

Business tax tip #5

How are Sales of Food Taxed in Maryland?

How is food taxed?

In general, sales of food are subject to sales and use tax unless the food is sold for consumption off the premises by a person operating a substantial grocery or market business and is not a taxable prepared food. The sales and use tax does not apply to sales of snack food items by a substantial grocery or market business for consumption off the premises, or to the sale of snack food through vending machines. This exemption does not affect the taxability of snack food items sold with meals and food prepared for immediate consumption, which remain taxable.

When is a grocery or market business substantial?

A grocery or market business is considered substantial if sales of grocery or market food items total at least 10 percent of all sales of food. Among other things, the food items that might normally be consumed on the premises of a restaurant, but which are packaged to carry out, are not considered grocery or market food for the purpose of calculating the 10 percent threshold.

Are sales at a bakery considered grocery or market food items?

Yes. However, when calculating if a business meets the 10 percent threshold for a substantial grocery or market business, you may not include sales of single servings, heated or prepared food or sales to be consumed on the premises.

Are there any foods that are taxable even if they are sold at a substantial grocery or market business?

Yes, food from salad, soup or dessert bars, party platters, heated food, sandwiches suitable for immediate consumption and ice

cream, frozen yogurt and other frozen desserts sold in containers of less than one pint are taxable.

The taxability of sales of ice cream, frozen yogurt, and other frozen desserts depends upon the size of each container sold. Thus, while the tax will apply to the sale of a single ice cream sandwich, it will not apply to a package of a dozen ice cream sandwiches containing more than one pint of ice cream.

Does the tax apply to sales of food through vending machines other than snack food?

Yes. While sales of snack food, milk, fresh fruit, fresh vegetables, and yogurt through vending machines are not taxable, the tax applies to the sale of all other food, including prepared food such as sandwiches or ice cream. Vendors should multiply their gross receipts by 94.50 percent before applying the 6 percent rate to determine the tax due on gross receipts derived from vending machine sales.

Are caterers required to collect the tax?

Yes. A caterer serving food at a customer's premises must collect the tax on the food sold. A caterer must collect the tax in this situation even if the caterer also conducts a substantial grocery or market business.

How is the tax applied at fairs, shows and other special events?

All sales of food within an area to which an admission is charged are subject to tax. If there is no admission charge, the general taxability rules apply to sales of food. Sales of food by nonprofit organizations which do not provide food consumption facilities are exempt.

Do nonprofit groups have to collect the sales tax on food?

Yes. There are, however, exemptions for sales of anything sold by religious organizations and for sales of food, including taxable prepared foods, by volunteer fire companies and veterans organizations for consumption on the premises. In addition, the

tax does not apply to sales of food by a nonprofit vendor who provides no facilities for consumption of food sold.

What are facilities for consumption of food?

Facilities include tables, chairs, booths, counters and stands at which any food sold may be consumed. Facilities do not include parking lots alone.

What is included within a vendor's premises?

A vendor's premises include property owned or controlled by the vendor and made available primarily for the use of patrons. If a public market provides eating facilities for the use of any vendors in the market, food vendors who conduct substantial grocery or market businesses are required to collect the tax on sales of food intended for consumption at these facilities. Other food vendors in the market are required to collect the tax on all their sales.

Do schools have to collect the sales tax on food?

No. Sales by schools other than institutions of post-secondary education, including sales of food by a food concessionaire, are exempt. This does not include sales by a concessionaire at events that are not sponsored by the school or are not related to education. Schools are required to collect the tax on sales of items, such as candy or soft drinks, which are not considered food for sales and use tax purposes.

Are there any other exemptions?

Yes. Sales of food to patients in a hospital when the food charges are included in the regular room rate are exempt. Sales of food and beverages on vehicles operating in interstate commerce are exempt. In addition, the tax does not apply to a sale of crabs for consumption off the premises where sold. Sales of seafood to be consumed off the premises where sold are also exempt if the seafood is not prepared for immediate consumption.

Does "food" include everything which is edible?

No. For sales and use tax purposes, soft drinks, bottled water, alcoholic beverages, candy and confectionery are not "food." The sale of any of these items is, therefore, not entitled to any of the exemptions for sales of food, including the exemptions for sales of food by volunteer fire companies and veterans organizations. Neither water nor ice is food, although they may be treated as food when sold as components of food.

What about gratuity charges?

The general rule is that mandatory gratuity charges are taxable. However, a mandatory gratuity paid by a purchaser of food and beverages on the premises of the vendor is not subject to tax if the food and beverages are sold to a group of ten or fewer persons.

Are cover charges taxable?

No, but minimum food or beverage charges are taxable, even if the purchasers do not avail themselves of all to which they are entitled.

What about coupons and menu club tickets?

Coupons and menu club tickets which are in the nature of discounts are not part of the consideration for the sale and thus not taxed. If the vendor can obtain reimbursement from any third party for the coupon or ticket, it is part of the sales price and thus taxable.

How are federal food stamps treated?

The tax does not apply to eligible food purchased with federal food coupons. Food stamp eligible food generally encompasses everything that is considered food for sales and use tax purposes, plus soft drinks, candy, confectionery, water, ice and otherwise taxable prepared foods. However, food stamp eligible food does not include alcoholic beverages, tobacco, and hot foods for immediate consumption.

Are purchases of disposable paper products by restaurants taxable?

Purchases of paper plates, bowls, cups and lids by a food server for use as containers for food sold are entitled to the resale exclusion. This exclusion applies whether the food sold will be consumed on or off the premises. The tax does apply, however, to a food server's purchases of disposable containers and wrappers made available for discretionary use and to all purchases of disposables such as napkins, straws, utensils and stirrers which are not in the nature of containers.