

Chapter 16 Sugar Sweetened Beverage Product Distribution Tax

3-16-1. - Findings and Purpose.

- (a) An excise tax on the distribution of sugar-sweetened beverages is intended to protect the health, safety and well-being of all in the City of Boulder.
- (b) Whereas consuming one sugar-sweetened beverage a day increases the risk for childhood obesity by 55%.
- (c) Whereas consuming one sugar-sweetened beverage a day increases the risk of developing Type Two Diabetes by 25%.
- (d) Whereas consuming one sugar-sweetened beverage a day increases the likelihood of death from cardiovascular disease by 30%.

3-16-2. - Imposition and Rate of Tax.

- (a) Excise tax. There is levied and shall be paid and collected an excise tax of two cents (\$0.02) per fluid ounce of sugar-sweetened beverage products that are distributed in the city. The tax is imposed only when the supply, acquisition, delivery or transport is for the ultimate retail sale of the sugar-sweetened beverage product within the city.
- (b) For purposes of calculating the tax imposed under this chapter, the volume, in fluid ounces, of a sugar-sweetened beverage product shall be:
 - (1) For a bottled sugar-sweetened beverage the tax shall be calculated on the volume, in fluid ounces, of sugar-sweetened beverages distributed to any person in the course of business in the city.
 - (2) For a sugar-sweetened beverage made from syrups and powders the tax shall be calculated on:
 - (A) The manufacturer's suggested serving size for the volume of fluid ounces of sugar-sweetened beverages produced from syrup or powder upon the initial distribution of syrup or powder; or
 - (B) If the labeling or packaging does not specify the recommended number of servings per container, the tax shall be calculated using the largest volume of fluid ounces of sugar-sweetened beverages that could be produced from syrup or powder upon the initial distribution of syrup or powder.

3-16-3. - Distributor Liable for Tax.

- (a) Each distributor of sugar-sweetened beverage products shall pay the tax imposed in this chapter on each non-exempt distribution of a sugar-sweetened beverage product, except

that if there is a chain of distribution within the City of Boulder involving more than one distributor, the tax shall be levied on the first distributor subject to the jurisdiction of the city, unless the tax is not paid by the first distributor for any reason, it shall be levied on subsequent distributors, provided that the distribution of sugar-sweetened beverage products may not be taxed more than once in the chain of commerce within the city.

- (b) Prior to distributing any sugar-sweetened beverage product in the city, the distributor shall obtain the license required by Section 3-2-11, "Sales and Use Tax License," B.R.C 1981.
- (c) In order to aid in the city's collection of taxes due under this chapter, any retailer of sugar-sweetened beverage products that receives sugar-sweetened beverage products from a distributor, in accordance with rules and regulations promulgated by the city manager pursuant to Section 3-16-6, shall provide to the city evidence that the distributor from whom the sugar-sweetened beverage products were received has registered as a distributor with the city.

3-16-4. – Definitions.

For the purposes of this Chapter 3-16, unless the context otherwise requires:

"Beverage for Medical Use" means a beverage suitable for human consumption and manufactured for use as a:

- (1) Source of necessary nutrition due to a medical condition, or
- (2) For use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness.

It shall not include drinks commonly referred to as "Sports Drinks" or any other common names that are derivations thereof.

"Bottled Sugar-Sweetened Beverage" means any sugar-sweetened beverage in a container that is ready for consumption without further processing, such as, and without limitation, dilution or carbonation.

"Caloric Sweetener" means a substance or combination of substances suitable for human consumption that adds calories to and is perceived as sweet to humans when consumed, including, but not limited to sucrose, dextrose, fructose, glucose, other mono and disaccharides; corn syrup or high-fructose corn syrup; or any other caloric sweetener designated by the city manager.

"Consumer" means a natural person who purchases a sugar-sweetened beverage product in the city for a purpose other than resale in the ordinary course of business.

"Distribution" or "distribute" means the transfer of title or possession:

- (1) From one business entity to another for consideration;
- (2) Within a single business entity, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors; or
- (3) For products for which the tax imposed by this chapter has not been paid by a prior distributor, "distribution" or "distribute" also means the placement of a product with a retailer of sugar-sweetened beverage products.

"Distribution" or "Distribute" shall not mean the retail sale to a consumer.

"Distributor" means any person who distributes sugar-sweetened beverage products in the city.

"Milk Products" means natural fluid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk, coconut milk, rice milk and almond milk.

"Powder" means any solid mixture, containing one or more caloric sweetener as an ingredient, intended to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the powder with one or more ingredients.

"Retailer of Sugar-Sweetened Beverage Products" means a person, other than a distributor, manufacturer, or wholesaler who receives, stores, mixes, compounds, or manufactures a sugar-sweetened beverage and sells or otherwise dispenses the sugar-sweetened beverage to the ultimate consumer.

"Simple Syrup" means a mixture of water and one or more natural or common sweeteners without any additional ingredients.

"Sugar-Sweetened Beverage" means any non-alcoholic beverage which contains at least 5 grams of caloric sweetener per 12 fluid ounces.

- (1) "Sugar-Sweetened Beverage" includes all drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "sweetened ice teas," "sweetened coffees," or any other common names that are derivations thereof.
- (2) "Sugar-Sweetened Beverage" does not include any of the following:
 - (A) Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;

- (B) Any beverage for medical use;
- (C) Any liquid sold for use for weight reduction as a meal replacement;
- (D) Any product commonly referred to as "infant formula" or "baby formula";
- (E) Any alcoholic beverage;
- (F) Any beverage consisting of 100 percent natural fruit or vegetable juice with no added caloric sweetener. Natural fruit juice and natural vegetable juice is the original liquid with or without water added resulting from the pressing of fruits or vegetables;
- (G) Sweetened medication such as cough syrup, liquid pain relievers, fever reducers and similar products; or
- (H) Any product commonly used exclusively to mix with alcohol that may exceed 5 grams or more per serving of caloric sweetener per 12 ounces of fluid that is not a sugar sweetened beverage, including without limitation margarita mix, bloody mary mix, daiquiri mix or similar products.

"Sugar-Sweetened Beverage Product" means a bottled sugar-sweetened beverage or a sugar sweetened beverage made from the dilution of syrup or powder.

"Syrup" means any liquid mixture, containing one or more caloric sweeteners as an ingredient, intended to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the syrup with one or more other ingredients.

3-16-5. - Exemptions.

The tax imposed by this chapter shall not apply:

- (a) To any distribution of syrups and powders sold directly to a consumer and intended for personal use by a consumer that are not already pre-mixed into a sugar-sweetened beverage product such as granulated sugar, honey, agave and similar products.
- (b) To any milk product.
- (c) To infant formula.
- (d) To any alcoholic beverage.
- (e) To any beverage for medical use.
- (f) To any product that does not meet the definition of a sugar sweetened beverage.

3-16-6. - Duties, Responsibilities and Authority of the City Manager.

- (a) The city manager is authorized to administer the provisions of this chapter and has all other duties and powers prescribed by Section 3-2-17, "Duties and Power of City Manager," B.R.C. 1981.
- (b) The city manager shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted.

3-16-7. - Liability for Tax; Records; Retailer Obligations.

- (a) No receiver of a sugar-sweetened beverage product from a distributor shall fail to pay and no distributor shall fail to collect the tax levied by this chapter.
- (b) The receiver of any sugar-sweetened beverage product from a distributor shall include with its records of receipt of such product, the name of the distributor and amount of tax paid to the distributor.
- (c) The records required to be maintained by the receiver of the sugar-sweetened beverage product and the distributor shall preserve all records and reports as provided in Section 3-2-18, "Taxpayer Duty to Keep Records, Provide Information and File Returns," B.R.C. 1981.
- (d) The burden of proving that any transaction is not subject to the tax imposed by this chapter is upon the person whom the duty to collect the tax is imposed.
- (e) In order to aid in the city's collection of taxes due under this chapter, when requested by the city manager, any retailer of sugar-sweetened beverage products that receives sugar-sweetened beverage products from a distributor shall:
 - (1) Provide to the city evidence that the distributor from whom the sugar-sweetened beverage products were received has registered as a distributor with the city; or
 - (2) Report to the city all such transactions, the volume in ounces of sugar-sweetened beverage products received in each transaction, and the identity and contact information of any unregistered distributor from whom the sugar-sweetened beverage product was received and remit it to the city.

3-16-8. - Taxes Collected are Held in Trust.

All sums of money collected by a distributor as required by this chapter are public monies that are the property of the city. The distributor shall hold such monies in trust for the sole use and benefit of the city until the distributor pays them to the city.

3-16-9. - Enforcement of Tax Liability.

- (a) Tax Constitutes a First Lien. The tax imposed by this chapter is a first and prior lien on tangible personal property in which the person responsible to remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of notice of tax lien as provided in Subsection 3-2-27(c), B.R.C. 1981.
- (b) Enforcement. The provisions of Sections 3-2-22, "Penalties for Failure to File Tax Return or Pay Tax (Applies to Entire Title)," 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale of Business Subject to Lien," 3-2-30, "Certificate of Discharge of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing the Collection of Taxes Due (Applies to Entire Title)," 3-2-33, "Recovery of Unpaid Tax by Action at Law," 3-2-34, "City May Be a Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations of Fiduciaries and Others," and 3-2-38, "Limitations," B.R.C. 1981, providing for enforcement of collection of taxes due, govern the authority of the city manager to collect the tax imposed under this chapter.

3-16-10. - Not a Sales and Use Tax.

The tax imposed by this Chapter is a tax upon the privilege of conducting business, specifically, distributing sugar- sweetened beverage products within the City of Boulder. It is not a sales, use or other excise tax on the sale, consumption or use of sugar-sweetened beverage products. The tax imposed herein shall be in addition to any license fee or tax imposed or levied under any other law, statute or ordinance where imposed or levied by the city, state, or other governmental entity or political subdivision.

3-16-11. - Dedicated Revenues.

- (a) The revenues from this excise tax shall be designated for the administrative cost of the tax, and once that obligation has been fulfilled, used for health promotion, general wellness programs and chronic disease prevention in the City of Boulder that improve health equity, such as access to safe and clean drinking water, healthy foods, nutrition and food education, physical activity, and other health programs especially for residents with low income and those most affected by chronic disease linked to sugary drink consumption.
- (b) The city shall track and record all revenues collected from the excise tax imposed by this chapter, all administrative costs and the distribution of the portion of the tax collected not used for administrative costs. The city council shall annually publish a public report on the city's website detailing the amount of revenue collected as a result of the tax and the type and amount of expenditures made as a result of the tax levied in this chapter.

3-16-12. - Municipal Affair.

The people of the City of Boulder hereby declare that the taxation of the privilege of distributing sugar-sweetened beverage products and that the public health impact of sugar-sweetened beverage products separately and together constitute municipal affairs. The people of the City of Boulder hereby further declare their desire for this measure to coexist with any similar tax adopted at the county or state levels.