

PROPOSED SUBSTITUTE TO FILE ID # 17-4704

(Finance Committee 10/10/2017)

SUBSTITUTE TO ITEM NO. 17-4704

PROPOSED ORDINANCE AMENDMENT

SPONSORED BY: COMMISSIONER SEAN M. MORRISON

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ORDINANCE AMENDMENT TO REPEAL THE COOK COUNTY SWEETENED BEVERAGE TAX

WHEREAS, the Sweetened Beverage Tax Ordinance was approved and adopted on November 10, 2016;
and

WHEREAS, it has becoming increasingly clear that this is a regressive tax which will cause immediate and irrevocable hardship to businesses in Cook County and put those businesses in competitive disadvantage to businesses nearby; and

WHEREAS, the U. S. Census Bureau has reported that from July of 2015 to June of 2016 Cook County has lost more population than any other county in the entire United States; and

WHEREAS, it has been widely reported that one of the main reasons businesses and residents are moving out of Cook County is excessive tax regulations; and

WHEREAS, a lawsuit has been filed questioning the constitutionality of this ordinance and Cook County may again be forced to spend huge sums to defend a potentially unconstitutional ordinance; and

WHEREAS, Crain's has reported that a recent poll conducted by a credible organization shows that 87 percent of Cook County residents are not in favor of the sweetened beverage tax; and

WHEREAS, although this regressive tax has only been in effect a short time, it appears that many consumers are crossing county borders to purchase items being taxed and are also buying others items leading to an ultimate loss of tax dollars to our neighboring counties and states; and

WHEREAS, it is in the best interest of the citizens and businesses of Cook County that this regressive tax ordinance be repealed;

NOW, THEREFORE, BE IT ORDAINED, by the Cook County Board of Commissioner that Chapter 74 Taxation, Article XXII Sweetened Beverage Tax, Sections 74-850 through 74-859 of the Cook County Code is hereby amended as follows:

~~ARTICLE XXII. -- SWEETENED BEVERAGE TAX⁽¹⁰⁾~~

~~Sec. 74-850. -- Short title.~~

~~This Article shall be known and may be cited as the "Cook County Sweetened Beverage Tax Ordinance."~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

~~Sec. 74-851. -- Definitions.~~

~~The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:~~

~~*Beverage for medical use* means:~~

- ~~(1) A beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness; and~~
- ~~(2) Medically necessary foods, as defined in the federal Orphan Drug Act, 21 U.S.C. 360ee(b)(3), as amended.~~

~~Beverage for medical use shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.~~

~~*Beverage dispensing machine* means a fountain drink machine, a device that combines syrup or syrup concentrate and carbon dioxide with chilled and purified water, or other refrigerated beverage machine used to serve non-carbonated or carbonated drinks.~~

~~*Bottle* means any sealed container regardless of size or shape, including, but not limited to, those made of glass, metal, paper, plastic, or any other material or combination of materials, including cans.~~

~~*Bottled sweetened beverage* means any sweetened beverage contained in a bottle that is ready for consumption without further processing such as, but not limited to, dilution or carbonation.~~

~~*Caloric sweetener* means any caloric substance used as an ingredient of a beverage, syrup, or powder that includes sucrose, fructose, glucose and/or other sugars, suitable for human consumption which adds calories to the diet of a person who consumes that substance.~~

~~*County* means the County of Cook.~~

~~*Department* means the Department of Revenue.~~

~~*Distributor* means any person, including manufacturers and wholesale dealers, who receives, stores, manufactures, bottles or distributes bottled sweetened beverages, syrup or powder, for sale to retailers doing business in Cook County, whether or not that person also sells such products to purchasers.~~

~~*Milk* means natural liquid milk regardless of animal or plant source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal or plant source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal or plant source or butterfat content.~~

~~Natural fruit juice means the original liquid resulting from the pressing of fruits or the liquid resulting from the dilution of dehydrated natural fruit juice.~~

~~Natural vegetable juice means the original liquid resulting from the pressing of vegetables or the liquid resulting from the dilution of dehydrated natural vegetable juice.~~

~~Non-alcoholic beverage means any beverage that contains less than one-half of one percent alcohol per volume.~~

~~Non-caloric sweetener means any non-caloric substance used as an ingredient of a beverage, syrup or powder that includes aspartame, saccharin, stevia and/or sucralose, suitable for human consumption which does not add calories to the diet of a person who consumes that substance.~~

~~Person means any individual, corporation, Limited Liability Corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.~~

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

~~Purchaser means any person who purchases in a retail sale.~~

~~Retail sale means any sale to a person for use or consumption, and not for resale.~~

~~Retailer means any person engaged in the business of selling sweetened beverages at retail in the County.~~

~~Sale, resale and selling means any transfer of ownership or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for valuable consideration.~~

~~Sweetened beverage means any non-alcoholic beverage, carbonated or non-carbonated, which is intended for human consumption and contains any caloric sweetener or non-caloric sweetener, and is available for sale in a bottle or produced for sale through the use of syrup and/or powder. Sweetened beverage does not include:~~

- ~~(1) Beverages consisting of 100 percent natural fruit or vegetable juice;~~
- ~~(2) Beverages in which milk, or soy, rice, or similar milk substitute, makes up more than 50 percent of the beverage or is the first listed ingredient on the label of the beverage;~~
- ~~(3) Beverages to which a purchaser can add, or can request that a retailer add, caloric sweetener or non-caloric sweetener;~~
- ~~(4) Infant formula;~~
- ~~(5) Beverages for medical use;~~
- ~~(6) Any liquid sold as a therapeutic nutritional meal replacement or for use for weight reduction as a meal replacement; or~~
- ~~(7) Any syrup or powder that the purchaser himself or herself combines with other ingredients to create a beverage.~~

~~Syrup means a liquid mixture, containing any caloric sweetener or non-caloric sweetener as an ingredient, intended to be used, or actually used, in making, mixing or compounding a sweetened beverage by combining the syrup with one or more other ingredients using a beverage dispensing machine.~~

~~(Ord. No. 16 5931, 11-10-2016.)~~

~~Sec. 74-852. Tax imposed and liability for payment.~~

- ~~(a) Effective July 1, 2017, a tax at the rate of \$0.01 per ounce is hereby imposed on the retail sale of all sweetened beverages in Cook County.~~
- ~~(b) The ultimate incidence of and liability for payment of the tax levied in this Article is to be borne by the purchaser of the sweetened beverage. Nothing in this Article shall be construed to impose a tax upon the occupation of distributors or retailers.~~
- ~~(c) It shall be deemed a violation of this Article for any distributor or retailer to fail to include the tax imposed in this Article in the sale price of the sweetened beverage, syrup and/or powder or to otherwise absorb the tax, unless otherwise required by law. The tax levied in this Article shall be in addition to any other taxes.~~
- ~~(d) Except as provisions are made in this Article for the collection of the tax levied in this Article upon the sweetened beverages, syrup and/or powder in the possession of retailers on the effective date of the ordinance from which this Article is derived, the tax levied in this Article shall be collected by each distributor when it sells sweetened beverages, syrup and/or powder to a retailer or a purchaser in Cook County.~~
- ~~(e) Any distributor of bottled sweetened beverages and any distributor of syrup and/or powder used to produce a sweetened beverage shall collect the tax levied by this Article from any retailer to whom the sale of bottled sweetened beverages or syrup and/or powder used to produce a sweetened beverage is made and shall remit the tax to the Department.
 - ~~(1) The tax on bottled sweetened beverages shall be based upon the number of whole ounces stated on the sealed container.~~
 - ~~(2) For purposes of the distributor's collection of the tax from its sale to a retailer of syrup and/or powder used to produce a sweetened beverage, the tax shall be \$0.01 per ounce of sweetened beverage produced from that syrup or powder. For such sales, the tax shall be calculated based upon the largest volume, in whole ounces, of sweetened beverage that could be produced from the syrup or powder, with a reduction of five percent of the calculated tax to account for spillage and product preparation at the retail level. The largest volume shall be determined based on the manufacturer's instructions.~~
 - ~~(3) Any retailer shall in turn then collect the tax from the purchaser of sweetened beverage.~~
 - ~~(4) Should a distributor sell sweetened beverages directly to a purchaser, the distributor shall collect the tax from that purchaser.~~
 - ~~(5) The tax shall be paid to the person required to collect it as trustee for and on behalf of the County.~~~~
- ~~(f) On or before August 20, 2017, every retailer of sweetened beverages doing business in the County shall file with the Department, on forms prescribed by it, a sworn tax return reporting the inventory of sweetened beverages, as well as the inventory of syrup and/or powder used to produce sweetened beverage, on which the sweetened beverage tax was not previously paid, in its possession or control on June 30, 2017. With said tax return, the retailer shall remit to the Cook County Collector the taxes due with respect to all sweetened beverages and syrup and/or powder used to produce sweetened beverage on which the sweetened beverage tax was not previously paid that was in the retailers' possession on June 30, 2017. The retailer shall in turn collect the tax from its purchasers. For the purpose of determining the amount of tax due on the amount of product in a retailer's possession or control on June 30, 2017, the following shall apply:
 - ~~(1) The tax on bottled sweetened beverages shall be based upon the number of whole ounces stated on the sealed container.~~
 - ~~(2) The tax for syrup and/or powder used to produce a sweetened beverage shall be \$0.01 per ounce of sweetened beverage produced from that syrup or powder, calculated based upon the largest volume, in whole ounces, of sweetened beverage that could be produced from the syrup or powder, with a reduction of five percent of the calculated tax to account for spillage and product preparation at the retail level. The largest volume shall be determined based on the manufacturer's instructions.~~~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

~~Sec. 74-853. Registration and remittance.~~

- ~~(a) Any distributor who engages in the business of selling sweetened beverages, syrup and/or powder in the County must register with the Department, in accordance with procedures prescribed by the Department, within 30 days after the effective date of this ordinance, and after such 30 days has passed, prior to engaging in the business of selling sweetened beverages, syrup and/or powder for resale, use or consumption in the County. Failure to register pursuant to this section shall be considered a violation of this Article.~~
- ~~(b) Distributors shall file each month with the Department a tax return reflecting sales of sweetened beverages, syrup and/or powder, in such form as prescribed and furnished by the Department, on or before the 20th day of the month following the month for which the return is due. Each tax return shall be accompanied by a remittance of the appropriate amount of tax applicable to the sales reported. The remittance shall be made payable to the County Collector. Registered distributors must file a monthly return even if no tax is due. Failure to file a monthly return and remit applicable tax shall be considered a violation of this Article.~~
- ~~(c) Any retailer who acquires sweetened beverages, syrup and/or powder from an unregistered distributor or on which tax was not previously paid, must file a tax return, in such form as prescribed and furnished by the Department, on or before the 20th day of the month following the month in which the sweetened beverages, syrup and/or powder were acquired. Each return must be accompanied by a remittance of the appropriate amount of applicable tax. The remittance shall be made payable to the County Collector. Failure of a retailer to file a return and remit applicable tax shall be considered a violation of this Article.~~
- ~~(d) The Department, in its discretion, may require that registration be completed, tax returns be submitted, and payments be made electronically.~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

~~Sec. 74-854. Tax-free sales.~~

- ~~(a) Registered distributors shall not pay or collect a tax with respect to sweetened beverages, syrup and/or powder which are otherwise subject to the tax when the sweetened beverages, syrup and/or powder are being sold to the following:
 - ~~(1) Another registered distributor; or~~
 - ~~(2) An unregistered distributor, a retailer or a purchaser when the selling distributor, or its agent, delivers the sweetened beverages, syrup and/or powder to a location outside of Cook County.~~~~
- ~~(b) The tax imposed by this Article shall not apply to purchases of sweetened beverages by a passenger on an interstate carrier; nor shall this tax apply to purchases that are specifically exempt from taxation under Federal law. It shall be presumed that all sales of sweetened beverages from distributors or retailers are subject to the tax under this Article until the contrary is established.~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

~~Sec. 74-855. Tax in addition to other taxes.~~

~~The tax imposed by this Article is in addition to all other taxes imposed by the Government of the United States, the State, or by any unit of local government.~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

~~Sec. 74-856. Books and records.~~

- ~~(a) Every distributor and every retailer shall keep accurate books and records showing all transactions that gave rise, or may have given rise, to any tax liability, exemption or defense to liability.~~
- ~~(b) Books and records and other documents shall be kept, by distributors and retailers, for the taxable time period as listed in the statute of limitations section of the Cook County Uniform Penalties, Interest and Procedures Ordinance, Chapter 34, Article III, Section 34-60 et seq. All books and records shall be kept in the English language and, at all times during business hours, shall be subject to and available for inspection or copying by the Department. Failure to keep books and records pursuant to this section shall be considered a violation of this Article.~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

~~Sec. 74-857. Violation; penalties.~~

~~Any person determined to have violated this Article, as amended, by failing to file a return and/or failing to remit taxes shall be subject to the penalties listed in the Cook County Uniform Penalties, Interest and Procedures Ordinance, Chapter 34, Article III. Any person determined to have violated any other provisions of this Article shall be subject to a fine of \$1,000.00 for the first offense, and a fine of \$2,000.00 for the second and each subsequent offense. Separate and distinct offenses shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof. It shall be deemed a violation of this Article for any person to knowingly furnish false or inaccurate information to the Department. Criminal prosecution pursuant to this Article shall in no way bar the right of the County to institute civil proceedings to recover delinquent taxes, interest and penalty due and owing as well as costs incurred for such proceeding.~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

~~Sec. 74-858. Application of uniform penalties, interest and procedures ordinance.~~

~~Whenever not inconsistent with the provisions of this Article or whenever this Article is silent, the provisions of the Cook County Uniform Penalties, Interest and Procedures Ordinance, Chapter 34, Article III shall apply and supplement this Article.~~

~~Sec. 74-859. Rulemaking.~~

~~The Department shall prescribe reasonable rules, definitions, and regulations necessary to carry out the duties imposed upon it by this Article. Such rules, definitions, and regulations shall take into account existing practices of sweetened beverage distributors and retailers for collection and remittance of the tax herein levied. Such rules shall include but not be limited to tax deductions/credits for breakage, spoilage, spillage, sweetened beverage expiration, sweetened beverage destruction and tax free sales.~~

~~(Ord. No. 16-5931, 11-10-2016.)~~

Effective Date: This Ordinance shall take effect on as of 12:00 AM on December 1, 2017.