McDonald's, Walgreens, 7-Eleven hit with lawsuits over Cook County soda pop tax

McDonald's is facing a lawsuit alleging that it essentially charged extra sales tax on top of the new Cook County sweetened beverage tax. (Mario Tama / Getty Images)

By **Becky Yerak**
Chicago Tribune

AUGUST 9, 2017, 3:04 PM

Three major purveyors of soda pop and other beverages have been sued in the week since Cook County's new penny-per-ounce tax on sweetened drinks went into effect, with 7-Eleven and Walgreens accused of applying the charge to unsweetened beverages and McDonald's accused of essentially taxing the tax.

In the latest case, Chicago resident Kelly Tarrant filed a lawsuit Wednesday in Cook County Circuit Court, alleging 7-Eleven charged her a 28-cent tax on a 99-cent unsweetened coffee in a Super Big Gulp cup that she bought Monday at a store on South Dearborn Street. Her lawsuit comes a day after a Chicago man sued McDonald's for allegedly adding the new tax to his order before calculating other sales taxes and five days after a Schaumburg man sued Walgreens for allegedly taxing unsweetened sparkling water.

The county tax went into effect Aug. 2 and applies to nonalcoholic beverages that are either sugar- or artificially sweetened, including fountain drinks as well as bottled and canned beverages.

7-Eleven has been trying to boost summer sales of its freshly brewed hot coffee by encouraging consumers to fill Big Gulp cups with ice and then add coffee, says the lawsuit, citing a Convenience Store News story. The convenience store chain has advertised the promotion with in-store signs — including in the South Dearborn store — and on social media, the lawsuit says. The company's website also promotes coffee on ice in a Big Gulp cup.

When Tarrant called to complain, the manager told her that the system automatically applies the sweetened beverage tax to all drinks bought in Big Gulp cups, regardless of the type of drink, the lawsuit says. She asked for a refund but didn't get one, the suit alleges.

In a lawsuit filed Tuesday, Chicago resident Yvan Wojtecki alleges he bought food at a McDonald's franchise that day and paid 23 cents under the sweetened beverage tax. That 23 cents was combined with the pretax price for the rest of his order to arrive at a subtotal, and Wotjecki was then charged sales tax on that amount, the suit alleges.

As a result, he was overcharged by 2 cents, the lawsuit says.

The tax collected by retailers is to be collected "in addition to all other taxes," the lawsuit says. The sweetened beverage tax "is not to be added to the pre-tax price of the good, but is itself to be added to the existing sales tax," the suit says.

Defendants initially included McDonald's Corp., McDonald's Restaurants of Illinois and about two dozen restaurants owned by franchisee Nick Karavites. The lawsuit was amended Wednesday to add more owners of McDonald's restaurants in Cook County, and now owners of most locations in the county are named, said Daniel Seidman, a lawyer for Wojtecki.

The lawsuit seeks a jury trial as well as compensatory damages and punitive damages equal to at least 1 percent of the annual revenue of each of the defendants' Cook County stores.

In early July, around the time that the sweetened beverage tax was initially set to take effect before it was held up in court, Karavites offered refunds after mistakenly charging customers the soda tax, despite a judge's order that placed the surcharge on hold. At the time, Karavites and McDonald's didn't disclose how many restaurants charged the tax, how many customers were affected or when the issue was resolved.

McDonald's did not respond to a request for comment.

Karavites denied the allegations Wednesday in an email.

"I understand the inherent confusion this new tax has created for our customers," he wrote. "My organization has abided by Cook County's requirements for this tax, and has not charged sales tax on the beverage tax. I believe this lawsuit is without merit and am confident my restaurants will be cleared of these claims."

In what appears to be the first lawsuit against a business over the tax, Schaumburg resident Vincent De Leon on Friday sued Walgreens for allegedly wrongly charging the sweetened beverage tax on unsweetened sparkling water.

LaCroix and similar flavored bubbly waters, such as Perrier and Soleil, aren't supposed to be taxed because they're not sweetened.

But some retailers experienced snafus in implementing the tax.

Walgreens, for example, said last week that it "inadvertently coded" some products incorrectly but that it was "working to resolve this complex issue as soon as possible."

"Even the architect of the tax, Cook County Board President Toni Preckwinkle, recently tweeted that unsweetened beverages are not subject to the pop tax," says the lawsuit, which includes a screen grab of her tweet.

"Walgreens has publicly admitted it is wrongly charging the pop tax on unsweetened beverages — and yet it continues to do so without informing customers that they are being wrongly charged," the lawsuit says. "Despite knowing that it has improperly coded its products, Walgreens has not taken any steps to provide corrections at the cash register."

De Leon's lawsuit says he bought Dasani Tropical Pineapple Sparkling Water, labeled as unsweetened, from a Walgreens store in Hoffman Estates on Friday and was charged the tax.

The lawsuit also gives other examples of unsweetened beverages being hit with the tax.

Walgreens spokesman Phil Caruso declined to comment on the lawsuit.

The lawsuits against 7-Eleven, McDonald's and Walgreens all seek class-action status. The 7-Eleven suit estimates that there are "many thousands" of people in the potential class.

Meanwhile, a state appeals court on Monday denied a request from a group of retailers to put the controversial tax on hold once again.

The Illinois Retail Merchants Association sued the county in June, alleging the tax is unconstitutional and too vague to implement. The legal battle delayed the tax for a month.

Cook County Circuit Judge Daniel Kubasiak dismissed the suit July 28 and dissolved a temporary restraining order that blocked implementation of the tax. But the merchants group appealed the ruling and asked the appeals court to reinstate the court order blocking the tax.

Preckwinkle spokesman Frank Shuftan said county officials "applaud the appellate court's decision."

"We believe this was the appropriate action by the court, and we appreciate the quick action by the justices," Shuftan said.

In the wake of that decision, Preckwinkle abandoned her request for Kubasiak to order the merchants association to pay $17 million to make up for the revenue the county estimates it lost as a result of the tax being delayed.

byerak@chicagotribune.com

Twitter @beckyyerak

Copyright © 2017, Chicago Tribune

This article is related to: McDonald's, Walgreens, 7-Eleven