

# Restaurants and Bars

137

Fact  
Sheet

## Sales Tax Fact Sheet 137

Legislation was passed adopting the Uniform Sales and Use Tax Administration Act proposed by the multistate Streamlined Sales Tax Project. The Act allows Minnesota to enter into the Streamlined Sales and Use Tax Agreement that sets out uniform definitions for administration of the sales and use tax law. Minnesota has adopted those definitions necessary to bring our law into conformance with the agreement. The law change is effective January 1, 2002.

The new streamlined definition of *prepared food* is explained in Fact Sheet 102D, Prepared Food. Also see the following food fact sheets for additional information:

- Food and Food Ingredients, #102A
- Candy, #102B
- Soft Drinks and Other Beverages, #102C
- Dietary Supplements, #102E

In addition, the new streamlined definition of *sales price* changes the taxability of delivery and tips.

### Taxable food

Nearly all food and drink sold by eating establishments is subject to tax.

**Eating Establishment** means places of business where food and drink is served and is meant to be eaten soon after it is served. These eating establishments may be mobile or immobile and may or may not provide seating accommodations for their customers. They include: restaurants, caterers, pizzerias, bars, taverns, night clubs, yogurt or ice cream stores/stands, coffee or donut shops, diners, refreshment stands, drive-ins, fast food restaurants, bagel shops, lunch counters, cafeterias, private and social clubs, sandwich shops, snack bars, hot dog carts, concession stands at a fair or a mall, sidewalk vendors and similar businesses.

See Fact Sheet 102D, Prepared Food, for more information about food that is taxable because it was prepared by the seller.

### Exempt food

**Grocery type food.** Some restaurants or eating establishments also sell grocery type food. Grocery type food is exempt if the customer generally cooks or heats it after the sale or if it was not prepared by the seller. Since most food sold at restaurants and eating establishments is taxable, it is important that the seller maintain adequate records to show that exempt grocery food items were sold. The information shown on the invoice, cash register receipt, or sales ticket must provide an adequate description of the exempt food item sold.

Examples of items that are exempt:

- gallons of milk
- frozen soup
- uncooked pizza
- uncooked pasta
- bags of apples

Food that is merely sliced, repackaged, or pasteurized is not taxable. For example, if a deli merely slices meat or cheese purchased from another seller, and wraps it in paper, it is not taxable. However, if the sliced cheese becomes part of a cheese tray, it is taxable.

Example 1. A restaurant sells salsa that it prepares at its own facility (either on or off-site). The salsa is taxable because the seller prepared it.

Example 2. A restaurant sells bottles of salad dressing that was prepared by another legal entity but which bear the restaurant's label. The salad dressing is not taxable since it was not prepared by the seller.

Example 3. Box lunches put together and sold by an eating establishment are taxable if they contain eating utensils such as napkins or forks, even if the lunch consists of prepackaged food items.

Example 4. A restaurant prepares and sells frozen pasta dinners. Since the pasta requires heating after the sale, it is not taxable.

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## Other common charges

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**Coat check.** Coat checking charges are not taxable.

**Cover charges** and minimum charges that allow the customer to receive food, drinks, entertainment, dancing, admission, etc., are taxable whether they are separately stated on the bill or collected as an admission fee.

**Equipment sales.** If you sell equipment or other items that were used in your business, the sale may be subject to sales tax. See Fact Sheet 132, Occasional Sales of Business Equipment and Goods, for more information.

**Gift certificates.** Sales of gift certificates are not taxable.

**Parking.** If you charge customers or employees for parking, the charges are taxable. If you buy parking services to provide free or reduced rate parking for your customers or employees, you must pay sales tax to the parking service provider on the cost of those services.

See Fact Sheet 166, Parking Services, for more information.

**Rentals.** Rental charges for lodging accommodations or any equipment, such as decorations, tables, chairs, audio-visual equipment, etc., are taxable. Rental charges for meeting rooms, ballrooms, halls, etc. (that are not for lodging) are not taxable unless the space is located within a recreational area. See Fact Sheet 141, Hotels and Lodging Facilities, and Fact Sheet 123, Recreational Areas, Resorts and Campgrounds for more information.

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## Determining sales price

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### Catering

The entire charge for prepared food and drinks is taxable, including charges for food, preparation, service, and delivery, even if the items are separately stated on the bill. Sales tax also applies when a customer provides the food that the caterer will prepare.

When a company, individual or group hires extra people or uses its own employees to work a catered function, the hourly wages paid to these people are not taxable. However, if the caterer provides staff such as wait persons, bartenders, chefs or kitchen help, the hourly charges for time worked by these people is taxable to the customer, even if separately stated.

Charges made by a caterer for tableware, tablecloths, tables, chairs, or other taxable items are also taxable. If the caterer charges separately for these items, or offers a reduced price if the customer provides them, the caterer may buy these items exempt for resale. If there is no reduced price option and the caterer includes these items as part of their service, the caterer must pay sales or use tax when they buy the items.

If you sell to an organization that resells the prepared food or drinks, you must collect sales tax unless the organization gives the seller a Certificate of Exemption, ST3, claiming a resale exemption.

**Corkage fees.** Charges for opening and serving drinks are taxable.

**Delivery charges.** Beginning January 1, 2002, charges to *deliver* taxable items are also taxable, even if they are separately stated. For example, if a pizza parlor charges \$10.00 for a pizza and \$1.50 for pizza delivery, the entire \$11.50 is taxable.

### Discounts and coupons

When a customer uses a coupon for a discount or a free meal (e.g., “buy one, get one free”), *charge sales tax only on what the customer actually pays*, unless a third party is reimbursing you. First subtract the coupon amount from the total price of the meal, and then calculate and add the sales tax. The coupon amount is not taxed.

When a customer uses a coupon for a discount or a free meal, and the restaurant is reimbursed by a third party for the discounted amount, *charge sales tax on the total sales price before subtracting the coupon amount*. In this case, the coupon amount is taxed.

## Employee meals

Charge tax on what the employee actually pays for the meal. For example, employees get a discount of 15 percent on their meals. The charge for the meal before tax is \$10.00, less the 15 percent discount of \$1.50. Charge tax on \$8.50.

If employees receive free meals, use tax is due by the business on its cost of all taxable items, including disposable plates, soft drinks, napkins, cups, flatware, etc., for use in the meal. No use tax is due on the cost of the nontaxable food ingredients but tax is due on the cost of prepared food that you had purchased exempt for resale.

## Free meals and drinks

Free meals and drinks are those that you give away with no stipulations (no purchase necessary), such as free appetizers or a free birthday drink or dessert.

Free meals and drinks do not include special offers such as two for one, free child meal with the purchase of an adult meal, or coupon meals (see the Discounts and coupons section).

Bar and restaurant owners serving free drinks must pay 6.5 percent use tax on their cost of the liquor used to prepare the free drinks (the 9 percent liquor tax rate only applies to sales of drinks). Use tax is also due on other taxable items (e.g., soft drinks, disposable cups, straws,

napkins, etc.) you furnish with the free drinks or meals. Use tax is also due on the cost of any prepared food you purchased exempt for resale that was included in a free meal. For example, if you buy a party tray from a caterer to set out at happy hour, your cost of the party tray is taxable. No use tax is due on the cost of nontaxable food.

**Gift certificate redemption.** A gift certificate is treated the same as cash. When a customer redeems a gift certificate, charge sales tax on the amount of any taxable purchases and use the gift certificate as payment.

**Returnable containers.** A deposit that you charge your customers for a returnable beer keg, pie tin or other reusable food or beverage container is not taxable.

## Tips and service charges

Tips left voluntarily by a customer are not taxable. Tips voluntarily added by the customer to a credit card slip are also not taxable.

However, under the new streamlined definition of sales price, when a tip or service charge is added to the bill by the seller, that amount is taxable. This is true even if the amount is separately stated or distributed directly to employees.

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## Liquor

**Intoxicating liquor.** The sales tax on intoxicating liquor is **9 percent**. If you are licensed to sell any type of intoxicating liquor, you must charge 9 percent tax on all on-sales or off-sales of liquor, including sales of 3.2 beer and wine coolers.

**3.2 beer and wine coolers.** The type of liquor license determines the sales tax rate charged on 3.2 beer and wine coolers. The most common types of liquor licenses issued to bars or restaurants and the applicable rate of sales tax that applies to sales of liquor are:

- **Intoxicating Liquor License:** charge 9 percent liquor tax on all sales of alcoholic beverages including wine coolers and 3.2 beer.
- **Club license:** charge 9 percent liquor tax on all sales of alcoholic beverages including wine coolers and 3.2 beer.
- **Wine license:** charge 9 percent liquor tax on all

sales of alcoholic beverages, including wine coolers and 3.2 beer.

- **3.2 percent malt liquor license:** charge 6.5 percent sales tax on all taxable sales, including 3.2 beer.
- **Set-up license:** charge 6.5 percent sales tax on all taxable sales.

**Nonalcoholic beer** (O'Doul's, Sharps, etc.) is subject to 6.5 percent sales tax when sold on-sale regardless of the type of liquor license the bar or restaurant holds. If nonalcoholic beer is sold off-sale, it is not taxable.

**Reporting the tax.** Report the 9 percent tax on liquor sales on your sales tax return. You must be registered to report liquor tax prior to filing your return. If you file your sales tax return over the internet, you can "Add a sales tax type". If you file by phone, contact us at 651-282-5225 or 1-800-657-3605.

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## Vending machines

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All food and drinks sold through vending machines or through a self-service honor system are taxable (unless the machines are located on school premises at a public or private school, university or college).

Receipts from coin-operated entertainment and amuse-

ment machines are taxable. Examples include jukeboxes, video and pinball games, foosball, pool tables and dartboards, fortune telling machines, and cranes.

See Fact Sheet 158, Vending Machines and Other Coin Operated Devices, for more information.

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## Government, nonprofit organizations & direct pay permit holders

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**Federal government.** Prepared food billed directly to and paid for by the federal government and its agencies is not taxable. Prepared food billed to an employee who is reimbursed by the federal government is taxable.

Federal employees sometimes make purchases using credit cards. There are four different types of cards issued by the federal government to employees.

**Travel cards** and **Integrated cards** can be used for purchases of lodging and prepared food. These cards used by the federal government begin with the four-digit prefixes listed below:

**VISA**, prefix 4486 or 4716

**MasterCard**, prefix 5568

The *sixth* digit determines if the purchase is taxable. If the sixth digit is 1, 2, 3, or 4, purchases charged to this card are taxable. The bill goes directly to the federal employee, who is later reimbursed by the federal government. If the *sixth* digit is 0, 6, 7, 8, or 9, do not charge sales tax as the federal government is billed directly.

**Fleet cards** and **Purchase cards** are billed directly to and paid for by the federal government; purchases made using these cards are not taxable. Fleet cards are used to buy fuel and maintenance for federal vehicles, planes, boats, and equipment. Purchase cards are used for day-to-day business expenses such as computers, furniture, office supplies, services, etc.

**Tribal Council or Government of an Indian Reservation in Minnesota.** The usual sales tax exemptions apply. Also, all sales billed to and paid by a tribal government of prepared food or drink, for on-reservation consumption by tribal officials acting in their governmental capacity, are exempt.

Off-reservation purchases of prepared food or drink for consumption by tribal officials are exempt only if the tribal government has a tax agreement with the

Department of Revenue that exempts purchases off the reservation by the tribal government solely for its own use. All Minnesota tribal governments have such an agreement, except for the Prairie Island Mdewakanton Community. See Fact Sheet 160, Indians, for more information.

**Foreign Consular Officials.** The U.S. Department of State's Office of Foreign Missions issues sales tax exemption cards to qualifying foreign diplomats and consular personnel stationed in this country. The card contains the official's picture, name, description, individual tax exemption number, and information about the extent of the exemption.

Ask to see the official's ID card. Make sure the purchase qualifies for exemption by checking the information on the back of the card. For example, some cards will state that the official must pay sales tax on charges for meals or on purchases under a certain dollar amount. You may also ask to see additional forms of identification. If the official qualifies for the exemption, write the individual tax exemption number found on the back of the card on your billing or sales invoice. Keep this in your file as proof of exemption.

**State government.** Prepared food and drinks sold to state government agencies are taxable. This includes not only the State of Minnesota but also all other states. State agencies must pay both state and local taxes, where applicable. Minnesota state agencies cannot use their Direct Pay Number (DP#) to purchase prepared food or drinks exempt from sales tax.

**Local government.** Prepared food and drinks sold to local government agencies are taxable. Local governments include Minnesota and non-Minnesota counties, cities, municipalities, townships, and most local government instrumentalities, political subdivisions, commissions, special districts, and government boards. See below for special rules that apply to *correctional facilities, hospitals and nursing homes*.

Local governments must pay *state* sales and use tax, but are not required to pay *local* general sales taxes. However, local governments are required to pay other special lodging, restaurant and liquor taxes imposed by local governments. See Fact Sheet 164S, Special Local Taxes, for more information.

**Correctional facilities.** Prepared food and drinks served to inmates or persons residing at correctional, detention, and detoxification facilities are not taxable.

**Hospitals and nursing homes (governmental and private).** Prepared food and snacks provided to patients as part of their routine care and included in the facility charges are not taxable. If hospital personnel serve a patient a meal in the patient's room, or when a nursing home resident eats in the home's resident dining room, the meal is not taxable. All food and

drinks sold from vending machines and snack shops are taxable. Prepared food sold to employees and guests are taxable.

**Nonprofit organizations.** Prepared food and drinks are taxable when sold to nonprofit organizations, except for hospitals and nursing homes as previously described, or unless they are for resale. An Exempt Status Number (ES#) cannot be used to buy prepared food and drinks exempt from tax.

**Direct pay permit holders.** Prepared food and drinks are taxable when sold to direct pay permit holders. A Direct Pay Number (DP#) cannot be used to purchase prepared food or drinks exempt from sales tax.

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## Schools

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### Food at schools

Prepared foods and drinks, catering services, and food and beverages dispensed from vending machines are exempt if they are furnished, prepared or served *on school premises*. School premises means the school building or grounds of any public or private (nonprofit or for-profit) school, college or university. The exemption does not apply to prepared food at private for-profit career schools.

Administrative offices located off the school premises are not considered part of the school so prepared food served at those offices is taxable.

Example 1. A fast food restaurant is located in a school building next to the cafeteria to give students different options for meals. No sales tax is charged because the fast food restaurant is located on school premises.

Example 2. A concession stand is located near the school football field (on school premises) where hot dogs, beverages, etc. are sold during games. No sales tax should be charged because the concession stand is on school premises.

Example 3. A wedding reception is held in a school cafeteria and a caterer furnishes food. The caterer does not charge sales tax on the meal because it is served on school premises.

Example 4. An elementary school is having a party at a pizza parlor. Tax applies since the meals are not served on school premises.

Example 5. An elementary school is having a pizza party at school. The pizza parlor delivers ten pizzas to school. Tax does not apply since the pizza is served on school premises.

See Fact Sheet 111, Schools – Sales and Purchases, for more information.

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## Purchases

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Restaurants and bars may buy items exempt from tax if they are sold as part of the prepared food and drinks. The following lists show how tax applies to some purchases:

### Taxable purchases

- appliances
- building cleaning services
- cash register tapes
- complimentary candy and matches
- cleaning products
- cookware
- dishes and glassware
- guest checks
- electricity
- equipment and fixtures
- gas for cooking and heating
- laundry services (including uniforms)
- lawn care services
- linens
- menus
- office supplies
- paper towels
- pie tins (not sold with a pie)
- silverware
- table cloths
- toilet tissue
- water

### Exempt purchases

- chopsticks (disposable)
- containers for take out food
- deli paper, foil and wraps used to wrap take out food
- disposable cups, lids, napkins, place mats, plates, silverware, tablecloths
- doggie bags and boxes
- gloves (rubber, latex, etc.)
- ice
- moist towelettes (furnished to customers)
- pie tins (returnable or nonreturnable, when sold with a pie)
- straws and swizzle sticks
- toothpicks
- uniforms

**Restaurants, bars, and eating establishments are excluded** from the exemptions that apply to industrial production and capital equipment refunds. The exemptions do not apply to restaurants, or other eating establishments selling prepared food or drink to be eaten on the premises, or sold to go. However, eating establishments that also produce frozen food, food that requires further preparation, bakery products, or other grocery-type food products may qualify. See Fact Sheets 145, Industrial Production, and 103, Capital Equipment, for more information.

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## Miscellaneous

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**Show sales tax separately.** Itemize the sales tax separately whenever possible. If tax is included in the selling price, you must post a sign, or list on your menus, a statement such as “all prices include sales tax” so your customers know they are being charged tax.

**Sales tax on drinks.** When prepared food and drinks are sold in restaurants, the sales tax is normally stated separately and added to the total bill. When drinks are purchased in the bar area of a restaurant, sales tax is often included in the price of the drink, as a convenience to both the restaurant and the customer. This procedure is acceptable if the restaurant advertises or otherwise notifies the customer that sales tax is included in the price. The restaurant must also keep track of bar sales separately (e.g., on a separate register) and the tax must be handled the same for all bar sales. For example, it is not acceptable to add sales tax to the price of drinks purchased on a tab at the bar but not add sales tax to drinks purchased and paid for immediately.

### How to subtract sales tax from receipts

If your records show only the total dollar amount of receipts, including the amount of sales tax collected, you must subtract the sales tax from your receipts so you can complete your return correctly.

- If your sales include tax collected at the rate of 6.5 percent, divide the sales amount by 1.065 or multiply by .939.
- If your sales include tax collected at the rate of 9 percent, divide the sales amount by 1.09 or multiply by .917.

The result of the calculation is the total dollar amount of sales not including sales tax. Use this amount when filing your sales tax return.

See your Sales and Use Tax Instruction Booklet for a chart showing calculations for other tax rates.

## Use tax

Use tax applies when you buy taxable items or services without paying sales tax to the seller. Use tax is similar to sales tax, and the rates are identical (with the exception of liquor, which is subject to sales tax of 9.0 percent and use tax of 6.5 percent). The use tax is based on your cost of the taxable items purchased. It is reported on your sales and use tax return. Local use tax also applies if you are located in an area with a local tax.

You must pay use tax on the following:

- items purchased over the internet, by mail, or by phone order for use in Minnesota when the seller does not charge sales tax,
- items purchased in another state or country for use in Minnesota when the seller does not charge sales tax,
- items purchased in another state when the seller charges sales tax at a rate lower than the Minnesota rate,
- items purchased for use in an area with a local use tax but only Minnesota state tax was paid,
- items purchased exempt for resale, if you take them out of inventory for business or personal use, and
- items purchased from a Minnesota seller who does not collect the sales tax, if you put the items to a taxable use.

Use tax is also due on your cost of liquor, and disposable paper cups, plates, napkins, candy, soft drinks, prepared food purchased exempt for resale, etc., which is given away with free meals and drinks. No use tax is due on the cost of the nontaxable food ingredients.

The items become taxable when they enter Minnesota, are taken from inventory for use, or are purchased from a Minnesota seller unless the sales tax was paid at the time of purchase.

See Fact Sheet 146, Use Tax for Businesses, for more information.

## Local sales and use taxes

Local taxes are explained in more detail in Fact Sheet 164, Local Sales and Use Taxes.

### Minneapolis and St. Cloud— Special local taxes

In addition to the general sales tax in Minneapolis, restaurant and liquor taxes apply to sales made in the downtown area, and a special entertainment tax applies to sales of food and drinks citywide. St. Cloud also imposes a special tax on sales of liquor and food sold in the city. See Fact Sheet 164S, Special Local Taxes, for more information.

**Duluth** administers its own sales tax through December 31, 2002. For more information, contact Duluth Sales Tax, 105 City Hall, Duluth, MN 55802, phone 218-723-3271. Beginning January 1, 2003, Duluth tax will be administered by the state.

## Gambling

If you have questions about lawful gambling (bingo, pulltabs, tipboards, and paddlewheels) call 651-297-1772 or 1-800-657-3619. If you need a license or permit for lawful gambling, call 651-639-4000. If you have questions about the Minnesota State Lottery, call 651-297-7456 or 1-800-475-4000.

## Past due taxes

If you owe the Department of Revenue past due taxes, or have unfiled tax returns, issuance or renewal of your business licenses may be stopped.

If you sell any kind of liquor products and owe past due taxes, your name will be submitted to the Commissioner of Public Safety (Liquor Control Board) for posting on a list. No wholesaler, manufacturer, or brewer may sell or deliver any product to a business included on the posted list. You must pay taxes in full before your name is removed from the list. Payment agreements are prohibited by law in these cases.

For additional information, call 651-296-3435 or 1-800-657-3873.

### References:

M. S. 297A.61, Subd 3(d), Definitions  
M. S. 297A.67, Subd. 2, Food and food ingredients  
M. S. 157, Hotels, Resorts, Restaurants  
M. S. 340A.101, Liquor definitions  
Rule 8130.0800, Subp. 4. Meals at schools.

### Other fact sheets you may need:

Cities, Counties, and Other Local Governments, #143  
Delivery Charges, #155  
Exemption Certificates, #161  
Food and Food Ingredients, #102A  
Candy, #102B  
Soft Drinks and Other Beverages, #102C  
Prepared Food, #102D  
Dietary Supplements, #102E  
Hotels and Lodging Facilities, #141  
Indians, #160  
Local Sales and Use Taxes, #164  
Occasional Sales of Business Equipment and Goods, #132  
Parking Services, #166  
Sales to Governments, #142  
Schools - Sales and Purchases, #111  
Special Local Taxes, #164S  
Use Tax for Businesses, #146  
Vending Machines and Other Coin Operated Devices, #158