

Frequently Asked Questions (FAQ) for the Sweetened Beverage Tax of Berkeley, CA

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

The Sugar-Sweetened Beverage Product Tax (“Tax”) is a City general tax adopted by the voters in November 2014 on the distribution of “sugar-sweetened beverage products” in the City of Berkeley. 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 containing certain forms of sugar, such as infant formula, milk products, and natural fruit and 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. This includes retailers who obtain and bring the beverages into the City themselves (“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. Distribution excludes retail sale to a consumer.

3. When did the Tax take effect?

The tax took effect on January 1, 2015. Taxes are due monthly. However, because the City had not developed complete information for taxpayers by that date, the first month distribution was taxable was March 2015, with remittances due on or before April 30, 2015. The City is doing further outreach to smaller retailers who self-distribute. These particular small self-distributors will be required to file their Sugar-Sweetened Beverage tax returns for the month of January 2016 with remittances due on or before February 29, 2016. 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 one cent (\$0.01) 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. If the distributor uses the syrup to produce a sugar-sweetened beverage, the regular practice of the distributor. For example, if one ounce of syrup produces 12 ounces of a sugar-sweetened beverage, the tax would be \$0.12.

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.

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:

1. it is suitable for human consumption;
2. it adds calories;
3. it is perceived as sweet; and
4. it is used for making Sugar-sweetened beverages by combining it with one or more other ingredients.

Added “caloric sweeteners” or syrups do not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

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 drinks with added caloric sweeteners to retail outlets and restaurants.

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This is not an exclusive list of potentially 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:

- any distributor who is not subject to taxation by the City under state or federal law;
- any distribution of a sugar-sweetened beverage product to a retailer with less than \$100,000 in annual gross receipts in the most recent year (as defined in Section 9.04.025);
- any distribution of natural or common sweeteners; or
- any distribution of added caloric sweeteners to a food products store, if that store then offers the sweetener for sale to customers for later use.

In addition, distribution of certain beverages is specifically exempted:

- beverages in which milk is the primary ingredient;
- beverages for medical use;
- liquids sold for use for weight reduction as a meal replacement;
- products commonly referred to as “infant formula” or “baby formula”; and
- alcoholic beverages.

8. Does the Tax apply to coconut and tree waters?

No, as long as these products do not contain added caloric sweeteners.

9. Does this tax apply to soda only?

No, this tax applies to sugar sweetened beverages. Please see item 10 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?

Below is a suggested 2-step method for determining whether the tax applies to the distribution of a particular 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 beverage have at least 2 calories per ounce?

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: Does the beverage have an added caloric sweetener (ACS)?

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. 100% coconut and tree waters would also be outside because they are 100% coconut or tree waters.)

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 BMC Section 7.72.030.A. 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?

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No. BMC section 7.72.020 exempts the distribution of natural or common sweeteners from the tax. BMC 7.72.030.K 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

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

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

15. When is the Tax due?

The Tax must be remitted/postmarked on or before the 30th day following the month the Tax was incurred.

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

The Tax is Chapter 7.72 of the Berkeley Municipal Code, which can be found at <http://codepublishing.com/ca/berkeley/html/Berkeley07/Berkeley0772/Berkeley0772.html#7.72>

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

<http://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/Sugar%20Sweetened%20Beverage%20Tax%20%20-%20Full%20Text.pdf>

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

Retailers who do not bring the sugar-sweetened beverages or syrups to their stores themselves are required to identify their distributors.

18. What about penalties and interest?

The Tax adopts the penalties and interest in the City's existing business license tax: payments that are up to 30 days delinquent trigger a penalty of 10%, and payments that are more than 30 days delinquent trigger a 50% penalty. Interest accrues on delinquent amounts at the rate of 1% per month.

19. How long will the Tax be in effect?

The Tax will expire on December 31, 2026.

20. Where can I get advice about paying the Tax?

The City of Berkeley has partnered with MuniServices, LLC for the administration of the Sugar-Sweetened Beverage Tax. For information regarding the tax, please contact MuniServices at:

City of Berkeley
C/O MuniServices, LLC
2342 Shattuck Ave. #889
Berkeley, CA 94704
Toll Free Phone: (866) 240-3665
Toll Free Fax: (855) 219-4338
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Website: http://www.cityofberkeley.info/Finance/Home/Business-Related_Taxes.aspx

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21. Who is MuniServices, LLC?

MuniServices, LLC is a private company that has been contracted by the City of Berkeley to administer the Tax.