

ST 2012-01 – Restaurants and Other Food Vendors—Issued December 2012

This Information Release discusses the application of Ohio sales tax to food sold by restaurants and other food vendors for consumption on the premises and all sales of soft drinks. Its intent is to give guidance in these areas and to answer several frequently asked questions.

Applicable Law

Ohio imposes sales tax “on each retail sale made in this state.” R.C. 5739.02.

R.C. 5739.01 (EEE)(1) defines food as follows:

“Food” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food” does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco.

R.C. 5739.01 (EEE)(2)(c) defines soft drink as:

...nonalcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.

All retail sales of food are presumed to be taxable, unless the vendor establishes that the sale is exempt. Sales tax “does not apply to sales of food for human consumption off premises where sold.” R.C. 5739.02 (B)(2).

R.C. 5739.01 (K) defines premises as follows:

...any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

Questions and Answers

Below are some typical questions asked by taxpayers regarding sales of food and soft drinks followed by the Department's responses based on the applicable provisions in the Ohio Revised Code. These Q&As are provided to help you understand how the law applies to your business.

A) What sales of food and other items are taxable?

Answer: All food sold for consumption on the premises of your restaurant is taxable. Food sold to be consumed off the premises is not taxable. All other sales (i.e., soft drinks, toys, memorabilia, etc.) are always taxable.

B) Does the food have to constitute a meal to be considered taxable?

Answer: No. Cookies, pastries, baked goods, ice cream and frozen yogurt are food and are taxable if consumed on the premises.

C) What if my business operates as part of a food court?

Answer: The common seating area is considered “on premises” and taxability applies.

D) What if my business operates as a food truck?

Answer: If you provide a seating area for your customers, “on premises” taxability applies.

E) How do I determine if my customer’s food purchase is taxable?

Answer: The best way to determine the taxability of a food purchase is to ask your customer if their purchase is “for here” or “to go.”

F) When are soft drinks taxable?

Answer: The retail sale of soft drinks is always taxable, whether they are consumed on or off the premises.

G) What other beverages are considered a soft drink for sales tax purposes?

Answer: All beverages that are sweetened naturally or artificially and do not contain fifty percent (50%) or more pure fruit juice are soft drinks unless they contain dairy products and/or dairy substitutes (i.e., milk, cream, whey, soy milk, almond milk, etc.).

H) If my restaurant only has two (2) tables with chairs, am I required to ask my customers if their purchase is “for here” or “to go?”

Answer: Yes. The taxability of food is determined by whether or not the customer chooses to consume the food on the premises or take it with them off the premises. The only way to determine the customer’s intent is to ask the customer “for here” or “to go.”

I) If my restaurant is located in a food court and seating is provided by the mall for my customers to sit down and eat, is that considered premises even though I don’t own the tables, chairs and/or booths?

Answer: Yes.

J) If my restaurant is located in a food court with its own designated seating, but there is also seating outside of the restaurant provided by the mall for customers to sit down and eat, is the seating provided by the mall also considered premises for my restaurant?

Answer: Yes.

K) Is the parking lot considered premises if I own or lease the building and the surrounding real estate?

Answer: Yes.

L) If I fail to collect the proper amount of sales tax from my customers am I responsible for the deficiency?

Answer: Yes. If you fail to properly collect sales tax from your customers and/or fail to remit the proper sales tax to the State of Ohio, your business is liable for the sales tax deficiency. Further, owners, officers and other responsible parties of the business are personally liable for the failure to collect and remit the proper sales tax.

M) Is there a way that I can voluntarily come forward and pay additional sales tax owed?

Answer: Yes, through the Department's voluntary disclosure program. The Department's voluntary disclosure program allows taxpayers with unpaid sales tax liability to voluntarily come forward and pay the tax due. In exchange for voluntarily coming forward, the Department agrees to waive civil and criminal penalties and limits the look back to 36 months, except for tax collected, but not remitted. All sales tax collected from customers, but not remitted, must be paid. For more information regarding voluntary disclosure please visit the Department's website at: http://tax.ohio.gov/channels/other/documents/ST_VDA_Q&A.pdf.

If you have any questions regarding this information release, please contact our Taxpayer Service Center at 1-888-405-4039, or e-mail us through our web site: tax.ohio.gov.

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