

1. What is the Sugar-Sweetened Beverage Product Tax?

The Sugar-Sweetened Beverage Product Tax (“Tax”) is a City excise tax adopted by the voters in November 2016 on the distribution of “sugar-sweetened beverage products” in the City of Boulder. Products whose distribution is subject to the tax include both products like soda, energy drinks, and heavily presweetened tea, as well as the “added caloric sweeteners” used to produce them, such as the syrup used to make fountain drinks. Certain drinks such as infant formula, milk products, alcoholic beverages, and 100% natural fruit and/or 100% vegetable juice are exempted.

2. Who is responsible for paying the tax?

The tax is to be paid by distributors— those who bring the beverages to retailers in the City – on the first distribution in the City of sugar-sweetened beverage products. This includes retailers who obtain and bring the beverages into the City themselves (“self-distributors”). There could be more direction from Boulder City Council regarding self-distributors. The tax defines “distribution” as the transfer of title or possession from one business entity to another, or within a single business, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors.

3. When did the Tax take effect?

The tax takes effect on July 1, 2017. Taxes are due monthly. The first return is due August 21, 2017 and on the 20th of every month after that. Those who fail to file their returns and remit tax payments will be subject to enforcement action.

4. What is the tax rate?

The tax rate is two cents (\$0.02) per fluid ounce of a sugar-sweetened beverage product. However, the tax on added “caloric sweeteners” or syrups is calculated on the maximum volume, in fluid ounces, of beverage that the syrup can produce based on the manufacturer’s instructions.

While the ordinance requires the tax to be paid on the first non-exempt distribution in the City, if it is not paid at that time, it is payable on the next (or any subsequent) distribution, provided that no taxable product may be taxed more than once.

How is the tax calculated?

For Sugar-Sweetened Beverages;

Number of ounces of Sugar-Sweetened Beverage X Tax Rate = Sugar-Sweetened Beverage Tax

For example;

- a 12-ounce can of Sugar-Sweetened Soda X .02 = **0.24cents Sugar-Sweetened Tax**
- an 8-ounce bottle of Sugar-Sweetened Beverage X .02 = **0.16cents Sugar-Sweetened Tax**

For Syrups or Powders – there are two ways to calculate the Sugar-Sweetened Beverage Tax and examples are below. Boulder City Council will be providing direction on which methodology to use;

Methodology 1 – a 750ml bottle of flavored syrup has 20 grams of sugar per one ounce serving and there are 25 servings in the container.

20grams of Sugar X 25 servings = 500grams of Sugar

500grams of sugar / 5grams of sugar = 100 Sugar-Sweetened Beverages (SSB)

100 SSB X 12 ounces (one serving size) = 1,200 ounces of Sugar-Sweetened Beverages

1,200 ounces X .02 (SSB tax rate) = **\$24.00 SSB Tax**

Methodology 2 – a 750ml bottle of flavored syrup has 20 grams of sugar per one ounce serving and there are 25 servings in the container.

$$\begin{aligned} 25 \text{ servings} \times 12 \text{ ounces (one serving size)} &= 300 \text{ ounces of SSB} \\ 300 \text{ ounces} \times .02 \text{ (SSB tax rate)} &= \mathbf{\$6.00 \text{ SSB Tax}} \end{aligned}$$

5. What qualifies as an added “Caloric Sweetener” or Syrup?

Some sugar-sweetened beverages are created with added “caloric sweeteners” or syrups. Those sweeteners or syrups are substances or combination of substances that meets all of the following four criteria:

- it is suitable for human consumption;
- it adds calories;
- it is perceived as sweet to humans when consumed.

6. What are some typical taxable distributions?

Typical taxable distributions would be:

- delivery of syrup to fast food or other restaurants;
- delivery of syrup to stores that sell fountain drinks; and
- delivery of Bottled Sugar-Sweetened Beverage with added caloric sweeteners to retail outlets and restaurants.
- purchase of Bottled Sugar-Sweetened Beverage or powders/syrups with added caloric sweeteners from unregistered distributors (self-distribution).

This is not an exclusive list of taxable distributions, but is intended only to provide typical examples.

7. Are there any exemptions to the Tax?

Yes, the Tax does not apply to:

- 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.
- to any milk product.
- to infant formula.
- to any alcoholic beverage.
- to any beverage for medical use.

8. How is medical use defined?

Any beverage that meets the statutory definition of “medical food” under the Orphan Drug Act, 21 U.S.C. § 360ee(b)(3), as amended. The Orphan Drug Act provides: “The term ‘medical food’ means a food that is formulated to be consumed or administered internally under the supervision of a physician and that is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”

In order to meet the definition of “medical food,” a beverage must meet the following criteria:

- It is a specially formulated and processed product (as opposed to a naturally occurring foodstuff used in its natural state) for the partial or exclusive feeding of a patient by means of oral intake or enteral feeding by tube, meaning a tube or catheter that delivers nutrients beyond the oral cavity directly into the stomach or small intestine;
- It is intended for the dietary management of a patient who, because of therapeutic or chronic medical needs, has limited or impaired capacity to ingest, digest, absorb, or metabolize ordinary foodstuffs or certain nutrients, or who has other special medically determined nutrient requirements, the dietary management of which cannot be achieved by the modification of the normal diet alone;
- It provides nutritional support specifically modified for the management of the unique nutrient needs that result from the specific disease or condition, as determined by medical evaluation;
- It is intended to be used under medical supervision;
- It is intended only for a patient receiving active and ongoing medical supervision wherein the patient requires medical care on a recurring basis for, among other things, instructions on the use of the medical food; and
- It is marketed by the manufacturer as a medical food, either on the product labeling or in other marketing material.

9. Does this tax apply to soda only?

No, this tax applies to any ready-to-consume sugar-sweetened beverage that contains at least 5 grams of caloric sweetener per 12 fluid ounces (or equivalent ratio) and to the volume of sugar-sweetened beverage that can be produced from certain syrups and powders. Please see item 9 to determine if the tax applies to a particular beverage.

10. How do I determine whether the tax applies to the distribution of a particular beverage and how do I calculate tax?

Below is a suggested 2-step method for determining whether the tax applies to the distribution of a Sugar-Sweetened Beverage. It does not constitute legal advice and so legal counsel should be consulted on the applicability of the tax to the distribution of a particular beverage.

Step 1: Does the non-alcoholic beverage have at least 5 grams of caloric sweetener per 12 fluid ounces?

If no, then the tax does not apply. (Example: This includes most diet drinks that don't have calories.)

If yes, proceed to Step 2.

Step 2: Sugar-Sweetened Beverage does NOT include any of the following;

- Any beverage in which milk is the primary ingredient, i.e. the ingredient constituting a greater volume of the product than any other;
- Any beverage for medical use;
- Any liquid sold for use for weight reduction as a meal replacement;
- Any product commonly referred to as “infant formula” or “baby formula;”
- Any alcoholic beverage;
- Any beverage consisting of one hundred (100) percent natural fruit or vegetable juice;
- Sweetened medication such as cough syrup, liquid pain relievers, fever reducers, and similar products.

If no, then the tax does not apply. (Example: 100% fruit or vegetable juice that, by definition, don't have added sugar because it is 100% fruit or vegetable.)

If yes, then the tax is likely to apply.

11. Is sugar (e.g., sucrose, glucose, fructose, etc.) an added caloric sweetener?

Yes. Sugar is an added caloric sweetener because it meets the definition of an added caloric sweetener as found in Chapter 3-16. It (i) is suitable for human consumption; (ii) adds calories to the diet if consumed; (iii) is perceived as sweet when consumed; and (iv) is used for making, mixing, or compounding sugar-sweetened beverages.

12. Is the distribution of granulated sugar an added caloric sweetener a taxable distribution?

Chapter 3-16 exempts the distribution of natural or common sweeteners from the tax. Chapter 3-16 defines natural or common sweeteners to include granulated sugar. However, once granulated sugar is used to make a sugar sweetened beverage, the distribution of that beverage is taxable (see previous answer).

13. Is the Tax a Sales Tax?

No. This is an excise tax.

14. May distributors increase their prices to retailers to pay for the Tax?

The ordinance does not prohibit distributors from increasing prices; that is a private business decision. The ordinance does not prohibit the Sugar Sweetened Beverage Product Tax from being passed on to consumers at the register or otherwise invoiced as a tax or surcharge. The ordinance does not prohibit retailers from increasing the shelf pricing; that is a private business decision.

15. Invoice/ Receipt

How should the beverage tax be presented on the invoice between a distributor and a retailer? Included in the sales price line amount or can it be a separate line item? Should the invoice include any particular language/ descriptions with reference to the beverage tax?

On the first distribution in the City, the Sugar-Sweetened Beverage Tax (SSBT) should be separately stated on the invoice from the distributor to the retailer. It can be called anything you like as long as we can identify it.

16. Is a sale to a nursing homes or assisted living facility a distribution subject to the beverage tax since this is the residents' home?

The distribution of ready-to-drink sugar-sweetened beverages are taxable in the City. The taxation of the distribution of powders and syrups under this scenario is currently being considered by the City.

17. Rounding: For ready-to-drink sugar-sweetened beverages, are ounces rounded to the full ounce before calculating the tax or is the tax rounded after multiplying it with the actual ounces of the beverage?

For purposes of tax calculation, the total number of ounces of sugar-sweetened beverage distributed should be calculated without rounding. That total number of ounces should then be multiplied by \$.02. The resulting total tax liability can be rounded to the nearest cent if necessary.

18. Exempt Purchasers – Are any entities exempt from the beverage tax? Public schools? State and Local governments? County jail? Military? Churches? What documentation does the distributor need to obtain and maintain in such instances?

There are no exempt purchasers/entities listed in the ordinance.

19. Donations – If a product that is subject to sweetened beverage when sold is donated, is the beverage tax still due the City? If not, would the City please specify what types of donations and/ or to which types of organizations this exemption would apply? i.e. What if products are donated to a non-profit food bank? To a business?

The taxation of distributed products which are donated is currently being considered by the City.

20. Self – Use & Samples – If a product subject to the beverage tax is pulled off the shelf for self-use or for samples, etc., is the beverage tax due on these transactions since they are not a sale to a retailer?

Yes – when the product is pulled off the shelf a distribution has occurred.

21. Unknown volumes – How is the distributor to determine the volume of finished product made from syrups/ powders/ concentrates if the manufacturer instructions are not present and it is the retailer who produces the finished product? Can a reasonable estimate be used?

Please see # 4 above.

22. Refunds – If the beverage tax is collected in error on a product and/ or from a retailer/distributor, from whom should the retailer/distributor seek a refund – the first distributor or the City – and how?

The retailer may seek a refund/credit from the distributor.

23. Product Taxability

Dietary Supplements, Liquid Nutritional Products, Thickened Beverages;

If items above qualify for an exemption – NO (see exempted items in #7)

If items above do NOT qualify for an exemption – YES (see exempted items in #7)

Flavored Syrups (not sold in grocery stores) added to a beverage – i.e. Cherry syrup added to a Coke since the cherry flavoring is not a beverage by itself but simply an additive to a beverage.

The Cherry syrup and Coke would both be taxable.

Creamers (not sold in grocery stores) added to a beverage – i.e. Hazelnut, sweetened, creamer intended to be added to coffee.

The creamers would be taxable if pre-mixed with the drink. If the creamers are for consumers use, then the creamer would not be taxable.

Mixers for alcoholic beverages – taxable.

24. When is the Tax due?

The Tax must be remitted/postmarked on or before the 20th day following the month (or on the next business day if the 20th falls on a weekend or holiday) the Tax was incurred.

25. Where can I find the language of the Tax itself?

The Tax is Title 3, Chapter 16 of the Boulder Municipal Code, which will be updated in late May 2017.

The ballot measure that was adopted by the voters can be found here:

<https://bouldercolorado.gov/tax-license/finance-sugar-sweetened-beverage-tax>

26. I am a retailer. Do I have any obligations under the Tax?

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 and that registration is current.

27. What about penalties and interest?

The Tax imposed by this Chapter shall be administered in the same manner as taxes imposed pursuant to Chapter 3-2-2 and, without limitation, shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in Chapter 3-2-22.

28. Where can I get information about paying the Tax?

For information regarding the tax, please contact the city’s Tax & Licensing Division at:

City of Boulder
Finance Department
Attention: Tax & License Division
P.O. Box 791, Boulder, CO. 80306
Phone: 303-441-3436
Email: SSBTax@bouldercolorado.gov
Website: <https://bouldercolorado.gov/tax-license/finance-sugar-sweetened-beverage-tax>