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# RETAIL DISTRIBUTORS FACE COMPLIANCE WITH SUGARY DRINK TAXES AROUND THE COUNTRY

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Retail distributors of sugary drinks are facing compliance with a number of taxes enacted by cities around the country.  San Francisco's sweetened beverage tax takes effect on January 1, 2018, and follows a national trend.

Similar taxes have recently taken effect in numerous other localities, including:

- Berkeley in December 2015;
- Albany, California in December 2016;
- Philadelphia in January 2017;
- and Oakland, California; Boulder, Colorado; and Cook County, Illinois in July 2017.

This past June, voters in Seattle, Washington approved a sugary drink tax, while such a tax was rejected by voters in Santa Fe, Mexico.

Typically, the taxes take the form of an excise tax on the first distribution of sugar-sweetened beverages and the powders or syrups used in making these beverages. The term "sugar-sweetened beverage" can be defined differently in each locality.  In Albany and Berkeley, for example, a sweetened beverage is defined broadly as any beverage that contains at least two calories per fluid ounce, while Oakland and San Francisco define it as containing 25 or more calories per 12 fluid ounces.

The San Francisco tax is 1 cent per fluid ounce and imposed on non-alcoholic beverages with added caloric sweetener.  Beverages commonly referred to as soda, pop, soft drinks, sports and energy drinks, and sweetened ice teas all fall within this definition.  The tax also applies to syrups and powders used to make sweetened beverages, i.e. fountain drinks.  Beverages produced for infant consumption are exempted.

Distributors of sweetened beverages in the affected areas should register as a business, then file a declaration of intent to remit payment of the tax. The San Francisco ordinance requires payments on a quarterly basis, and the first payment will be due April 30, 2018.

The taxes tax the distributors of sweetened beverages, not the producers or retailers.  However, the tax is likely to be passed along to retailers, who are likely to pass it on to consumers.

In fact, the stated purpose of the San Francisco tax is to reduce consumption of sugary drinks among consumers.  The ordinance cites statistics that nearly a third of San Francisco children and 46 percent of adults are obese or overweight, and that each additional sugary beverage consumed daily can increase a child's risk for obesity by 60 percent and the risk of Type II diabetes by 26 percent.

A study published in the American Journal of Public Health in November 2015 examining the Berkeley tax three months after it was enacted found an increase in prices and a decrease in consumption.  There is also speculation, however, that neighboring cities without a sugary drink tax may experience an increase in consumption.

In the past few decades, several states implemented "soda taxes" of sorts.  However, those taxes mainly differ from the recent ones, because: (1) the old taxes take the form of licensing fees and a tax on gross receipts, whereas the new taxes are excise taxes based on the amount of beverages sold within a jurisdiction; and (2) the primary purpose of the old taxes was revenue collection and project-specific financing (e.g. raising money for state recycling funds), whereas, the newer taxes have been enacted in order to influence consumer behavior, i.e. improve the health of the local population through a reduction in the consumption of sugar.

For questions or additional information, contact the author, Charles Lin, at 949-223-7145 or Charles.Lin@BryanCave.com, or any member of the Retail or Tax Advice and Controversy teams.

## MEET THE TEAM


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