



SALES AND USE TAX BULLETIN 2021-02

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Taxation of Energy Drinks and Energy Shots

Purpose

This Tax Bulletin provides taxpayers with guidance on the Pennsylvania Department of Revenue's ("department") position on the taxability of energy drinks and energy shots in the context of Pennsylvania's Sales and Use Tax ("SUT") law.

Applicable Law

Article II of Pennsylvania's Tax Reform Code of 1971 ("TRC"), 72 P.S. §§7201-7282, as amended, imposes a tax of 6% of the purchase price on the sale at retail or use of tangible personal property and certain enumerated services within this Commonwealth. 72 P.S. § 7202(a). "Tangible personal property" includes "soft drinks." 72 P.S. § 7201(m).

"Soft drinks" are defined as:

All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsi cola, Dr. Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as "soft drinks," of whatsoever kind, and are further described as including any and all beverages, commonly referred to as "soft drinks," which are made with or without the use of any syrup. The term "soft drinks" shall not include natural fruit or vegetable juices or their concentrates, or non-carbonated fruit juice drinks containing not less than twenty-five per cent by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term "soft drinks" include coffee, coffee substitutes, tea, cocoa, natural fluid milk or non-carbonated drinks made from milk derivatives.

72 P.S. §7201(a).



Effective June 15, 2019, the department updated its list of taxable and exempt property and included energy drinks or shots 4 ounces or greater as taxable and energy drinks or shots less than 4 ounces as nontaxable. 49 Pa.B. 3169 (June 15, 2019). Further, in accordance with the provisions of 61 Pa. Code §§ 52.1 and 58.1, the department updates the Retailers' Information Booklet (REV-717) every three years. The Rev-717 was updated in August 2020 to include energy drinks or shots 4 ounces or greater as taxable and energy drinks or shots less than 4 ounces as nontaxable.

Discussion

Energy drinks and energy shots can be sold individually and in multi-packs. For purposes of determining the 4-ounce threshold, taxpayers should not aggregate the ounces in a given package. For example, if each bottle in a six-pack of energy drinks or energy shots contains 1.98 ounces, but the total fluid ounces for the six-pack amounts to 11.88 ounces, the six-pack is not subject to tax because the individual products making up the six-pack are all below the 4-ounce threshold.

Taxpayers may file a petition for refund with the Board of Appeals if they believe they incorrectly paid sales tax on any energy drinks or energy shots, such as 5-Hour Energy, purchased after June 15, 2019.