

TESTIMONY PRESENTED TO:

**The Honorable Scott Wagner, Chair
Senate Local Government Committee**

**The Honorable John Blake, Chair
Senate Local Government Committee**

Committee Members:

**The Honorable James Brewster
The Honorable Michele Brooks
The Honorable John Eichelberger
The Honorable Vincent Hughes
The Honorable Scott Hutchinson
The Honorable Wayne Langerholc
The Honorable Scott Martin
The Honorable Thomas McGarrigle
The Honorable Judith Schwank**

**and The Honorable Senator Anthony Williams,
who requested the public hearing**

BY:

**David McCorkle, President
Pennsylvania Food Merchants Association**

**PHILADELPHIA CITY HALL
FRIDAY, JUNE 23, 2017**

TESTIMONY OF THE PHILADELPHIA BEVERAGE TAX PRESENTED ON BEHALF OF THE MEMBERS OF THE PENNSYLVANIA FOOD MERCHANTS ASSOCIATION

BY

DAVID MCCORKLE, PRESIDENT

Thank you for the opportunity to share comments about the passage of the Philadelphia Beverage Tax in June 2016 and the import of the taxation beginning on January 1, 2017.

The Pennsylvania Food Merchants Association (PFMA) is a statewide trade association advocating the views of convenience stores, supermarkets, independent grocers, wholesalers and consumer product vendors operating in Pennsylvania.

PFMA's membership consists of national chain stores, regional chains and locally owned independent retailers of all sizes. Our 800 + corporate members operate more than 3,200 retail food stores and employ more than 150,000 Pennsylvanians.

Comments on the Beneficiaries

Attached for your information is a summary of how beverage tax funds will be spent. The document was published in 2016 based on information from the Mayor's office. The funding plan is evolving and I am sure that a new plan is forthcoming in light of revenue shortfalls for the initial five months of taxation.

The food industry, from retailers to the farm community, supports the expansion of Pre-K services, funding for education from K-12, financial support for rebuilding Philadelphia and improvement of parks and recreation programs that make up about 73% of the 2016 funding plan. However, the tax is falling far short of anticipated collection as demonstrated by City Controller Alan Butkovitz's recent report (see attached). In my opinion, if the tax continues, it will stop food store development in Philadelphia. The result will be store closings, additional job losses and the loss of convenient city shopping locations where healthy and affordable food will be available.

Projected Impact on Philadelphia's Food Sales

Since the implementation of the Pennsylvania Fresh Food Financing Initiative in 2003 public and private investment in food store development in Philadelphia has exploded. New stores have opened, neighborhoods have changed and employment has expanded. The average supermarket provides over 150 full-time jobs for individuals often hired from the immediate area. In 2016/17, the following stores opened. Many were in development stages for years and others reopened after several Pathmark and Super Fresh locations closed.

Wyncote Fresh Grocer
Grays Ferry Fresh Grocer
3rd & Oregon ShopRite
Washington Lane Save-a-Lot

Monument Road Fresh Grocer
69th Street Fresh Grocer
Cheltenham Market
Glenolden ShopRite

Had the current owners of those stores known that the Philadelphia Beverage Tax would pass in 2016, I don't believe any would have opened. Today an ACME Market is opening at 29 Snyder Avenue in South Philadelphia. Testimony today from PFMA's chairman Jeff Brown and the Fresh Grocer Executive Vice President Grant McLoughlin will provide insight into how the new locations are doing and what the future will bring if the beverage tax continues. Testimony from Daniel Grace, Secretary/Treasurer of Teamsters Local 830 and union members will document the devastating impact of the tax on beverage industry associates.

The Impact of the Tax on Philadelphia Families

Philadelphia has the highest percentage of poverty of any major city in America. About 25% of Philadelphians receive SNAP (Supplemental Nutrition Assistance Program) benefits. They use SNAP and other federal and state funded assistance programs to put food on the family table. Most recipients are elderly, disabled or children.

City Council members who voted for the beverage tax and Mayor Kenney know that the tax is regressive and discriminatory. In addition, it may violate federal SNAP regulations that are enforced by USDA (see attached letter).

I urge Mayor Kenney and City Council to work with members of the Senate Local Government Committee, Governor Wolf and the members of the House of Representatives to identify sustainable funding sources for programs that we all support like Pre-K.



Pennsylvania Food Merchants Association

*Advocating the views of convenience stores, supermarkets,
independent grocers, wholesalers and consumer product vendors.*

May 15, 2017

David McCorkle, President & CEO
Pennsylvania Food Merchants Association
PO Box 870
Camp Hill, PA 17001-0870

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David L. McCorkle

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**PENNSYLVANIA FOOD
MERCHANTS ASSOCIATION**
1029 Mumma Road • P.O. Box 870
CAMP HILL, PA 17001-0870

P: 717.731.0600; 800.543.8207
F: 717.731.5472; E: pfma@pfma.net
www.pfma.org
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Dear Mr. McCorkle,

Philadelphia's sweetened beverage tax is a sales tax or an excise tax on Supplemental Nutritional Assistance Program (SNAP, also known as "food stamps") eligible products, specifically on sweetened beverages, and is therefore barred by SNAP regulations.

In our court papers we have argued, persuasively, that the sweetened beverage tax is a sales tax which violates both state law and the SNAP law and regulations. However, if, contrary to those arguments, it is not a sales tax, it is most certainly an excise tax also specifically barred by SNAP.

As you know, an excise tax is an indirect tax placed upon the sale of a particular good, in this case on sweetened beverages. The tax is applied to purchases made by retailers from distributors, and is then passed onto the consumer by including it in the products' price. SNAP regulations state:

"(1) A State shall not participate in the Food Stamp Program if State or local sales taxes or other taxes or fees, including, but not limited to excise taxes, are collected within the State on purchases made with food stamp coupons. 7 CFR 272.1(b)(1)"

The sanction for violating this prohibition is the termination of that state's participation in the Food Stamp Program. The regulation reads:

"(2) State and/or local law shall not permit the imposition of tax on food paid for with coupons. FNS may terminate the issuance of coupons and disallow administrative funds otherwise payable pursuant to part 277 in any State where such taxes are charged. 7 CFR 272.1(b)(2)"

Based on these provisions, PFMA may reasonably request that the United States Department of Agriculture advise the City of Philadelphia and the Commonwealth of Pennsylvania, through the state's Department of Human Services, that the City of Philadelphia must cease imposing the sweetened beverage tax on beverages purchased with SNAP benefits, or risk both the City and the State being terminated from the Food Stamp Program.

Sincerely,

Allen Warshaw
PFMA General Counsel



CITY OF PHILADELPHIA

12th Floor, Municipal Services Bldg.
1401 John F. Kennedy Boulevard
Philadelphia, PA 19102
(215) 686-6680
FAX (215) 686-3832
alan.butkovitz@phila.gov

ALAN BUTKOVITZ
City Controller
www.philadelphiacontroller.org

June 13, 2017

Rob Dubow, Director
Office of the Director of Finance
1401 John F. Kennedy Blvd.
Municipal Services Building 13th Fl.
Philadelphia, PA 19102

Dear Mr. Dubow:

As we continue to monitor and analyze monthly tax collections, I am concerned with the current and future projection shortfalls with the City of Philadelphia's new Beverage Tax revenues. These shortfalls are potentially creating a multi-million burden on the city in order to pay for programs and initiatives like Pre-K and Rebuild.

While the City lowered its initial budget projections for the first two months and then reported better-than-expected revenues, the fact is the City's initial budget projections indicated that the Beverage Tax needed to generate \$7.7 million every month for the first six months, resulting in \$46.2 million by the end of the fiscal year. Lowering the projections for the first two months and not reflecting those revised figures in the annual projection ultimately created a deficit that the city now has to realize.

Since the tax was implemented in January, the City is \$5.2 million below its initial projections. A breakdown of monthly collections recorded so far this year compared to the initial budget projections includes the following:

Beverage Tax Collections <i>(amounts in millions)</i>			
<u>Month</u>	<u>Projected</u>	<u>Actual</u>	<u>\$ Diff</u>
February	\$7.7	\$5.9	-\$1.8
March	\$7.7	\$6.2	-\$1.5
April	\$7.7	\$7.0	-\$0.7
May	\$7.7	\$6.5	-\$1.2
Total	\$30.8	\$25.6	-\$5.2

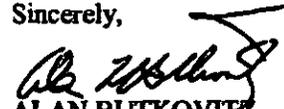
In order for the city to reach its collection goal for the current year, it would need to average about \$10 million a month for the next two months – a figure that currently appears to be significantly out of reach.

Based on the current monthly collections, the city has averaged about \$6.4 million a month. If this average would continue through next year, the total collection would be \$76.8 million. This appears to be problematic since a recent media report indicated that city will likely not revise any long term projections, meaning that the city still anticipates collections \$91 million for next year.

The City appears to be creating a short-term and long-term deficit through the Beverage Tax by not budgeting with true and accurate collection figures. The School District of Philadelphia encountered a similar problem when it implemented the Cigarette Tax. Initially, the School District budgeted \$80 million in the first year. Unfortunately, it never reached that figure and has been on a steady decline since generating less than \$50 million in the current year.

To ensure transparency with the city's latest budget revisions for the current fiscal year and FY2018-2022 (Five-Year) Budget Plan, please provide my office with the latest revenue projections that would demonstrate the city's ability to meet future Beverage Tax revenue projections. In addition, please provide any budget adjustments that have or will be made in order for the city to fund programs with Beverage Tax revenues such as Pre-K and Rebuild.

Sincerely,


ALAN BUTKOVICZ
Philadelphia City Controller

cc: Darrell L. Clarke, President, Philadelphia City Council

NEWS > ([HTTP://WWW.PHILLY.COM/NEWS](http://www.philly.com/news))

Infographics

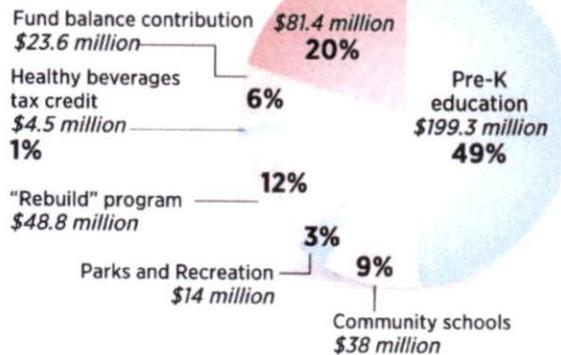
(mailto:?subject=Philly.com: Graphic: New Recipients of Drinks-Tax Revenue&body=Read the full story here:
<http://www.philly.com/philly/infographics/382844231.html>)

New Beneficiaries of Tax on Sugary and Diet Beverages

In addition to funding early childhood education, about 20 percent of the projected revenue from the tax on sugary and diet beverages would help pay for other city programs and employee benefits.

Proposed spending from drinks-tax revenue, fiscal 2017 through 2021

New funding beneficiaries in 2017



New funding beneficiaries in fiscal 2017

Employee benefits	\$6,700,000
Health and Human Services	\$4,375,000
Juvenile Lifers Without Parole	\$1,600,000
Community College	\$1,000,000
Cultural institutions	\$915,000
Community Life Improvement Programs	\$700,000
Internal Services	\$420,000
City Commissioners – presidential election	\$365,000
Recreation Activities Fund	\$215,000
Community Development	\$210,000
Community Legal Services	\$150,000
Board of Revision of Taxes	\$100,000

SOURCE: Mayor's Office

Staff Graphic

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