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Chicago: Collection of sweetened beverage tax, temporary restraining order

A Cook County circuit court judge on June 30, 2017, agreed to issue a temporary restraining order that temporarily blocked Cook County from requiring collection of the tax on “sweetened beverages.” The tax was scheduled to become effective July 1, 2017.

There are reports that the restraining order will be in effect until at least July 12, 2017, when the next hearing would be expected in this matter.

The Illinois Retail Merchants Association and several grocery stores filed suit seeking a temporary restraining order against Cook County enforcing the tax. The plaintiffs allege that the beverage tax is unconstitutional because it creates classes of taxable sweetened beverages in violation of the Uniformity Clause in Illinois’ Constitution. For example, the tax would be imposed on ready-to-drink sweetened coffee beverages sold in a bottle or can, but would not be imposed on a sweetened coffee drink made to order at a coffee shop. The plaintiffs also argued that the ordinance is impermissibly vague.

Background

In November 2016, the Cook County Board of Commissioners passed an ordinance for a tax on sweetened beverages. Under that ordinance, effective July 1, 2017, a tax of \$0.01 per ounce would be imposed on the retail sale of bottled sweetened beverages in Cook County. The tax (to be collected by the retailer as a separate line item on the customer’s receipt) would be based upon the number of whole ounces stated on a sealed container. The tax also would be extended to the sale of syrup and/or powder used to produce a sweetened beverage, imposed at a rate of \$0.01 per ounce of sweetened beverage produced from that syrup or powder. As such, fountain drinks sold at fast food restaurants and stores would be subject to the tax.

For these purposes, a "sweetened beverage" does not just apply to sugary beverages, but means any non-alcoholic beverage, carbonated or non-carbonated, intended for human consumption that contains any caloric sweetener or non-caloric sweetener.

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