

City and County of Denver, Colorado

TAX GUIDE

Topic No. 32

FOOD AND DRINK

TAX RATE

A special tax rate of 4.00% is imposed upon food and drink not exempted under Denver Revised Municipal Code Sections 53-26 and 53-97.

Tax collected on taxable food and drink must be separately reported on line 5D on the sales tax return and on line 3 of the consumer use tax return.

SALES SUBJECT TO TAXATION

1. Food and drink sales subject to 4.00% tax are:
 - a. Food and drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, boarding houses, carryout shops and other places at which prepared food or drink is regularly sold, including pushcarts, motor vehicles and other mobile facilities;
 - b. Food and drink sold through a vending machine. The 4.00% tax, however, is included in the vended price rather than being added separately. (See Related Tax Guide Topic - Vending Machines);
 - c. Alcoholic beverages. Such items as cooking wine, wine vinegar, and nonalcoholic cocktail mixes when marketed and sold for domestic home consumption are exempt food items;
 - d. Food and drink sold by newsstands, gift shops, shops located in public transportation centers, other public or commercial buildings, entertainment and recreational facilities, as these locations typically do not sell food for home consumption;
 - e. Coffee and related food products sold for office or commercial establishment use;
 - f. Food and beverage items which do not qualify as exempt as described below in SALES EXEMPT FROM TAXATION, items #1 and #2.
2. Non-food items taxable at 4.31% include sales and purchase of therapeutic products and deficiency correctors such as vitamins and minerals which are marketed and labeled as food supplements; health aids such as patent medicines and other products used as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies and antacids. Such food supplements, health aids, and over-the-counter drugs are taxable at the rate of 4.31%.
3. Food items not marketed for human consumption are taxable at the rate of 4.31%. Examples would be pet food, bird seed, and other animal food.
4. Products which qualify as food under the Federal Food Stamp Program but do not qualify as food for purposes of the sales and use tax exemption unless purchased with Federal Food Stamps or WIC vouchers or checks, as described below in SALES EXEMPT FROM TAXATION, item #3.

5. Mandatory gratuities or service charges associated with the taxable sale of food or beverage are subject to tax at the rate of 4.00%.

SALES EXEMPT FROM TAXATION

The DRMC provides an exemption for the sale and purchase of food that meets specific criteria. The Regulation "Rules Implementing the Exemption for Certain Food and Drink" provides further standards and definitions:

- a. The term "food" includes food and drink.
- b. Food for domestic home consumption is defined by the Federal Food Stamp Program as "The sale of food for domestic, home, or household use, which is advertised or marketed for human consumption and is sold in the same form, condition, quantities, and packaging as is commonly sold by grocers, is exempt from sales and use tax." (7 USC Section 2012(g) as of October 1, 1987, or as thereafter amended)

The following is a list of food considered exempt from sales and use tax:

1. Food for domestic home consumption. Examples include but are not limited to, meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, dairy products, coffee, tea, cocoa, candy, condiments, spices, soft drinks, cakes, cookies, potato chips, special dietary foods, enriched or fortified foods, health food items, infant formulas, food with "nutrition facts" labels and items incorporated into foods with other ingredients (e.g., pectin, lard and vegetable oils).
2. All water is exempt from taxation, except for carbonated and flavored water as specified in paragraph 3.
3. Items which qualify as food under the Federal Food Stamp Program but do not qualify as food for purposes of the sales and use tax exemption unless purchased with Federal Food Stamps or WIC vouchers or checks are:
 - a. Carbonated water marketed in containers (e.g., sparkling or seltzer water).
 - b. Chewing gum and breath mints.
 - c. Seeds and plants to grow food.
 - d. Prepared salads requiring refrigeration, whether prepared by the retailer on site or at a warehouse, or by a manufacturer for sale to and by a retailer.
 - e. Salad bars.
 - f. Cold sandwiches.
 - g. Deli trays.
 - h. Prepared food or food marketed for immediate consumption.

RELATED TAX GUIDE TOPICS

Mandatory Service
Charges Vending
Machines

REFERENCES

- * DRMC Section 53-24(13). Definitions – Food
- * DRMC Section 53-25(5). Imposition of tax.
- * DRMC Section 53-26(8),(20). Exemptions.
- * DRMC Section 53-95(15). Definitions – Food
- * DRMC Section 53-96(1). Imposition of tax.
- * DRMC Section 53-97(8),(23). Exemptions.

Rules Implementing The Exemption For Certain Food & Drink Under The City Retail Sales And City Use Tax
Article Of The Denver Revised Municipal Code.
7 U.S.C. Section 2012(g).

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT DENVER
TAX LAW FOR THIS INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL
PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE DRMC AND APPLICABLE RULES
AND REGULATIONS.

01/2019