

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. When did the Tax take effect?

The tax took effect on January 1, 2015. However because the City had not developed complete information for taxpayers by that date, the first month during which distribution will be taxable is March 2015, with remittances due on or before April 30, 2015.

3. Is the Tax a Sales Tax?

No, this is not a sales tax.

4. What is the tax rate?

The tax rate is one cent (\$0.01) per fluid ounce of a sugar-sweetened beverage.

For taxable caloric sweeteners such as syrups, the tax is calculated on the largest volume, in fluid ounces, of beverage that could be produced from the syrup, based on the manufacturer's instructions or, if the distributor uses the syrup to produce a sugar-sweetened beverage, the regular practice of the distributor. Thus the tax on an ounce of syrup would be significantly more than one cent (\$0.01).

5. Who is responsible for remitting the Tax?

The tax is to be paid by 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.

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.

6. What is an "Added Caloric Sweetener"?

An "added caloric sweetener" is any substance 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 do not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

7. 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.

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8. 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.
- retail outlets or restaurants bringing drinks into the City for sale at their own store

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

9. 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;
- 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.

10. Does the tax apply to alcoholic mixers?

Effective January 1, 2018, yes. Mixers fit the description of an “added caloric sweetener” and are taxed at the maximum amount of beverage produced. Mixers do not fit the description of an “Alcoholic Beverage” as defined in Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code; therefore, mixers are not exempt.

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

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

12. 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.

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

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.)

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

The Tax does not prohibit distributors from doing so; 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 collected.

16. Where can I find the Tax itself?

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

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?

Initially, retailers are required only to identify the distributors that provide them with sugar sweetened beverage products.

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. Can the tax be listed on distributor invoices?

If the Sugar-Sweetened Beverage Tax is listed on the Distributor's invoice, the tax must not be displayed in a way that implies that the customer is paying the tax (e.g. sales tax). The reference to the tax must also be accompanied by a statement that indicates that the amount listed is paid by the Distributor of the Sugar-sweetened beverage.

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
Email: berkeley-support@muniservices.com

Website: http://www.cityofberkeley.info/Finance/Home/Business-Related_Taxes.aspx

21. Who is MuniServices, LLC?

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