

State of Rhode Island – Division of Taxation

Sales and Use Tax

Regulation SU 04-59

Meals

In general, the seven percent (7%) state sales tax applies to sales of meals, food and drinks served on or off the premises of eating establishments. The tax applies even though such orders may be sold by weight or measure. For example, a pound of salad; a quart of chowder, etc. To determine items subject to the one percent (1%) local meals and beverage tax, see SU 04-147 "Local Meals and Beverage Tax."

Paper cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals are sold with the meals. Sales of such items for such purpose to persons engaged in the business of selling meals are, accordingly, sales for resale.

Eating establishments mean and include restaurants, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshment stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, vending machines, or similar facilities in amusement parks, bowling alleys, clubs, drive-in theatres, industrial plants, race tracks, shore resorts or other locations, lunch carts, mobile canteens and other similar vehicles, and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware or in parking facilities provided primarily for the use of patrons in consuming products purchased at the location.

Retailers selling prepared foods in bulk either in customer-furnished containers or in the seller's containers, for example "Soup and Sauce" establishments, are deemed to be selling prepared foods ordinarily for immediate consumption and as such are considered eating establishments.

A. Combination-Type Businesses: The sale of meals and other food products ordinarily sold for immediate consumption on or off the premises of the retailer is a taxable sale even though such products are sold on a "take-out" or "to go" order and are actually packaged or wrapped and taken from the premises.

Therefore, where a person operates a combination-type business at one location such as an eating place combined with a bona fide delicatessen store or donut or pastry shop, the sales of sandwiches, meals and individual orders (i.e., an order of coffee and donuts or a sandwich, piece of pie and milk) are taxable regardless of whether sold for consumption on the premises or sold on take-out orders for off-premises consumption.

However, certain sales of food products by such combination-type businesses are nontaxable when sold for home consumption.

EXAMPLE NO. 1. A customer orders a sandwich in a delicatessen store to eat on the premises -- (taxable). A customer orders a sandwich "to go" -- (taxable). A customer purchases at the delicatessen counter a pound of sliced bologna and a pound of potato salad to take home -- (nontaxable).

EXAMPLE NO. 2. A customer has donuts and coffee at the lunch counter of a donut or pastry shop and also orders two sandwiches and two donuts and two coffees "to go" and also purchases a dozen donuts and an apple pie for home consumption. The tax applies to everything except the dozen donuts and the whole apple pie.

In determining whether bakery products sold by a combination-type business are for home consumption and therefore nontaxable, the following guideline may be used.

The sale of pastry, donuts, muffins, bagels or other like bakery product sold by a combination-type business shall not be considered the sale of a "meal" or other food product "ordinarily sold for immediate consumption" if at the time of sale the products are packaged or wrapped in a box, bag, or other container consistent with home consumption and are sold in units of six (6) or more.

B. Convenience Stores: Convenience stores sell certain foods and drinks for immediate consumption and as such are required to charge and collect tax on the sales. The following items are examples of taxable food and drinks considered for immediate consumption:

- Coffee or tea (ready to consume, hot or iced);
- Sandwiches and meals;
- Popsicles, ice cream cones, cups, sundaes, and other individual services of frozen desserts unless sold in factory prepackaged multi-unit packs;
- Ice cream, frozen yogurt, and other frozen desserts sold in containers of less than one pint;
- Fountain drinks, shakes, and syrup-flavored crushed ice drinks;
- Soda;
- Bottled or canned fruit juices and drinks, containers of milk, and non-carbonated mineral or spring water sold in containers of 24 fluid ounces or less unless sold in prepackaged multi-unit packs;
- Unpackaged donuts, muffins, rolls, bagels, pastries, cookies, etc. sold in units of less than six;
- Salads sold at a salad bar where utensils and/or dressings are provided (exception: purchases of salad from a salad bar would be exempt if the weight is one pound or greater and sold without utensils and/or dressings);
- Pies or cakes by the slice;
- Individual prepackaged or factory-sealed bags or packages of five (5) ounces or less of chips, popcorn, nuts, trail mix, crackers, cookies, snack cakes, or other snack foods;
- Pizza, whole or by the slice;
- Cooked chicken sold by the piece including whole chickens;
- Prepared food heated (soup, popcorn, etc.);
- Deli trays and party platters

The above items are taxable, whether eaten on or off the premises of the store. These taxable items serve as examples only and are not meant to be all inclusive.

C. Supermarkets: Supermarkets are primarily engaged in the retail sale of a wide variety of food products and other goods. Food products such as cereals, milk, meats, fish, vegetables, fruits, etc. for

home consumption are exempt from sales tax. However, certain sales of food or drinks are considered for immediate consumption and therefore, subject to tax. Following are examples of taxable food sales:

- Catering sales
- Deli trays and party platters
- Sales of sandwiches, grinders, coffee, tea, hot soup, hot sauce or hot barbecue chicken prepared at a delicatessen counter or elsewhere in the supermarket
- Prepared food sold with utensils, paper plates, etc. (salad bars, soups, etc.)
- Sales of meals in areas of a supermarket where food is intended to be consumed in the supermarket, such as at snack bars or food courts. The meals sold in these designated eating areas are taxable even if taken off the premises by the purchaser.
- Sales of any food and/or drinks listed as taxable under section B “Convenience Stores”.

D. Gratuities and other charges: When a retailer bills a customer for the rental of a public room or for gratuities, service charges, cover charges, or entertainment charges (including charges for bands or orchestras) in connection with the serving of meals or drinks; or when an employer requires employees to turn over to the employer the amount of tips or a portion thereof, received in connection with the serving of meals or drinks, the amounts so billed or received by the retailers will be considered as part of gross receipts from the sales of the meals or drinks and must be included in the measure of tax. Amounts designated as service charges, added to the price of meals, are a part of the selling price of the meals and, accordingly, must be included in the retailer's gross sales subject to tax even though such service charges are made in lieu of tips and are paid over by the retailer to the employees.

E. Caterers: The term "caterer" means a person engaged in the business of serving meals, food, and drinks on the premises of customers but does not include employees hired by the hour or day. Tax applies to the entire charges made by caterers for serving meals, food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals. Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers. Tax also applies to charges made by caterers for the rental of dishes, silverware, glasses, etc., even though no food is provided or served by the caterers in connection with such rental. Sales of meals by caterers to social clubs, fraternal organizations, or other persons are sales for resale if such social clubs, fraternal organizations, or other persons are the retailers of the meals and give valid resale certificates therefor. The term “caterer” also includes a delicatessen store or a deli area within a food store that sells prepared food as part of a party platter, deli tray, etc.

F. Social Clubs and Fraternal Organization: "Social clubs and fraternal organizations" as used herein includes any corporation, partnership, association, group, or combination acting as a unit, such as service clubs, lodge organizations, community, country and athletic clubs. The tax applies to receipts from the furnishing of meals, food, and drinks by social clubs, and fraternal organizations.

G. Meals Served to Students and Teachers: Tax does not apply to the sale of meals by public, private, or parochial schools, school districts, colleges, universities, student organizations, and parent-teacher associations to the students or teachers of a school, college, or university whether the meals are served by the said educational institution or by a food service or management entity under contract to said educational institution. This applies even though the school is operated for profit. Items sold through vending machines located in areas designated primarily for students and teachers shall be considered a

meal or a portion thereof. Those designated areas include cafeterias, student unions, classroom buildings, teachers' lounges, dormitories and faculty buildings. Food items sold by college/university rathskellers or taverns located on campus which sell alcoholic beverages shall not be exempt from the sales tax on meals.

H. Subsidized Employer Cafeterias and Food Service Operations: An employer who engages a caterer or food service contractor to provide food and drink or service in connection therewith to employees at the employer's expense is the purchaser of food and drink and must pay the sales tax thereon. Any subsidy given by an employer to a caterer or food service contractor (whether termed a management fee, guarantee of profit or other designation) is taxable as a receipt from the sale of food and drink. Where the subsidy is paid by an employer in addition to a specific amount paid by the employee, both amounts are taxed as the receipt from the sale of food and drink.

I. Meals Sold to Employees: The tax does not apply to meals served to employees where the compensation of such employees includes the providing of such meals without charge. For example, a waitress in a restaurant who, as compensation for services, receives her meals without charge and who, in addition thereto, receives a salary. The tax does apply to meals served to employees where a separate charge or deduction is made therefor by the employer. For example, where the contract of employment provides that the employer shall deduct the cost of meals served to the employee from the latter's salary, or where an actual charge is made for meals served the employees.

R. GARY CLARK
TAX ADMINISTRATOR

EFFECTIVE: January 1, 2004

THIS REGULATION AMENDS AND SUPERSEDES REGULATION SU 02-59 PROMULGATED MARCH 1, 2002.

CROSS REFERENCE: SU 02-97 "Room Rentals -- By Hotels, Rooming Houses, Tourist Camps"; SU 04-147 "Local Meals and Beverage Tax"