

Quick Service Restaurants

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This document provides guidance to quick service restaurants (QSRs) by citing the applicable sales tax statutes in the Ohio Revised Code (R.C.) and answering frequently asked questions. Information Releases containing more detailed guidance can be found on ODT's website: [ST 2012-01](#) – Restaurants and Other Food Vendors and [ST 2004-01](#) – Food Definition. In general, food consumed on premises ("for here" or "dine in") is subject to sales tax paid by the customer. Food not consumed on premises ("to go" or "take out") is exempt from sales tax. A soft drink is always taxable, no matter where the beverage is consumed.

To properly comply with sales tax law, restaurateurs need to consider the following:

- What is considered food?
- Are certain beverages considered food?
- What is considered premises?
- What if the transaction mixes taxable and non-taxable items?

Applicable Law**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)(1)

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 the premises where sold". R.C. 5739.02(B)(2); also refer to the Ohio Constitution, Article 12, Section 3(C).

Soft drinks:

"...means 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." R.C. 5739.01(EEE)(2)(c)

Premises:

"...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." R.C. 5739.01(K)

Questions and Answers

1) What sales are taxable?

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 (e.g., soft drinks, toys, memorabilia) are always taxable.

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

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

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

All beverages that are sweetened naturally or artificially and do not contain more than 50% pure fruit or vegetable juice are soft drinks unless they contain dairy products and/or dairy substitutes. NOTE: If sugar or sweetener is added to an unsweetened beverage at the request of a customer at the drive-through window, the Department would not consider the beverage to be a soft drink.

4) When are soft drinks taxable?

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

5) What beverages are considered food for sales tax purposes?

These beverages are considered food for sales tax purposes:

- unsweetened, such as black coffee or tea
- contain dairy products and/or dairy substitutes (e.g., milk, cream, soy milk)
- contain more than 50% fruit or vegetable juice

6) How do I determine if my customer's food purchase is taxable?

Ask your customer if their purchase is "for here" (taxable) or "to go" (exempt).

7) 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 on-premises even though I don't own the tables, chairs and/or booths?

Yes. The common seating area is considered on-premises and taxability applies.

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

Yes; sales tax is a "trust" tax. The State of Ohio, the counties, and the transit districts trust the vendor to collect and remit the sales tax. If the proper sales tax is not collected from your customers and/or remitted 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. R.C.5739.33