



Sales and Use Tax on Restaurants and Catering

What restaurant owners and caterers need to know.

What is Taxable?

Food or drinks that restaurants, lunch counters, cafeterias, hotels, amusement parks, taverns, stadiums, theaters, or similar places of business, prepare, serve, or sell are taxable with few exceptions.

Complimentary Items

Complimentary food items given to the customer free of charge as promotional, complimentary, or courtesy items are subject to use tax and the applicable discretionary sales surtax on the total cost of the items given away. The cost price of the complimentary food items includes the cost of labor and other overhead costs necessary to prepare and serve food. This would be the regular retail charge for such food and beverage items, less mark-up.

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 only on the establishment's cost of purchasing the items.

Complimentary food items included on the menu or posted by the business, which are free of charge with the purchase of a meal, are considered a part of the price of the meal and not given to the customer. Such items include salsa and chips, rolls or bread, salads, baked potatoes, etc.

Meals that are "two for the price of one" are not complimentary food items. You must calculate the tax on the sales price charged for both as two for one. There is no use tax applied since the "two for one" charge is a discount or reduced charge covering both meals.

Any cover charges, minimum charges, or similar charges made by restaurants, taverns, lounges, nightclubs, or any other like places of business are taxable as an admission.

Public lodging establishments that provide complimentary food and drinks do not have to pay sales or use tax on food or drinks that are part of a packaged room rate. The lodging establishment must meet these conditions:

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

What is Exempt?

Exemptions include:

- Bottled water containing no flavoring or carbonation, and separately priced on the sales ticket.
- Meals bought or served by a church.
- 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.
- Meals furnished by an employer to an employee as part of the contract of employment.
- Paper and plastic coated plates, paper napkins, paper cups, plastic spoons and forks, etc., for use in connection with the operation of a restaurant.

Are Gratuities Taxable?

Gratuities (tips) or service charges added to a guest check or invoice by the restaurant or by the customer are exempt if listed separately on the invoice and distributed in full to the employees. These gratuities are not part of the sales price.

However, if any part of the gratuity or service charge benefits the restaurant (employer), these are part of the sales price of the meal and the entire charge for the gratuity is taxable. Examples of gratuities added to a guest check or invoice that benefit the employer include but are not limited to: charges for employee uniforms, payments used to offset the employer's portion of the employees' payroll taxes, and payments into an employee insurance fund.

Who Must Register to Collect Tax?

Any place of business licensed by the Department of Business and Professional Regulation's Division of Hotels and Restaurants or with the Department of Agriculture and Consumer Services as a bakery or similar food establishment must register to collect and pay sales tax on its sales of meals and prepared food.

You can register to collect and/or report tax through our Internet site at www.myflorida.com/dor. 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 *Application to Collect and/or Report Tax in Florida* (Form DR-1).

After we approve your registration application, you will receive a *Certificate of Registration* (Form DR-11), an *Annual Resale Certificate* (Form DR-13), and your tax return forms.

Making Purchases for Resale

You may purchase goods tax-exempt that you will resell in your regular business operations. To purchase items tax-exempt for resale, you must provide the seller a signed copy of your current Annual Resale Certificate. If the goods bought for resale are used (not resold), the dealer must report and pay use tax on those items, plus any applicable surtax, penalties, and interest. There are additional liabilities for intentional misuse of a resale certificate. If you have difficulty determining what you may buy tax-exempt for resale, the *Annual Resale Certificate for Sales Tax* brochure (Form GT-800060) will help you.

How to File

To file, complete a *Sales and Use Tax Return* (Form DR-15) and mail it with payment to us. You must file a return for each collection period, even if no tax is due.

When Tax is Due

Returns and payments are due on the 1st and late after the 20th day of the month following the date of sale. For example, if a sale takes place on the 1st of one month, then sales tax is not due until the 1st of the next month.

Returns and payments postmarked after the 20th are late. However, if the 20th falls on a Saturday, Sunday, or state or federal holiday, returns will not be late if they are postmarked on the first business day after the 20th.

If you make tax payments using electronic funds transfer (EFT), you must send the funds before 5:00 p.m., ET, on the business day before to the 20th.

Penalty and Interest

A taxpayer who files a late return or is late in paying the tax due will owe a late **penalty** of 10 percent of the tax, but no less than \$50. The \$50 minimum penalty applies even if no tax is due. Penalty will be due if the return or payment is submitted on time but is incomplete.

A floating rate of **interest** applies to underpayments and late payments of tax. We update the rates January 1 and July 1 of each year by using the formula in section 213.235, Florida Statutes. Current and prior period interest rates are posted on our web site.

Reference Material

Tax Law – Our online Tax Law Library contains statutes, rules, legislative changes, opinions, court cases, and publications. Search the law library for Rule 12A-1.011, Florida Administrative Code, *Food and Drink for Human Consumption; Sales of Food or Drinks Served, Cooked, Prepared, or Sold by Restaurants, Vending Machines or Other Like Places of Business.*

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

- Florida’s Sales and Use Tax
- Florida’s Annual Resale Certificate for Sales Tax
- Amusement Machines
- Vending Machines

For Information and Forms

Information and forms are available on our Internet site at: www.myflorida.com/dor

To speak with a Department of Revenue representative, call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671.

Persons with hearing or speech impairments may call our TDD at 800-367-8331 or 850-922-1115.

For a written reply to tax questions, write:

Taxpayer Services
Florida Department of Revenue
5050 W Tennessee St Bldg L
Tallahassee FL 32399-0112

Get the Latest Tax Information

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- Tax Information Publications (TIPs).
- *Facts on Tax*, a quarterly publication.
- Proposed rules, notices of rule development workshops, and more.

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