

GUIDELINES FOR THE TAX ON PREPARED FOOD AND BEVERAGES

July 1, 2015 Revised July 08, 2015 The following information is a guideline only.

The Prepared Food and Beverage Tax ("Meals Tax") was established by Ordinance No. 28631 and was adopted by the City Council on May 18, 1987. In the case of any conflict between these guidelines and the provisions of the Code of the City of Roanoke (1979), as amended, or other ordinances, the Code or ordinance will prevail.

What is the Prepared Food and Beverage Tax?

Effective August 1, 1987, a tax was levied on the purchaser of all prepared food and beverages served in and from these places of business:

Restaurants
Eating Houses
Dining Rooms
Eateries Grills
Bowling Alleys
Coffee Shops
Drug Stores
Cafeterias
Lunch Wagons/Lunch Trucks
Cafes
Pushcarts
Snack Bars
Carry-Out Lunch Counters Caterers
Delicatessens
Gas Stations
Confectioneries
Food Concessions
Hotels
Motels
Grocery Store Delicatessens
Carnivals
Ice Cream Stores
Dinner Theaters
Movie Theaters
Festivals
Bed & Breakfast Inns
Private Clubs
Convenience Stores
Recreation Clubs
Non-Profit Organizations
Concession Stands
Bakeries
Doughnut Shops

ALL PREPARED FOOD AND BEVERAGES ARE TAXABLE WHETHER INTENDED TO BE CONSUMED ON THE SELLER'S PREMISES OR NOT.

TAX RATES:

Effective July 1, 2015, the rate of tax will be five and half percent (5.5%). Effective July 1, 2012, through June 30, 2015 the tax rate is five percent (5%). Effective July 1, 2010 through June 30, 2012, the rate of tax was seven percent (7%). Prior to June 30, 2010, the tax rate was five percent (5%).

For the purpose of this tax, FOOD is defined as:

Any and all edible refreshments or nourishment, liquid or otherwise including alcoholic beverages, except for snack foods, purchased in or from the places of business including, but not limited to, those listed above.

*** Please refer to the Exemptions section for details on the purchases of foods that are exempt from this tax.

WHO COLLECTS THE PREPARED FOOD AND BEVERAGE TAX?

All of the businesses that come under the definition of restaurant or caterer and that are listed on page one must collect this tax from their customers when the charge for the food and beverages is paid. The tax is to be paid whether the customer pays by cash or by credit card. The seller adds the tax to the gross amount and collects the total from the customers.

SELLERS MUST NOT in any way suggest or indicate that they will relieve the customers of payments of part or all of this tax. Menus and advertised prices may not include tax as part of the stated price. The customer only must pay the total amount due.

ARE TIPS TAXABLE?

No, unless 20% and added to the sales price of the meal. Previously, all tips were taxable when added to the total amount of the bill. An amendment to the Code of Virginia became effective on July 1, 2006 providing that gratuity, service charges or tips that are mandatory or automatically added to the price of a meal by the seller are not subject to the Meals Tax unless the service charges or tips are in excess of 20%. This exemption only applies if the service charge added to the price of the meal does not exceed 20%. Those service charges or tips that are 20% or more and added to the price of the meal remain subject to the Meals Tax.

MONTHLY REMITTANCE:

The seller must complete and sign the monthly reporting form indicating the amount of the food and beverage charges collected and the tax required to be reported. A form still needs to be filed even if there were zero sales for that month.

Payment forms can be printed from our website: www.roanokeva.gov/localtax. Payment forms will also be emailed or mailed upon request. The Office of the City Treasurer must receive these reports along with the tax remittance by the 20th of the month for taxes collected in the preceding month. The seller may use the mail, but the responsibility for late delivery rests with the seller. In the event that the 20th of the month falls on a weekend or holiday, the next business day becomes the due date.

RECORDS RETENTION:

The seller must retain three years of auditable records of:

1. Gross Receipts for all food and beverages, records of food and beverage purchases, records of spoilage, waste or any other purchases to support the food and beverage operation.
2. Amount charged the buyer for each purchase.
3. Date of each sale, deposit records, cash register tapes, voids, daily worksheets, etc.
4. The amount of tax collected from each sale. 5. Exempt sales.

CLOSING OF A BUSINESS:

If the business should close or that part of the business that is applicable to this tax, the seller must IMMEDIATELY complete the Registration Change Request and pay all taxes due. The seller must also list the New Owner's name and address, if known, on the Registration Change Request .

ARE CATERING BUSINESSES LOCATED OUTSIDE OF THE CITY OF ROANOKE REQUIRED TO COLLECT AND REMIT THE TAX TO THE CITY?

On February 4, 1991, Ordinance 30394-20491 amended the Code of the City of Roanoke to provide that the situs for meals taxation is the locality in which the sale is made. Section 32-284 states that “the tax is levied and imposed on the purchaser of all food sold in the city... or by a caterer regardless of place of delivery or consumption.” Therefore, catering businesses located inside the City of Roanoke must collect the tax and remit it to the City even if the food is delivered to a destination outside of the City of Roanoke. However, when mobile trucks, booths, or caterers with businesses located outside the City of Roanoke set up to sell in the City of Roanoke, they are liable to the City for the tax. Catering businesses located outside of the City of Roanoke are not required to collect and to remit the tax to the City unless they establish a point of sale within the City such as a mobile truck, booth, pushcart, or they prepare and cook food within the City.

EXEMPTIONS:

Snack Foods are not taxable by this Ordinance.

The term “snacks” includes items such as:

Unopened bottled or canned drinks (not served with meals in a restaurant)

Chewing Gum

Candy

Popcorn (packaged for home consumption)

Peanuts and other nuts

Unopened bags of chips, cookies, doughnuts, crackers, nabs, popcorn etc...

And other items of a similar nature consumed as a snack.

The following purchases of food will not be subject to this tax:

1. Foods furnished by restaurants to employees as part of their compensation when no charge is made to the employee.
2. Foods sold by non-profit day care centers, public or private elementary or secondary schools or foods sold by any college or university to its students or employees.
3. Foods for use or consumption by the Commonwealth, any political subdivision of the Commonwealth or the United States.
4. Foods furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or disabled or other extended care facility or residents thereof.
5. Foods furnished by nonprofit charitable organizations to the elderly, infirm, disabled, or needy persons in their homes or at central locations.
6. Foods sold by nonprofit, education, charitable or benevolent organizations on an occasional basis.
7. Any other sale of food ordered exempt by the Virginia Retail Sales and Use Tax Act. 4
8. Foods sold from a vending machine.
9. Bakery foods as defined in the Food Stamp Act of 1977, 7 U.S.C. '2012. This includes bagels, brownies, cakes, cookies, crackers, croissants, doughnuts, pies, pastries and similar bakery items that are pre-packaged or factory sealed.

PENALTIES:

If the tax remittance and report is not received in the Office of the City Treasurer by the 20th of the month, a 10% penalty will be assessed if the failure is not for more than 30 days and 20% if the failure is not for more than 60 days, not to exceed 25%, with a minimum penalty of \$2.00. The penalty for filing a false or fraudulent report is 50% of the amount of tax due. Failure to comply with any provision of the tax on Prepared Food and Beverages Ordinance constitutes a Class 1 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection, or remittance of the tax.

Agreements to pay delinquent taxes in installments do not relieve the seller of criminal liability until the taxes and penalties are paid, in full.

ADMINISTRATIVE OVERVIEW:

There are possible administrative difficulties with items sold in grocery and convenience stores in determining the applicability of the tax to items sold. Fairness dictates that the Prepared Food and Beverage Tax is to be applied to sales in those businesses (other than restaurants) that are substantially similar to and in direct competition with sales of restaurants. It is important to note that the tax is collected from the purchaser of all food served, sold or delivered in the City in or from a restaurant, whether prepared in the restaurant or not, or by a caterer, regardless of the place of delivery or consumption. The Prepared Food and Beverage Tax does not apply to groceries, but it does apply to grocery stores and convenience stores that sell prepared food and beverages which directly compete with restaurants. This department will be pleased to work with the owners and operators of grocery and convenience stores to answer any questions and to facilitate the collection of this tax. Please call (540) 853-6828 if you have any questions.

PREPARED FOOD AND BEVERAGE TAX DEFINITIONS CATERER:

Any person who furnishes food on the premises of another for compensation.

FOOD:

Any and all edible refreshments or nourishment, liquid or otherwise, including alcoholic beverages, purchased in or from a restaurant or from a caterer, except snack food.

PURCHASER:

Any person who purchases food in or from a restaurant or from a caterer.

RESTAURANT:

Any place in or from which food is sold in the City, including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, delicatessen, bakery, confectionery, eating house, drugstore, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar or lounge. The word "restaurant" shall not mean a grocery store or supermarket except for any space or section therein designated as a delicatessen or for the sale of prepared sandwiches, delicatessen food or food prepared in a delicatessen.

SELLER:

Any person who sells food in or from a restaurant or as a caterer. (See Section 32-283 for an expanded definition)

SNACK FOOD:

Unopened bottles or cans of carbonated soft drinks, chewing gum, candy, popcorn packaged for home consumption, peanuts and other nuts; unopened 5 packages of cookies, doughnuts, crackers and potato chips and other items of essentially the same nature and consumed for essentially the same purpose.

OCCASIONAL SALE:

A sale by a person (seller) who is engaged in sales on three or fewer separate occasions within one calendar year.

PERSON:

Any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.

EXAMPLES OF ITEMS NOT TAXABLE

Unopened bottle, can or six-pack of beer or bottled wine purchased for off premises consumption.

Chewing gum purchased at a restaurant.

Church supper prepared by church on an occasional basis. (If a nonprofit organization or church sold dinners on a weekly basis for fund-raising, it would be taxable).

Cold unopened drink from a case at a convenience store.

Food provided to a patient in a hospital or nursing home.

Food purchased as part of a rescue squad or church fund-raising effort on an occasional basis.

Frozen TV dinner or a grocery item purchased in a grocery store.

Meal purchased by parent at an elementary school.

Pre-sealed, prepackage sweet roll purchased from a snack bar or a cafeteria.

For example, "Tasty Kake" cinnamon bun, "Little Debbie" brownies. Peanuts or other nuts from a peanut or candy shop. Candy from a movie theater. Vending machine sales.

Popcorn packaged for home consumption. Luncheon meats and cheese sold from a delicatessen.

Salads (potato salad, macaroni salad) by the pound from a delicatessen. Uncooked pizzas from a delicatessen.

Whole/half cakes, pies, breads, brownies, loose or prepackaged cookies, doughnuts, pastries and any similar bakery items that is prepackaged.

Freezer Cakes from a grocery store delicatessen or bakery.

Doughnuts that are in unopened, pre-sealed packages.

Potato salad or cole slaw from a delicatessen or grocery store delicatessen sold by the pound.

THE TAX IS NOT CONSIDERED TO APPLY TO:

A frozen TV dinner.

Garden type salads in factory sealed packages that is considered to be for additional home preparation.

These salads are usually sold in the produce section of grocery stores in factory sealed, stay-crisp style bags, and usually require additional preparation before consumption. Salads, such as potato, macaroni, chicken salad or coleslaw, sold by the pound and not for immediate consumption on premises. These salads are commonly sold in the grocery delicatessens in containers with lids.

Frozen seafood, sold by the pound in grocery stores that provide employee operated steam cooking at no additional charge and when the item is not to be consumed on premises.

Ice cream or frozen yogurt in factory packaged or bulk packed containers sold at a store or by a street or ice cream truck vendor.

Alcoholic and non-alcoholic beverages, in factory sealed containers, sold for off-premise consumption.

EXAMPLES OF TAXABLE ITEMS

Baked, fried, or barbecued turkey, chicken, seafood or ribs from a restaurant, delicatessen or grocery store delicatessen for on or off premises consumption.

Beer, wine or mixed drinks at any bar, tavern or restaurant.

Beer, wine or mixed drinks delivered to hotel or motel rooms or any "room service" food.

A church supper provided by a caterer.

Potato salad or cole slaw from a delicatessen, grocery store delicatessen or restaurant.

Cup of coffee.

Food and beverages at a country club or private club.

Food and beverage at a company or hospital cafeteria.

Fountain drink from a fast food chain or movie theater.

Hot dog from a convenience store or pushcart. Ice cream cone, ice cream cakes, ice cream sundaes or cotton candy

. A salad from a delicatessen or grocery store delicatessen.

Sandwich from a case at a service station, truck, pushcart, delicatessen, grocery store delicatessen, or convenience store.

Nachos with cheese served from a service station, truck, pushcart, delicatessen, grocery store delicatessen, or convenience store.

Cheese balls from a delicatessen or a grocery store delicatessen.

Hand packed ice cream or yogurt sold by the pint, quart, 2 gallon, etc... Slice of cake or pie.

Doughnuts served and eaten on premise. (non packaged).

THE TAX APPLIES TO:

All sandwiches, hot or cold. All hot foods.

All non-factory sealed beverages, fountain drinks, hot or cold coffee or chocolate, milkshakes, floats, Slurpees, Ices, or similar frozen ice drinks regardless of whether it has a lid. Ice cream or frozen yogurt in a cone, dish or single serving sized open container sold by an ice cream type store or food establishment.

Frozen or chilled factory packaged, single serving sandwiches, burritos and the like, marketed and sold in a food establishment that provides a heating device to render the item palatable.

Salads, commonly referred to as Chef, Cobb, or other similar garden style salads, that are packaged or prepared in a manner similar to those provided in a restaurant or purchased in a grocery delicatessen or convenience store and package in containers affixed with lids or or tops ready for immediate consumption.

Alcoholic beverages sold at restaurants, drinking establishments, festivals, receptions, sporting events, and other similar events.

Slice of cake, pie, loose cookies.

Examples of Food and Beverage Taxable/Non taxable Items For Specific Businesses

NOTE: The burden shall be upon the seller of the food and beverage to maintain records detailing taxable receipts and nontaxable receipts. Grocery Stores/Supermarket/Convenience Stores The majority of items sold by a grocery or convenience store are not taxed. The tax applies to the sale of prepared food and beverage items from a delicatessen section operated within the grocery and convenience stores.

Taxable Items:

All sandwiches (hot or cold),
all hot foods, hot dogs,
salad bar items sold from a salad bar.
single serving salads,
non-factory sealed beverages,
fountain beverages,
a cup of coffee or hot chocolate.

Frozen or chilled factory packaged, single serving sandwiches, burritos, and the like, sold in an establishment that provides a heating device to render the item palatable are meal taxable.

Non-packaged doughnuts or cookies eaten on premise.

Nontaxable Items:

Includes but are not limited to
factory sealed beverages such as beer and wine (for offpremise consumption),
factory sealed soft drinks and bottled water.

Meats and seafood, sold by the pound, that provide the employee operated steam cooking at no additional charge, is a non-taxable item. S

ingle and bulk servings of fruit. Cakes, doughnuts, brownies, rolls, muffins, loose or prepackaged cookies, pastries, chips and the like that are factory sealed or prepackaged.

Foods that are cooked and then chilled in accordance with health and food handling regulations, but packaged for home consumption.

Bakery

Taxable Items:

Non-factory sealed beverages.
All sandwiches (hot or cold).
Slice of cake or pie.
Loose doughnuts and cookies.

Nontaxable Items:

Factory sealed soft drinks and bottled water.
Prepackaged Cakes, doughnuts, brownies, rolls, muffins, pastries, loose or prepackaged cookies, chips and the like.
Whole or half pies and cakes and non-food items.
Whole loaves of bread

Caterers

Taxable Items:

All food and beverage catering services are taxable.

Nontaxable Items:

Linen rental, setup, floral arrangements, and tables are nontaxable.

Delicatessen

Taxable Items:

All sandwiches (hot or cold),
salad bar items sold from a salad bar and soups.
Baked, fried, or barbecued chicken, turkey, ham, seafood or ribs.

Nontaxable Items:

Sliced meats/cheese by the pound,
salads, (potato salad, macaroni salad) by the pound,
party/gift baskets that include meats/cheese by the pound,
party trays,
crackers, prepackaged chips, cookies and the like.

Fast Food Chains/Restaurants

Taxable Items:

All food and beverage items for on premise consumption,
hot food items, sandwiches and salads, packaged for off premise consumption,
ice cream or frozen yogurt in a cone or container enabling immediate or off premise consumption.

Nontaxable Items:

Non-food items, candy, gum, whole or half pies and cakes, prepackaged chips or cookies.

Take Out/Delivery Restaurants

Taxable Items:

All hot food, sandwiches, salads packaged for off premise consumption and nonfactory sealed beverage items.

Cooked food types that are combined with other food products and sold as a warm or hot meal.

Nontaxable Items:

Foods that are cooked and then chilled in accordance with health and food handling regulations, but packaged for home consumption.

Ice Cream/Frozen Yogurt Shops

Taxable Items:

Ice cream or frozen yogurt in a cone, dish or single serving sized open container.

Milkshakes, floats, sandwiches, non-factory sealed beverages.

Nontaxable Items:

Ice creams or similar frozen products packaged or bulk packed containers.

Whole/half cakes, pies, prepackaged cookies,

rolls,

factory sealed beverages,

nuts

syrup,

regular loaves of bread.

Movie Theaters/Theme Parks/Sporting Arenas, Civic Centers

Taxable Items:

All sandwiches,

pizza,

nachos,

popcorn,

beverages,

cup of coffee,

hot chocolate,

ice creams,

candy,

gum.

Nontaxable Items:

Non-food items.

Snack items

gum and candy.

Contact Information:

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