



Restaurants and New Jersey Taxes

Bulletin S&U-1

Introduction

Businesses which sell prepared food and drink (such as restaurants, taverns, snack bars, and caterers) are responsible for a number of New Jersey taxes. This bulletin explains the New Jersey sales tax rules that apply to the sale of food and drink. It also briefly describes other taxes administered by the Division of Taxation for which a restaurant or food service business may be liable.

Sales and Use Tax

In general, food and drink (including alcoholic beverages) sold in restaurants are subject to New Jersey sales tax whether eaten in the restaurant or taken and consumed off the premises (take-out order). This includes prepared food and beverages sold for immediate consumption by drive-in/drive-through restaurants, food service and hot dog carts, and other mobile service facilities.

The following establishments, as well as other establishments engaged in the sale of food and drink for consumption either on or off the premises, are required to collect sales tax:

Automats	Ice Cream Stands
Cafés	Lunch Bars
Cafeterias	Lunch Counters
Carry-Out Restaurants	Lunch Rooms
Caterers	Luncheonettes
Chili Parlors	Mall Food Courts
Coffee Shops and Houses	Mobile Vending Operators
Dairy Bars	Oyster and Clam Bars
Delicatessens	Pizzerias
Diners	Restaurants
Drive-In/Drive-Through Restaurants	Sandwich Bars and Shops
Fast Food Operators	Snack Bars
Food Vendors in Offices, Factories, and Other Work Places	Soda Fountains/Juice Bars
Food Vendors in Sports/ Entertainment Arenas	Sushi Bars
Hamburger and Hot Dog Stands	Taverns, Grills, Bars Wiener Restaurants

Sales tax is imposed on all food and drink sold for consumption at the seller's location. This means that sales tax is charged both on food prepared at the

restaurant as well as on prepacked foods and beverages sold there such as cupcakes, pretzels, potato chips, bottled water or juice, etc., if intended to be eaten at the location where it is sold.

Where the food or drink sold is intended for consumption off the premises of the vendor, and consists of a meal or of food which is prepared and ready to be eaten (e.g., sandwich), it is taxed unless the food or drink is sold in:

- (1) An unheated state, and
- (2) The same form and condition, quantities, and packaging commonly used by food stores which are not principally engaged in selling take-out food.

Food sold in an unheated state is taxable when sold as sandwiches or as meals ready to be eaten when arranged on platters as individual or multiple servings, regardless of how the sales price is arrived at (pound versus serving).

Food or drink sold in an unheated state is not subject to tax when commonly sold in food stores by bulk, by weight, by the dozen (or part of a dozen), or by volume (gallon, quart, etc.) for off-premises consumption. This does not include candy or confectionaries or carbonated soft drinks and beverages which are taxable whether sold for consumption on or off the premises.

Example

A Deli/Restaurant serves meals in its restaurant section. In the deli section the restaurant sells potato salad, roast beef, cheese and other cold cuts, and also hot pastrami by the pound for home consumption. The food and drink sold in the restaurant section are taxable. In the deli section, potato salad, roast beef, or cheese sold by the pound are not taxable, but the pastrami (in a heated state) is taxable. A take-out sandwich is also taxable.

Example

A take-out establishment sells ten pieces of chicken, six rolls, and one pound of potato salad as a

meal for three persons and charges one price for the package. A sale of this type for immediate consumption is taxable in full.

Meal Coupons and Discounts

The sale of food and drink (including alcoholic beverages) in restaurants is subject to New Jersey sales tax. Restaurants may offer their patrons various discounts on meals. The same general rules apply for charging sales tax whether the establishment offers a senior citizen discount, “kids eat free” program, or accepts coupons or “dining cards” entitling the user to buy one meal and get a second one free, or at a reduced price.

Discounts (No Coupon Required)

If a restaurant charges a reduced price for a meal or provides a free item or meal, and no coupon is required for the customer to receive the discount, New Jersey sales tax is charged on the amount that the customer actually pays.

Coupons

Vendor Not Reimbursed. Whenever a customer must present a coupon or “dining card” to receive a reduced price or a free item, and the restaurant receives no reimbursement from a manufacturer, distributor, or other third party for accepting the coupon, New Jersey sales tax is charged on the discounted price or the amount the customer actually pays.

Vendor Reimbursed. When a restaurant accepts a coupon entitling a purchaser to pay a reduced price or to receive a free item, and the restaurant is reimbursed by a manufacturer, distributor, or other third party, sales tax is imposed on the full price of the item. In this case, the taxable receipt is composed of the amount the customer pays plus the value of the coupon.

If a coupon involves a reimbursement by a manufacturer, distributor, or other third party, and that fact is not disclosed either on the coupon or in an accom-

panying advertisement, the vendor who accepts the coupon collects sales tax on the reduced price from the customer but will be required to remit sales tax to New Jersey on the entire receipt (i.e., the amount the customer pays plus the reimbursement received for the coupon).

Example

When a coupon enables the patron to buy one meal and get the second one free, and the restaurant receives no reimbursement, sales tax is imposed only on the price of the meal the customer pays for.

First meal	\$ 12.95
Coupon for free meal	+ 0.00
Taxable receipt	<u>\$12.95</u>
6% sales tax	+ .78
Amount due from patron	<u>\$ 13.73</u>

Example

When a coupon allows either a dollar amount or percentage off the cost of a meal (the coupon may be valid only if two meals are purchased), and the restaurant receives no reimbursement, sales tax is imposed after the amount of the coupon is subtracted from the total bill.

First meal	\$ 16.95
Second Meal	+13.95
Subtotal	\$30.90
Coupon	- 5.00
Taxable receipt	<u>\$25.90</u>
6% sales tax	+ 1.56
Amount due from patron	<u>\$ 27.46</u>

For more information on coupons and discounts, request our publication ANJ-9, *Coupons, Discounts & New Jersey Sales Tax*.

Caterers

All catering charges are subject to sales tax. This applies whether or not the food is prepared for eating on the caterer’s premises or for delivery to the purchaser’s home. Other taxable charges include, but are not limited to, fees for a cook, maître d’, or bartender.

Service Charges

Cover or entertainment charges are considered fees for admission and are subject to sales tax. Minimum charges are also subject to sales tax.

Example

A night club has a \$5 minimum charge. A patron gets a check that includes \$2 for food, \$2 for cocktails, and \$1 for the minimum charge. The patron pays sales tax on the entire \$5 check.

Gratuities

Charges made for tips and gratuities, including stipulated gratuities or service charges, are not subject to tax when:

1. The charge is separately stated on the bill or guest check given to the customer; and
2. The charge is specifically designated as a gratuity; and
3. All such monies received by management are paid in total to the employees.

A stipulated “service charge” other than an employee’s gratuity is subject to sales tax.

Exempt Organizations

Meals purchased in restaurants by tax-exempt organizations are not subject to sales tax when the organization pays for the meals *directly from organization funds* and the representative issues a valid New Jersey Exempt Organization Certificate (Form ST-5).

If a representative of the organization pays for the meal personally, with the intention of being reimbursed by the organization, the representative may not issue an Exempt Organization Certificate instead of paying sales tax. In this case, the representative must pay the sales tax on the price of the meal.

Sales and use tax exemption is extended to meals purchased by Federal government employees where payment is made directly from a government

account. Government entities do not issue Exempt Organization Certificates. However, for Federal employees, payment made with the proper SmartPay credit card is acceptable proof of exemption. Only a Visa or MasterCard imprinted with “United States of America – SmartPay for Official Government Travel Only” or “United States of America – SmartPay for Official Government Use Only,” and having a 0, 6, 7, 8, or 9 as the *sixth digit* of the card account number is acceptable for the tax-exempt purchase of meals. Credit card purchases billed to and paid by a Federal employee who is later reimbursed by the Federal government are subject to sales tax.

For more information, request our brochure *Exempt Organization Certificate* (M-5014).

Alcoholic Beverages

All retail sales of alcoholic beverages are subject to New Jersey sales tax. This includes package goods as well as alcoholic beverages sold for consumption on the premises. Alcoholic beverages include all liquors, mixed drinks, wines, sparkling wines, cordials, and beer. As with other retail sales, the tax must be separately charged and stated to the customer.

Tobacco Products

Cigarettes. All retail sales of cigarettes, whether over the counter or through vending machines, are subject to New Jersey sales tax. In addition, cigarettes are subject to an excise tax of \$0.1025 on each cigarette (\$2.05 on a pack of 20 cigarettes), which is collected primarily from licensed distributors who receive cigarettes directly from out-of-State manufacturers.

Other Tobacco Products. All retail sales of other tobacco products are subject to New Jersey sales tax, whether over the counter or through vending machines. Examples of other tobacco products are:

cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco, tobacco substitutes, and snuff. For information on the tobacco products wholesale sales and use tax, see page 6.

Purchases by Restaurants

In general, restaurants, caterers, and other food service establishments must pay sales or use tax on supplies purchased for use in their businesses. However, because the New Jersey Sales and Use Tax Act provides certain exemptions from sales tax, a restaurant may purchase some goods and services from a supplier without paying sales tax.

For example, when a restaurant purchases taxable items of food and drink, such as candy, carbonated beverages, and alcoholic beverages which are to be resold, the restaurant issues the supplier a New Jersey Resale Certificate (Form ST-3) and does not pay sales tax. The restaurant will charge sales tax on these items when they are sold.

The Act also provides an exemption for products which are: (1) nonreturnable containers or wrapping supplies and (2) incidental to the delivery of prepared food to the customer. When purchasing these items, the restaurant issues the supplier a New Jersey Exempt Use Certificate (Form ST-4) and does not pay sales tax.

The following disposable items are exempt from sales tax when used to deliver prepared food and beverages to patrons:

Aluminum Foil	Paper Buckets
Aluminum Plates	Paper Cups
Baking Cups	Plastic Cups
Boxes for Take-out Orders	Sandwich Plastic Wrap
Cake Boxes	Take-out Order Trays
Cellophane Paper	Twine
Cup Carriers	Waxed Bags
Cup Lids	Waxed Paper
Paper Bags	Wrapping Paper

A restaurant must pay sales or use tax on purchases of taxable items used in the business which are not resold or which are not otherwise exempt, e.g., soaps, detergents, floor waxes, paper towels, and other similar items.

A restaurant must pay sales or use tax when it purchases the following items:

Ashtrays	Plastic Forks
Butter Trays	Plastic Knives
Dispensers	Plastic Spoons
Doilies	Plastic Stirrers
Flatware	Plastic Trays
Freezer Paper	Straws
Guest Checks	Table and Counter Equipment
Janitorial Supplies	Toilet and Tissue Paper
Napkins	Toothpicks
Paper Napkins	Towels
Placemats	
Plastic Can Liners	

A restaurant must pay sales or use tax on the purchase of food preparation equipment such as coffee and soda machines, ice makers, blenders, food processors, etc. A restaurant is not treated as a manufacturer and cannot claim exemption for machinery and equipment used to prepare food and beverages.

For more information request Tax Topic Bulletins S&U-6, *Sales Tax Exemption Certificates*, and S&U-9, *Business Purchases*.

Services to Property

All cleaning and janitorial services (indoor and outdoor) are subject to sales tax, whether the services are performed on a regular contractual basis or not. Charges for parking lot sweeping, snow plowing, and lawn maintenance are subject to sales tax. Rodent and pest control services are also taxable; however, charges for an initial inspection or reinspection of real property are exempt from tax. Rug and carpet cleaning (other than normal vacuuming), including charges for picking up and relaying

cleaned rugs and carpets, is exempt from sales tax as a laundering service. Cleaning of upholstered fabrics including draperies and other textile furnishings is also exempt.

Charges for the removal of contained waste including garbage, rubbish, trash, and recyclables are exempt from sales tax where the services are performed on a regular contractual basis for a term of not less than 30 days.

Laundered Items

Laundering services are exempt from New Jersey sales tax, but charges for the rental of tangible property are taxable. When a business rents laundered items such as dust cloths, mats, mops, industrial wiper cloths, bed linens, hospital linens, table linens, towels or similar items, and the total on the invoice is a lump-sum amount which includes charges for both the rental and laundering of the items, the tax is based on an assumed rental charge of 33⅓% of the total charge. The invoice must show the total charge, the percentage reduction (66⅔%) and the net amount subject to sales tax. For example:

Lump-sum Charge	\$100.00
	- 66.66
<i>Adjusted Charge</i> (subject to 6% sales tax)	\$ 33.34

It is improper for a vendor of linen furnishings to indicate that the effective rate of tax is 2% of the total charge. On invoices where the charges for the rental of the laundered items and for laundering services are separately stated, the laundering charges are exempt from sales tax, but the full rental charge is subject to tax.

Urban Enterprise Zones

Qualified businesses located within New Jersey's designated Urban Enterprise Zones and UEZ-impacted business districts are eligible for certain tax advantages.

A qualified business in an Urban Enterprise Zone is entitled to an exemption from sales tax when it purchases most equipment and supplies (except motor vehicles) and taxable services (except telecommunications services) which are for the exclusive use of the business within the Zone. The business must provide the seller with an Urban Enterprise Zone Exempt Purchase Certificate (Form UZ-5) when it makes these purchases. However, qualified businesses purchasing meals (including catered meals) or prepared foods are not entitled to any exemption. There is also no exemption for a qualified business's purchase of natural gas, electricity, or utility service.

In addition, a qualified business which is a certified reduced-rate vendor may charge sales tax at 50% of the regular rate on retail sales of tangible personal property within the Zone or UEZ-impacted business district. However, the reduced sales tax rate does not apply to sales of restaurant meals or prepared food, motor vehicles, alcoholic beverages, or cigarettes. A business must collect sales tax at the full rate on these items. Sales of taxable services by a qualified business are also subject to tax at the full sales tax rate.

For more information about Urban Enterprise Zones or UEZ-impacted business districts visit the New Jersey Commerce and Economic Growth Commission's Web site at: www.state.nj.us/commerce/uezhome.htm. Also see the publication *Urban Enterprise Zone Tax Questions and Answers*, which is available at: www.state.nj.us/commerce/pdf/taxqu.pdf.

Litter Control Fee

New Jersey imposes a litter control fee, due March 15 annually, on wholesale and retail sales of litter-generating products sold within or into New Jersey by manufacturers, wholesalers, distributors, or retailers. For restaurant purposes, "litter-

generating" products include: beer and other malt beverages, cigarettes and tobacco products, distilled spirits, food for human consumption, soft drinks, carbonated waters, and wine.

"Retailer" includes the owner or operator of a take-out or drive-through restaurant, snack bar, or similar establishment, where the majority of the restaurant's food and beverage gross receipts are derived from sales made for consumption off the premises. "Retailer" does not include owners or operators of restaurants, the principal activity of which consists of selling any meal or food prepared and ready to be eaten for consumption on the premises of the restaurant. A restaurant's "principal activity" is one which accounts for more than half of the business's gross receipts relating to food and beverage sales.

Any retailer with less than \$500,000 in gross receipts from the sales of litter-generating products is excluded from payment of the fee for that calendar year.

Tobacco Products Wholesale Sales and Use Tax

The tobacco products wholesale sales and use tax is imposed on the sale, use, or distribution of tobacco products other than cigarettes. The tax paid by the distributor or wholesaler is calculated on the amount paid by the distributor or wholesaler to buy the products from the manufacturer. A retail dealer or consumer must be given an invoice, receipt, or other statement stating that the tax has been paid or will be paid by the distributor or wholesaler. If a distributor or wholesaler has not paid the wholesale sales tax, the retail dealer or consumer must pay a compensating use tax directly to the Division of Taxation within 20 days of the date the tax was required to be paid. Examples of tobacco products are: cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco, tobacco substitutes, and snuff. Cigarettes are exempt from this tax.

Corporation Business Tax

The New Jersey Corporation Business Tax Act imposes an annual franchise tax on every New Jersey corporation and every out-of-State corporation which acquires a taxable status in New Jersey by doing business, employing or owning capital or property, maintaining an office, or deriving receipts, or engaging in contracts in New Jersey. Both domestic and foreign corporations are required to file a New Jersey Corporation Business Tax Return (Form CBT-100) regardless of whether they had any assets or conducted any business activities.

S Corporations

A corporation may elect to be treated as a New Jersey S corporation if the corporation is or will be an S corporation for Federal purposes and has filed the New Jersey S Corporation or New Jersey QSSS Election (Form CBT-2553). S corporations pay a reduced rate of corporation business tax.

For more information on corporation business tax, refer to the instructions for Forms CBT-100 or CBT-100S.

Employer Responsibilities

Every New Jersey employer is required to register with the State for tax purposes and to withhold New Jersey income tax from wages paid to both resident and nonresident employees working in this State (except Pennsylvania residents). Employers also have Department of Labor responsibilities to withhold New Jersey unemployment insurance, health care subsidy fund, workforce development partnership fund and/or disability insurance contributions. Request *New Jersey Gross Income Tax Instruction Booklet for Employers, Payors of Pension and Annuity Income and Payors of Gambling Winnings (NJ-WT)* and Tax Topic Bulletin MISC-1, *Employer Responsibilities*, for more information.

For More Information

By Phone

- Call the Division of Taxation's Customer Service Center at **609-292-6400**
- TTY equipment users call **1-800-286-6613** (within NJ, NY, PA, DE, and MD) or **609-984-7300** (anywhere)

Online

- Division of Taxation Web site: www.state.nj.us/treasury/taxation/
- E-mail: taxation@tax.state.nj.us
- Subscribe to *NJ Tax E-News*, the Division of Taxation's online information service, at: www.state.nj.us/treasury/taxation/listserv.html

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- Call NJ TaxFax at **609-826-4500** from your fax machine's phone
- Visit the Division of Taxation's Web site: www.state.nj.us/treasury/taxation/