

Draft Rule – 5-953 Sweetened Beverage Tax

- I. GENERAL PROVISIONS. This rule explains the Sweetened Beverage Tax (“SBT”) as imposed by Chapter 5.53 of the Seattle Municipal Code (“SMC”). The SBT is an excise tax on the distribution in the City of Seattle of any beverage, except as otherwise provided in Chapter 5.53 SMC and this rule, that is intended for human consumption and contains one or more caloric sweeteners.
- A. The provisions contained in Chapter 5.55 SMC shall have full force and application with respect to taxes imposed under Chapter 5.53 SMC.

Definitions. The definitions contained in Chapter 5.30 shall be fully applicable to Chapter 5.53 except as may be expressly stated to the contrary herein. The following additional words and phrases when used in this Rule shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

1. “Beverage for medical use” means a beverage suitable for human consumption and manufactured for uses as a/an:
 - a. Oral nutritional therapy for persons who cannot absorb or metabolize caloric or dietary nutrients from usual food or beverages; or
 - b. Oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness; or
 - c. Any beverage that meets the statutory definition of “medical food” under the Orphan Drug Act of 1983, 21 U.S.C. 360ee(b)(3), as amended. The Director may request documentation of “medical food” status and, upon request by the Director, the taxpayer is required to provide such information.

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

GATORADE
POWERADE
COCONUT WATER
MUSCLE MILK
SMARTWATER
VITAMINWATER

Appendix A to this rule is a non-exclusive list of beverages for medical use, therapeutic nutritional meal replacements, and weight reduction meal replacements. Further guidance is available at the following URL: <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm054048.htm>

2. “Bottled Sweetened Beverage” means any sweetened beverage contained in a bottle or any other closed container that is ready for consumption without further processing such as, and without limitation, dilution or carbonation.
3. “Caloric Sweetener” means any substance or combination of substances that contains calories, is suitable for human consumption, and that humans perceive as sweet. Caloric sweeteners include, but are not limited to, sugar, sucrose, dextrose, fructose, glucose, and other monosaccharides and disaccharides; corn syrup or high fructose corn syrup; honey; and any other such substance designated by the Director.

Appendix B to this rule is a non-exclusive list of caloric sweeteners.

4. “Concentrate” means a syrup, powder, frozen or gel mixture, or other product containing one or more sweeteners as an ingredient, intended to be used in making, mixing, or compounding a sweetened beverage by combining the concentrate with one or more other ingredients.
5. “Consumer” means a natural person who purchases a sweetened beverage in the City for a purpose other than resale in the ordinary course of business and for sale to another.
6. “Distribute” and “distribution” mean the transfer of ownership of, title to, or possession of products, where the recipient of the transfer offers the products for retail sale in the City and the transfer is:
 - a. from one person to another for consideration; or
 - b. within a single non-natural person, such as from a wholesale or warehousing unit of a business to a retail outlet of the same business or between two or more employees or contractors of the same business; or

- c. by a person who procures sweetened beverages outside the City and brings them into the City for retail sale (“self-distributors”); or
- d. by a person who procures concentrate which has not been subject to the SBT and is intended to be used in making, mixing, or compounding a sweetened beverage for retail sale in the City.

“Distribute” and “distribution” shall not mean the retail sale to a consumer; the SBT is imposed upon the distribution of sweetened beverages that are intended for sale at retail in the City. A distribution takes place where delivery to the recipient occurs, except in the case of self-distributors, where distribution takes place when sweetened beverages are brought into the City for retail sale.

- 7. “Distributor” means any person that distributes sweetened beverages in the City, regardless of whether the person also offers sweetened beverages for retail sale.
- 8. “Milk” means natural fluid milk, regardless of animal sources or butterfat content; natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content; and plant-based milk substitutes that are marketed as milk, such as but not limited to, soy milk, coconut milk, rice milk, and almond milk.
- 9. “Natural or common sweetener” means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.
- 10. “Nonalcoholic beverage” means a beverage suitable for human consumption and that is not liquor as defined in RCW 66.04.010.
- 11. “Sweetened beverage” means any beverage intended for human consumption which contains one or more caloric sweeteners, whether in bottles, prepared from concentrates, served as a fountain beverage, or in any other form.
“Sweetened beverage” includes all drinks and beverages commonly referred to as soda, pop, cola, soft drinks, sports drinks, energy drinks, sweetened ice teas and coffees, and

other products with added caloric sweeteners including but not limited to juice with added caloric sweetener, flavored water with added caloric sweetener, and non-alcoholic mix beverages that may or may not be mixed with alcohol or any other common names that are derivations thereof.

"Sweetened beverage" does not include any of the following:

- a. Any beverage in which natural milk is the primary ingredient, in other words, the ingredient listed first in the product ingredient list; or in which water and grains, nuts, legumes, or seeds constitute the first two ingredients in the product ingredient list;
- b. Any beverage for medical use;
- c. Any liquid sold for use as a meal replacement for weight reduction or other purposes;
- d. Any product commonly referred to as infant formula or baby formula;
- e. Any alcoholic beverage;
- f. Any beverage consisting of 100 percent natural fruit or vegetable juice with no added sweetener. For the purposes of this definition of "sweetened beverage", natural fruit juice and natural vegetable juice mean the original liquid resulting from the pressing of fruits or vegetables;
- g. Any concentrate that the consumer combines with other ingredients to create a beverage;
- h. Any beverage that contains fewer than 40 calories per 12-ounce serving;
- i. Drinks considered "diet," specifically, any beverage, syrup or other concentrate used to prepare a beverage that lists any form of artificial sugar substitute, including stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame; or
- j. Sweetened medication such as cough syrup, liquid pain relievers, fever reducers, and similar products.

II. IMPOSITION AND RATES OF THE SBT.

- A. Imposition. Effective January 1, 2018 and thereafter, a SBT is imposed on every person engaging in business within the City as a distributor of sweetened beverages for sale at retail in the City. The tax shall be imposed only once with respect to distribution of any individual item of sweetened beverage, and is not a tax on a retail sale to a consumer.
- B. Rates. The amount of tax due shall be equal to the volume of sweetened beverages the distributor distributes in the City for sale at retail, multiplied by the applicable tax rates prescribed in SMC 5.53.030.B.
1. For sweetened beverages that are concentrates, the tax shall be calculated using the largest volume of beverage that would typically be produced by the amount of concentrate distributed based on the manufacturer's instructions or industry practice. If the manufacturer's instructions for preparation or industry practice cannot be reasonably obtained, it will be presumed that one ounce of syrup yields one 12-ounce beverage, unless the distributor has documentation to establish otherwise. Where a product is produced from more than one concentrate, the rate on each component shall be calculated proportionately, so that the combined tax on the total yields \$.0175 per fluid ounce of resulting beverage.
 2. For sweetened beverages that the Director has certified to have been manufactured by a manufacturer with worldwide gross income of more than \$2,000,000 but less than \$5,000,000 in the prior calendar year, the tax rate shall be \$0.01 per fluid ounce of sweetened beverage the distributor distributes. For a sweetened beverage to be eligible for this rate under SMC 5.53.030.B.1, the manufacturer must apply to the City for certification as prescribed in III.B.1.a of this rule, below.
 3. For all other sweetened beverages, the tax rate shall be \$0.0175 per fluid ounce of sweetened beverages the distributor distributes.

III. LIABILITY, PAYMENT, EXCLUSION, EXEMPTION AND CERTIFICATIONS

- A. The tax imposed by Chapter 5.53 SMC shall be due and payable in accordance with SMC 5.55.040. Taxpayers filing their Chapter 5.45 SMC business license tax on a quarterly basis shall file the SBT on a

quarterly basis, and taxpayers filing their business license tax on an annual basis shall file the SBT on an annual basis, on forms prescribed by the Director. Persons discontinuing their business activities in the City shall report and pay the SBT at the same time as they file their final business license tax return.

B. Exclusions and Certifications.

1. A distributor may exclude from the amount of sweetened beverages used to calculate the tax owed under SMC 5.53.030 all sweetened beverages that the Director has certified have been manufactured by a manufacturer with worldwide gross income of \$2,000,000 per year or less. For a sweetened beverage to be eligible for the exclusion under SMC 5.53.050.A, the manufacturer must apply to the City for Small Manufacturer's SBT Exemption Certificate as prescribed in III.B.1.a of this rule, below.

A distributor may also be eligible for a reduced SBT rate under SMC 5.53.030 B.1, for all sweetened beverages that the Director has certified have been manufactured by a manufacturer with worldwide gross income of more than \$2,000,000 but less than \$5,000,000 in the prior calendar year. For a sweetened beverage to be eligible for the reduced SBT rate under SMC 5.53.050.B.1, the manufacturer must apply to the City for certification as prescribed in III.B.1.a of this rule, below.

- a. To determine Eligibility for a Certificate of Reduced SBT Rate under II.B.2 and a Certificate of Small Manufacturer's SBT Exemption Certificate under III.B.1 of this Rule, above, a Manufacturer must apply on a form prescribed by the City, accompanied by satisfactory proof of gross income, specifically the prior year's federal tax return, or other such documentation as the Director deems appropriate. Once certification is granted to a manufacturer, such certificate must be provided to a distributor, who is required to keep it on file. A distribution of a certified manufacturer's sweetened beverage will not be entitled to the exclusion or the reduced rate until the Certificate of reduced rate or exemption has been secured from the City.

The Certificate of Reduced Rate or the Certificate of Small Manufacturer's SBT Exemption Certificate must be renewed

annually. The reduced rate and exclusion from the sweetened beverage tax will only be available from the effective date of such certificate.

2. A distributor who distributes sweetened beverages within the City may exclude from the amount of sweetened beverages used to calculate the tax owed under SMC 5.53.030 all sweetened beverages for which it has received a Redistribution Certificate. A Redistribution Certificate is to be completed by a person other than the Distributor. The certificate may be downloaded from the City's website, completed, signed by an authorized individual, and provided to the Distributor. Once the Distributor secures the Redistribution Certificate, the Distributor must forward a copy to the City within 15 days of receipt. A person who completes a Redistribution Certificate and provides it to a Distributor is responsible for remitting the SBT on the products it ultimately distributes to itself in the City.

The Redistribution Certificate is available for instances where a retailer may take distribution of sweetened beverages in the City, but as part of its normal business practice re-distributes the sweetened beverages to locations not in the City. For example, RR is a retailer who takes delivery of sweetened beverages in the City, but later RR transfers sweetened beverages from its warehouse located in the City to its locations outside the City. Accepting delivery of all its sweetened beverages at its warehouse in the City and re-distributing the sweetened beverages to its different locations both inside and outside the City at a later date is part of its normal business practice.

C. Exemptions.

1. The direct retail sale of sweetened beverages by a manufacturer to a consumer without the involvement of a third party to transport or distribute the beverages shall not constitute "distribution" and the tax under SMC 5.53.030 shall not apply to sweetened beverages transferred in this manner.
2. If a person who is a member of a consolidated group, as defined by the Internal Revenue Code, pays the tax imposed by SMC 5.53.030 on a distribution of sweetened beverages, then subsequent transfers of those sweetened beverages from that

person to members of the consolidated group are not subject to the tax imposed by SMC 5.53.030.

3. Persons that are exempt from taxation by Washington cities pursuant to federal or state tax statutes or regulations are exempt from the tax imposed by Chapter 5.53 SMC.

APPENDICES

A. BEVERAGES FOR MEDICAL USE, THERAPEUTIC NUTRITIONAL MEAL REPLACEMENTS, AND WEIGHT REDUCTION MEAL REPLACEMENTS

Beverages for Medical Use.

Abbott Nutrition Products

Cyclinex®-1
Cyclinex®-2
Elecare® Jr
Ensure® Pre-Surgery
Ensure® Surgery
Ensure® Original
Ensure® Plus
Ensure® Enlive
Ensure® High Protein Shake
Ensure® High Protein TN
Glucerna® Shake
Glucerna® Advanced Shake
Glucerna® Snack Shake
Glutarex®-1
Glutarex®-2
Hi-Cal
Hominex®-1
Hominex®-2
I-Valex®-1
I-Valex®-2
Jevity® 1.0 Cal
Jevity® 1.2 Cal
Jevity® 1.5 Cal
Ketonex®-1
Ketonex®-2
Nepro® with Carb Steady
Osmolite® 1 Cal
Osmolite® 1.2 Cal

Osmolite® 1.5 Cal
Oxepa®
Pedialyte® Advanced Care
Pedialyte® Liquid
Pedialyte® Freezer Pops
Pedialyte® Advanced Care+
Pediasure® Grow & Gain
Pediasure® Grown & Gain with Fiber
Pediasure® with Fiber TN
Pediasure® 1.5 Cal
Pediasure® 1.5 Cal with Fiber
Pediasure® Enteral Formula 1.0 Cal
Pediasure® Enteral Formula 1.0 Cal with Fiber
Pediasure® Peptide 1.0 Cal
Pediasure® Peptide 1.5 Cal
Pediasure® Sidekicks®
Pediasure® Sidekicks® 0.63 Cal
Perative®
Phenex®-1
Phenex®-2
Pivot® 1.5 Cal
Promod® Liquid Protein
Promote®
Promote® with Fiber
Pro-phree®
Proprimex®-1
Proprimex®-2
Provimin®
Pulmocare®
Suplena® with Carb-Steady
Tyrex®-1
Tyrex®-2
TwoCal® HN
Vital® 1.0 Cal
Vital® AF 1.2 Cal
Vital® 1.5 Cal

Nestle Nutrition Products

Arginaid Extra®
Benecalorie®
Boost® Original
Boost® Glucose Control
Boost® Very High Calorie
Boost® High Protein
Boost® Plus

Compleat® Pediatric Reduced Calorie
Compleat® Pediatric
Compleat®
Diabetishield®
DiabetiSource® AC
FiberSource® HN
Glytrol®
Impact®
Isosource® 1.5Cal
Isosource® HN
MCT oil®
Microlipid®
NovaSource® Renal
Nutren® 1.0
Nutren® 1.0 Fiber
Nutren® 1.5
Nutren® 2.0
Nutren® Junior
Nutren® Junior Fiber
Nutren® Pulmonary
Peptamen®
Peptamen® with Prebio
Peptamen® 1.5 with Prebio
Peptamen® Junior
Peptamen® Junior Fiber
Peptamen® Junior with Prebio
Peptamen® Junior 1.5
Peptamen® AF
RenalCal®
Replete®
Replete® Fiber
Resource® Thicken Up® Clear
Tolerex®
Vivonex® TEN
Vivonex® Plus
Vivonex® Pediatric

Hormel Health labs

Vital Cuisine® Shakes
Healthy Shots® Protein Supplement Beverage
Thick & Easy® Nectar Thick Drinks
Thick & Easy® Honey Thick Drinks
L-Emental®
MedPass®
MedPass® 2.0 Nutritional Shakes

Mighty Shakes®
Mighty Shakes® II

Kent Precision Food Groups, Inc.

Thick-It®

Lyons Magnus

ReadyCare® Thickened Juice & Beverages

Medline

Active® Liquid Protein Nutritional Supplement
Active® Critical Care Protein Nutritional Supplement

National Nutrition Inc

ProSource®

Nutricia North America

ProStat®
FiberStat®

Global Health Products

LiquaCel®

Beverages for Weight Reduction/ Therapeutic Nutrition Meal Replacement

Abbott Nutrition Products

Ensure® Original Therapeutic Nutrition
Ensure® Plus Therapeutic Nutrition
Ensure® Enlive® Therapeutic Nutrition
Ensure® Clear
Glucerna® Therapeutic Nutrition
Glucerna® Hunger Smart Shake
Pediasure® Grow & Gain Therapeutic Nutrition
Pediasure® Sidekicks®
Pediasure® Sidekicks® 0.63 Cal
Vital® High Protein
Advant Edge® Carb Control

Nestle Nutrition Products

Boost® Kid Essentials
Boost® Kid Essentials 1.5 with Fiber
Boost® High Protein
Boost® Breeze
Boost® Calorie Smart
Boost® Compact
Boost® Simply Complete
Carnation Breakfast Essentials® Ready to Drink
Carnation Breakfast Essentials® Light Start
Carnation Breakfast Essentials® High Protein
Impact® Advanced Recovery
Optisource® Very High Protein Shake
ProNourish®

B. CALORIC SWEETENERS

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

ILLUSTRATIVE EXAMPLES

EXAMPLE 1

XYZ is a large grocery store with three locations in Seattle and two locations outside Seattle. XYZ buys its sweetened beverages from ABC distributor. ABC distributor delivers the sweetened beverages to each of XYZ's locations.

Question 1: Who is liable for the sweetened Beverage tax ("SBT")?

Answer: ABC distributor is liable for the SBT. The tax is imposed on the distribution of sweetened beverage for retail sale in Seattle. ABC is distributing to XYZ and XYZ is offering the beverages for retail sale in Seattle.

Question 2: Which deliveries are subject to the SBT?

Answer: ABC will need to pay the SBT on the deliveries to the three locations in Seattle. The tax is imposed on the soda and sweetened beverages distributed in Seattle for sale at retail. ABC shall not remit the tax on the distributions of sweetened beverages outside Seattle.

Question 3: What happens if XYZ grocery store moves sweetened beverages from a location outside Seattle to one of its locations inside Seattle?

Answer: In this instance, XYZ will become liable for the SBT on sweetened beverages that were initially delivered to its location outside Seattle but subsequently moved into Seattle to be sold at retail. XYZ will need to inform the City that it is distributing sweetened beverages into Seattle so that XYZ can report and pay SBT on its own distributions into Seattle.

EXAMPLE 2

XYZ is a large grocery store with locations in Seattle and outside Seattle. XYZ maintains a warehouse and distribution center outside Seattle where it holds inventory. XYZ will move inventory, including sweetened beverages, from the warehouse and distribution center to its stores as needed. XYZ will also have other sweetened beverages delivered directly to its stores by MT Cola Co.

Question: Who is liable for the SBT?

Answer: MT Cola Co is liable for the SBT on its distributions of sweetened beverage to XYZ's locations in Seattle. XYZ will also be liable for SBT on the sweetened beverages that it distributes to its stores in Seattle from its warehouse and distribution center located outside Seattle.

EXAMPLE 3

ABC Distributes name-brand sweetened beverages and bottles of flavored syrups to XYZ Grocer, a retail grocery store, located in Seattle. XYZ Grocer also has a warehouse that holds inventory outside Seattle. XYZ Grocer will transfer its house-brand sweetened beverages to its locations inside Seattle.

Question 1: Who is liable for the SBT?

Answer: Both ABC distributor and XYZ Grocer are distributing sweetened beverages into Seattle and therefore both will be subject to the SBT.

Question 2: On which items will ABC Distributor be liable for the SBT?

Answer: ABC Distributor must pay the SBT on the sweetened beverages distributed to XYZ Grocer locations in Seattle. ABC Distributor may exclude the flavored syrups from the SBT because these syrups are distributed to a grocery store where it is presumed that the buyers are consumers who will combine the syrups with other ingredients to create their own beverages. If a person purchases syrups at XYZ Grocer and uses them to create sweetened beverages for retail sale (e.g. coffee shop) then the purchaser of the syrups will be deemed a distributor and liable for SBT.

Question 3: On which items will XYZ Grocer be liable for the SBT?

Answer: XYZ Grocer will pay the SBT on the sweetened beverages that it distributed to its Seattle retail location from its warehouse. It may also exclude the flavored syrups as mentioned in question 2.

EXAMPLE 4

ABC Distributor distributes 20 bottles of syrups to a restaurant in Seattle. The restaurant uses the syrups to make Italian sodas and other house beverages.

Question 1: Is SBT due on this distribution?

Answer: Yes. ABC is distributing a concentrate that will be combined with other ingredients to create a beverage for retail sale in Seattle. It is presumed that the restaurant, not the customer, will use the syrup to create sweetened beverages that are sold to its customers.

Question 2: How much SBT is due on the bottles of syrups?

Answer: The amount of SBT due is based on the total ounces of beverages that can be created from the syrup based on the manufacturer's instructions or industry practice. For example, each bottle contains approximately 25 ounces (750 ml) and instructions provide for 1 ounce of syrup to make a 12-ounce Italian soda. Therefore, one bottle will potentially make 300 ounces of Italian sodas. This equates to \$5.25 of SBT per bottle (300 oz. of sweetened beverage X 0.0175). Total SBT due for this distribution to the restaurant will be \$105.00. (20 bottles x \$5.25).

EXAMPLE 5

ABC Distributor distributes 100 bottles of flavored syrups to restaurants in Seattle. The syrups do not contain any manufacturer's instructions as to the amount of syrup to be used in creating a sweetened beverage.

Question: How does ABC Distributor calculate the amount of tax that is due on the distributions of syrups if there are no instructions from the manufacturer?

Answer: If there are no instructions from the manufacturer, or if the manufacturer provides for a variety of measurements for different beverages, then ABC Distributor may default to the measure provided in II.B.1 of this rule, above, and presume one ounce of syrup yields one 12-ounce beverage, unless the distributor has documentation to establish otherwise.

If the ratio of 1 ounce to one 12-ounce sweetened beverage applies, then one 25-ounce (750 ml) bottle of syrup will create 300 ounces of sweetened beverage, making the tax \$5.25 per bottle of syrup (300 sweetened beverage X \$0.0175). The tax on the distribution of 100 bottles of flavored syrups will be \$525.00 (100 bottles x \$5.25 per bottle).

EXAMPLE 6

MN Restaurant Chain has locations inside and outside Seattle. MN Restaurant orders its sweetened beverages from ABC Distributor which delivers the sweetened beverages to MN's primary location in Seattle. MN then distributes the sweetened beverages to its different locations based on their needs. In this case, MN issues a Redistribution Certificate to ABC Distributor. ABC accepts the Redistribution Certificate from MN.

Question 1: Who is liable for the SBT?

Answer: MN has provided ABC Distributor a Redistribution Certificate, which places the responsibility to pay the SBT on MN. ABC Distribution may now exclude the sweetened beverages distributed to MN Restaurant Chain from the SBT. ABC Distribution will need to maintain copies of the Redistribution Certificate from MN in its records to support the excluded distributions as well as provide a copy of the distribution certificate it received from MN to the City.

Question 2: On what sweetened beverages will MN be liable for the SBT?

Answer: MN will owe SBT on the sweetened beverages that it distributed to its locations where the sweetened beverages will be offered for retail sale in Seattle. MN will not report and pay SBT on sweetened beverages distributed to its locations outside Seattle. MN will need to maintain documentation on the inventory that it distributed both inside and outside Seattle.

EXAMPLE 7

LM is a small retail convenience store located in Seattle. The owners purchase their inventory of sweetened beverages from a retail supplier located outside Seattle.

Question: Is LM liable for the SBT?

Answer: LM is liable for the SBT on the sweetened beverages it distributes into Seattle to sell at its convenience store. In this instance, LM is deemed to be the distributor because LM is distributing sweetened beverages into Seattle that will be sold at retail.

EXAMPLE 8

ABC Distributing distributes bag-in-box (“BiB”) soda syrups, cocktail mixers, and bottled alcoholic mixed drinks to D&D Bar and Grill in Seattle. ABC also delivers alcoholic drink mixers and cans of soda to XYZ grocery store in Seattle.

Question 1: Who is liable for the SBT?

Answer: ABC distributing is liable for the SBT on distributions of sweetened beverages in Seattle.

Question 2: What items are subject to the SBT?

Answer: The distribution of the soda syrups (BiB) to D&D Bar and Grill and the cans of soda delivered to XYZ grocery store are subject to the SBT. The cocktail mixers sold to D&D Bar and Grill are also subject to the tax because the mixers are included in the definition of sweetened beverage. The cocktail mixers distributed to XYZ grocery store are not subject to the SBT because it is presumed the consumer will be using the cocktail mixers to mix their own beverages. The bottled alcoholic mixed drinks are not subject to the tax because these are alcoholic beverages and are specifically excluded from the sweetened beverage definition.

EXAMPLE 9

MN Pizza has locations just outside Seattle. MN Pizza will make deliveries into Seattle. MN also sells beverages with its pizza on request.

Question: Is MN liable for SBT?

Answer: Yes. In this instance, MN is deemed to be distributing sweetened beverages in Seattle. MN is liable for SBT on sweetened beverages that it distributes for retail sale in Seattle.

EXAMPLE 10

JM operates a food truck that sells food and sweetened beverages (e.g. soda) in Seattle. JM purchases its supplies including sweetened beverages from a supplier located outside Seattle.

Question 1: Is JM liable for SBT?

Answer: Yes. JM is distributing sweetened beverages into Seattle because it is bringing into Seattle and ultimately offering the sweetened beverages for retail sale inside Seattle. JM is liable for SBT on the sweetened beverages it distributes in Seattle for sale at retail.

Question 2: What if JM purchases its sweetened beverages from a supplier located in Seattle?

Answer: If JM purchases sweetened beverages from a supplier located in Seattle then JM will not be liable for SBT on those sweetened beverages it sells in Seattle that it also purchased from a supplier located in Seattle. In this instance, it is presumed that the SBT was already paid on the beverages previously distributed to the supplier located in Seattle.

EXAMPLE 11

ABC Distributing distributes sweetened beverages into Seattle. On occasion, ABC donates and distributes sweetened beverages to a Seattle non-profit.

Question: Is SBT due on the donated sweetened beverages?

Answer: No. In this instance, ABC Distributing did not transfer to another recipient for consideration where that recipient offers the sweetened beverage for retail sale in Seattle, nor did ABC sell the sweetened beverages under a self-distribution scenario. Therefore, the donation does not meet the definition of a “distribution.”

EXAMPLE 12

During first quarter of 20x8, BIG Cola sells its product to ABC Distributing. BIG Cola sells 5,000 cans of regular cola and 5,000 cans of diet cola to ABC Distributing. BIG Cola distributes its products into ABC Distributing’s Seattle warehouse. ABC Distributing then distributes the BIG Cola products to its retail store customers in Seattle. During the same quarter, ABC Distributing sells all 5,000 cans of regular cola and 5,000 cans of diet cola to its retail customers in Seattle.

Question 1: Who’s liable for the SBT?

Answer: ABC Distributing is liable for the SBT. This is because ABC is distributing to its customers that offer the sweetened beverages for retail sale in Seattle.

Question 2: What items are subject to the SBT?

Answer: All the regular colas are subject to the SBT. Assuming each can is 12 ounces, ABC will report and pay \$1,050.00 ($5,000 \times 12 \times 0.0175$) on its distribution of 5,000 cans. The diet colas are excluded from the definition of a sweetened beverage so they are exempt.

EXAMPLE 13

NB is a small manufacturer of specialty sodas. NB does not distribute to its customers. EZ Distributing distributes NB’s sodas to its customers. NB’s worldwide gross income is \$1,700,000 and would like to allow for its products to be exempt from the SBT.

Question 1: Can EZ Distributing exempt NB’s sweetened beverages from the SBT?

Answer: EZ Distributing can exempt all of NB’s sweetened beverages from the SBT if NB provides EZ with a Small Manufacturer’s SBT Exemption Certificate.

Question 2: How does NB obtain an exemption certificate?

Answer: NB will need to apply for a Small Manufacturer's SBT Exemption Certificate with the City of Seattle's License and Tax Administration department. NB will need to fill out an application and provide with it a copy of its federal income tax return page showing its worldwide gross income; acceptable documentation includes page one from Form 1120, 1120S, 1065, or Schedule C, depending on the entity type, or pertinent pages from its audited financials. If approved, NB may provide the exemption certificate to EZ allowing EZ to exclude NB's products from the SBT.

Question 3: NB does not have a federal tax return or audited financial statements for the current year; what does it provide with the application?

Answer: NB should provide its FITR information or audited statements for its last completed year. Thus, if it's applying for the exemption certificate in November 2017, then it can use its tax return or audited financials for 20x6.

Question 4: What does EZ need to do with the certificate?

Answer: EZ will need to maintain a copy of the certificate for five years.

EXAMPLE 14

MT Cola Inc. manufactures and distributes sweetened beverages to retailers for sale in Seattle. MT also sells its sweetened beverages itself through its own vending machines in Seattle.

Question: Is MT Cola liable for the SBT?

Answer: MT Cola is liable for the SBT on distributions to retailers in Seattle. The distribution of the sweetened beverages through their vending machines in Seattle would be entitled to the exemption for direct retail sales of sweetened beverages by manufacturers to a consumer without the involvement of a third party to transport or distribute.

Same facts as Example 14 except MT Cola Inc. transfers the sweetened beverages it manufactures to a sister entity, MT Cola LLC, that distributes the sweetened beverages in MT Cola LLC's vending machines.

Question: Would MT Cola Inc. still be exempt from the SBT for the distribution of its products through the vending machine?

Answer: MT Cola Inc. would not be subject to the SBT because they are not distributing into Seattle. MT Cola LLC would be liable for the SBT. MT Cola LLC is

the entity distributing the sweetened beverages into Seattle for retail sale in its vending machines.

EXAMPLE 15

ABC Distributing distributes sweetened beverages to a restaurant in Seattle. The distribution consists of:

- 10 five-gallon Bag-in-box (BiB) concentrates for the restaurants soda dispenser, five (5) of these BIB's are zero calorie (diet) drink syrups;
- 720 twelve-ounce canned beverages (all non-diet);
- 20 Bottles of flavored syrups.

The restaurant utilizes the flavored syrups for their dessert creations or as an ingredient in other non-beverage items.

Question 1: What items are subject to the SBT?

Answer: The five (5) BiB's of non-diet concentrate and the 720 canned beverages are subject to the SBT. The diet soda concentrates are not subject to the SBT because they are excluded from the definition of a "sweetened beverage." Generally, the 20 bottles of flavored syrups would be subject to the SBT because based on the manufacturer's instructions they are to be used to make sweetened beverages. The restaurant, however, uses these for creating desserts. Therefore, these syrups may be excluded from the SBT.

Question 2: How much sweetened beverage tax is due on this distribution?

Answer: \$487.20

ITEM	TOTAL Oz SB per ITEM	NUMBER OF ITEMS	TOTAL OUNCES	TAX (0.0175/oz.)
BiB	3,840*	5	19,200	\$336.00
Cans	12	720	8,640	\$151.20
TOTAL				\$487.20

* One BiB contains 640 oz. of concentrate. If the manufacturer's instructions provide for 2 ounces per 12-ounce drink, then there is approximately 3,840 ounces of sweetened beverage per BiB.

Question 3: What documentation does the distributor need to obtain from the restaurant if it wishes to exclude the syrups from the SBT

Answer: The distributor will need to obtain documentation from the restaurant operator that the syrups purchased are not used to create sweetened beverages but are intended for other purposes. For example, the distributor may secure from the restaurant a written statement that clearly provides those specific syrups are not used for sweetened beverages but instead are used in the production of certain meal items. The document should be signed by an individual authorized to sign off on tax matters for the restaurant. The distributor will need to retain this signed statement as documentation for the syrups it excluded from the SBT in this instance. If the distributor does not obtain documentation from the restaurant operator, then they should remit the SBT on the distribution of the flavored syrups to the restaurant.

EXAMPLE 16

LM operates a coffee shop in Seattle. ABC Distributor distributes 50 bottles of syrups to LM in Seattle for use in its coffee drinks.

Question 1: Who is liable for SBT in this instance?

Answer: ABC Distributor is liable for the SBT.

Question 2: What if LM determines that approximately 25 bottles of the syrups will be used to make coffee drinks in which the primary ingredient is milk?

Answer: If LM provides ABC Distributor with documentation stating that the 25 bottles of syrup are used to create drinks in which the primary ingredient is milk, ABC may exclude the 25 bottles from the SBT. The ABC may secure from LM a written statement that clearly provides those specific syrups are used for beverages in which the primary ingredient is milk. The document should be signed by an individual authorized to sign off on tax matters for LM. ABC will need to retain this signed statement as documentation for the syrups it excluded from the SBT in this instance. If ABC does not obtain documentation from LM, then ABC must remit the SBT on the distribution of the flavored syrups to LM.

EXAMPLE 17

JM is a restaurant chain with locations in Seattle. JM purchases syrups from EZ Distributing. EZ Distributing pays the SBT based on the manufacturer's intended use of 2 ounces of syrup per a 12-ounce drink. Therefore, based on manufacturer's instructions, if EZ distributes 100 bottles of syrup to JM and each bottle can create

approximately 150* ounces of sweetened beverage, then SBT on one bottle is \$2.625. EZ will be liable for \$262.50 in SBT on the distribution of 100 bottles to JM.

JM, however, does not use the syrups under the manufacturer's instructions. Instead, JM uses multiple syrups for its own custom drink recipes and as a result, one drink has approximately 4 ounces of different syrups per 12-ounce drink. Therefore, based on its recipes it can only produce an average of 75 ounces of sweetened beverage from one bottle.

Question: Is EZ required to follow the manufacturer's standard in determining the SBT due on the distribution to JM?

Answer: SMC 5.53.030.A.2 specifically allows for the SBT to be calculated proportionately so that the combined tax when using multiple concentrates yields \$.0175 per fluid ounce of the resulting beverage. JM may provide documentation to EZ Distributing showing that it does not use the syrups as instructed by the manufacturer, detailing in its declaration to EZ that an average drink uses 4 ounces of syrup per drink, rather than 2 ounces. Without such documentation, JM's use would make the syrup taxable at \$0.0353 per oz. ($\$2.625 / 75$ beverages per bottle average) rather than \$0.0175 per oz. ($\$2.625 / 150$ sweetened beverages per bottle).

However, EZ may instead pay the SBT on the distribution of syrups to JM based on JM's use of 4 ounces of syrup per a 12-ounce sweetened beverage, meaning each bottle can create approximately 75 ounces of sweetened beverage, making the SBT on one bottle \$1.3125. Therefore, EZ will be liable for \$131.25 of SBT on the distribution of syrups to JM. EZ is required to maintain in its records the declaration from JM detailing its use of the syrups to support its tax calculation on the distributions to JM.

* (25-ounce bottle / 2 ounces per drink x 12-ounce drink)