



CITY OF PHILADELPHIA

LAW DEPARTMENT

Tax Unit

Municipal Services Building
1401 JFK Boulevard- 5th Floor
Philadelphia, PA 19102-1595

FRANCES RUMML BECKLEY
REVENUE CHIEF COUNSEL

PHONE: 215.683.0515

EMAIL: frances.beckley@phila.gov

May 3, 2017

Re: Sugar Sweetened Beverage Tax – Request for Letter Ruling

Dear Mr. [REDACTED]

This ruling is issued by the Tax Unit of the Law Department and the Technical Staff of the Revenue Department and is in response to your request for a ruling on whether frozen concentrates, water enhancers, and powered mixes are taxed under the Sugar-Sweetened Beverage Tax (“SBT”).

In your request, you argue that there is an inconsistency among the ordinance, regulation, and frequently asked questions (FAQ) response on the Philadelphia website, whether these items are taxable. Specifically, you note that the ordinance exempts syrup or other concentrate products to which the customer is required to add other ingredients to have a consumable beverage, but argue that the regulations and Revenue Commissioner’s Report on the SBT limit that exemption when the manufacturer’s intended end product is taxable. Attached is your Memorandum dated April 14, 2017, requesting a ruling.

Question Presented

1. Whether taxable syrups, concentrates and powered mixes include frozen concentrates; such as Ocean Spray Cranberry Juice Cocktail, “water enhancers,” like MiO, and powdered drink mixes, like Nestea ice tea mix or Country Time lemonade mix?

Statement of Law

Philadelphia Code § 19-4101 (3)(b) states that a SBT includes “[a]ny non-alcoholic syrup or other concentrate that is intended to be used in the preparation of a beverage and that lists as an ingredient.” However, Philadelphia Code § 19-4101 (3)(c)(.6), excludes from the tax “[a]ny syrup or other concentrate that the customer himself or herself combines with other ingredients to create a beverage.”

Section 102 of the SBT Regulations states that the SBT does not include:

Any syrup or other concentrate that the customer himself or herself combines with other ingredients to create a beverage. For example, table sugar, maple syrup, and honey are generally in this category, because they are multi-purpose sweeteners and their manufacturers’ packaging, marketing, and instructions do not reflect an intention for use in the preparation of a beverage. Similarly a bag of sugar with a beverage recipe on it is included in this category, because the use is merely incidental. In contrast, bag-in-box high fructose corn syrup is packaged and marketed as a sweetener for beverages, and its instructions reflect that use; accordingly, it is subject to the tax.

Phila. Reg. § 102(a)(F).

Revenue Commissioner’s Report:

It was requested that the regulations be amended to:

- Clarify that syrups and other concentrates are only taxable when used by someone other than the end consumer to make a beverage.
- Clarify that syrups and other concentrates are only taxable when the end product, as prepared to the manufacturer’s specifications, would be taxable.

The Commissioner agrees and the necessary changes have been made in ARTICLE 1 GENERAL PROVISION – Section 102.

Revenue Commissioner’s Report on Philadelphia Beverage Tax Public Hearing, Oct. 31, 2016, p. 3 (https://beta.phila.gov/media/20161101125829/Philadelphia-Beverage-Tax_Commissioners-Report-on-Public-Hearing_20161031.pdf).

FAQ section on the city of Philadelphia’s SBT:

Are mixes sold at retail (like powdered ice tea, protein shakes, hot cocoa, or lemonade) taxable?

Not if they are sold in concentrate form to the end customer who will mix them to create a beverage. If the dealer mixes them to create a beverage, the finished product is taxable.

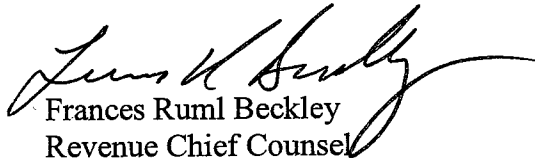
<http://www.phillybevtax.com/Consumers/Frequently-Asked-Questions>

Ruling

Upon review of the ordinance, regulation, and frequently asked questions (FAQ) response on the Philadelphia website, and Revenue Commissioner's Report on Philadelphia Beverage Tax Public Hearing, it is determined that frozen concentrates like Ocean Spray Cranberry Juice Cocktail, water enhancers like MiO, and powdered drink mixes like Nestea ice tea mix or Country Time lemonade mix, sold at retail to which the customer himself or herself combines with other ingredients to have a consumable beverage, are not taxable under the SBT.

This opinion is given to you as of the date hereof, and we express no opinion as to any matter not expressly set forth herein. By rendering this opinion, we do not undertake any obligation to advise you of any change in law or facts that may occur or come to our attention after the date hereof. We offer no assurance that we would reach the same conclusion with respect to other specific items.

Sincerely yours,


Frances Ruml Beckley
Revenue Chief Counsel