except snack and nonalcoholic beverage bars) where patrons generally order or select items and pay before eating. Food and drink may be consumed on premises, taken out, or delivered to the customer's location. Some establishments in this industry may provide these food services in combination with selling alcoholic beverages.

2. Healthy Beverage. A non-alcoholic beverage that does not list as an ingredient the following:

- a. any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or
- b. any form of artificial sugar substitute, including stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame.

3. Merchant Cost. The amount paid by the Qualifying Merchant to purchase Healthy Beverages for sale in the merchant's store within Philadelphia.

B. Application. A Qualifying Merchant wishing to apply for the credit under this section must complete an application on a form and in a manner as specified by the Department. Applications for tax credits for the prior tax year will be accepted between the first and last day of February each year.

The business must meet all eligibility criteria for this credit. The Department shall accept such applications on a "first come-first served" basis until the total amount of credits for a particular year reaches one million dollars (\$1,000,000). The Department shall when necessary randomly choose among applicants that apply on the same date.

C. Tax Credit.

- 1. Starting in Tax Year 2017, for any tax year in which a Qualifying Merchant provides Healthy Beverages for sale in its store, the Qualifying Merchant, whose application is accepted by the Department shall be eligible for a credit against its Business Income and Receipts Tax liability, in the amount by which the Merchant Cost for that Tax Year exceeds the Merchant Cost for the immediately preceding Tax Year, up to a maximum tax credit of two thousand dollars (\$2,000).

2. Unused Healthy Beverages Tax Credits may not be carried forward.
3. In order to claim the tax credit for any Tax Year, the Qualifying Merchant must have been in business the entire calendar year preceding the Tax Year. For example, in order to claim a tax credit for Tax Year 2017, the Qualifying Merchant must have been in business for the entire calendar year of 2016. A Qualifying Merchant shall not be allowed to claim a tax credit for the first Tax Year of business operations.
4. Calculation of Credit

Example 1.

Question:

ABC is a merchant primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks. ABC has one store located within Philadelphia. In Tax Year 2016, ABC purchased Healthy Beverages at the cost of \$25,000. In Tax Year 2017, ABC purchased Healthy Beverages at the cost of \$30,000. ABC applied for the Healthy Beverage Tax Credit for the maximum of \$2,000. Is ABC eligible to receive the credit? If so, how much?

Answer:

First, before accepting ABC's application, the Department has to make sure that the maximum \$1,000,000 total amount of credit available for the Tax Year has not yet been allotted to taxpayers that applied for the credit prior to ABC's submission of its application. Second, the Department has to receive documentation from ABC proving that it is a Qualifying Merchant and that it purchased the Healthy Beverages at the cost specified in its application. Then, the credit available to ABC is calculated as follow:

<u>Cost of Healthy Beverage purchased for sale in Philly in 2016</u>	<u>\$25,000</u>
<u>Cost of Healthy Beverage purchased for sale in Philly in 2017</u>	<u>\$30,000</u>
<u>Amount by which 2017 Cost exceeds the 2016 Cost (\$30,000 - \$25,000)</u>	<u>\$ 5,000</u>

As such, ABC is eligible to receive the maximum \$2,000 credit for Tax Year 2017.

Example 2.

Question:

ABC is a merchant primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks. ABC has two store locations, one located within Philadelphia and the other outside Philadelphia. In Tax Year 2016, ABC purchased Healthy Beverages at the cost

of \$24,000 and carried 50% of it for sale in its Philadelphia store. In Tax Year 2017, ABC purchased Healthy Beverages at the cost of \$30,000 and carried 50% of it for sale in its Philadelphia store. ABC applied for the Healthy Beverage Tax Credit for the maximum of \$2,000. Is ABC eligible to receive the credit? If so, how much?

Answer:

First, before accepting ABC's application, the Department has to make sure that the maximum \$1,000,000 total amount of credit available for the Tax Year has not yet been allotted to taxpayers that applied for the credit prior to ABC's submission of its application. Second, the Department has to receive documentation from ABC proving that it is a Qualifying Merchant and that it purchased the Healthy Beverages at the cost specified in its application. Then, the credit available to ABC is calculated as follow:

<u>Cost of Healthy Beverage purchased for sale in Philly in 2016 ($\\$24,000 * .5$)</u>	<u>\$12,000</u>
<u>Cost of Healthy Beverage purchased for sale in Philly in 2017 ($\\$30,000 * .5$)</u>	<u>\$15,000</u>
<u>Amount by which 2017 Cost exceeds the 2016 Cost ($\\$15,000 - \\$12,000$)</u>	<u>\$ 3,000</u>

As such, ABC is eligible to receive the maximum \$2,000 credit for Tax Year 2017.

Example 3.

Question:

The same question as Example 2 above except that ABC sold only \$12,000 worth of Healthy Beverages, not the entire \$15,000 of Healthy Beverages it purchased in Tax Year 2017 and placed for sale in its Philadelphia store location. All \$12,000 of Healthy Beverages purchased in Tax Year 2016 was sold. Thus, the cost of the Healthy Beverages sold in both Tax Years is \$12,000. Would your answer be any different from the answer to Example 1?

Answer:

No, the answer wouldn't be any different. The credit is not based on the value of the Healthy Beverages sold in the Tax Year compared to the value the Healthy Beverages sold in the immediately preceding Tax Year. The credit is based on the cost of Healthy Beverages purchased in the Tax Year compared to the cost of Healthy Beverages purchased in the immediately preceding Tax Year, regardless of whether they were sold.

Example 4.

Question:

The same question as Example 2 above except that \$998,700 worth of Healthy Beverages Tax Credits have already been allotted in Tax Year 2017 to taxpayers that applied for the credit prior to ABC's submission of its application. Is ABC eligible to receive any credit? If so, how much?

Answer:

As computed in Example 2, the amount by which cost of the Healthy Beverages purchased by ABC in Tax Year 2017 exceeds the cost of the Healthy Beverages purchased in Tax Year 2016 is \$3,000. However, the Healthy Beverages Tax Credit available for ABC is only \$1,300, which is the difference between the maximum \$1,000,000 Healthy Beverages Tax Credit available in Tax Year 2017 less the amount of Healthy Beverages Tax Credit provided to other taxpayers on a first-come-first-served basis prior to ABC's submission of its application. The \$700 unused credit, which is the \$2,000 maximum less \$1,300 available, shall not be carried forward.

D. Tax Compliance – In order for a Qualifying Merchant to receive the Healthy Beverages Tax Credit as provided by this section, the Qualifying Merchant is required to be in compliance with all applicable City and School District of Philadelphia taxes.

____ **Underline denotes new matter**



Date: 5-15-18

Frank Breslin, Revenue Commissioner