



Purchases by Restaurants, Taverns, and Similar Establishments

Introduction

This bulletin explains how sales tax applies to purchases by restaurants, taverns, and other similar establishments. In this bulletin, the word *restaurant* includes:

- diners,
- cafeterias,
- drive-ins,
- pizzerias,
- taverns,
- delicatessens,
- food courts,
- street carts,
- concession stands, and
- any other establishment that sells "restaurant-type" food.

For information on sales by these types of businesses, see Tax Bulletin [Sales by Restaurants, Taverns, and Similar Establishments \(TB-ST-806\)](#).

"Restaurant-type" food

"Restaurant-type" food can generally be described as food or drink which is sold in a form ready to be eaten. It includes:

- food or drink sold for on-premises consumption;
- sandwiches;
- self-service salad bars;
- food or drink sold in a heated state; and
- unheated food or beverages sold for off-premises consumption that are not sold in the same form, condition, quantities and packaging as they are ordinarily sold in grocery stores.

Inventory

Whether a restaurant buys inventory from a supplier in bulk or from a grocery store, food items such as produce, seafood, meat, canned goods, etc., are not taxable to any purchaser, i.e., these items are exempt whether purchased by an individual or a business.

A restaurant may purchase otherwise taxable food and beverage items for resale provided a properly completed [Form ST-120, Resale Certificate](#), is given to the seller. The restaurant will collect tax when the items are resold at retail. Examples of food and beverages that can be purchased for resale include:

- alcoholic beverages¹

¹ New York State Liquor Authority rules require that alcoholic beverages be purchased from a licensed wholesaler or manufacturer.

- bottled water
- cocktail mixers
- cooked dishes
- deli or sandwich platters (such as cold cuts, subs, or burgers)
- hot coffee
- ice served in drinks
- juices containing less than 70% natural fruit juice
- meals purchased to be resold
- premade sandwiches
- soft drinks
- soups
- subcontracted catering services
- vegetable platters

If a restaurant pays sales tax on a purchase, it may later take a credit on its sales tax return. See Tax Bulletin [Sales Tax Credits \(TB-ST-810\)](#).

Any taxable inventory that was purchased for resale that is later given away without charge, such as a complimentary meal or drink for a guest or an employee meal, is subject to the use tax. For more information on purchases subject to use tax, see Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#).

However, taxable inventory that was purchased for resale that is sold as part of a meal or drink special (e.g., a "2 for 1" drink special during "happy hour") is not subject to tax.

Utilities

A restaurant must pay sales tax on its purchase of utilities. For information on certain exemptions for utilities used in production, see Tax Bulletin [Production Equipment and Utilities Used by Supermarkets, Grocery Stores and Delis \(TB-ST-690\)](#).

Production of food for sale

The Tax Law separates the sale of restaurant-type food from the sale of food generally found for sale in a supermarket. Many times, businesses such as bakeries, butcher shops, and delis sell both types of food.

Other purchases

Taxable purchases	
Purchase	Examples
Paper and other products that do not actually hold or contain food or beverages (See also TSB-M-81(12)S, Disposable Packaging and Wrapping Products.)	<ul style="list-style-type: none"> • napkins • straws • stirrers • toothpicks • placemats • plastic silverware
Products used or consumed in the kitchen	<ul style="list-style-type: none"> • foil • plastic wrap • containers to store food
Kitchen equipment used to prepare and cook food and beverages	<ul style="list-style-type: none"> • ovens (conventional, convection, microwave) • stoves • coolers • prep tables • knives • grills

	<ul style="list-style-type: none"> • fryers • freezers • mixers • dishwashers • hood vents
Equipment and utensils used for serving food and beverages	<ul style="list-style-type: none"> • plates • glassware • silverware • trays • hot plates • coffee pots • soda fountains
Rentals	<ul style="list-style-type: none"> • extra tables or chairs • fountains • sound or lighting equipment
Supplies and office products	<ul style="list-style-type: none"> • sterno fuel • candles • cleaning supplies • coasters • decorations • cash registers • cash register tapes • guest checks • all other office supplies
Certain outside services	<ul style="list-style-type: none"> • repair and maintenance services • cleaning services • knife sharpening services • printing services • security services

Exempt purchases	
Purchase	Examples
<p>Paper and other products that are given to the customer to hold or contain food or beverages.</p> <p>Give your seller Form ST-120, <i>Resale Certificate</i>.</p> <p>(See also TSB-M-81(12)S, <i>Disposable Packaging and Wrapping Products</i>.)</p>	<ul style="list-style-type: none"> • carry-out bags • french fry sleeves or bags • pizza boxes • Styrofoam containers • cups • lids • disposable plates • food wrappers
Certain outside services	<ul style="list-style-type: none"> • accounting services • payroll services • laundry services • legal services • advertising services

Employee meals

Meals that are provided to employees during their scheduled work time are not subject to sales tax as long as:

- the employer does not receive any cash from the employee or deduct money from their wages or accept other consideration for the meal from the employee; and

- the value of the meal is not income to the employee under federal or New York State income tax laws.

Any charge by the employer to an employee for food or drink is taxable, whether paid by the employee or withheld from the employee's wages.

The employer is liable for use tax on any taxable components of the food and any taxable drinks given to the employee.

Recordkeeping requirements

Keeping detailed business records will help in preparing accurate and complete sales tax returns. Records must be maintained to establish the taxable status of all purchases of property or services. **All** purchase records must be kept for **at least three years** from the due date of the return to which those records relate, or the date the return is filed, if later. Purchase records should include records related to:

- purchases subject to state and/or local taxes;
- purchases for resale (e.g., inventory and raw materials);
- purchases exempt from state and/or local taxes for reasons other than for resale.

Purchase records must substantiate all expenses and a business's cost of goods sold. These records should also show that business inputs (purchases) bear a reasonable relationship to business outputs (sales).

If a restaurant uses a point-of-sale (POS) system to track inventory and other purchases, each POS transaction record must provide enough detail to independently determine the taxability of each purchase. See Tax Bulletin [Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#) for a complete discussion of recordkeeping and internal control requirements for businesses using a POS system.

If a restaurant uses a POS system and the system lacks the storage capacity to comply with the three-year retention period, the restaurant must transfer, maintain, and have available in a machine-sensible and auditable² form any data that has been removed from the POS system. If a restaurant changes POS systems, it must ensure that the data from the old system is transferred, maintained, and available in a machine-sensible and auditable form.

A restaurant should also keep any other record or document that, given the nature of its business, would be necessary to prove that it has paid the proper amount of sales or use tax due. For complete information on these requirements see Tax Bulletin [Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#).

If a restaurant is not able to provide adequate records on audit, it may be subject to an estimated audit methodology to determine any additional taxes due. If the restaurant owes additional taxes, it will also be subject penalties and interest and could have its *Certificate of Authority* suspended or revoked.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

² *Machine-sensible and auditable form* means that the data should be stored in a commonly used format and not stored or presented to the department in a format readable only by proprietary software.

References and other useful information

Tax Law: 1105(d)

Regulations: Section 527.8

Memorandum:

[TSB-M-81\(12\)S](#), *Disposable Packaging and wrapping Products*

[TSB-M-18\(1\)S](#), *Summary of Sales and Use Tax Changes Enacted in the 2018-2019 Budget Bill*

Bulletins:

[Candy and Confectionery \(TB-ST-103\)](#)

[Food and Food Products Sold by Food Stores and Similar Establishments \(TB-ST-283\)](#)

[How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#)

[Recordkeeping Requirements for Sales Tax Vendors \(TB-ST-770\)](#)

[Sales by Restaurants, Taverns, and Similar Establishments \(TB-ST-806\)](#)

[Sales Tax Credits \(TB-ST-810\)](#)

[Use Tax for Businesses \(TB-ST-910\)](#)