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# TAX TRENDS

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## Cook County Sweetened Beverage Tax legal challenges continue as retailers collect new tax

By David J. Kupiec and Natalie M. Martin

**On July 28, 2017, the Illinois Circuit Court issued an Opinion and Order:** 1) granting Cook County's 2-615 Motion to Dismiss Plaintiff's Verified Complaint for Injunctive Relief and for Declaratory Judgment; 2) dismissing Plaintiff's Verified Complaint for Injunctive Relief and for Declaratory Judgment; and 3) dissolving the Temporary Restraining Order ("TRO") originally entered on June 30, 2017 and continued on July 11, 2017, and July 21, 2017.

By way of background, on November 10, 2016, the Cook County Board of Commissioners enacted Ordinance Number 16-5931, sections 74-850 through 74-859 of the Cook County Code, which established a 1 cent per ounce tax on the retail sale of all sweetened beverages sold in Cook County on and after July 1, 2017. (See *State and local tax update* article by David P. Dorner appearing in the June 2017 volume of ISBA Tax Trends for additional details concerning the new tax)

On June 27, 2017, the Illinois Retailer Merchants Association and others, (hereafter "Plaintiffs") filed a Verified Complaint for Injunctive Relief and Declaratory Judgment, contending that the Ordinance is unlawful under the uniformity clause of the Illinois Constitution as well as being unconstitutionally vague. The Plaintiffs also filed an Emergency Motion for Temporary Restraining Order. The Circuit Court issued the TRO on June 30, 2017, temporarily enjoining the County from imposing and enforcing the tax and maintaining status quo until a final determination is rendered on the issues. On July 10, 2017, the Illinois Appellate Court denied the County's Rule 307(d) petition. On July 21, 2017, the Circuit Court heard oral arguments on the County's Motion to Dismiss.

In its Motion to Dismiss, the County argued that the Sweetened Beverage Tax does not violate the uniformity clause and is not unconstitutionally vague. In granting the County's Motion to Dismiss, the Circuit Court, citing *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142 (2003), stated that in order to survive the uniformity clause challenge, a non-property tax classification must: (1) be based on a real and substantial difference between the people taxed and those not taxed; and (2) bear some reasonable relationship to the object of the legislation or to public policy. The Circuit Court held that the Plaintiffs failed in their burden to establish that the County's justification is insufficient as a matter of law or that it is unsupported by the facts. The Circuit Court added that the County set forth a real and substantial difference between the people taxed, who purchase ready-to-drink, pre-made sweetened beverages, and those not taxed, who purchase on-demand, custom sweetened beverages. The Circuit Court added that although the Plaintiffs correctly pointed out the similarity of the products treated differently, Plaintiff's arguments were misplaced and that a minimum standard of reasonableness is all that is required. In dismissing the constitutional vagueness issue, the Circuit Court stated that the provisions of the new ordinance provide a person of ordinary intelligence a reasonable opportunity to understand what is

required and that the ordinance is sufficiently detailed and specific to preclude arbitrary enforcement.

Although the Circuit Court's Opinion and Order granting the County's Motion to Dismiss and dissolving the TRO was issued on July 28th, the County almost immediately issued a statement indicating that the tax should be collected from consumers starting August 2, 2017. On August 1, 2017, the Plaintiffs filed an appeal of the Circuit Court's July 28th Opinion and Order with the Illinois Appellate Court. Cook County retailers started collecting the Sweetened Beverage Tax on August 2, 2017. As of the drafting of this article this matter is pending before the Illinois Appellate Court. Additional information concerning the Sweetened Beverage Tax is available on the Cook County website.

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