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Lawsuit Filed on Soda Tax

Calling new law unconstitutional, beverage alliance spearheads effort to keep the city from collecting.

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STAFF WRITERS

The American Beverage Association, along with some Philadelphia residents and businesses, filed suit Wednesday to block the city's recently enacted sweet-

ened-beverage tax, arguing it is unconstitutional.

The lawsuit was filed in Common Pleas Court, but lawyers for the plaintiffs are asking that the state Supreme Court take up the case. They are seeking an injunction to stop the city from

collecting the tax, which goes into effect Jan. 1.

"The Supreme Court will doubtlessly decide the case eventually," said Shanin Specter, the attorney representing the 10 plaintiffs. "We think it's important for the citizens of Pennsylvania, including Philadelphians, that they do so sooner rather than later."

The tax will add 1.5 cents per ounce to the cost of most sugary

and diet beverages. Mayor Kenney sought the so-called soda tax as a way to pay for expanded pre-kindergarten and a number of other initiatives. The tax, signed into law in June, is expected to generate about \$92 million annually.

On Wednesday, Kenney cast opponents of the tax in a villainous light.

"While it is repugnant that the See **SODA TAX** on A16

Soda Tax

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multi-billion-dollar soda industry would try to take away these educational and community programs from the hundreds of thousands of Philadelphians who need them, we were not surprised by their lawsuit given the ten million dollars they have already spent opposing the tax," Kenney said in a statement. "I have no doubt we'll be successful in defeating the lawsuit."

A spokesman for Philadelphians Against the Grocery Tax Coalition, a group largely funded by the beverage association, disputed Kenney's characterization of opponents' motives.

"We are not against pre-K, but it should be funded in the right way," Anthony Campisi said in a statement. "As we've said throughout, rather than relying on a tax based on speculative revenue projections and paid for on the backs of small businesses and low-income families, the city should seek a broad-based solution to sustainably fund

these programs."

The city has retained former City Solicitors Ken Trujillo and Mark Aronchick to help in the legal battle.

The lawsuit contends that the new tax is preempted by the state sales tax and would violate state law that requires similar products to be taxed at the same rate.

The lawsuit also argues that products purchased through the Supplemental Nutrition Assistance Program (SNAP), popularly known as food stamps, are exempt from sales taxes and therefore implementing a soda tax on such purchases would be in violation of state and federal rules.

"By taxing those beneficiaries, the city will siphon off \$23 million in federal money to the city treasury and away from Philadelphia's 492,000 most needy residents," a news release on the lawsuit said.

That argument assumes that the soda tax is a type of sales tax, which is at the heart of the case.

The city contends the soda tax is not a sales tax because it is applied at the distributor level and not at

the point of purchase.

The beverage industry argues it is a sales tax because it will likely be passed along in part to consumers.

The lawsuit argues that the tax would violate the state constitution's uniformity clause, which requires similar products to be taxed at the same rate.

The suit notes that "the tax is based on volume not value," meaning the more expensive a beverage, the less the tax would be as a percentage of overall cost.

The suit cited past state Supreme Court rulings that rejected that type of taxation when it involved property, liquor, and coal.

City officials said they were reviewing the complaint but vowed to "vigorously" defend the tax.

"We have always been confident that the Sweetened Beverage Tax was a proper exercise of City Council's authority and that it will be upheld in Court," City Solicitor Sozi Pedro Tulante said in a statement.

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