



## Restaurants and New Jersey Taxes

*Bulletin S&U-1*

### **Introduction**

*Businesses which sell prepared food and beverages (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 beverages. It also briefly describes other taxes administered by the Division of Taxation for which a restaurant or food-related service business may be liable.*

### **Sales and Use Tax**

Prepared food and beverages (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 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 prepared food and beverages are required to collect sales tax:

Cafés	Hamburger and
Cafeterias	Hot Dog Stands
Carry-Out Restaurants	Luncheonettes
Catering Halls	Pizzerias
Diners	Restaurants
Drive-In/Drive-Through	Sushi Bars
Restaurants	Taverns, Grills, Bars
Fast Food Operators	

### **Meal Coupons and Discounts**

Restaurants may offer their patrons various discounts on meals. The same 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 discounted price or the amount the customer actually pays.

### Coupons

**Seller 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.

**Seller 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 charged 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 accompanying advertisement, a seller that accepts the coupon charges the customer sales tax on the reduced price but is required to remit sales tax to New Jersey on the entire receipt (i.e., the amount the customer paid plus the reimbursement received for the coupon).

#### Example

A coupon enables the patron to buy one meal and get the second one free, and the restaurant

receives no reimbursement. Sales tax is charged only on the price of the meal the customer pays.

First meal	\$12.95
Coupon for free meal	+ 0.00
Taxable receipt	\$12.95
7% sales tax	+ .91
Amount due from patron	\$13.86

#### Example

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 charged 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	\$25.90
7% sales tax	+ 1.81
Amount due from patron	\$27.71

For more information on coupons and discounts, see [ANJ-9](#), *Coupons, Discounts & New Jersey Sales Tax*.

### Caterers

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.

### Service Charges

Cover or entertainment charges are considered to be 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.

## Exempt Organizations

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

If a representative of an exempt 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.

The 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 a SmartPay 2 credit card with 0, 6, 7, 8, or 9 as the 6th digit is acceptable proof of exemption. Travel and integrated cards having a 1, 2, 3, or 4 as the 6th digit are

*not* acceptable for tax-exempt purchases. Credit card purchases billed to and paid by a Federal employee who is later reimbursed by the Federal government are subject to sales tax.

Certain purchases by foreign diplomatic and consular personnel residing in the United States are also exempt from sales tax. There are two types of sales tax exemption cards issued by the U.S. Department of State, Office of Foreign Missions, that are acceptable as proof of the exemption. Personal sales tax exemption cards are issued for the sole benefit of the individual identified on the card. Mission tax exemption cards are issued to embassies, consulates, and international organizations for official purchases only and for the sole benefit of the mission identified on the card.

For more information, see Tax Topic Bulletin [MISC-3](#), *Tax Treatment of Nonprofit Organizations and Government Entities*, and Technical Bulletin [TB-53](#), *Diplomat/Consular Sales Tax Exemptions*. Also visit the U.S. Department of State, Office of Foreign Missions' [Web site](#).

## Alcoholic Beverages

All retail sales of alcoholic beverages are subject to New Jersey sales tax. 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 \$0.135 on each cigarette (\$2.70 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 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 prepared food and beverages, such as candy, soft drinks, and alcoholic beverages which are to be resold, the restaurant issues the supplier a New Jersey Resale Certificate ([Form ST-3](#)) or the Streamlined Sales and Use Tax Certificate of Exemption ([Form ST-SST](#)) 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](#)) or the Streamlined Sales and Use Tax Certificate of Exemption ([Form ST-SST](#)) 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

considered a manufacturer and cannot claim an exemption for machinery and equipment used to produce prepared food and beverages.

For more information see Tax Topic Bulletins [S&U-6](#), *Sales Tax Exemption Administration*, 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 services, including picking up and relaying cleaned rugs and carpets, are subject to sales tax. Charges for cleaning upholstered fabrics, including draperies and other textile furnishings, are also taxable.

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

### **Laundered Items**

Charges for laundering and/or the rental of the following types of items are subject to sales tax: cloths, mats, mops, industrial wiper cloths, bed linens, hospital linens, table linens, towels, and similar items.

### **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. For example, this purchase exemption would apply to the purchase of industrial kitchen equipment or patron tables for use at the Zone location. To claim the exemption, the business must provide the seller with an Urban Enterprise Zone Exempt Purchase Certificate (Form UZ-5) when making these purchases. There is no exemption for a qualified business's purchase of natural gas, electricity, or utility service.

Although a qualified business which is a certified reduced-rate seller may charge sales tax at 50% of the regular rate on most retail sales of tangible personal property within the Zone or UEZ-impacted business district, the reduced sales tax rate does not apply to sales of prepared food or beverages. 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 Department of Community Affairs](#). Also see the publication [Urban Enterprise Zone Tax Questions and Answers](#).

### **Litter Control Fee**

New Jersey imposes a litter control fee, due March 15 annually, on the gross receipts of

wholesale and retail sales of litter-generating products sold within or into New Jersey by manufacturers, wholesalers, distributors, or retailers. “Litter-generating” products include but are not limited to: 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 prepared food 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 contacts within 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 in New Jersey.

## **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 covered under the Reciprocal Personal Income Tax Agreement between New Jersey and Pennsylvania). Employers also have Department of Labor and Workforce Development

responsibilities to withhold New Jersey unemployment insurance, health care subsidy fund, workforce development partnership fund, disability insurance and/or family leave insurance contributions. See *New Jersey Gross Income Tax Instruction Booklet for Employers, Payors of Pension and Annuity Income and Payors of Gambling Winnings* ([NJ-WT](#)) for more information.

## For More Information

### By Phone

- Call the Division of Taxation's Customer Service Center at **609-292-6400**.
- Text Telephone Service (TTY/TDD) for Hard-of-Hearing Users: **1-800-286-6613** (toll-free within NJ, NY, PA, DE, and MD) or **609-984-7300**. These numbers are accessible *only* from TTY devices. Submit a text message on any tax matter and receive a reply through NJ Relay Services (711).

### Online

- Division of Taxation Web site: [www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)
- E-mail: [nj.taxation@treas.state.nj.us](mailto:nj.taxation@treas.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](http://www.state.nj.us/treasury/taxation/listserv.html)

### In Writing

New Jersey Division of Taxation  
Technical Information Branch  
PO Box 281  
Trenton, NJ 08695-0281

## Forms and Publications

- Visit the Division of Taxation's Web site:
  - Forms — [www.state.nj.us/treasury/taxation/forms.shtml](http://www.state.nj.us/treasury/taxation/forms.shtml)
  - Publications — [www.state.nj.us/treasury/taxation/pubs.shtml](http://www.state.nj.us/treasury/taxation/pubs.shtml)
- Call NJ TaxFax at **609-826-4500** from your fax machine's phone.
- Call the Forms Request System at **1-800-323-4400** (within NJ, NY, PA, DE, and MD) or **609-826-4400** (Touch-tone phones only) to have printed forms or publications mailed to you.  
**Note:** Due to budgetary constraints, supplies are limited and only certain forms and publications can be ordered through this System.