



# Sales and Use Tax on Restaurants and Catering

## What is Taxable?

Food products (including beverages) served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, amusement parks, stadiums, theatres, or other similar places of business are subject to sales tax and applicable discretionary sales surtax. Food products that are furnished, prepared, or served using trays, glasses, dishes, or other single-serve tableware for consumption at tables, chairs, or counters are also subject to sales tax and surtax.

## Complimentary Discounted Food Products

Complimentary food items given to the customer free of charge as promotional, complimentary, or a courtesy are subject to use tax and the applicable discretionary sales surtax on the total cost of the items given away. The total cost of the complimentary food items includes the cost of labor and other overhead costs necessary to prepare and serve the food items.

Complimentary food items that do not involve preparation costs by the establishment, but are simply set out on a table and served to guests, are subject to use tax and surtax on the actual cost of the items.

Food products included on the menu or posted by the business that are free of charge with the purchase of a meal, are part of the meal. Examples include salsa and chips, rolls or bread, salads, and baked potatoes.

Meals that are “two for the price of one” are subject to sales tax and surtax on the actual price charged for both meals. Since the “two for one” charge is a discount or reduced charge covering both meals, **no** use tax is due on the second meal.

When food products are provided without charge after a customer purchases a designated number (of meals or dollars spent), tax is due on the sales price of the food products sold. No use tax is due on food products provided to customers without charge.

Public lodging establishments that advertise that they provide complimentary food and drinks do not have to pay sales or use tax on food or drinks when:

- The food or drinks are furnished as part of a packaged room rate;
- No specific amount or separate charge is stated to the guest for such food or drinks;
- The public lodging establishment has a valid license with the Department of Business and Professional Regulation’s Division of Hotels and Restaurants; and
- The public lodging establishment rents or leases transient accommodations subject to sales and use tax.

## What is Exempt?

- Bottled water containing no flavoring or carbonation.
- Food products sold by or purchased by religious institutions that hold a Florida *Consumer’s Certificate of Exemption* (Form DR-14) as a “religious – physical place” (indicates the religious institution has a physical place of worship).
- Prepared meals bought by nonprofit volunteer organizations and delivered as a charitable activity to the residences of handicapped, elderly, or indigent people.
- Food and beverages sold or served in a student cafeteria in a school offering grades K-12, as part of a school lunch to students, teachers, school employees, or school guests.

- Food products furnished by an employer to its employees are not subject to tax when the food products are not required to be reported as income to the employee for federal income tax purposes.

### **Are Gratuities Taxable?**

Service charges, minimum charges, corkage fees, setup fees, or similar charges imposed by a restaurant, tavern, nightclub, or other similar places of business as part of the charges for furnishing, serving, or preparing food products are subject to sales tax and surtax.

Gratuities (tips) are not subject to tax when:

- The gratuity or tip is separately itemized on the customer's receipt, guest check, or sales invoice; and
- The restaurant, caterer, or similar dealer receives no monetary benefit from the gratuity.

A monetary benefit for this purpose does not include:

- Money withheld for purposes of payment of the employee's share of social security or federal income tax;
- Any fee imposed by a credit card company on the amount of the gratuity; or
- Money withheld pursuant to judicial or administrative orders.

### **Are Items Used to Furnish or Serve Food Products Taxable?**

Materials, containers, labels, sacks, bags, or similar items that accompany a food product sold to a customer and used one time only for packaging the food product or for the convenience of the customer are tax exempt. Examples include:

- Paper, plastic, plastic-coated, or plastic foam in the form of bags, boxes, bowls, cups, dividers, liners, lids, plates, platters, trays, and other similar food and beverage containers.
- Aluminum foil served with food products; butter chips; single-use baking dishes; steak markers, toothpicks, toothpick frills, film wrap; disposable utensils, straws, stirrers, napkins, leftover bags, boxes, or other containers.

As a registered dealer, you may provide your *Florida Annual Resale Certificate for Sales Tax* (Form DR-13) to purchase tax-exempt items used one time only for packaging food products for sale.

The purchase or rental of dishes, tables, chairs, silver, linens, kitchen utensils, and other items used in furnishing or serving food products is subject to sales tax and surtax. When a caterer purchases or leases such items exclusively for sale or rental to a customer, the items may be purchased tax exempt when the sales price or rental charge for the items are separately itemized on the customer's receipt or invoice.

### **Who Must Register to Collect Tax?**

Any public food service establishment must register as a dealer to collect and report sales tax. You can register to collect and report tax through our website at [www.floridarevenue.com](http://www.floridarevenue.com). The site will guide you through an application interview that will help you determine your tax obligations. If you do not have Internet access, you can complete a paper *Florida Business Tax Application* (Form DR-1).

After we approve your registration, you will receive a *Certificate of Registration* (Form DR-11) and a *Florida Annual Resale Certificate for Sales Tax* (Form DR-13). If you are not filing electronically, we will mail paper tax returns to you. The *Florida Annual Resale Certificate for Sales Tax* is used for tax-exempt purchases or rentals of property or services you intend to resell or re-rent as part of your business. If the goods bought for resale are later used (not resold), you must report and pay use tax and surtax on those items. Florida law provides for criminal and civil penalties for fraudulent use of a *Florida Annual Resale Certificate for Sales Tax*.

## When is Tax Due?

Returns and payments are due on the first day of the month and late after the 20th of the month following each reporting period, whether you are filing monthly, quarterly, twice a year, or yearly. If the 20th falls on a Saturday, Sunday, or state or federal holiday, returns and payments will be timely if they are postmarked on the first business day after the 20th. **Florida law requires you to file a tax return even if you do not owe sales and use tax.**

## Electronic Filing and Payment

We offer the use of our free and secure website to file and pay sales tax. You also have the option of buying software from a software vendor. For more information on electronic filing and payment options, visit our website.

You may voluntarily file and pay taxes electronically; however, if you pay \$20,000 or more in sales and use tax between July 1 and June 30 (the state fiscal year), you must use electronic funds transfer (EFT) for the next calendar year to pay your taxes.

If you make tax payments using electronic funds transfer (EFT), you must initiate electronic payments no later than 5:00 p.m., ET, on the business day before the 20th.

## Penalty and Interest

**Penalty** – If you file your return or pay tax late, a late penalty of 10 percent of the amount of tax owed, but not less than \$50, may be charged. The \$50 minimum penalty applies even if no tax is due. Penalty will also be charged if your return is incomplete.

**Interest** – A floating rate of interest applies to underpayments and late payments of tax. Current and prior period interest rates are posted on our website.

## Reference Material

**Tax Laws** – Our online Revenue Law Library contains statutes, rules, legislative changes, opinions, court cases, and publications. Search the library for:

- Rule 12A-1.0011, Florida Administrative Code (F.A.C.) – Schools Offering Grades K through 12; Parent-Teacher Associations; and Parent-Teacher Organizations
- Rule 12A-1.011, F.A.C. – Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice
- Rule 12A-1.0115, F.A.C. – Sales of Food Products Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies
- Rule 12A-1.037, F.A.C. – Occasional or Isolated Sales or Transactions Involving Tangible Personal Property or Services
- Rule 12A-1.040, F.A.C. – Containers and Other Packaging Materials; Gift Wrapping
- Rule 12A-1.080, F.A.C. – Concession Prizes; The Sale of Food, Drink, and Tangible Personal Property at Concession Stands
- Rule 12A-15.010, F.A.C. – The Sale of Food, Drink, and Tangible Personal Property at Concession Stands

**Brochures** – Download these brochures from our “Forms and Publications” page:

- *Sales and Use Tax on Concession Stands* (GT-800003)
- *Sales and Use Tax on Commercial Real Property Rentals* (GT-800016)
- *Sales and Use Tax on Vending Machines* (GT-800041)
- *Sales and Use Tax on Bars and Lounges* (GT-800046)

Information, forms, and tutorials are available on our website: [www.floridarevenue.com](http://www.floridarevenue.com)

**To speak with a Department representative**, call Taxpayer Services at 800-352-3671, Monday through Friday, excluding holidays.

To find a **taxpayer service center** near you, go to:

[www.floridarevenue.com/taxes/Pages/servicecenters.aspx](http://www.floridarevenue.com/taxes/Pages/servicecenters.aspx)

**For written replies to tax questions**, write to:

Taxpayer Services – MS 3-2000  
Florida Department of Revenue  
5050 W Tennessee St  
Tallahassee FL 32399-0112

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- Tax Information Publications (TIPs).
- Proposed rules, notices of rule development workshops, and more.

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