

Sugar-Sweetened Beverage Tax Regulations

Revision of Example 11

WHEREAS, Example 11 was intended to illustrate a hypothetical special circumstance in which the Department intended to relax strict enforcement of the Tax to provide an administrative convenience and leniency adjustment to businesses in an attempt to aid their general compliance with the Tax; and

WHEREAS, in the course of litigation, members of the beverage industry expressed some confusion over the import of Example 11, suggesting that it demonstrates that a retail sale is a necessary predicate for imposition of the Tax; and

WHEREAS, the Commonwealth Court, sitting *en banc*, was not persuaded by the interpretation or import of Example 11 argued by members of the beverage industry, but two dissenting judges of the Commonwealth Court did cite to Example 11 for the proposition that a retail sale is a necessary predicate for imposition of the Tax; and

WHEREAS, despite the clear decisions of the Court of Common Pleas and the Commonwealth Court upholding the legality of the Tax, the Department nevertheless seeks to eliminate any confusion potentially resulting from Example 11; and

WHEREAS, the guidance issued by the Department through Example 11 was an attempt to aid businesses, but members of the beverage industry have expressed confusion regarding it; and the Department believes that consistency with the plain text of the Ordinance and clarity to taxpayers is more important than providing an administrative convenience to businesses in a hypothetical scenario; and

WHEREAS, the Department will not provide for the administrative convenience and leniency adjustment previously referenced in Example 11;

NOW, THEREFORE, the Department hereby amends Example 11 to read as follows:

Matter deleted by amendment is in ~~strikethrough~~
Matter added by amendment is in **bold**
(Text of Example 10 is included here for clarity only.)

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

2017 JUN 30 14:03:53

DEPARTMENT OF REVENUE

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.

* * *

Example 11

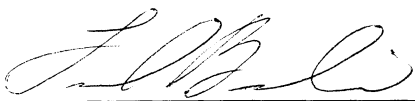
Same fact pattern as Example 10 above, except that the special event took place near one of the ABEX's stores located outside Philadelphia and ABEX had to transfer to this store half the inventory intended for sale in the two Philadelphia stores. Thus, instead of the 30 cases of SB ABEX notified the 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.~~ **No, a refund or credit is not available from the Department in this situation.**



Frank Breslin CPA, Revenue Commissioner

Date: June 28, 2017

3
31580
DEPARTMENT OF REVENUE
2017 JUN 30 AM 10:53