

S&U-1 Restaurants and New Jersey Taxes

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-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
Cafes	Lunch Bars
Cafeterias	Lunch Counters
Carry-Out Restaurants	Lunch Rooms
Caterers	Luncheonettes
Coffee Shops and Houses	Mobile Vending Operators
Dairy Bars	Oyster and Clam Bars
Delicatessens	Pizzerias
Diners	Restaurants
Drive-Through Restaurants	Sandwich Bars and Shops
Fast Food Operators	Snack Bars
Hamburger and Hot Dog Stands	Soda Fountains
	Sushi Bars
	Taverns, Grilles, Bars

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 sold there such as cupcakes, pretzels or potato chips, 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 accompanying 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	<u>+13.95</u>
Subtotal	\$30.90
Coupon	<u>- 5.00</u>
Taxable receipt	\$25.90
6% sales tax	+ 1.55
Amount due from patron	<u>\$27.45</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, maitre 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 Organiza-

tion 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, a Cigarette Tax of \$0.04 on each cigarette is charged on all retail sales (\$.80 on a pack of 20 cigarettes).

Tobacco Products (Other than Cigarettes). All retail sales of tobacco products, other than cigarettes, are subject to New Jersey sales tax, whether over the counter or through vending machines. Examples of 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 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 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 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
Janitorial Supplies	Equipment
Napkins	Toilet and Tissue Paper
Paper Napkins	Toothpicks
Placemats	Towels
Plastic Can Liners	

For more information on exemption certificates, request S&U-6, *Sales Tax Exemption Certificates*.

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 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 33 $\frac{1}{3}$ % of the total charge. The invoice must show the total charge, the percentage reduction (66 $\frac{2}{3}$ %) 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)	<u>\$ 33.34</u>

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 are eligible for certain tax advantages. Twenty-seven zones have been designated: Asbury Park/Long Branch, Bridgeton, Camden, Carteret, East Orange, Elizabeth, Guttenberg, Hillside, Irvington, Jersey City, Kearny, Lakewood Township, Millville/Vineland, Mt. Holly, Newark, North Bergen, Orange, Passaic, Paterson, Pemberton Township, Perth Amboy, Phillipsburg, Plainfield, Pleasantville, Trenton, Union City and West New York.

A qualified business 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, which became subject to tax as of January 1, 1998.

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. 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 information on becoming a “qualified business” within an Urban Enterprise Zone, contact the local municipal zone coordinator.

Litter Control Tax

New Jersey imposes a litter control tax, due March 15th annually, on wholesale and retail sales of litter-generating products. For purposes of this tax, “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.

“Food for human consumption” includes sales of meals, beverages or other prepared food by restaurants, taverns, snack bars, mobile vending operators, vending machines and other similar establishments for consumption off the premises where sold. Food and beverages, except beverages specifically listed as litter-generating products, sold by such establishments for consumption on the premises are not taxable, unless served on or with disposable plates, cups, utensils or other paper or plastic products.

Restaurants or other such establishments and caterers are liable for Litter Control Tax if their annual retail sales of litter-generating products are \$250,000 or more.

Tobacco Products Wholesale Sales and Use Tax

New Jersey imposes a Tobacco Products Wholesale Sales and Use Tax at the rate of 48% on receipts from every sale of tobacco products, other than cigarettes, by a distributor or wholesaler to a retail dealer or consumer. Examples of tobacco products are: cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco, tobacco substitutes, and snuff. Cigarettes are exempt from the Tobacco Products Wholesale Sales and Use Tax.

Restaurants are required to pay the Tobacco Products Wholesale Sales and Use Tax when they purchase tobacco products, other than cigarettes, which are to be sold at retail. If the wholesaler or distributor does not collect the tax, then the restaurant is responsible for remitting use tax directly to the State.

For more information on the Tobacco Products Wholesale Sales and Use Tax, request Technical Bulletin TB-43 (R), *Tobacco Products Wholesale Sales and Use Tax Guidelines*.

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, or maintaining an office 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. Corporations with entire net income of more than \$100,000 are taxed at the rate of nine percent (9%) on adjusted entire net income or the portion allocable to New Jersey. For tax years beginning on or after July 1, 1996, corporations with entire net income of \$100,000 or less are taxed at the rate of seven and one-half percent (7.5%). For accounting or privilege periods beginning in calendar year 1997,

the minimum tax is \$200 for a domestic corporation, \$200 for a foreign corporation and \$250 for an investment company or real estate investment trust. After 1997, the minimum tax will be adjusted every fifth year.

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 tax. For tax years ending on or before June 30, 1998, the rate is based on the difference between the highest personal income tax rate and the Corporation Business Tax rate. For example, if the maximum personal rate is 6.37%, the S corporation rate is 2.63% (9% less 6.37%); 1.13% for S corporations with entire net income of \$100,000 or less (7.5% less 6.37%).

For tax years ending on or after July 1, 1998, the S corporation tax rate is reduced to 2% (0.5% for S corporations with entire net income of \$100,000 or less). All New Jersey S corporations must file the New Jersey S Corporation Business Tax Return (Form 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 Tax Topic Bulletin MISC-1, *Employer Responsibilities*, for more information.

Taxpayers' Bill of Rights

The New Jersey Taxpayers' Bill of Rights ensures that taxpayers are accorded fair and equitable treatment and receive the information and assistance they need to understand and meet their State tax responsibilities. To find out more, contact the Division of Taxation.

For More Information

For more information on restaurants and New Jersey taxes, contact the Division's Customer Service Center at 609-292-6400, or write to:

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Many State tax forms and publications are now available, both by fax and through the World Wide Web. Call NJ TaxFax at 609-826-4500 from your fax machine's phone or access the Division's home page via your computer's modem at: <http://www.state.nj.us/treasury/taxation/>