



CITY OF PHILADELPHIA

LAW DEPARTMENT

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June 12, 2017

Re: Philadelphia Beverage Tax – Request for Letter Ruling

Dear [REDACTED]

This ruling is issued by the Tax Unit of the Law Department and the Technical Staff of the Revenue Department (together “the City”) and is in response to your request for a ruling on whether [REDACTED] would be subject to the Philadelphia Beverage Tax (“PBT”) in two instances upon which [REDACTED] is acting as a Philadelphia dealer on taxable product that it has manufactured. The first instance relates to situations where [REDACTED] owns and manages Coca-Cola vending machines. The second instance relates to situations where [REDACTED] sells taxable sweetened beverages (“SB”) directly to retail customers that give away their product to their employees and customers.

Facts

This ruling is based upon the following facts as detailed in Gordon Jenkins’ letter dated April 13, 2017 and an email follow-up from Mr. Jenkins dated May 11, 2017:

- [REDACTED] is a wholly-owned subsidiary of the Coca-Cola Company (“TCCC”).
- [REDACTED] is a manufacturer and produces SB both within and outside the City of Philadelphia, making the SB from concentrate.
- [REDACTED] currently purchases concentrate for Coca-Cola products from its parent company, TCCC. TCCC creates that concentrate from raw ingredients, rather than purchasing it from any third-party.

- For third-party products (products not owned by TCCC, but produced pursuant to co-packing agreements) that █████ produces, █████ purchases concentrate from a third party.
- █████ is a registered Philadelphia distributor and pays the PBT on supplies of SB delivered to Philadelphia dealers. Most of █████'s SB sales are to other dealers.
- █████ also acts as a Philadelphia dealer by supplying SB in Coca-Cola owned and managed vending machines located within Philadelphia. These vending machines are stocked by █████ employees with SB manufactured by █████ both within and outside Philadelphia. Retail customers/consumers acquire the SB directly from █████ through the vending machine purchase.
- █████ also sells SB directly to retail customers. These retail customers are using the SB to give away to their employees and customers, and so are not dealers. For instance, █████ may sell and deliver SB to a lawyer's office and the lawyer provides the SB to his or her clients and employees.

Summary Question and Answer

Is █████ subject to PBT when on SBs it manufactures and sells directly to retail customers either through vending machines or by delivery?

No PBT is imposed on the direct retail sales by █████, whether by vending machine or delivery. However, because █████ is acting as retailer in these transactions, its purchase of concentrate from third-parties to make non-Coca-Cola products for retail will be subject to PBT. The purchase of concentrate to make Coca-Cola products from █████'s corporate parent will not be subject to PBT.

Statement of Law

Philadelphia Code § 19-4103(1) imposes the PBT as follows:

Effective January 1, 2017, and thereafter, a tax is imposed upon each of the following: the supply of any sugar-sweetened beverage to a dealer; the acquisition of any sugar-sweetened beverage by a dealer; the delivery to a dealer in the City of any sugar-sweetened beverage; and the transport of any sugar-sweetened beverage into the City by a dealer. The tax is imposed only when the supply, acquisition, delivery or transport is for the purpose of the dealer's holding out for retail sale within the City the sugar-sweetened beverage or any beverage produced therefrom. The tax is to be paid as provided in § 19-4105 (liability for payment of tax) and § 19-4107 (waivers).

Philadelphia Code § 19-4101(4) and Philadelphia PBT Regulation § 101(h) both define supply as "[s]ell, distribute, transfer, deliver or supply."

Ruling

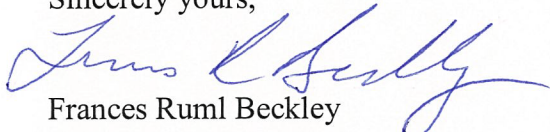
The PBT is imposed when “the supply, acquisition, delivery or transport [of SB] is for the purpose of . . . holding out for retail sale within the City the sugar-sweetened beverage or any beverage produced therefrom.” Philadelphia Code § 19-4103(1).

In the situations described above, [REDACTED] acts as both the manufacturer and dealer of the SB provided to the customer. Because there is no distributor from which [REDACTED] acquires that final SB, there is no distribution transaction upon which to impose the PBT. When [REDACTED] makes its own SB, it is self-evident that the SB has not been “supplied” to, “acquired” by, or “delivered” to [REDACTED]. While it may be technically true that [REDACTED] “transports” the SB into the City in cases where the manufacture occurred outside Philadelphia, the City takes the position that transportation only triggers the tax when it is the completion of a distribution transaction from a third-party.¹

However, the SB provided to the customer is not the only SB at issue in these situations. Because [REDACTED] is a Philadelphia dealer, its purchase of concentrate (also defined as SB) from a third-party to make non-Coca-Cola SBs for retail customers is “supply” of SB subject to the tax. Accordingly, if the third-party from whom [REDACTED] purchases the concentrate for non-Coca-Cola SBs is not a registered distributor, [REDACTED] must register and pay the PBT on those purchases. [REDACTED]’s purchases of concentrate from its corporate parent will be treated as self-supply and not subject to PBT so long as the transactions are within an affiliated corporate group.

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

¹ Those situations are analogous to the farmers’ market scenario presented in the frequently asked questions (FAQ) section on the city of Philadelphia’s website. In each, there will be no taxable event since the product was never “supplied” to a dealer:

I am a manufacturer who sells sweetened beverages directly to the public, for example at a Farmer’s Market. Do I need to register and pay the tax for sweetened beverages I sell to the public in Philadelphia?

No. The Sweetened Beverage Tax is on the distribution of sweetened beverages for resale to a dealer in Philadelphia. In this case, because no distribution has occurred, no taxable transaction has occurred.

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