

# **SUGAR-SWEETENED BEVERAGE TAX (“SBT”)**

## **REGULATIONS**

### **ARTICLE I GENERAL PROVISION**

#### **Section 101. Definitions.**

The following words and phrases when used in these Regulations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) Dealer. Any person engaged in the business of selling Sugar Sweetened Beverage for retail sale within the City, including but not limited to restaurants; retail stores; street vendors; owners and operators of vending machines; non-profits; government agencies; schools; and distributors who engage in retail sales. (See Example 12 for illustration)
- (b) Department. The Department of Revenue, in some cases working with the Law Department.
- (c) Distributor. Any person who supplies Sugar Sweetened Beverage to a dealer.
- (d) Registered Dealer. Any Dealer that has elected to register as if it were a Distributor and agreed to assume all of the obligations of a Distributor, under subsection 302(b) of these Regulations. (See Examples 7 and 9 for illustration)
- (e) Registered Distributor. Any Distributor, including a Dealer that is also a Distributor, who applies to obtain a certificate of registration for the purpose of complying with the provisions of the City’s Sugar Sweetened Beverage Tax law and receives such certificate from the Department. (See Examples 6 and 8 for illustration)
- (f) Sugar-Sweetened Beverage (hereinafter referred as “SB”)
  - (A) Any non-alcoholic beverage that lists as an ingredient:
    - (.1) any form of caloric sugar-based, including, but not limited to, sucrose, glucose or high fructose corn syrup. The following is a non-exclusive list of caloric sweeteners for purposes of Sections 101 (f)(A)(.1) and 101(f)(B)(.1) of these Regulations as it may be amended from time to time:
      - AGAVE
      - BEET SUGAR
      - BROWN RICE SYRUP
      - BROWN SUGAR
      - CALORIC SUGAR ALCOHOLS
      - CANE JUICE
      - CANE SUGAR

- CANE SYRUP
- CLINTOSE
- CONFECTIONER'S SUGAR
- CORN GLUCOSE SYRUP
- CORN SWEET
- CORN SWEETENER
- CORN SYRUP
- DATE SUGAR
- DEXTROSE
- DRIED RAISIN SWEETENER
- FRUCTOSE
- GLUCOSE
- GOLDEN SYRUP
- GOMME
- GRANULAR SWEETENER
- GRANULATED SUGAR
- HIGH FRUCTOSE CORN SYRUP
- HONEY
- INVERT SUGAR
- ISOGLUCOSE
- ISOMALTULOSE
- MALT SWEETENER
- MALT SYRUP
- MALTOSE
- MAPLE
- MAPLE SUGAR
- MAPLE SYRUP
- MIZUAME
- MOLASSES
- NULOMOLINE
- POWDERED SUGAR
- RICE SYRUP
- SORGHUM
- SORGHUM SYRUP
- STARCH SWEETENER
- SUCANAT
- SUCROSE
- SUCROVERT
- SUGAR
- SUGAR BEET
- SUGAR INVERT
- TABLE SUGAR
- TREACLE
- TURBINADO SUGAR

Caloric sweeteners also include sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100 percent fruit or vegetable juice of the same type. Examples of juice concentrates that can be caloric sweeteners include:

- APPLE JUICE  
CONCENTRATE
- CHERRY JUICE  
CONCENTRATE
- DATE JUICE  
CONCENTRATE
- GRAPE JUICE  
CONCENTRATE
- ORANGE JUICE  
CONCENTRATE
- PEAR JUICE  
CONCENTRATE

Any beverage or syrup or other concentrate containing “added sugar” pursuant to the United States Food and Drug Administration’s regulatory definition of “added sugar,” 21 C.F.R. § 101.9(c)(6)(iii), as amended, contains caloric sweetener for purposes of Sections 101 (f)(A)(.1) and 101(f)(B)(.1) of these Regulations; or

(.2) any form of sugar substitute or non-nutritive sweetener, including but not limited to stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame. A sugar substitute is any ingredient that causes humans to perceive sweetness in the absence of sugar. The following is a non-exclusive list of sugar substitutes for purposes of Sections 101 (f)(A)(.2) and 101(f)(B)(.2) of these Regulations:

- ACESULFAME POTASSIUM (ACE-K)
- ADVANTAME
- ASPARTAME
- NEOTAME (NUTRASWEET)
- NON-CALORIC SUGAR ALCOHOLS
- SACCHARIN (SWEET’N LOW)
- STEVIA (PUREVIA, TRUVIA)
- SUCRALOSE (SPLENDA)

(B) Any non-alcoholic syrup or other concentrate that is intended to be used in the preparation of a beverage and that lists as an ingredient:

(.1) any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or

(.2) any form of sugar substitute, including but not limited to stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame.

A syrup or other concentrate is "intended to be used in the preparation of a beverage" if the manufacturer's packaging, marketing, or instructions reflect an intention for the syrup or other concentrate to be used in the preparation of a beverage, unless the preparation of a beverage is only an incidental use of the syrup or other concentrate.

(C) Examples of sugar-sweetened beverages include, but are not limited to, soda; non-100%-fruit drinks; sports drinks; flavored water; energy drinks; pre-sweetened coffee or tea; and non-alcoholic beverages intended to be mixed into an alcoholic drink.

(D) Examples of beverages that are not sugar-sweetened beverages include any beverage that is 100% juice, or 100 juice concentrate that is nutritionally equivalent to 100% juice when reconstituted with water, with no added sweetener.

(g) Special Dealer. A Dealer that is granted by the Department, under the provisions of subsection 302(a) of these Regulations, a waiver from “Notification of Dealer Status” requirement provided under § 402 of these Regulations for a specific product or products. (See Examples 3 and 5 for illustration)

- (h) Supply. Sell, distribute, transfer, deliver or supply.
- (i) Taxpayer. Any person liable to pay the Sugar Sweetened Beverage Tax (“SBT”). This includes Registered Distributors, Registered Dealers and Special Dealers; and any Dealer who fails to provide the notification required under § 403 of these Regulations and any Dealer who sells at retail, or holds out or displays for sale at retail, any SB in violation of § 402 of these Regulations. (See Example 6 for illustration)

## **Section 102. Exclusion**

- (a) Notwithstanding subsection 101(f) of these Regulations, SB shall not include:

- (A) Baby formula.

Only infant formula meeting the Federal Food, Drug, and Cosmetic Act (FFDCA) definition is exempt from SBT. The FFDCA defines infant formula as “a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk” (FFDCA 201(z)). FDA regulations define infants as persons not more than 12 months old (Title 21, Code of Federal Regulations 21 CFR 105.3(e)).

FDA has requirements for nutrients in infant formulas, which are located in section 412(i) of the FFDCA and 21 CFR 107.100. These nutrient specifications include minimum amounts for 29 nutrients and maximum amounts for 9 of those nutrients. If an infant formula does not contain these nutrients at or above the minimum level or within the specified range, it is an adulterated product unless the formula is “exempt” from certain nutrient requirements. An “exempt infant formula” is “any infant formula which is represented and labeled for use by an infant who has an inborn error of metabolism or low birth weight, or who otherwise has an unusual medical or dietary problem” (FFDCA 412(h)(1)).

(B) 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:

- a. 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;

- b. 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;
- c. 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;
- d. It is intended to be used under medical supervision;
- e. 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
- f. It is marketed by the manufacturer as a medical food, either on the product labeling or in other marketing material.

The following are examples of beverages that are not “medical foods”:

GATORADE

POWERADE

COCONUT WATER

MUSCLE MILK

SMARTWATER

VITAMINWATER

The following are examples of products identified by their manufacturers as “medical food.” The Department may request documentation of “medical food” status and, upon request by the Department, the taxpayer is required to provide such information.

PEDIALYTE

AXONA

NEOCATE

ELECARE JR.

PORTAGEN

ENSURE CLEAR

JUVEN

**Adequate Documentation for Medical Food Exemption.** A legible copy of marketing materials on which the product manufacturer either (1) states that the product is a medical food or (2) makes a health claim consistent with medical food status that would be prohibited on conventional foods (e.g., a manufacturer claim that a product is for use under medical supervision to address a patient's special dietary needs that exist because of a disease, such as thickened beverages that are specifically marketed for use by people with dysphagia and/or swallowing dysfunction). If the taxpayer believes that a product is a medical food but cannot procure adequate documentation from available marketing materials, the taxpayer may request a written statement from the manufacturer that the product is a medical food pursuant to the Orphan Drug Act, U.S.C. § 360ee(b)(3), as amended, which the taxpayer may submit to the Department. Upon approval by the Department, the manufacturer's statement shall serve as adequate documentation of medical food status.

Further guidance is available at the following URL:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm054048.htm>

(C) Any product, more than fifty percent (50%) of which, by volume, is milk. For the purpose of this tax, milk includes products meeting USDA Nutrition Standards for Fluid Milk Substitution. The following products meet the USDA's criteria for fluid milk substitutes.

- Soy Milk
  - 8<sup>th</sup> Continent Original Soy Milk
  - Kikkoman Pearl Organic Soy Milk, Vanilla or Chocolate
  - Pacific Natural Ultra Soy Milk, Plain or Vanilla
  - Westsoy Soy Milk Organic Plus, Plain
  - White Wave Silk Soy Milk, Original
- Lactose-free cow's milk- brands such as Lactaid and Horizon or store brands

Soy milk products consistent with Pennsylvania Department of Education and PA WIC approved lists meet all the criteria and would be appropriate substitutes for fluid milk. On the other hand, rice milk, almond milk and cashew milk do not meet all the criteria and would not be appropriate substitutes for fluid milk if they contain any sweetener as an ingredient. Unsweetened milk substitutes, like all unsweetened beverages, are not subject to this tax.

#### USDA Minimum Nutrition Standards for Milk Substitutes

Nutrient	Amount per cup (8 fluid ounces)
Calcium	276 milligrams (mg)
Protein	8 grams (g)
Vitamin A	500 international units (IU)
Vitamin D	100 IU
Magnesium	24 mg
Phosphorus	222 mg
Potassium	349 mg
Riboflavin	.44 mg
Vitamin B-12	1.1 micrograms (mcg)

Source: USDA, Food and Nutrition Service, Final Rule

<https://www.gpo.gov/fdsys/pkg/FR-2008-09-12/pdf/E8-21293.pdf>

Milk solids or dry milk, when reconstituted with water in such a proportion to be nutritionally equivalent to milk shall be considered milk for the purposes of this section.

(D) Any product more than fifty percent (50%) of which, by volume, is fresh fruit, vegetables or a combination of the two, when such fresh fruit or vegetables are added at the point of sale by someone other than the customer . The beverage must be composed of fruit or vegetables that are fresh at the time of retail purchase. This exclusion allows Distributors to distribute syrups and concentrates without payment of SBT if, and only if, the manufacturer's instructions provide that the primary use of the syrup or concentrate is to prepare a beverage and those instructions provide for a beverage that is to be prepared by the dealer, at or near the time of purchase, to which the dealer will add fresh fruit or vegetables in quantities sufficient to constitute at least 50% by volume, of the beverage (*e.g.*, a fresh fruit smoothie). The exclusion does not apply to any product prepared in advance and shipped for retail sale made from fruit juice, fruit-based syrup or fruit concentrate that contains a caloric sugar-based sweetener, sugar substitute or non-nutritive sweetener. Any juice product, including juice concentrates, that consists of 100% fruit juice and that contains no caloric sugar-based sweeteners, sugar substitutes or non-nutritive sweeteners does



not fall within the definition of SB. This rule applies without regard to the actual use by a Dealer or customer.

(E) Unsweetened drinks to which a purchaser can add, or can request that a seller adds, sugar, or artificial sugar substitute, at the point of sale.

(F) Any syrup or other concentrate that the customer himself or herself combines with other ingredients to create a beverage. For example, table sugar, maple syrup, and honey are generally in this category, because they are multi-purpose sweeteners and their manufacturers' packaging, marketing, and instructions do not reflect an intention for use in the preparation of a beverage. Similarly, a bag of sugar with a beverage recipe on it is included in this category, because the use is merely incidental. In contrast, bag-in-box high fructose corn syrup is packaged and marketed as a sweetener for beverages, and its instructions reflect that use; accordingly, it is subject to the tax.

(G) Any syrup or other concentrate that is intended to be used for the preparation of a beverage where the resulting beverage, if prepared according to the manufacturers specifications, would be excluded from this tax. For example, if the manufacturer's instructions called for the resulting beverage to be more than 50% milk or more than 50% fresh fruit added at the time of retail sale.

(b) The Department is authorized by Philadelphia Code Section 19-4101(3)(e) to promulgate regulations to clarify the inclusion or exclusion of particular products; and to exclude particular products with respect to which, because of their ingredients or other administrative or health-related reasons, exclusion would be consistent with sound public policy and the purposes of this Ordinance.

## **ARTICLE II IMPOSITION AND RATE OF THE SUGAR-SWEETENED BEVERAGE TAX**

### **Section 201. Imposition**

Effective January 1, 2017, and thereafter, a tax (“SBT”) is imposed upon each of the following: the supply of any SB to a Dealer; the acquisition of any SB by a Dealer; the delivery to a Dealer in the City of any SB; and the transport of any SB into the City by a Dealer. The tax shall be imposed only once with respect to any individual item of SB. 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 either the SB or a beverage produced therefrom. The tax is to be paid by the Taxpayer as provided in § 301 (liability and payment of tax) and § 302 (waiver) of these Regulations. (See Example 2 for illustration)

### **Section 202. Rates**

(a) For SBs described in paragraph 101(f)(A) of these Regulations, one and one-half cents (\$.015) per fluid ounce.

(b) For syrup or other concentrate described in paragraph 101(f)(B) of these Regulations, the rate per ounce of syrup or other concentrate that yields one and one-half cents (\$.015) per fluid ounce on the resulting beverage, prepared to the manufacturer’s specifications. Upon a determination that the application of these rates to any particular product is unfair or unreasonable, the Department is authorized to issue regulations imposing the tax at an alternate rate on that particular product, to approximate as closely as possible the rates set forth in subsection (a). In the event that the manufacturer’s specifications for preparation cannot be reasonably obtained, the taxpayer shall make a reasonable estimate. (See Example 9 for illustration). Where a product is produced from more than one syrup or concentrate, the rate on each component shall be calculated, proportionately, so that the combined tax on the total yields one and one-half cents (\$.015) per fluid ounce on the resulting beverage.

## **ARTICLE III LIABILITY, PAYMENT AND WAIVER**

### **Section 301. Liability and Payment of Tax.**

(a) In general, SBT shall be paid to the city by the Registered Distributor; and the Dealer that acquires the SB from the Registered Distributor shall not be liable to the City for payment of the tax as long as the Registered Distributor has received from the Dealer notification pursuant to §402 of these Regulations that it is a Dealer.

(b) Where a Dealer is also a Registered Distributor, such Dealer is liable to the City for payment of SBT; no additional SBT shall be owing on the supply of any SB by such Dealer/Distributor to another Dealer if SBT already has been imposed on the supply or delivery of the beverage to the Dealer/Distributor or the acquisition of the beverage by the Dealer/Distributor. (See Example 2 for illustration)

(c) Where a Dealer is a Registered Dealer, such Dealer is liable to the City for payment of SBT; no additional SBT shall be owing on the supply of any SB by such Dealer to another Dealer if SBT already has been imposed on the supply or delivery of the beverage to the Dealer or the acquisition of the beverage by the Registered Dealer.

(d) Where a Dealer is a Special Dealer, such Dealer is liable to the City for payment of SBT on the product or products for which the waiver was granted pursuant to subsection 302(a) of these Regulations. (See Example 3 for illustration)

(e) In addition to any penalties provided hereunder, a Dealer who fails to provide the notification required under § 403 of these Regulations and a Dealer who sells at retail, or holds out or displays for sale at retail, any SB in violation of § 402 of these Regulations, shall be liable to the City for payment of any SBT owing under § 201 these Regulations, and shall file returns with the Department in form prescribed by the Department. (See Example 1 for illustration)

### **Section 302. Waiver**

(a) Upon a showing of extraordinary circumstances, where distribution channels would make purchase of a particular SB from a Registered Distributor substantially impracticable, the Department, in its discretion, may grant a full or partial waiver to a dealer from the provisions of § 402 of these Regulations. In such case, as well as during the pendency of any application for waiver under this subsection, SBT on such SB shall be paid directly by this Special Dealer to the Department, in such manner and using such forms as the Department shall prescribe. The Department may require an annual demonstration of continuing extraordinary circumstances in order to continue a waiver. (See Example 3 and 5 for illustration)

(b) A Registered Dealer is any Dealer that elects to register as if it were a Distributor and agrees to assume all of the obligations of a Distributor with respect to the Dealer's acquisition of any SB, including payment of SBT to the Department. The Department shall grant a waiver certificate from provisions of §402 and §403 of these Regulations to any Dealer that makes such election. (See Example 4 and 5 for illustration)

## **ARTICLE IV DISTRIBUTOR REGISTRATION; PURCHASES FROM REGISTERED DISTRIBUTOR; NOTIFICATION OF DEALER STATUS**

### **Section 401. Distributor Registration**

Upon application by any Distributor in form prescribed by the Department, the Department shall issue a certificate of registration to a Distributor, regardless of whether the Distributor does or does not do business in the City. Registration by a Distributor shall not subject a Distributor otherwise not liable for payment of Business Income and Receipts Tax to the payment of Business Income and Receipts Tax.

### **Section 402. Purchases from Registered Distributors**

(a) No Dealer may sell at retail, or hold out or display for sale at retail, any SB acquired by the Dealer on or after January 1, 2017, unless:

(A) The SB was acquired by the Dealer from a Registered Distributor or from a Registered Dealer; and

(B) The Dealer has complied with the notification requirements of § 403 of these Regulations; and received confirmation from the Registered Distributor or the Registered Dealer of such notification, as well as confirmation that the Distributor is a Registered Distributor, all in form prescribed by the Department. (See Example 1 and 2 for illustration)

### **Section 403. Notification of Dealer Status.**

(a) Effective January 1, 2017, no Dealer shall accept any SB from a Registered Distributor or a Registered Dealer, for purpose of holding out for retail sale in the City such SB or any beverage produced therefrom, without first notifying the Registered Distributor or the Registered Dealer, that such dealer is a Dealer as defined under Section 101 of these Regulations. Notice may be provided in the form of a Commonwealth of Pennsylvania sale for purpose of resale exemption certificate, so long as such certificate clearly indicates that the Dealer is located in Philadelphia; or in such other form as the Department may provide. Every Dealer shall maintain copies of any notices provided to a Registered Distributor, as provided in the Philadelphia Code § 19-506. A Distributor shall have no SBT liability with respect to any SBs supplied to a person who does not give notification to the distributor, prior to the sale that the SBs will be held out for retail sale in the City as provided in this section. Once a year notification is sufficient for this purpose if all or a known percentage of every purchase by a

Dealer from the Distributor is for retail sale in Philadelphia and the Distributor includes in the receipts the SBT imposed on each transaction as required under subsection 403(b) of this section.

(b) Upon receipt of notification pursuant to subsection (a) above, no Registered Distributor or Registered Dealer, shall supply any SB to a Dealer without providing to the Dealer, contemporaneously, (i) confirmation of notification; and (ii) a receipt detailing the amount of SB supplied in the transaction and the amount of SBT imposed on such transaction, all in form satisfactory to the Department. This notice shall appear either on the invoice to the dealer or on a form provided by the Department as a supplement to the invoice. (See Examples 4, 7, and 10 for illustration) A receipt will satisfy the requirements of this Section 403(b) if (i) the distributor includes on the receipt either the SBT imposed on the transaction such that the amount of SB supplied can be calculated by dividing the SBT imposed by the SBT rate or the volume of SB supplied and finished product that can be made from syrups and other concentrates such that the amount of SBT can be calculated by multiplying the volume in ounces by \$0.015, and (ii) the Distributor maintains records substantiating the amount of SB supplied in such transaction.

## **ARTICLE V RETURNS AND REPORTS; MAINTENANCE OF BOOKS AND RECORDS**

### **Section 501. Returns and Reports.**

(a) For each calendar month, on or before the 20<sup>th</sup> day of the month following the calendar month:

(A) Every Taxpayer as defined under Section 101(e) of these Regulations shall file with the Department a return setting out, in form satisfactory to the Department:

(.1) The amount of SB (separately for fluid and syrup) transferred in transactions on which SBT is imposed pursuant to subsection 201 of these Regulations.

(.2) The amount of SBT due on those transactions.

(B) Every Taxpayer shall pay to the Department the amount of SBT due.

(b) All bills or invoices created by or for a Taxpayer in connection with the acquisition of SB by a Dealer from that person, shall separately indicate the total volume of SB under paragraph 101(f)(A) of these Regulations; and, with respect to syrups or other concentrates under paragraph 101(f)(B) of these Regulations, the total volume of SB that would be prepared from such syrups or other concentrates when prepared to manufacturer specifications. This information shall appear either on the invoice to the Dealer or on a form provided by the Department as a supplement that must accompany each invoice to the Dealer.

(c) The Department may require every Taxpayer and Dealer to submit such other information as the Department deems necessary for proper administration of SBT.

(d) The Department is charged with enforcement and collection of SBT and is empowered to promulgate and enforce reasonable regulations for its enforcement and collection. (See Example 3 for illustration)

(e) Any taxpayer required to file a return under this Section and to pay SBT to the Department shall file an amended SBT return correcting an underpayment of SBT and with such amended return Taxpayer shall pay the underpaid SBT and any interest thereon. Such amended return shall be filed within 60 days of discovering the underpayment.

(f) When a Taxpayer discovers an overpayment of tax, the Taxpayer shall file an amended return to claim a credit or, if the Taxpayer is no longer required to file a SBT return, the Taxpayer will be entitled to claim a refund of the overpaid SBT. A credit or a refund may be

claimed only if the later filed SB return or refund claim is filed by the Taxpayer no later than three (3) years after the later of the date of payment of the overpaid SBT or the due date for such payment.

### **Section 502. Electronic Filing and Payment.**

(a) Any person liable to pay the SBT will be required to file the tax return and remit the attending tax payment electronically through electronic funds transfer (“EFT”). EFT includes automated clearinghouse (ACH) debits and/or credits, e-Check, and any other means or technologies that may be available to obtain the funds due the City in an efficient manner. The Department may by policy or announcement provide for additional electronic means/technologies as they become available.

(b) Any Taxpayer who is required by this regulation to electronically file a return and fails to do so will be subject to a penalty of \$500 for each occurrence. Every month that such Taxpayer fails to electronically file will constitute a separate occurrence. This penalty is in addition to any penalty due under Philadelphia Code § 19-509(4)(e).

(c) Any Taxpayer who is required by this regulation to make an electronic payment and fails to comply shall in addition to any interest, penalties and fees owed under Philadelphia Code § 19-509 be subject to a penalty for each occurrence as follows:

(1.) If the amount to be paid electronically is less than or equal to \$10,000: five percent (5%) of the amount to be paid electronically.

(2.) If the amount to be paid electronically is more than \$10,000 but less than \$50,000: five hundred dollars (\$500).

(3.) If the amount to be paid electronically is \$50,000 or more: one percent (1%) of the amount to be paid electronically.

Every month that the Taxpayer fails to make electronic payments will constitute a separate occurrence.

### **Section 503. Maintenance of Books and Records.**

Every Taxpayer and every Dealer is required to maintain for a period of six (6) years after the return is due or actually filed, whichever date is later, books and records, and such other information as the Department deems necessary for proper administration of this tax, and to make them available to the Department upon its request.

## **ARTICLE VI POWERS AND DUTIES OF THE REVENUE COMMISSIONER**

### **Section 601. Collect and Receive Tax.**

It shall be the duty of the Commissioner to collect and receive SBT.

### **Section 602. Enforce Collection and Promulgate Regulations.**

The Commissioner is charged with enforcing the collection of SBT. The Commissioner is also empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining to the administration and enforcement of the ordinance authorizing the imposition of SBT.

Questions not specifically answered in these regulations should be submitted in writing to Technical Staff, Department of Revenue, 1401 JFK Blvd., Room 480, Philadelphia, PA 19102 or by email to the Department at Revenue@phila.gov.

### **Section 603. Examine Books and Records.**

The Department, through its authorized agents or employees, is empowered to examine the books, records, copies of reports and returns transmitted to or filed with the City, copies of tax returns filed with other taxing authorities and such other information the Department deems necessary of every Taxpayer and every Dealer. Every Taxpayer and every Dealer is required to provide the duly authorized representative of the Department with the means, facilities and opportunity for such examination.

### **Section 604. Assess and Collect Underpayments of Tax.**

If upon examination by the Commissioner a return is found to be incorrect, the Commissioner is authorized to assess and collect any additional SBT determined to be due and unpaid by any taxpayer. If a return required to be filed under the ordinance authorizing this tax has not been filed, or if although a return has been filed, the tax shown on the return to be due has not been paid in part or in full, the correct amount of tax found by the Commissioner to be owing shall be assessed against, and collected directly from, the person liable for the tax with or without the formality of obtaining a return or amended return.

### **Section 605. Maintain Confidentiality of Returns.**

Consistent with Pennsylvania Law, any information gained by the Commissioner as a result of any returns, investigations, or verifications required to be made pursuant to these Regulations, shall be confidential, except for official purposes.



## **ARTICLE VII INTEREST, PENALTIES, FINES AND COSTS**

### **Section 701. Assessment of Interest and Penalty.**

Interest plus penalty shall be paid by any person subject to SBT as provided under Section 19-509 of the Philadelphia Code and Section 401 of the City of Philadelphia General Regulations if the SBT is not remitted to the City by the due date.

### **Section 702. Violation, Fines and Costs.**

(a) Any person subject to this tax, who violates any of the provisions of the ordinance authorizing the imposition of SBT, in addition to the interest and penalty prescribed under Section 701 of these Regulations, may be subject to additional fines and costs as provided under Section 19-509 of the Philadelphia Code and Section 602 of the City of Philadelphia General Regulations.

(b) In addition to any other penalties provided under Title 19 of The Philadelphia Code, a violation of §§402 and 403 of these Regulations shall constitute a Class II Offense under § 1-109 of the Philadelphia Code. The maximum fine for such offense is one thousand (1,000) dollars for each violation; and each separate sale, transaction or delivery shall constitute a separate offense. (See Example 1 and 2 for illustration)

(c) A person who violates the provisions of § 402 of these Regulations more than one time in any twenty-four (24) month period shall be subject to suspension of his or her Commercial Activity License for such period of time as the Department of Licenses and Inspections deems appropriate.

## **ILLUSTRATIVE EXAMPLES**

### **Example 1**

Company X is a Registered Distributor and Company Y is a Dealer as those terms are defined under Section 101 of these Regulations. Company Y is neither a Registered Dealer nor a Special Dealer. On January 1, 2017, Company X sold SB to Company Y. Upon reviewing the records of Company Y on March 1, 2017, the Department found out that Dealer Y, at the time of purchase, did not notify Company X that it is a Dealer and did not receive confirmation of notification from Company X.

### **Question:**

1. Is this sale/purchase subject to SBT?
2. If so, who is liable to the City for the payment of the tax and why?

### **Answer:**

1. Yes, the supply by a Distributor of any SB to a Dealer or the acquisition of any SB product by a Dealer from a Distributor is subject to SBT.
2. In this case, Dealer Y is liable to the City for payment of SBT. In general, the Registered Distributor is liable to the City for payment of SBT upon supplying SB to a Dealer. However, when a Dealer fails to provide the notification required under §403 of these Regulations, the Dealer is in violation of the SBT law and becomes liable, not only for payment of the tax, but also for penalties and fines. In addition to any other penalties provided under Title 19 of the Philadelphia Code, a violation of §§402 and 403 of these Regulations shall constitute a Class II Offense under § 1-109 of the Philadelphia Code. The maximum fine for such offense is one thousand dollars (\$1,000) for each violation; and each separate sale, transaction or delivery shall constitute a separate offense.

**Example 2**

The same fact pattern as Example 1 above, except that when the Department examined Dealer Y's books and records on March 1, 2017, Dealer Y had not yet sold the SB it purchased from Company X on January 1, 2017. Assume that the Philadelphia store is the only store where Dealer Y sells SB at retail and that all the SB Y acquired from X was for the purpose of retail sale.

**Question:**

Would your answer be any different from the answer to Example 1 above?

**Answer:**

No. The tax is not a sales tax; the tax is imposed upon the supply of the SB to the Dealer or the acquisition of the SB by the Dealer, not upon the sale of SB by the Dealer to its customers.

### Example 3

On March 1, 2017, XYZ acquired from Distributor A, who is not a Registered Distributor, 100 24-packs of 12 ounce cans of SB. On April 1, 2017, XYZ acquired from Distributor B, who is a Registered Distributor, 100 quarts of pre-made syrup each ounce of which produces, according to the manufacturer's specification, 1 quart of SB. With respect to the SB that XYZ acquired from Distributor A, XYZ is a Special Dealer. XYZ properly informed Distributor B that it is a Dealer and received confirmation notification as specified under Section 402 of these Regulations.

#### Question:

1. Is either of these transactions subject to SBT? Why?
2. If so, who is liable for the payment of the tax on each of these transactions? Why?
3. What is the amount to tax due on each transaction?
4. What is the due date/dates for filing and paying the tax relating to each transaction?

#### Answer:

1. Yes, both transactions are subject to SBT. In these transactions, the Dealer (XYZ) acquired from the Distributors (A and B) SB and syrup that is intended to be used in the production of SB. Supply of SB to a Dealer and acquisition of any SB by a Dealer (for the purpose of retail sale in the City) is subject to SBT.
2. Because XYZ is a Special Dealer with respect to the first transaction, it is liable for the payment of the tax on that transaction. A Special Dealer is a Dealer that is granted by the Department, under the provisions of subsection 302(a) of these Regulations, a waiver from "Notification of Dealer Status" requirement provided under § 402 of these Regulations for a specific SB or SBs. The SBT shall be paid directly to the Department by XYZ. Distributor B, who is a Registered Distributor, is liable for the payment of the tax on the second transaction. When a Registered Distributor receives from a Dealer notification and provides the Dealer with confirmation of notification pursuant to Section 402 of these Regulations, the Registered Distributor is liable for the payment of the tax.
3. Amount of SBT due on the first transaction

Total number of ready to consume ounces of SB:  $100 \times 24 \times 12 = 28,800$  ounces

SBT due  $(28,800 \times \$0.015) = \underline{\$432.00}$

Amount of SBT due on the second transaction

Number of quarts of syrup acquired: 100

Number of ounces per quart 32

Amount of syrup acquired in ounces  $(100 \times 32)$  3,200

Total number of ounces of SB to be produced  $(3,200 \times 32)$  102,400

SBT due  $(102,400 \times \$0.015) = \underline{\$1,536.00}$

4. SBT is filed and paid on a monthly basis. For each calendar month, the due date for filing and paying SBT is the 20<sup>th</sup> day of the month following the calendar month. As such, the due date for filing the return and paying the tax relating to the March 1, 2017 transaction is on or before April 20, 2017. The due date for filing and paying the tax relating to the April 1, 2017 transaction is on or before May 20, 2017.

#### **Example 4**

ABC is a large grocery store engaged in retail business in Philadelphia and its surrounding areas. ABC has five stores, two of them located within Philadelphia and the other three outside Philadelphia. ABC has one big storage facility which is located outside the City limit in the suburb of Philadelphia. ABC is neither a Registered Dealer nor is it a Special Dealer. ABC purchases all of its SB from Registered Distributors, who deliver all products to ABC's storage facility located outside Philadelphia. Upon each purchase, ABC properly informs the Registered Distributor that it is a Dealer engaged in retail business in Philadelphia and surrounding areas and receives confirmation of notification from the Registered Distributors.

#### **Question:**

1. Are any of the SB delivered to ABC's storage facility located outside the City subject to SBT?
2. If so, what portion of the delivery is subject to SBT and whose responsibility is it to determine the portion subject to the tax? Who is liable to the City for the payment of the tax?
3. If ABC does not inform the Distributors at the time of the transactions what portion of the SB will transfer to the Philadelphia locations, how should the Distributors calculate the tax?
4. Is there a viable alternative to this arbitrary determination of the portion of SB subject to the SBT?
5. If ABC notifies a Registered Distributor that 50% of the SBs sold in a particular transaction will be transferred to Philadelphia locations, but the Distributor erroneously pays tax on the entire amount supplied in such transaction, what is the Distributor's remedy?

#### **Answer:**

1. Yes, the SBs that will end up in the two ABC's grocery stores in the City for resale are subject to SBT. The Registered Distributors are liable to the City for the payment of the tax on those SBs.
2. As the Registered Distributors do not have any way of knowing the portion that ABC will transfer from its storage facility to its two Philadelphia location, it is ABC's responsibility to inform the Distributors at the time of the transactions the portion of the SB it will transfer to the Philadelphia locations. Based on that information, the Registered Distributors shall prepare a receipt detailing the amount of SB included in the transactions and the amount of SBT owing on such transactions.
3. If ABC does not inform the Distributors what portion of the SB will transfer to the Philadelphia locations, the Distributors should assume that 100% of the SB is taxable.
4. Yes. The viable alternative is for ABC to be a Registered Dealer and to take the responsibility for the payment of the SBT. As a Registered Dealer, ABC is responsible for payment of the SBT upon transfer of the SB from its storage facility to its two Philadelphia retail locations and would certainly know the amount of SB

subject to the SBT. This responsibility comes under the SBT law with the right to sell SB to other Dealers as long as it provides to such Dealer confirmation of notification as required under Section 403(b) of these Regulations.

5. Upon discovery that SBT has been overpaid, the Distributor should claim a credit against the SBT reported on a later filed SBT return. If the Distributor is no longer required to file a SBT return, the Distributor will be entitled to claim a refund of the overpaid tax (as long as such claim is filed within the time limits of Phila. Code Section 19-1703).

### **Example 5**

Same fact pattern as Example 4 above, except that ABC also directly imports from a foreign country a certain SB product that is popular within the large community of that foreign country in Philadelphia. The product is directly shipped from that foreign country via common carrier to one of the ABC's stores in Philadelphia. The foreign company that sells this product to ABC doesn't do any other business in Philadelphia and is not a Registered Distributor for the purpose of the SBT.

#### **Question:**

1. Is this transaction subject to the SBT? Why?
2. If so, who is liable to the City for payment of the tax? Why?

#### **Answer:**

1. Yes, the transaction is subject to SBT. Acquisition of any SB by a Dealer (a person engaged in the business of selling SB for retail in Philadelphia) is subject to SBT. The fact that the SB is imported and shipped via common carrier by a foreign company distributor which does not have any other business activity in Philadelphia only indicates that the foreign company may not have sufficient business nexus with Philadelphia to make it subject to the BIRT.
2. ABC is liable for the payment of SBT. The only way ABC could legally sell in Philadelphia any SB that it acquires after January 1, 2017, is either (i) by acquiring the product from a Registered Distributor who is liable to the City for payment of the SBT or (ii) by obtaining from the Department a full or partial waiver, as provided under Section 302 of these Regulations. In this case, ABC is not a Registered Distributor and therefore must apply to the Department for a partial waiver to be a Special Dealer for the purpose of this transaction and directly pay SBT to the City. Otherwise, ABC will be in violation of the law and will be subject, in addition to the payment of the tax, to penalties and costs



### **Example 6**

XYZ is a Dealer who acquired SB from Registered Distributors. XYZ is neither a Registered Distributor nor a Registered Dealer. Upon each purchase, XYZ properly informs the Registered Distributors that it is a Dealer engaged in retail business in Philadelphia and receives from the Registered Distributors (i) confirmation of notification; and (ii) a receipt detailing the amount of SB supplied in the transaction and the amount of tax owing on such transaction. BCD, a Dealer who is neither a Registered Dealer nor a Special Dealer, engaged in retail business in Philadelphia, purchased SB from XYZ. Prior to purchase, BCD notified XYZ that it is a Dealer engaged in retail business in Philadelphia and XYZ informed BCD that it is neither a Registered Distributor nor a Registered Dealer. XYZ gave a written statement to BCD that all SB it is selling to BCD was acquired from Registered Distributors who were notified that XYZ was a Dealer and who paid tax on all the SB.

### **Question:**

1. Upon audit by the Department, BCD provides the documents showing that it acquired the SB from XYZ and the written statement it receives from XYZ that XYZ acquired all its SB from Registered Distributors who were notified and paid tax. BCD believes that no additional tax is due on its purchase of SB from XYZ because the tax already has been imposed on and paid by Registered Distributors on the supply of the SB to XYZ. Is BCD's understanding correct?
2. If BCD's understanding is not correct, what are the consequences of its erroneous understanding of the law?
3. Should there be any penalty on XYZ for selling SB to BCD after being informed by BCD that it is a Dealer engaged in retail business in Philadelphia?

### **Answer:**

1. BCD's understanding is not correct. Except when the Dealer is also a Registered Distributor or a Registered Dealer, no Dealer may sell at retail, or hold out or display for sale at retail, any SB acquired by it unless: a) The SB was acquired from a Registered Distributor or from a Registered Dealer who would be liable to the City for payment of the tax; and b) The Dealer has complied with the notification requirements of § 403 of these Regulations; and received confirmation from the Registered Distributor or from the Registered Dealer of such notification, as well as confirmation that the Distributor is a Registered Distributor or a Registered Dealer. In the instant case, XYZ properly informed BCD that it is neither a Registered Distributor nor a Registered Dealer, and BCD knew that it did not acquire the SB from a Registered Distributor or from a Registered Dealer. The fact that BCD requested and received a written statement from XYZ that XYZ acquired all SB it carries in its Philadelphia store from Registered Distributors who are liable to the City for payment of the tax does not make XYZ a Registered Distributor or a Registered Dealer.

2. Because BCD acquired the SB from a source other than a Registered Distributor or a Registered Dealer, BCD is liable to the City for payment of any penalties, fines and costs as provided under Section 702 of these Regulation. Because SBT has already been paid by the Registered Distributor upon the supply of SB to XYZ, BCD shall not be liable for payment of SBT.
3. There should not be any penalty on XYZ for selling SB to BCD. There is nothing in the SBT law that prohibits XYZ from selling at retail to any person, including to another Dealer, SB it properly acquires from Registered Distributors. When acquiring all SB it carries in its Philadelphia store from Registered Distributors, XYZ properly fulfilled its notification requirement under the SBT law and properly received from the Registered Distributors (i) confirmation of notification; and (ii) a receipt detailing the amount of SSB supplied in the transaction and the amount of tax owing on such transaction.

### **Example 7**

The same fact pattern as Example 6 above, except that XYZ incorrectly notified BCD that (a) it is a Registered Dealer (b) as a Registered Dealer, it has the obligation to pay SBT to the City and the right to sell SBs to other Dealers and (c) no additional SBT must be paid by BCD if it purchases SB from XYZ to sell in Philadelphia at retail. Relying on XYZ's statements, BCD acquired the SB from XYZ, and XYZ provided BCD with confirmation of notification and with a receipt detailing the amount of SB supplied and SBT due on the transaction. XYZ did not pay SBT to the City on the transfer to BCD.

#### **Question:**

1. Is XYZ in violation of the law? What is the penalty imposed on XYZ for such violation? Is XYZ liable for the payment of SBT?
2. Is BCD in violation of the law? What is the penalty imposed on BCD for such violation? Is BCD liable for the payment of SBT?
3. Would your answer to question 1 and 2 be any different if XYZ is actually a Special Dealer and pays the tax?

#### **Answer:**

1. XYZ is in violation of the law for falsely identifying itself to BCD as a Registered Dealer, and for providing BCD with invalid confirmation of notification and with a receipt detailing the amount of SB supplied in the transaction and the amount of tax owing on such transaction. By so doing, XYZ intentionally misled BCD and should be liable to the City for payment of penalties, fines and costs. Because the tax has already been paid by the Registered Distributors upon supplying the SB to XYZ, XYZ shall not be liable for the payment of additional SBT.
2. No. BCD was intentionally misled by XYZ to believe that XYZ was a Registered Dealer and therefore BCD did not violate the SBT law.
3. The answer to question one is essentially the same. A Special Dealer is a Dealer that is granted, upon showing of extraordinary circumstances, a waiver by the Department to make purchase of SB from other than Registered Distributors and, as a result, assumes responsibility for payment of the tax to the Department. However, a Special Dealer is not a Registered Dealer and its responsibility to pay the SBT does not include the right to sell SB to other Dealers. Even though XYZ pays the tax on the transaction with BCD, misinforming BCD and acting as if it were a Registered Dealer is still a violation of the law, and XYZ should be liable to the City, at a minimum, for payment penalties and costs provided under Sections 701 and 702 of these Regulations.

The answer to question 2 remains the same.

### Example 8

Company A is a Registered Distributor for purposes of SBT. Company B is a Dealer engaged in retail sale business within Philadelphia. B acquired from A and A delivered to B's business location in Philadelphia, the following beverages: a) 50 24-packs of 16 ounce cans of SB that includes sucrose as an ingredient, b) 50 36-packs of 12 ounce cans of SB that includes stevia as an ingredient, c) 50 12-packs of 16 ounce cans of product that contains 60% milk by volume, and d) 50 12-packs of 16 ounce cans of SB that contains 45% fresh fruit by volume.

#### Question:

1. Calculate the amount of SBT Company A is liable to pay to the City.
2. Would your answer be any different if B, upon purchase, informed A that it is going to use the 45% fresh fruit SB as a mix to produce a beverage that is 75% fresh fruit by volume?

#### Answer:

1. Amount of SBT due on the SB that includes or contains

Sucrose as an ingredient:	$(50 \times 24 \times 16) \times \$0.015$	\$288.00
Stevia as an ingredient:	$(50 \times 36 \times 12) \times \$0.015$	\$324.00
45% fresh fruit by volume:	$(50 \times 12 \times 16) \times \$0.015$	\$144.00
60% milk by volume:	Not subject to SBT	<u>0.00</u>
<b>Total SBT due</b>		<b>\$756.00</b>

2. No, the answer would be the same; the tax is imposed upon the supply of the SB to the Dealer and taxability of the beverage sold to the Dealer depends on the manufacturer's specifications known to the Distributer at the time of the transaction takes place. The fact that the Dealer intends to mix the otherwise taxable SB with another beverage to produce a different beverage that might not have been subject to the SBT is irrelevant.

### Example 9

Company W is a major restaurant with many locations in Philadelphia. W is a Registered Dealer and acquired the following SBs from various Distributors:

- a) 20 quarts of syrup that contains sugar-based sweetener as an ingredient and each quart of which produces, according to the manufacturer's specification, 30 quarts of SB. W doesn't follow the manufacturer's specification and intends to produce 40 quarts of SB out of each quart of syrup.
- b) 10 quarts of concentrate that contains as an ingredient sugar substitute. According to the manufacturer's specification, each quart of concentrate produces 200 quarts of SB. Again, W doesn't follow the manufacturer's specification and intends to produce 300 quarts SB out of each quart of concentrate.

### Question:

1. As a Registered Dealer, W is liable to the City for payment of the SBT, and W calculates the SBT due based on the amount of SB it intends to produce out of the syrups and concentrates it acquired as follows:

#### **Amount of SBT due on the syrup**

Number of quarts of syrup acquired:	20
Number of ounces per quart	32
Amount of syrup acquired in ounces (20*32)	640
Ounces of SB W intends to produce (640*40)	25,600
<b>SBT due (25,600*\$0.015) = <u>\$384.00</u></b>	

#### **Amount of SBT due on the concentrate**

Number of quarts of concentrate acquired:	10
Number of ounces per quart	32
Amount of concentrate acquired in ounces (10*32)	320
Total number of ounces of SB W intends to produce (320*300)	96,000
<b>SBT due on (96,000*\$0.015) = <u>\$1,440.00</u></b>	

$$\text{Total SBT due } \$192.00 + \$1,440.00 = \underline{\underline{\$1,632.00}}$$

Is \$912.00 the correct SBT W is liable to pay to the City? Why?

2. If the above amount is not the correct SBT, what is the correct amount?

### Answer:

1. \$912.00 is not the correct SBT. As a Registered Dealer, W has elected to pay the SBT on the SB it acquires. W must calculate the SBT using the same formula as a Registered Distributor. The election to be a Registered Dealer doesn't come with a special privilege to pay less SBT than a Registered Distributor would pay on the same transaction.

2. The correct amount of SBT that Company W is liable to pay to the City should be calculated based on the manufacturer's specification of the number of ounces of SB that could be produced. Thus, the correct amount is:

**Amount of SBT due on the syrup**

Number of quarts of syrup acquired:	20
Number of ounces per quart	32
Amount of syrup acquired in ounces (20*32)	640
Ounces of SB to be produced per manuf. specification (640*30)	19,200
<b>SBT due (19,200*\$0.015) = <u>\$288.00</u></b>	

**Amount of SBT due on the concentrate**

Number of quarts of concentrate acquired:	10
Number of ounces per quart	32
Amount of concentrate acquired in ounces (10*32)	320
Ounces of SB to be produced per manuf. Specification (320*200)	64,000
<b>SBT due on (64,000*\$0.015) = <u>\$960.00</u></b>	

**Total SBT due \$288.00 + \$960.00 = \$1,248.00**

### Example 10

ABEX is a Dealer with ten (10) retail stores, two (2) of which are located within Philadelphia. ABEX is not a Registered Dealer. On April 2, 2017, ABEX acquired 100 cases of SB from a Registered Distributor. The Registered Distributor delivers the SBs to ABEX's only storage facility, which is located in Philadelphia. ABEX intends to sell 30 of the 100 cases of SB in its two Philadelphia stores. The remaining 70 cases will be taken by ABEX to its other stores located outside Philadelphia for retail sale. Upon purchase of the SBs, ABEX properly notified the Distributor of this fact and received from the Distributor confirmation notification and receipts detailing the amount of SB that ABEX intends to sell with Philadelphia and the amount of SBT it would pay on this transaction. The Distributor filed the required return and paid the SBT before the due date, which is May 20, 2017, on the 30 cases of the SB it transferred to ABEX storage facility for sale in Philadelphia. However, due to a special event that took place in the last week of May, ABEX ended up selling at its Philadelphia locations 50 cases, rather than 30 cases, of the SB purchased from the Distributor in that transaction.

#### Question:

Are the 20 additional cases of SB sold by ABEX in its Philadelphia store subject to the SBT? If so, who is liable for the payment of the tax?

#### Answer:

Yes, the 20 additional cases of SB sold by ABEX in its Philadelphia store is subject to the SBT. **The correct solution for the underpayment is for ABEX to adjust its future order for that particular SB to overstate its anticipated Philadelphia store needs by 20 cases and therefore correct its inventory balance between Philadelphia and non-Philadelphia cases.**

If ABEX fails to make that adjustment within the next two orders for that SB, ABEX would be in violation of the SBT law and, in addition to the fines and costs specified under Section 702 of this regulation, ABEX would be liable for the payment of the tax. In the extraordinary situation where ABEX will not be placing any future Philadelphia orders for that SB (either because it will cease to carry that SB or because it no longer will have a Philadelphia location), ABEX should contact the Department directly to arrange payment of the additional tax due.

### Example 11

Same fact pattern as Example 10 above, except that the special event took place near one of the ABEX's stores located outside Philadelphia and ABEX had to transfer to this store half the inventory intended for sale in the two Philadelphia stores. Thus, instead of the 30 cases of SB ABEX notified the Distributor that it would sell in its two Philadelphia stores, for which the

Distributor properly paid the SBT, ABEX only sold in the two Philadelphia stores 15 cases of the SB it acquired from the Distributor in the April 2, 2017 transaction.

**Question:**

Would the Distributor receive refund or a credit from the Department of the SBT paid on the 15 cases of SB that were not sold in the Philadelphia Stores by ABEX? What can ABEX do to recover any excess cost it incurred as a result of the SBT paid on those 15 cases?

**Answer:**

As long as ABEX has documented that 15 cases of SB intended for sale in Philadelphia actually were sold outside the City, if ABEX has sufficient non-Philadelphia inventory, ABEX may elect to replenish its Philadelphia inventory with 15 cases of SB from its non-Philadelphia inventory (on which no SBT was paid). In the extraordinary situation where ABEX will not be placing any future Philadelphia orders for that SB (either because it will cease to carry that SB or because it no longer will have a Philadelphia location), ABEX can notify the Distributor of the change in the retail sale location and the Distributor can claim a credit or refund, as appropriate, in accordance with Section 501 (e) of these Regulations. Any recovery by ABEX is entirely at the discretion of the Distributor.

**Example 12**



TBS is a Dealer located in Philadelphia that purchased online from an internet retailer a concentrate intended to produce SB. The internet retailer does not have any location in Philadelphia and, for the purpose of SBT, it is neither a Registered Distributor nor a Registered Dealer. TBS used a quarter of the concentrate it purchased from the internet retailer to prepare SB for a charitable event that takes place within Philadelphia and donated the SB free of charge to the charity that organizes the event. TBS used another quarter of the concentrate it purchased from the internet retailer to prepare SB and to sell it at cost to the same charity for the same event. In each case, the charity intends to provide the SB to patrons of the event at no charge. The remaining one-half of the concentrate was used to prepare SB for retail sale in Philadelphia at a regular price.

**Question:**

1. Is the on-line seller liable for the payment of any SBT to Philadelphia on its supply of the concentrate to TBS?
2. Is TBS liable for the payment of any SBT to Philadelphia on its purchase?
3. If TBS is liable for the payment of any SBT, what portion is subject to the tax?
4. If TBS, used the SB itself or for free samples instead of donating it to charity, would it be liable for the payment of any SBT?

**Answer:**

1. The online seller is not liable for the payment of any SBT to Philadelphia, because it is neither a Registered Distributor nor a Registered Dealer.
2. TBS is liable for the payment of SBT to Philadelphia on the acquisition of SB concentrate. Because the online seller is not a Registered Distributor or Dealer, for TBS to be able to sell its purchase of concentrate, TBS has to be either a Registered Dealer or Special Dealer pursuant to Section 302 of these Regulations and to assume the responsibility of payment of the SBT to the City.
3. The quarter of the concentrate that TBS purchases from the internet retailer to prepare SB for donation to charity free of charge is not subject to SBT. The portion of the concentrate TBS uses to prepare SB for sale to the charity at cost and the portion it uses to prepare SB for retail sale at a regular price are both subject to the SBT. The fact that the portion of the SB is sold at a substantial discount (in this case at cost), even if it is sold to a charity, is irrelevant for the purpose of SBT as long as the SB is sold at retail.
4. No, products not transferred for retail sale are not subject to the tax.

### **Example 13**

On January 20, 2017, Distributor A sold and delivered 100 cases of SB to Dealer B, which is also a Distributor. For the purpose of this tax, both A and B are Registered Distributors. B intends within three (3) months a) to sell at retail within Philadelphia 35 cases of the SB it purchased from A, b) to distribute/sell to Dealers within Philadelphia 25 cases of the SB it purchased from A and c) to distribute/sell the remaining 40 cases to Dealers/retailers located outside Philadelphia. B distributes all 100 cases of the SB to Dealers within Philadelphia in February, 2017.

#### **Question:**

1. Is Distributor A liable for the payment of any SBT on this transaction?
2. Is Dealer/Distributor B liable for payment of any SBT on this transaction?
3. If there is any SBT due, what is the due date for the payment of the tax?

#### **Answer:**

1. As a Registered Distributor, Distributor A may be liable for the payment of SBT on the 35 cases of the SB it sold to B. For Distributor A to be liable, B has to properly notify A that it intends to sell 35 cases of its purchase from A at retail within Philadelphia and B has to receive from A, pursuant to Section 403 of these Regulations, confirmation of notification and receipts detailing the transaction and the amount of SBT due. The fact that B is a Dealer that is also registered as a Distributor for the purpose this tax does not make it automatically responsible for the payment of the tax on the transaction. B will be responsible for the payment of the tax if, for whatever reason, it opts not to notify Distributor A about its intent to sell the 35 cases of its purchase at retail in Philadelphia.
2. Dealer/Distributor B is liable for the payment of SBT on the 25 cases of the SB it distributes to other Dealers/retailers within Philadelphia, assuming it gets notification from those Dealers that they are Dealers and that they intend to sell the product at retail in Philadelphia. The remaining 40 cases of SB that B distributes to retailers outside Philadelphia is not subject to the tax.
3. The due date for the payment of SBT is the 20<sup>th</sup> day of the month following the calendar month when the transaction takes place. Distributor A sold the SB to B in the month of January, 2017, and as such, the due for the payment of the SBT by Distributor A is February 20, 2017; Dealer/Distributor B sold the SB to other Dealers in Philadelphia in the month of February, 2017 and, as such, the due date for payment of the SBT by Dealer/Distributor B is March 20, 2017.