
EATING AND DRINKING ESTABLISHMENTS

The sale of food and beverages are subject to sales tax and any person making a sale must acquire a sales tax license and collect sales tax based upon the total consideration paid.

EATING ESTABLISHMENTS means places of business where food and drink is served and is meant to be eaten soon after it is served. These eating establishments may be mobile or immobile and may or may not provide seating accommodations for their customers. They include but are not limited to: restaurants, caterers, pizzerias, bars, taverns, night clubs, yogurt or ice cream stores / stands, coffee or donut shops, diners, refreshment stands, drive-ins, fast food restaurants, bagel shops, lunch counters, cafeterias, private and social clubs, sandwich shops, snack bars, hot dog carts, concession stands at a fair or special event, sidewalk vendors and similar businesses.

CATERERS

A caterer is a person engaged in the business of preparing and serving meals, drinks, or other food products at locations designated by the customer. All caterers, whether their business is located in Arvada or not, are required to be licensed with the City and are liable for sales tax on the total selling price of items sold and/or charges for the services essential to providing meals and beverages, including delivery charges.

Charges made by a caterer for the rental of tableware, tablecloths, tables, chairs, or other items are also taxable. If the caterer charges separately for these items then the caterer may purchase these items for resale, but must assess sales tax to the customers when the items are rented.

MOBILE VENDOR / CARTS

Sales of food and beverages from motor vehicles and other mobile facilities are taxable.

DELIVERY CHARGES

Charges to deliver taxable items are also taxable, even if they are separately stated.

Example, if a pizza parlor charges \$10.00 for a pizza and \$1.50 for pizza delivery, the entire \$11.50 is taxable.

GIFT CERTIFICATES

Sales of gift certificates are not taxable. The redemption of a gift certificate is treated the same as cash. When a customer redeems a gift certificate sales tax is assessed on the amount of any taxable purchases and the gift certificate is used as payment.

COUPONS, DISCOUNTS AND PROMOTIONS

When a customer uses a coupon for a discount or a free meal (e.g. "buy one, get one free" or "punch card"), ***sales tax is charged only on what the customer actually pays***, unless a third party is reimbursing the business. For example, customer gets a discount of 15 percent on their \$10.00 meal the taxable amount would be \$8.50 = (\$10.00 - \$1.50). The coupon amount is not taxed.

When a customer uses a coupon for a discount of a free meal, and the restaurant is reimbursed by a third party for the discounted amount, ***sales tax is charged on the total sales price before subtracting the coupon amount***. In this case the coupon amount is taxed.

COMPLIMENTARY

When a business offers a meal or drink free with a purchase of another taxable item, such as another meal or drink, the sale is taxable only on the actual amount charged.

However, if the business offers a free meal or drink as a promotion with no stipulations (no purchase necessary), such as free appetizers, a free birthday drink or dessert, or an employee meal at no charge, then the business is subject to use tax on the cost of all taxable items, including disposable plates, soft drink, napkins, cups, flatware, etc., for use in the meal and/or beverage. Generally the percentage of Cost of Good Sold can be applied to the Retail Sales Price of meals to estimate the amount subject to use tax.

BULK FOOD SALES

The sale of food items in bulk is not generally considered the sale of meals for immediate consumption. For example, whole loaves of bread, whole cakes and pies, whole roasted coffee beans or an uncooked pizza would be considered “food for home consumption.” These items are subject to Arvada sales tax, but would be taxed at a different tax rate than food for immediate consumption. See the Arvada Combined Sales Tax Rate Sheet.

SALE TAX SEPARATELY STATED

Sales tax must be shown as a separate and distinct charge. Sales tax may only be included in the price of liquor sold by the drink and the price of items vended through coin or bill operated devices. If tax is included in the selling price of an item, a sign must be posted or noted on the menu, stating that the price includes sales tax and the rate of sales tax that is included.

LIQUOR SOLD BY THE DRINK

When liquor is sold by the drink in the bar area of a restaurant, sales tax is often included in the price of the drink, as a convenience to both the restaurant and the customer. This procedure is acceptable if the restaurant advertises or otherwise notifies the customer that the sales tax is included. The restaurant must also keep track of the bar sales separately from other restaurant sales because the sales tax must be backed out of the gross receipts amount from the bar sales prior to reporting the sales with the other restaurant sales.

VENDING MACHINE SALES

A vending machine is a money-operated (coins and bills) machine offering tangible personal property to a consumer. All sales and purchases of food items by and through vending machines are subject to Arvada sales tax, however, the Colorado Department of Revenue may exempt some of these items – see Colorado Department of Revenue FYI Sales 59 for guidance.

HOW TO CALCULATE GROSS SALES

First determine the total sales tax rate that should be collected by what is being sold and where the vending machine is located. The total amount of money collected during the reporting period would be considered “Gross Receipts”. To determine the Gross Sales the sales tax will need to be backed out. Divide the Gross Receipts amount by (1) plus the total combine tax rate.

For example if the retailer is responsible for 7.96% (2.9% Colorado, 1.1% RTD/CD, .50% Jefferson County and 3.46% Arvada), the divisor would be 1.0796.

$$\$500.00 \div 1.0796 = \$463.13 \text{ Gross Sales}$$

$$\$463.13 \times 7.96\% = \$36.87 \text{ Sales Tax}$$

$$\$36.87 + \$463.13 = \$500.00 \text{ Gross Receipts}$$

TIPS, GRATUITIES AND SERVICE CHARGE

The term “tips” and “gratuities” shall mean a monetary amount paid by a customer in a bar, restaurant or similar establishment usually in return for or in anticipation of some service. While a tip or a gratuity is generally thought of as a voluntary monetary gift, in practice some retailers add a mandatory gratuity to the customer’s bill.

Sales tax must be paid on tips, gratuities or service charges that are included in the cost of food served by restaurants, banquet facilities, hotels and caterers, or in the cost of services provided.

Tips and gratuities are subject to tax when any of the following conditions apply:

They are not separately stated; or

They are collected by the employer and distributed as wages (non qualifying employees); or

Any portion is retained by the business; or

The business uses them to compensate non qualifying employees and not given entirely to the service providers.

The retailer must maintain records which demonstrate that the full amount collected as mandatory gratuity has been distributed to qualifying employees. In order to comply with this requirement, the records must show:

All mandatory gratuities collected from customers and the corresponding disbursements to each qualified employee; or

That the total direct compensation (tips and gratuities) due all qualified employees during each sales and use tax reporting period equals or exceeds the total amount collected as mandatory gratuity.

QUALIFYING EMPLOYEES

Qualifying employees shall be those service providers (e.g. wait staff, busboys, bartenders, and wine stewards, but not janitorial personnel, chefs, cashiers, dishwashers or sales staff).

SUPPLY ITEMS / CONTAINERS

Items supplied to the customer with their meals or beverages that are non-reusable in nature may qualify for the **Commercial Packaging Materials exemption**. These products can be purchased for resale if they meet the following conditions:

Is used by said person to contain or label finish product;

Is transferred by said person along with and as part of the finish product to the purchaser; and

Is not returned to said person for reuse.

Items used in food services:

Plastic and paper products such as towelettes, napkins, soda straws, plates, knives, spoons and cups are specifically exempt from tax when provided without charge. These items are considered part of the meal that is being purchased by the consumer and can be purchased for resale. However, if these items are separately stated and charged on an invoice (for example by a caterer) then these items are subject to sales tax.

Non-Taxable items include but are not limited to:

Aluminum foil/plastic wrap – used to wrap food sold to customer
Plates and bowls – paper, plastic, styrofoam
Napkins – disposable
Carry-out Containers
Children’s bibs – disposable
Coffee stirrers – disposable
Cups and lids – disposable
Cutlery – disposable
Straws and swizzle sticks
Toothpicks
Chopsticks – disposable
Moist towelettes – furnished to customers

Taxable supplies subject to sales / use tax include but are not limited to:

Aluminum foil/plastic wrap – used to preserve food
Guest Checks
Matches
Candy
Register detail tape
Serving trays
Trash can receptacle / Liners
Coffee filters
Paper products (toilet tissue, paper towels)
Gloves (rubber, latex)
Uniforms
Menus
Silverware / Smallwares
Dishes and glassware
Cookware
Table cloths – reusable
Linens
Aprons
Floral arrangements
Cleaning supplies

Natural Gas and Electricity

All natural gas and electricity used to operate any and all restaurant equipment is taxable.

CO₂

The sale of CO₂ gas that is used in the sale of draft beer is taxable to the vendor of the beer, since the vendor buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas.

If the gas is purchased for the sole purpose of incorporating it into a product to be sold as in soda, water or other beverages, the sale of the gas is exempt as a sale for resale.

BOARDING HOUSES, DAY CARE CENTERS RETIRMENT HOME AND NURSING HOMES

Facilities which serve meals and beverages only to persons regularly boarding or cared for there and not to the public should pay sale / use tax on the cost of the food being purchased.

If the facility is an exempt organization and sells meals to employees or the public (family members) then sales tax should be collected on the sale of the meals and beverages.

EXAMPLES

1. George and Martha go out to a neighborhood restaurant for dinner. When they receive the bill, George leaves a cash tip for the outstanding service that they received. Because the tip was voluntary and the service provider received the entire amount the tip is not taxable.
2. Fifteen co-workers go to a retirement luncheon at their favorite restaurant. The restaurant, as is its practice for parties of eight or more, adds a 19% gratuity to the bill. If the gratuity is distributed entirely to the waiters and waitresses who provided the service, it is not subject to the imposition of City sales tax. Even though this was a mandatory gratuity the entire amount was distributed to the wait staff and therefore not taxable.
3. XYZ Corporation held their annual awards banquet at a local banquet hall. The banquet hall imposed a 19% mandatory service charge on all banquets. Such a statement appears on the menu and the customers' bill. The banquet hall keeps 2% of the 19% service charge and distributes the rest to the waiters and waitresses who actually provided the service. The entire 19% mandatory service charge is taxable.

ARVADA MUNICIPAL CODE – Chapter 98 - Taxation

Sec. 98-61. Definitions

Commercial packaging materials means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial packaging materials does not include commercial shipping materials.

Commercial shipping materials means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial shipping materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

Food for home consumption means food for domestic home consumption as defined in 7 U.S.C. sec. 2012(k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012(t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

Linen services means services involving the provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

Sec. 98-66. Property and services taxed.

d. Upon the amount paid for all meals, foods, beverages, liquors and cover charges, if any furnished in any restaurant, eating house, hotel, drugstore, club, resort or at any such place at which meals, foods or drinks are sold to the public or employees. Caterers are liable for tax on the total selling price of items sold and charges for the essential services to providing the meals and beverages.

j. On the cost of meals given without charge to employees or others.

(2) On all sales of food for home consumption.

Sec. 98-70. - Exempt sales.

There shall be exempt from taxation under the provisions of this article the items of sales and services including, but not limited to the following:

(9) Additional provisions of exemption from the tax under this article:

k. The sales of commercial packaging materials (as defined in section 98-61).

Sec. 98-77. Tax on use, storage, distribution, consumption-Intent.

It is hereby declared to be the legislative intent of the city council that for the purposes of this article every person who stores, uses, distributes or consumes within the city any article of tangible personal property purchased at retail, and not stored or distributed in normal function of wholesaling, is exercising a taxable privilege. It is hereby declared that every resident of the city or any person doing business within the city who purchases or leases tangible personal property for use, storage or consumption within the city from sources outside the city and taxable hereunder, and who has not paid the tax imposed by this article, shall make a return and pay the tax to the finance director. The use, storage or consumption of tangible personal property includes for the purpose of this article, materials, commodities and items of tangible personal property affixed to or made a part of facilities and structures on real property owned or leased situated within the city.

(Code 1981, § 31-51; Ord. No. 3783, § 2, 12-16-2002)

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT ARVADA TAX LAW FOR THIS SUBJECT, INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE ARVADA MUNICIPAL CODE. HOWEVER, THE TAX GUIDE SHALL BE USED IN CONJUNCTION WITH THE ARVADA MUNICIPAL CODE (CHAPTER 98) IN DETERMINING TAX LIABILITY.