



COMMISSIONER OF THE REVENUE
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GLOUCESTER COUNTY GUIDELINES FOR
THE TAX ON PREPARED FOOD AND BEVERAGES

EFFECTIVE DATE: FEBRUARY 1, 1997

The following information should be used as a guideline only. The tax on prepared food and beverages was established by Ordinance, Chapter 16, article VII, Code of Gloucester County on January 7, 1997.

RATE OF TAX AND COLLECTION PROCEDURES:

The rate of tax is four percent (4%) of the amount paid for prepared food and beverages beginning February 1, 1997.

The seller must complete and sign a monthly report indicating the amount of food and beverage charges collected and the tax required to be reported. The Commissioner of the Revenue's office must receive these reports, along with the tax remittance, by the 20th day of the month for taxes collected in the preceding month. (The first report is due March 20, 1997.) The seller may use the mail, but the responsibility for late delivery rest with the seller. All forms will be provided to you at no charge with a return envelope.

The seller must retain for audit purposes three years of records showing:

1. The gross sales for all foods and beverages (both taxed and untaxed).
2. The amount charged the buyer for each purchase.
3. The date of each purchase.
4. The amount of tax collected for each purchase of prepared food or beverages.

If the tax remittance and report are not received in the office of the Commissioner of Revenue by the 20th of each month, a 10 percent late penalty of the tax amount due is automatically assessed, and interest at a rate of 10 percent per annum, which is computed on the taxes and penalty from the date the taxes are due, begins to accrue.

Failure to comply with any provision of the Tax on Prepared Foods and Beverages Ordinance is a Class 3 misdemeanor. Even an agreement to pay in installments will not relieve you of criminal liability until the taxes and penalties are paid in full.

COLLECTION OF THE PREPARED FOOD AND BEVERAGES TAX:

Considerable attention has been given to the question of which items are taxable and which are exempt. Every restaurant and caterer must collect this tax from its customers when the charge for the food and beverage is paid. The tax is to be collected, whether the customer pays in cash or by credit card. The seller adds the tax to the sale amount and collects the total from the customer. A **restaurant** is defined as:

1. Any place where food is prepared for service to the public whether on or off the premises;
2. Any place where food is served to the public; or
3. Any place or operation that prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public.

Examples of a **restaurant** include: Dining room; grill; coffee shop; cafeteria; café; snack bar; lunch counter; lunchroom; short order place; tavern; delicatessen; confectionery; bakery with seating area; drugstore; catering service; lunch wagon or truck; pushcart or other mobile facility that sells food; dining facility in a public or private club; resort; bar or lounge; kitchen facility of a hospital or nursing home; and dining facility of a public or private school or college.

A **caterer** is a person who furnishes food on the premises of another for compensation.

Tips are not taxable unless the seller keeps part or all of the tip, or the seller adds a specific amount of percentage to the gross price of the food and requires the customer to pay this amount. For example, some restaurants advertise on their menus that a 15 percent gratuity is automatically added for parties of 8 or more. This additional percentage is taxable.

GROCERY AND CONVENIENCE STORES:

The majority of items sold by grocery or convenience stores are not subject to this tax; however, sales of prepared sandwiches and single-meal platters are taxable. The food and beverage tax was not intended to apply to groceries, but it does recognize that some grocery and convenience stores include prepared food operations that compete with restaurants. In those cases, the tax applies to such businesses. Thus a TV dinner is not taxable; however, a prepared plate containing fried chicken, potato salad, and a roll, purchased from a grocery store deli would be taxed. Similarly, the purchase of a sandwich, prepared on or off the premises, and whether intended for consumption on or off the premises is taxable. A person consuming a few prepared doughnuts (not prepackaged) and a prepared beverage or a prepared piece of pizza (not prepackaged) and a prepared beverage would be considered to be having a prepared-meal platter, just as if they prepared a salad platter. A prepared-meal platter is not necessarily the entrée of a three-course dinner.

EXEMPTIONS:

The following purchases of food are not taxable:

1. Food furnished by restaurants to employees as part of their compensation when no charge is made to the employee.
2. Food sold by nonprofit day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
3. Food for use or consumption by the commonwealth, any political subdivision of the commonwealth or the United States.
4. Food furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, and infirm or handicapped or other extended care facility to patients or residents thereof.
5. Food furnished by a nonprofit charitable organization to elderly, infirm, handicapped or needy persons in their homes or at central locations.
6. Food sold by a nonprofit education, charitable or benevolent organization on an occasional basis as a fund-raising activity or food sold by a church or religious body on an occasional basis.
7. Food furnished by boarding houses that do not accommodate transients.
8. Food sold by cafeterias operated by industrial plants for employees only.
9. Food sold by nonprofit cafeterias in public schools, nursing homes and hospitals.
10. Food sold by churches, fraternal and social organizations and volunteer fire departments and rescue squads which hold occasional dinners and bazaars of one or two day duration, at which food prepared in the homes of members or in the kitchen of the organization is offered for sale to the public.
11. Food furnished by churches that serve meals for their members as a regular part of their religious observance.
12. Food sold through vending machines.
13. Food sold by grocery store delicatessens and convenience stores except for prepared sandwiches and single-meal platters.
14. Any sale of food exempt from taxation under the Virginia Retail Sales and Use Tax Act.

EXAMPLES:

To further assist you in applying the tax, we are providing the following examples:

EXAMPLES OF SOME TAXABLE ITEMS:

- Beer/mixed drinks sold or served at any bar, lounge, tavern or restaurant, when sold/consumed as part of a meal
- Food at a country club
- Food sold at a cafeteria
- Hot dog from a convenience store or pushcart

- Ice cream cone, sundae and the like sold at an ice cream shop
- Salads from delicatessen
- Prepared single-meal platter from a grocery or convenience store delicatessen
- Prepared sandwich from a service station/convenience store
- Sandwich from a lunch truck

EXAMPLES OF SOME NON-TAXABLE ITEMS:

- Unopened beer or wine purchased for off-premise consumption
- Church supper
- Cold unopened drinks from case at convenience store
- Food provided to patient in hospital or nursing home
- Food purchased as part of a rescue squad or church fund raising effort
- Frozen TV dinner or like grocery items purchased in a grocery store
- Lunch meat and loaf of bread from a delicatessen of a grocery store
- Prepackaged box of doughnuts purchased at a grocery store
- Popcorn, candy and other “snack foods” purchased at a movie theater
- Prepackaged ice cream purchased at either a grocery store or ice cream store, i.e., pint, quart, etc.
- Unopened potato chips, corn chips, nabs, peanuts, doughnuts or other “snack foods” not purchased for consumption in a restaurant

This office will be pleased to work with all persons who will administer the tax, and we will answer questions to assist you in your start up. Please phone us or come by the office.

Thank you.

Jo Anne Harris
Commissioner of the Revenue