

Bill No. 3548-07

NO. 54-07-OR

ORDINANCE

An Ordinance amending and supplementing the Allegheny County Code of Ordinances, Division 1, entitled "Administrative Code," creating Article 808.A, "Alcoholic Beverage Taxation," in order to provide for the imposition of a County tax on the sale at retail of liquor and malt and brewed beverages within the County.

Whereas, under Act 44 of 2007, the Pennsylvania General Assembly and Governor have empowered Counties of the Second Class to impose a tax on the sale at retail of liquor and malt and brewed beverages within the County in order to generate revenue to support transit; and

Whereas, Act 44 requires that any such tax be modeled on the First Class School District Liquor Sales Tax Act of 1971; and

Whereas, the Port Authority of Allegheny County, despite both service and staff cuts, continues to experience a budgetary shortfall that threatens the Authority's ability to provide services to the County's residents, many of whom rely upon the Authority as their exclusive means of transportation to and from their places of employment, medical appointments, and other vital destinations;

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. . Creation of New Article 808.A.

The Allegheny County Code of Ordinances, Division 1, entitled "Administrative Code," is hereby amended through the creation of a new Article 808.A, entitled "Alcoholic Beverage Taxation," and comprised of the following new sections:

§5-808.A.01. Definitions.

For the purposes of this Article, the following definitions shall apply, unless the context clearly indicates otherwise:

- A. *Tax Collector*: the Allegheny County Treasurer.

- B. *Person:* Any individual, limited partnership, partnership, limited liability company, association or corporation. Whenever used in a clause prescribing or imposing a fine or imprisonment or both, the term "person" as applied to "limited partnership" or "partnership," shall mean the partners thereof, as applied to "limited liability company" and "association," shall mean the members thereof, as applied to "corporation," the officers thereof, except that, as to incorporated clubs, the term "person" shall mean such individual or individuals who, under the bylaws of such clubs, shall have jurisdiction over the possession and sale of liquor therein.
- C. *Purchaser:* A Person who acquires liquor or malt and brewed beverages through sale at retail.
- D. *Sale at retail:* Any transfer at retail for a consideration in any manner or by any means whatsoever of liquor and malt and brewed beverages, but the term shall not include any transaction which is subject to tax by the Commonwealth of Pennsylvania under the Tax Act of 1963 for Education or Article II of the Tax Reform Code of 1971.
- E. *Tax Year:* The year commencing January first of the calendar year and ending December 31 of the calendar year.
- F. *Vendor:* Any person maintaining a place of business in the County of Allegheny and licensed by the Commonwealth of Pennsylvania to sell or dispense liquor or malt and brewed beverages, the sale of which is subject to the tax authorized by this Section, but not including an employe who in the ordinary scope of employment renders services to his employer in exchange for wages or salaries.
- G. *Liquor:* Any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than one-half of one per cent of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.
- H. *Malt or Brewed Beverages:* Any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called, and shall mean alcoholic cider.
- I. *Controller:* The Allegheny County Controller.

§5-808.A.02. Imposition of the Allegheny County Alcoholic Drink Tax.

A tax is hereby imposed upon the sale at retail in the County of liquor and malt and brewed beverages, which are sold or dispensed during Tax Year 2008, or any part thereof, and for each tax year thereafter, by any person licensed by the Commonwealth of Pennsylvania to sell or dispense liquor or malt or brewed beverages. The tax shall be levied at the rate of ten percent (10%) of the sale price of each beverage meeting the definition of "liquor" or "malt or brewed beverages" contained within this Article.

§5-808.A.03. Collection of the Allegheny County Alcoholic Drink Tax.

- A. Every Vendor shall collect the tax as agent for the County of Allegheny from the purchaser at the time of making the sale and shall remit the tax to the Tax Collector.
- B. Any Vendor required under this Section to collect tax from another person, who shall fail to collect the proper amount of tax, shall be liable for the full amount of the tax which he should have collected, and in addition shall be subject to any other remedies at law or in equity.

§5-808.A.04. Returns and Payments of the Allegheny County Alcoholic Drink Tax.

Each Vendor shall file returns with and remit payments to the Tax Collector on a monthly basis and in accordance with such rules and regulations promulgated in furtherance of this Article. Forms for the return shall be provided by the Tax Collector. The failure of any Vendor to procure or receive any report form shall not excuse him from making a return and paying the taxes collected.

§5-808.A.05. Powers and Duties of the Tax Collector.

- A. It shall be the duty of the Tax Collector to collect and receive the taxes, fines and penalties imposed by this Article. It shall also be his duty to keep a record showing the amount received from each person or business paying the tax and the date of such receipt.
- B. The Tax Collector is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this Article. All rules and regulations adopted or amended pursuant to this section shall be approved by Allegheny County Council. A copy of such rules and regulations currently in force shall be available for public inspection.
- C. The Tax Collector and the Controller, and their designee(s), are hereby authorized to examine the books, papers, and records of any Vendor or any individual or entity whom the Tax Collector or the Controller, or their designee(s) reasonably believes to be a Vendor, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every Vendor and every person or entity whom the Tax Collector or the Controller, or

their designee(s) reasonably believes to be a Vendor shall be required to give to the Tax Collector or the Controller, or their designee(s), the means, facilities and opportunity for such examination and investigations, as are hereby authorized.

- D. Any information gained by the Tax Collector, Controller, or their designee(s), as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this Article, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.
- E. Revenue derived from the imposition of the tax authorized by this Article shall be deposited into a restricted account of the County.

§5-808.A.06. Review and Appeal.

The Tax Collector shall provide a method of appeal from any assessments by the Tax Collector. The methods and procedure for review and appeals shall be the same as those governing reviews and appeals with respect to other local taxes.

§5-808.A.07. Penalties and Enforcement.

In addition to any other remedy provided by law or in equity:

- A. Any Person who willfully fails or refuses to appear before the Tax Collector or Controller in person with his or her books, records or accounts for examination when required by the Tax Collector or Controller to do so, or to permit inspection of the books, records or accounts in his custody or control when required by the Tax Collector or Controller; or who willfully makes any false or untrue statement on his or her return; or who willfully fails or refuses to file a return required by this Section or to collect and pay over to the Tax Collector any tax imposed herein shall be liable to pay a fine of three hundred (300) dollars.
- B. Any Person who, on more than one occasion, fails to keep or make any record, return or report required by this Section, or keeps or makes any false or fraudulent record, return or report, or who shall refuse the Tax Collector, County Controller or other duly authorized representative of the Tax Collector or Controller to examine his or her books and records in order to verify the accuracy of his payment of the tax authorized by this Section, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than three hundred (300) dollars, or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a Repeat Violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

- C. Any Person who fails to pay the taxes collected on or before the last date prescribed for payment shall be liable to pay a penalty of one percent (1%) per month or fraction thereof on such tax from the time the tax became due and interest at the rate of one-half (1/2) of one (1) percent per month or fraction thereof. The penalties and interest provided for in this Article shall be added to the tax assessed and collected at the same time, in the same manner, and as a part of the tax.
- D. The penalty and interest on unpaid taxes imposed by this Section shall be paid to the County of Allegheny.

§5-808.B.08. Suit for Collection.

- A. It shall be the duty of the Tax Collector to sue for the recovery of all taxes due hereunder not paid when due.
- B. Any suit to recover any tax, together with interest and penalties, authorized hereunder, from any Person, shall be commenced within six (6) years after such tax is due or within six (6) years after a return has been filed, whichever date is later; but this limitation shall not apply:
 - 1. Where no declaration or return was filed by any Person although a declaration or return was required to be filed by him under provisions of this Article, there shall be no limitation.
 - 2. Where an examination of the declaration or return filed by any Person, or of other evidence relating to such declaration or return in the possession of the Tax Collector, reveals a fraudulent evasion of taxes, there shall be no limitation.
 - 3. In the case of substantial understatement of tax liability of twenty-five percent or more and no fraud, suit shall be begun within six (6) years.
 - 4. Where any Person has deducted taxes under the provisions of this Article, and has failed to pay the amounts so deducted to the Tax Collector, or where any Person has willfully failed or omitted to make the deductions required by this section, there shall be no limitation.
 - 5. This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by applicable statute.
- C. The Tax Collector may sue for recovery of an erroneous refund provided such suit is begun two years after making such refund, except that the suit may be brought within five years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

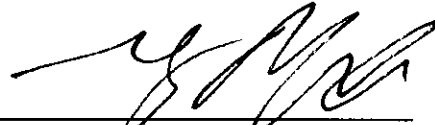
SECTION 2. Severability. *If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.*

SECTION 3. Repealer. *Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.*

PRIMARY SPONSOR: *Chief Executive*

Enacted in Council, this 4th day of December, 2007,

Council Agenda No. 3548-07.



Rich Fitzgerald
President of Council

Attest: John Mascio
John Mascio
Chief Clerk of Council

Chief Executive Office December 10, 2007

Approved: Dan Onorato
Dan Onorato
Chief Executive

Attest: Donna Beltz
Donna Beltz
Executive's Secretary


SUMMARY OF LEGISLATION

This legislation will enact a tax on poured liquors, malt beverages, and wine in Allegheny County beginning in 2008 as authorized by Act 44 of 2007.

MEMORANDUM

OFFICE OF THE COUNTY MANAGER

TO: John Mascio
Chief Clerk

FROM: James M. Flynn, Jr. 
County Manager

DATE: November 15, 2007

RE: Proposed Ordinance

Attached is an Ordinance amending and supplementing the Allegheny County Code of Ordinances, Division 1, entitled "Administrative Code," creating Article 808.A, "Alcoholic Beverage Taxation," in order to provide for the imposition of a County tax on the sale at retail of liquor and malt and brewed beverages within the County.

The Allegheny County Law Department has reviewed this legislation prior to submitting it to Council.

Please place this on the next agenda for County Council approval.

Thank you.

ALLEGHENY COUNTY COUNCIL

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