

Nebraska Sales and Use Tax Guide for Prepared Food and Beverage Service

Overview

Retail sales of prepared food, including sales by caterers, and all sales of food and food ingredients through vending machines, are taxable.

Retail sales of alcoholic beverages are taxable.

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Terms

Alcoholic Beverages. Alcoholic beverages means beverages that are suitable for human consumption and contain 0.5% or more of alcohol by volume.

Beverage Service. The provision of alcoholic and nonalcoholic drinks by an establishment or business such as a restaurant, cafe, hotel, or caterer.

Caterer. Caterer means an individual or business providing food and/or beverage service to customers.

Food or Food Ingredients. Food or food ingredients means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form that are sold for ingestion or chewing by humans, and are consumed for their taste or nutritional value (see [Reg-1-087, Food for Human Consumption](#)).

Prepared Food. Prepared food is food intended for, and which is generally ready for, immediate consumption, either on or off the premises of the seller. Prepared food means food that meets **any** of the following conditions:

- A. The food is sold with eating utensils when the utensils are handed to the customer by the seller. Examples include plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws. If the eating utensils are not handed to the customer by the seller, and are merely made available to the customer, the food may or may not be taxable as prepared food. See the explanation on page 4;
- B. The food contains two or more food ingredients mixed or combined by the seller for sale as a single item. Examples include meals, sandwiches, self-service fountain drinks, and ice cream sundaes; or
- C. The food is sold in a heated state or heated by the seller. Examples include hamburgers, rotisserie chicken, baked beans, soups, and coffee.

Prepared food in Category B above **does not** include:

- ❖ Food that is only sliced, repackaged, or pasteurized by the seller (other than caterers). Examples include luncheon meats, cheeses, meat and cheese trays, and cut fruits;
- ❖ Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the FDA. One example is marinated meats;
- ❖ Food sold in an unheated state by weight or volume as a single item. Examples include containers of deli salad and bagged popcorn;
- ❖ Food sold by food manufacturers. Examples include cereals, canned vegetables, and dairy products; and
- ❖ Bakery items. Examples include bagels, bread, donuts, cakes, pies, and tortillas.

Taxable Sales

Establishments generally determined to be engaged in the sale of taxable prepared food include, but are not limited to:

- Bars, taverns, and grills
- Cafes
- Cafeterias*
- Caterers
- Coffee shops
- Convenience stores
- Delicatessens
- Diners
- Fast food restaurants
- Food courts
- Food vendors in sports/entertainment arenas (concession stands)
- Hot dog stands
- Ice cream and yogurt shops
- Juice bars
- Mobile food vendors
- Personal chefs
- Pizzerias
- Restaurants
- Sandwich shops

* Hospitals, including nonprofit hospitals, and educational institutions, which operate a cafeteria that is open to employees and the general public are retailers of prepared food and must collect and remit sales tax on sales made to its employees and the general public. Sales of prepared food to patients of a hospital, or to students of an educational institution at a facility that is closed to the general public, are not taxable.

Separate Statement of Tax

Except as noted below for sales by concessionaires, vending machines, and certain sales of alcoholic beverages, retailers of prepared food must collect sales tax as a separate item from the selling price of the food. In the following example, the restaurant is located in a city where the combined state and city sales rate is 7.0%.

Example 1.	Sandwich	\$6.00
	Fountain drink	<u>+2.50</u>
	Subtotal	\$8.50
	Sales tax (7% x \$8.50)	<u>+ .60</u>
	Total	\$9.10

Alcoholic Beverages

Sales of alcoholic beverages are taxable, whether sold packaged as “off-sale,” or by-the-drink as “on-sale.” Bars, taverns, and restaurants that hold a liquor license are permitted to include the sales tax in the selling price of beverages that are consumed on their premises. Retailers and organizations which have been granted a Special Designated License for the sale of alcoholic liquor may also include the sales tax in the selling price of beverages consumed on property owned by governmental entities. Sales of soft drinks from these establishments may be treated in the same manner (see [Reg-1-040, Alcoholic Liquors Consumed on the Premises](#)).

For alcoholic beverages provided free-of-charge, the seller owes use tax on the cost of the beverages.

Caterers

Individuals or businesses providing catered foods or beverage service must collect sales tax on receipts from preparing or serving these foods and beverages. Charges for food, wages, bartenders, wait staff, chefs, use of dishes, room service, chairs, tables, etc., are taxable even though separately stated on the billing invoice. The tax applies whether the food is served by the seller or merely provided to the purchaser for consumption. Sales tax does not apply to separately stated charges for announcers, door attendant's, or other persons not connected with the preparation or serving of prepared food and beverages. The location of the catered event determines the applicable local (city or county) sales tax that applies to the sale.

Concessionaires

All concession sales of prepared food are taxable, except those made by elementary and secondary schools. Concessionaires are permitted to include the sales tax in the selling price.

In the following example, the concession stand is located outside the city limits where only the state sales tax applies.

Example 2.	Hamburger	\$5
	Fountain drink	2
	Ice cream cone	<u>+1</u>
	Total	\$8

In this example, sales tax is included in the \$8 selling price of the prepared food items. When calculating the amount of tax to be remitted on the retailer's [Nebraska and Local Sales and Use Tax Return, Form 10](#), the sales receipts and tax amounts are calculated below.

Total sale including sales tax divided by one plus the tax rate. $\$8.00/1.055 = \7.58 .

Sales receipts	\$7.58
Sales tax (\$8.00 - \$7.58)	<u>+42</u>
Total	\$8.00

Convenience Stores

Convenience stores often sell both prepared food, which is taxable, and food and food ingredients, which are not taxable.

- ❖ **Prepared Food.** All food sold by convenience stores in a **heated** state is taxable and includes items such as hot dogs, hot coffee, pizza, and pretzels. Food that is **heated by the purchaser** is not taxable even if a microwave oven located on the seller's premises is used. Sales of fountain drinks and other mixed beverages, such as iced coffee drinks, are taxable.

Sales of food maintained at room temperature or cooler **are not taxable, unless** the seller physically gives the customer an eating utensil with the food (see "Eating Utensils" below). For example, sales of sandwiches, donuts, or cookies which are not packaged by the seller are not taxable, **unless** the seller's customary practice is to give a napkin, plate, or other eating utensil to the purchaser.

- ❖ **Food and Food Ingredients.** Sales of food and food ingredients, **which are not classified as prepared food**, are not taxable. Food and food ingredients include staple foods (for example, milk, flour, eggs, meats, vegetable oils, gelatins, salt, ketchup, potato chips, candy, chewing gum, and soft drinks in bottles or cans) (see [Nebraska Sales and Use Tax Guide for Food, Food Ingredients, and Dietary Supplements](#)).

Delicatessens

All heated foods sold by a delicatessen (for example, pizza, meat loaf, fried chicken, rice, macaroni & cheese, egg rolls, baked beans, soup, hot coffee, and potatoes and gravy), are prepared food and are taxable.

Sandwiches, whether packaged or unpackaged, **which are prepared by the seller**, fountain drinks, or soft serve ice cream are also taxable as prepared food.

Delicatessen foods maintained at room temperature or below (for example, potato salad, cole slaw, fruit salad, olives, and pudding) are not taxable when served in a container with a lid and measured and sold by weight or volume. These foods are taxable when sold as part of a meal, when catered, or when served on a plate or with a fork, spoon, or other eating utensils.

Eating Utensils Provided by Seller

As explained above, when the seller hands the customer an eating utensil, such as a plate, cup, fork, or napkin, the food is deemed to be sold “with eating utensils provided by the seller” and is subject to tax.

Examples of taxable sales of food where the seller hands the purchaser an eating utensil include:

- ❖ A bagel sold with a plastic knife;
- ❖ A boxed or sacked lunch sold with a napkin or plastic fork;
- ❖ A cup of ice cream; or
- ❖ A can of soda served with a straw.

Vending Machine Sales

All food and other items sold through a vending machine are subject to tax. The location of the machine determines the applicable **local** (city or county) **sales tax** that applies to the sales. Vending machine operators will include state and local sales tax in the selling price of the items in the machine. The sales tax does not have to be separately stated on vending machine sales (see [Reg-1-031, Coin-Operated Machines](#)).

Tax Exempt Sales

Sales and use taxes do not apply to the following sales of:

- ❖ Certain sales of prepared food served or sold by schools, school groups, churches, and organizations licensed by the State for the care of human beings. See [Reg-1-083, Prepared Food and Beverage Service](#); [Reg-1-090, Nonprofit Organizations](#); [Reg-1-091, Religious Organizations](#); and [Reg-1-092, Educational Institutions](#);
- ❖ Prepared food sold at political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees;
- ❖ Prepared food sold by residential facilities with communal dining rooms. For example, sales of meals to residents of a fraternity are not taxable. However, if a caterer sells meals to a fraternity, this is taxable and tax must be collected from the fraternity;
- ❖ Prepared food sold by organizations for the elderly, handicapped, or recipients of Supplemental Security Income authorized to accept electronic benefits transfer or food coupons; and
- ❖ Concession sales of prepared food when sold by elementary and secondary schools at school events.

Eating Utensils Test

When eating utensils are not handed to the customer by the seller, and are merely made available for use by customers, such as the placement of napkins or straws on a nearby counter, the seller’s sales of food may be subject to tax as explained below.

To determine whether food is “sold with eating utensils provided by the seller,” and are therefore, taxable, the seller must annually compute a percentage of its food sales as described in the following section.

If 75% or less of the sales of all food by the seller are sales as described in B and C of the “Prepared Food” definition (above, two or more ingredients or heated food), then eating utensils are considered provided by the seller for all other food items only if they are handed to the purchaser by the seller.

If more than 75% of the sellers sales of all food items are sales of food described in B and C of the “Prepared Food” definition, then eating utensils are considered provided by the seller for all other food items if they are merely available on the premises where the food is sold.

To calculate the percentage:

The numerator includes sales of food in categories B and C of the prepared food definition. The denominator consists of all sales of food and food ingredients, including all candy, soft drinks, and dietary supplements.

Alcoholic beverages are excluded from both the numerator and denominator.

Example 3. A coffee shop makes sales of hot and iced coffee drinks, hot and iced tea, sandwiches, bottled water, and dessert items (other food items). Napkins and straws are not handed to the customer but are available on the counter. For 2012, the shop has computed its annual sales percentage below.

Hot or iced coffee drinks	\$18,000	
Hot or iced tea drinks	5,000	
Sandwiches	<u>+3,000</u>	
Prepared Food Subtotal		\$26,000
Cookies & brownies	2,000	
Bottled water	<u>+2,000</u>	
Subtotal		<u>\$4,000</u>
Total Sales		\$30,000
Numerator	<u>\$26,000</u>	= 87%
Denominator	\$30,000	

Since the coffee shop’s sales of food consisting of two or more ingredients mixed or combined by the seller (Category B) and food sold in a heated state (Category C) is 87% of the shop’s total sales, sales tax must also be collected on sales of the dessert items and bottled water as these items are considered to be sold with eating utensils provided by the seller (Category A).

Example 4. A convenience store sells heated pizza, fountain drinks, a variety of bottled sodas, and other food items, including cookies and brownies. Napkins and straws are not handed to the customer but are available on the counter. For 2012, the store has computed its annual sales percentage below.

Pizza	\$10,000	
Fountain drinks	<u>+10,000</u>	
Subtotal		\$20,000
Bottled soda	30,000	
Other food items	<u>+200,000</u>	
Subtotal		<u>\$230,000</u>
Total Food Sales		\$250,000
Numerator	<u>\$20,000</u>	= 8%
Denominator	\$250,000	

Since the convenience store’s sales of food consisting of two or more ingredients mixed or combined by the seller (Category B) and food sold in a heated state (Category C) is only 8% of the store’s total sales of all food items, the bottled soda and other food items are not taxable. The bottled soda and other food items are not considered to be sold with eating utensils.

Exception to the 75% rule - For sellers with a sales percentage greater than 75% who sell food items that contain four or more servings packaged as one item, the food item does not become prepared food, and is therefore tax exempt, even though the seller has utensils available. For example, a restaurant selling a dozen donuts, a loaf of bread, or a whole pie, would not be required to collect tax on these items. Whenever available, serving sizes will be determined based on the “Nutrition Facts” label. If no label is available, a seller will reasonably determine the number of servings in an item.

Other Information

Bakeries

Items prepared and sold by a bakery, such as donuts, cakes, pies, and breads are not subject to sales tax as long as the items are not sold in a heated state and are not served with an eating utensil.

Discounts and Coupons

Store Coupons. When a customer uses a coupon or a frequent-buyer card for a discount or a free product (for example, “buy one, get one free”) and a third party is not reimbursing the seller for the discounted amount, sales tax is due on the amount actually paid by the customer. In other words, the discount or coupon amount is sales tax exempt (see [Reg-1-037, Trading Stamps and Coupon Redemption](#)).

Example 5. ABC Restaurant, located where the state and local tax rate is 7%, advertises a 30% discount on the purchase of any regularly-priced menu item during the month of April. To claim the discount, customers must present a store coupon that was printed in local newspapers. A customer purchases a meal and presents the store coupon. Sales tax is calculated as follows:

Selling price of the meal	\$30.00 T
Less store coupon amount (30% x \$30)	<u>-9.00</u>
Amount subject to tax	21.00
Sales tax (7% on \$21)	<u>+1.47</u>
Total Due	\$22.47

The retailer would report taxable sales of \$21 on its sales tax return and remit state sales tax of \$1.15 (\$21 x 5.5%) and local sales tax of \$.32 (\$21 x 1.5%) for a total of \$1.47.

Deal-of-the-Day Certificates

The sale of promotional “deal-of-the-day” certificates from advertisers, local radio stations, and newspapers are treated in the same manner as gift certificates. The sale of the certificate is sales tax exempt.

When the promotional deal is redeemed by the customer, sales tax is calculated on the full selling price of the taxable sale. The amount of the promotional deal is then applied to the transaction.

Example 6. A \$50 deal-of-the-day certificate for meals at a restaurant is sold for \$25 by a local radio station. Sales tax is not collected on this transaction. When the purchaser of the certificate redeems the certificate on his or her meal selection, sales tax is calculated below, assuming the combined state and city sales tax rate is 7%.

Meals	\$75.00
Sales tax @ 7.0%	<u>+5.25</u>
Subtotal	80.25
Less - certificate	<u>-50.00</u>
Net due from customer	\$30.25

The restaurant would collect \$30.25 from the customer (\$25 for the sale of the meals and \$5.25 in sales tax). On the sales tax return, the retailer would report taxable sales of \$75 and remit state sales tax of \$4.13 (\$75 x 5.5%) and city sales tax of \$1.12 (\$75 x 1.5%) for a total of \$5.25.

Employee Meals

Amounts charged to employees for prepared food are taxable even if they are discounted. If prepared food is provided to employees without charge, use tax is not due on the cost of the prepared food.

Food Sold by a Bar or Tavern

Bars and taverns which also sell a limited number of nontaxable food items (for example, milk, cheese, and eggs), may sell these items exempt from sales tax when separate records are maintained. The information shown on the customer’s invoice or cash register tape should provide an adequate description of the nontaxable food items sold.

Gift Certificates

Sales of gift cards or gift certificates are not subject to sales tax. When the retailer issuing the card or certificate redeems the card or certificate on a sale of prepared food, the retailer will compute sales tax on the total amount of the sale before deducting the value of card or certificate.

Occupation Taxes

Certain retailers of prepared food (for example, caterers, restaurants and bars), which are located in cities imposing an occupation tax on these businesses, may itemize the tax on their customer's bill. The occupation tax must be included in the sales price of the prepared food before calculating the applicable sales tax. The business is not allowed to combine the occupation tax rate with the sales tax rate. See "[Occupation Taxes](#)" information on the Department's website.

Example 7. A customer purchases a meal at a restaurant in a city with a 2.5% occupation tax on restaurants. The calculation of the invoice is shown below:

Meal	\$50.00
Occupation Tax (2.5%)	<u>+1.25</u> (remit to city)
Subtotal	\$51.25
7% Sales Tax (State 5.5% and City 1.5%)	<u>+3.59</u> (remit to Nebraska Department of Revenue)
Total	\$54.84

Purchases by Sellers of Prepared Food

The following items may be purchased tax-free or tax exempt with a Form 13, for taxable beer, liquor, straws, etc. by sellers of prepared food:

- ❖ Food, food ingredients, and alcoholic beverages that will be resold to customers. Examples include ingredients used to prepare meals, soft drinks, candy, chips, beer, liquor; and
- ❖ Single-use disposable food service items provided to the customers. Examples include paper napkins, paper place mats, straws, plastic utensils, and foam and paper cups.

Records

Sellers must maintain adequate accounting records to distinguish taxable sales of prepared food from tax exempt sales of food and food ingredients.

Tips and Gratuities

When an amount or percentage for a tip or gratuity is mandatory and added by the seller to the purchaser's bill, the total charge is taxable. Discretionary tips or gratuities given by the purchaser are not taxable even when charged to the customer's bill instead of the customer giving the tip directly to the server.

Example 8. Mandatory Gratuity. A restaurant requires payment of a 15% gratuity on the total meal and beverage charge for groups of eight or more. The combined state and local tax rate where the restaurant is located is 6.5%.

Meals	\$160.00
Beverages	<u>+50.00</u>
Subtotal	\$210.00
Gratuity (15% x \$210)	<u>+31.50</u>
Subtotal	\$241.50
Sales tax (6.5% x 241.50)	<u>+15.70</u>
Total	\$257.20

Example 9. Discretionary Gratuity.

Meals	\$160.00
Beverages	<u>+50.00</u>
Subtotal	\$210.00
Sales Tax (6.5% x 210)	13.65
Gratuity - added by customer	<u>+31.50</u>
Total	\$255.15

Litter Fee

Retailers making sales of prepared food that is not consumed on the retailer's premises (carry-out or to-go sales) are required to pay the Nebraska Litter Fee on these sales (see the [Nebraska Litter Fee Information Guide](#)).

Sales to Exempt Entities

Sales to entities that are exempt from sales tax must be supported by a properly completed [Nebraska Resale or Exempt Sale Certificate, Form 13](#), Section B. A list of entities that are exempt from tax is provided in the [Sales Tax Exemption Chart](#).

Resource List

Information Guides

- ❖ [Nebraska Sales and Use Tax Guide for Bars, Taverns, and Restaurants](#)
- ❖ [Nebraska Sales and Use Tax Guide for Food, Food Ingredients, and Dietary Supplements](#)
- ❖ [Nebraska Litter Fee](#)

Nebraska Sales and Use Tax Regulations

- ❖ [Reg-1-008, Records](#)
- ❖ [Reg-1-031, Coin-Operated Machines](#)
- ❖ [Reg-1-037, Trading Stamps and Coupon Redemption](#)
- ❖ [Reg-1-040, Alcoholic Liquors Consumed on the Premises](#)
- ❖ [Reg-1-087, Food for Human Consumption](#)
- ❖ [Reg-1-090, Nonprofit Organizations](#)

Miscellaneous

- ❖ [Occupation Taxes Web Page](#)

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