Philadelphia's Beverage Tax: A Sweet Victory?

POSTED ON NOV. 12, 2018

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In this installment of Pennsylvania's SALT Shaker, Karpchuk reviews the history of Philadelphia's recently enacted soda tax, including its effect on similar levies throughout the country and the industry response to attempts to tax sweetened beverages.

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Effective January 1, 2017, Philadelphia became the largest city in the country to impose a sugar-sweetened beverage tax — commonly referred to as a soda tax.[1] The Philadelphia City Council approved it 13 to 4 in June 2016, making it the second U.S. city to enact such a tax. At the time, Berkeley, California was the only other city to enact soda tax legislation — but with a population of approximately 112,000, its size paled in comparison to Philadelphia's 1.5 million.

Despite the recent passage of both laws, beverage taxes are not a novel theory. As far back as 1914, amidst World War I and a revenue decrease because of a drop in imports, President Woodrow Wilson proposed a special revenue tax on soft drinks, beer, and patent medicine.[2] Notwithstanding this long history, progress in implementation was slow. Before June 2016, approximately 40 cities and states futilely attempted to enact beverage taxes — including New York City, San Francisco, and Massachusetts. In fact, former Philadelphia Mayor Michael Nutter twice tried to pass similar legislation within the past decade.

What made this attempt in Philadelphia different and why did it succeed where others failed? Previous attempts — including the two in Philadelphia — focused on the health effects of sugar-sweetened beverages and highlighted associated health problems such as obesity, diabetes, and tooth decay. The health-focused approach has worked abroad: Mexico passed a sugar-sweetened beverage tax at a rate of 1 peso per liter (approximately 7 cents), which effectively raised the price of sugar-sweetened beverages by 10 percent.[3] The tax was an attempt to combat Mexico's daunting population of overweight and obese citizens.[4] The country's sugar tax, in effect since 2014, has resulted in a decline in soda sales.[5]

A health-focused strategy also worked in Britain, where a new levy on soft drinks was enacted in March 2016 — with officials emphasizing the country's obesity crisis and its annual cost burden on the government-funded healthcare system.[6] The tax rate in Britain is 18 or 24 pence per liter, depending on sugar content (which equates to about 22 cents or 29 cents).[7] Again, the tax is working there, and has resulted in a decline in soda sales.[8]

France, Belgium, Ireland, and Hungary have also imposed similar taxes on sugar-sweetened beverages.[9] Despite success abroad, historically, a total focus on health in the soda tax debate had not worked in this country.

Instead of focusing entirely on health, Philadelphia Mayor Jim Kenney (D) focused on the city's children. Philadelphia's soda tax was slated to fund universal pre-kindergarten programs in the city; create community schools; improve parks, recreation centers, and libraries; and offer a tax credit to businesses that sold healthy beverages. Merely looking at the two public protests the day the measure was voted on tells the story: the lobbyists had their charts, their signs, and their rhetoric as they protested in front of city hall. Meanwhile, also outside city hall, supporters of the tax had giggling preschoolers erupting in laughter as they dropped Mentos into soda bottles and watched them explode.[10] While the American Beverage Association spent millions pushing an aggressive ad campaign against the tax, this strategy was not something the soda industry previously experienced in other states and cities that attempted to enact similar legislation. Philadelphia wasn't pitting soda lobbyists against the obese in society and concerns over their health; it was pitting soda lobbyists against the futures of smiling preschoolers. That is how Kenney succeeded where others failed.

Not surprisingly, Philadelphia's tax was immediately met with a legal challenge.[11] The American Beverage Association unsuccessfully challenged the tax in the lower courts, claiming that it duplicated state sales taxes and lacked uniformity.[12] But the courts unequivocally rejected both

arguments. On appeal, numerous organizations filed amicus briefs in support of the city's position, including the American Heart Association, the African-American Chamber of Commerce of Pennsylvania, the International Municipal Lawyers Association, and the city of Berkley, California. The case ultimately made its way to the Pennsylvania Supreme Court, culminating in a 4-2 decision upholding the tax in its entirety. The court found that the city's beverage tax "resides within the broad, general grant of autonomous taxing power available to the City."[13]

Not to be dissuaded by their failed lobbying efforts and unsuccessful appeals in court, the beverage industry tried a new tactic: cutting jobs and blaming it on the beverage tax. PepsiCo laid off 20 percent of its Philadelphia employees — which amounted to approximately 80 to 100 workers.[14] Canada Dry also announced layoffs.[15] Proponents of the tax claimed this was classic fearmongering.[16] Those companies made rash layoff decisions when the tax was only in place for weeks and its true impact could not possibly be accurately quantified.

Another industry tactic was to emphasize lost revenue to retailers. Some soda retailers in Philadelphia argued that their beverage sales had dropped by up to 50 percent; however, this fails to tell the whole story.[17] Missing from this data is the revenue that those retailers are now making from untaxed beverages such as bottled water. Was there a shift in consumer spending to a healthier alternative? There is no way to tell when only one-sided numbers are presented. Further, if the price is causing consumers to buy less product, the retailers are the ones with the power to affect that spending habit. Instead of passing the tax through directly to the customer in increased prices solely on those sugar-sweetened beverages, the retailer could take the tax and equally distribute it across all the goods it sells, raising each by a penny, thereby deflecting the increased beverage tax away from solely the beverages.

Despite the opposition, Philadelphia's success seemed to affect other cities' abilities to pass similar legislation. On the heels of the success of the legislation in Philadelphia, in November 2016, San Francisco, Oakland, and Albany, California; Boulder, Colorado; and Cook County, Illinois, passed similar taxes.[18] Following the trend, Seattle also implemented a beverage tax and marketed it as not only a measure to improve the health of its citizens, but also a way to fund education programs.[19]

With the success these cities had in passing legislation, it seemed likely that more cities would tap this additional revenue source in the years to come. However, not to be outdone, the beverage industry's newest tactic has proved its most successful yet: lobbying for legislation to specifically outlaw beverage taxes at the state level.

Earlier this year, Arizona made a preemptive strike against soda taxes through H.B. 2484, signed into law March 16, which requires cities to uniformly tax food, including its manufacturing and packaging. Food for home consumption isn't taxed under Arizona's state version of a sales tax, but municipalities can levy their own tax. The new law won't prevent cities from raising taxes across the board on food, but instead prohibits them from targeting a specific category.

Next, California Gov. Jerry Brown (D) signed a measure that blocks cities and counties from enacting any new taxes on soda and other sugar-filled drinks through 2030.[20] Four California cities were considering soda taxes in 2018, and the beverage industry reacted sharply — circulating a ballot initiative that would have raised the approval threshold from 50 percent to two-thirds on all measures on all topics in all 482 cities, and expanded the definition of state taxes that would require a two-thirds vote from the State Legislature. Once Brown signed the bill, an announcement was made that the initiative imposing supermajority approval requirements on new revenue measures had been withdrawn. The legislation prohibits the imposition of new taxes, fees, or other local assessment on groceries for the next 12 years and is retroactive to the start of 2018.

In Washington, Initiative 1634 — funded primarily by soft drink companies — was started to block localities from enacting new taxes on soft drinks and food via ballot measures. The initiative, which will appear on the November 2018 ballot, would retain Seattle's recent beverage tax, but bar other city and county governments in the state from enacting similar taxes. Similarly, Pennsylvania state Rep. Mark Mustio (R) introduced a bill to overturn the Philadelphia beverage tax by banning any city, township, or borough in the commonwealth from imposing a tax on any food or beverage (except for beer, wine, and spirits), or on any food or beverage container.[21]

Although the effectiveness of the beverage industry's typical attempts to thwart the imposition of sugar-sweetened beverage taxes appears to be fizzling out, their new tactic is bubbling up and leaves the potential for a lasting effect on localities. Before legislatures buy into this newest lobbying effort, they should assess whether that limitation over their municipalities is something they want to encourage. It could be a dangerous precedent to allow this type of legislation — and the lobbying behind it — to limit local control and their ability to raise revenue through new streams.

FOOTNOTES

[1] Pennsylvania imposes a 6 percent sales tax, and Philadelphia imposes an additional 2 percent sales tax. Philadelphia's beverage tax is imposed at a rate of 1.5 cents per ounce at the wholesale

level, which represents an additional cost to the vendor above the combined 8 percent sales tax it collects. The tax is imposed on the retailers and must be collected by the wholesale distributor. The city's definition of sugar-sweetened beverages is broad and reaches diet beverages and nonalcoholic syrups as well. Phila. Code section 19-4101(3)(a), (b).

[2] "Wilson Proposes Soft Drink Tax," *Hawaiian Gazette*, Sept. 1, 1914, p. 1.

[3] Mercy Manyema et al., "Modelling the Potential Impact of a Sugar-Sweetened Beverage Tax on Stroke Mortality, Costs and Health-Adjusted Life Years in South Africa," BMC Public Health (May 31, 2016).

[4] M. Arantxa Colchero et al., "In Mexico, Evidence of Sustained Consumer Response Two Years After Implementing a Sugar-Sweetened Beverage Tax," 36, 3 *Health Affairs* (March 2017).

[5] *Id*.

[6] Ivana Kottasova, "UK to Charge Soda Tax on Sugary Drinks," CNN.com, Apr. 4, 2016.

[7] Kottasova, "Soda Wars: The UK's Tax on Sugary Drinks Is Working," CNN.com, Mar. 9, 2017.

[8] *Id*.

[9] *See* Kate Kelland, "Britain Launches Soft Drinks Sugar Tax to Fight Obesity," Reuters, Aug. 17, 2016; and Elaine Edwards, "Sugar Tax to Come Into Effect Next Week," *The Irish Times*, Apr. 24, 2018.

[10] "Philadelphia Becomes First Major U.S. City With Soda Tax," CBS News, June 16, 2016.

[11] *Williams v. City of Philadelphia*, 2077 C.D. 2016, 2078 C.D. 2016 (Cmwlth. Ct. 2016).

[12] *Williams v. City of Philadelphia*, No. 01452 (Phila. Common Pleas Ct. 2016).

[13] *Williams v. City of Philadelphia*, No. 2 & 3 EAP 2018 (Pa. 2018).

[14] Kate Taylor, "Pepsi Is Laying Off Up to 100 Workers in Philadelphia and Blaming a 2-Month-Old Soda Tax," *Business Insider*, Mar. 1, 2017.

[15] Ali Meyer, "Soda Tax Causes Layoffs and Losses in Philadelphia," *The Washington Free Beacon*, Mar. 7, 2017.

[16] DeMarco Morgan, "Fallout Over Philadelphia's Soda Tax Bubbles Up," CBS News, Mar. 7, 2017.

[17] Jennifer Kaplan, "Philadelphia's Soda Sellers Say Tax Has Reduced Sales by as Much as 50%," *Bloomberg*, Feb. 17, 2017.

[18] Alexandra Sifferlin, "Soda Taxes Prompt High Fives From Health Advocates," *Time*, Nov. 11, 2016.

[19] Daniel Beekman, "Mayor Ed Murray Proposes $55 Million a Year Property-Tax Levy to Fight Homelessness," *The Seattle Times*, Feb. 21, 2017.

[20] California A.B. 1838, 2018.

[21] Pennsylvania H.B. 2241, 2018.

END FOOTNOTES

DOCUMENT ATTRIBUTES

MAGAZINE CITATION	STATE TAX NOTES, NOV. 12, 2018, P. 617 90 STATE TAX NOTES 617 (NOV. 12, 2018)
TAX ANALYSTS DOCUMENT NUMBER	DOC 2018-39471