

# Sales and Use Tax on Restaurants and Catering

*What restaurant owners and caterers need to know.*

## What is Taxable?

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The sale of food or drinks served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, amusement parks, taverns, stadiums, theaters, or similar places of business is taxable, with few exceptions. Bottled water that contains flavoring or carbonation, or bottled drinking water that is included in the price of a meal is taxable.

### Complimentary Items

Complimentary food items given to the customer free of charge as promotional, complimentary, or courtesy items are subject to use tax 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, if they were sold, less mark-up.

Complimentary food items which do not involve any preparation cost by the establishment, but are simply set out on a table and served to guests as purchased by the establishment, are subject to use tax only on the establishment's cost of purchasing such items.

Also, complimentary food items included on the menu or otherwise posted by the business establishment, which are provided to the customer free of charge with the price of a meal, are considered to be sold as a part of the price of the meal and not given to the customer. Such items may include, but are not limited to: salsa and chips, rolls or bread, salads, baked potatoes, etc.

Meals which are served "two for the price of one" are not considered to be complimentary food items. Thus, the sales tax is calculated 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, night clubs, or any other like places of business are taxable.

Public lodging establishments which advertise that they provide complimentary food and drinks are not required to pay sales or use tax on food or drinks furnished as a part of a packaged room rate, provided that all of the following conditions are met:

- ┆ The food or drinks are furnished as a part of a packaged room rate.
- ┆ A separate charge or specific amount is not stated to the guest for such foods or drinks.
- ┆ The lodging establishment is licensed with the Department of Business and Professional Regulation's Division of Hotels and Restaurants.
- ┆ The lodging establishment rents or leases transient lodging accommodations that are subject to sales and use tax.

## **What is Exempt?**

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Exemptions include, but are not limited to:

- ┆ Bottled water that contains no flavoring or carbonation, and is separately priced on the sales ticket.
- ┆ Meals purchased or served by a church.
- ┆ Prepared meals purchased by nonprofit volunteer organizations to be delivered as a charitable activity to the residences of handicapped, elderly, or indigent people.
- ┆ Food and beverages sold or served in a student lunchroom, student dining room, or other area designated for student dining 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., when sold for use in connection with the operation of a restaurant.

## **Are Gratuities Taxable?**

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Not always. Gratuities (tips) or service charges added to a guest check or invoice by the customer and "distributed in full" are not taxable, because they are not part of the sales price.

However, if any part of the gratuity or service charge is added to benefit the restaurant (employer) these are considered to be 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 employers portion of the employees payroll taxes, and payments into an employee insurance fund.

## **Who Must Register to Collect Tax?**

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Any place of business that is required to be 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 remit sales tax on its sales of meals and prepared food.

You can register via the Department's Internet site. Go to [www.myflorida.com/dor](http://www.myflorida.com/dor) and click on e-Services. If you do not have Internet access, you can complete a paper Application to Collect and/or Report Tax in Florida (Form DR-1). Obtain Form DR-1 from your local DOR service center or one of the contacts listed on the back panel.

After your registration application is approved, 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**

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The Annual Resale Certificate may be used to purchase goods tax-exempt that will be resold in your regular business operations. If the goods purchased for resale are later used (not resold), the dealer must report and pay use tax on those items, plus any applicable 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, there is a brochure that will help you: Annual Resale Certificate for Sales Tax.

## **How to File**

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To file, complete a Sales and Use Tax Return (Form DR-15) and mail it with payment to the Florida Department of Revenue. Returns must be filed for each collection period, even if no tax is due.

## **When Tax is Due**

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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 federal or state holiday, returns will not be considered late if they are postmarked on the first working day following the 20th.

If you make tax payments using electronic funds transfer (EFT), funds must be transmitted no later than 5:00 p.m., ET, on the business day prior to the 20th.

## **Penalty and Interest**

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A taxpayer who files a late return or is late in paying the tax due will be assessed a late penalty of 10 percent of the amount of tax owed, but no less than \$50. The \$50 minimum penalty applies even if no tax is due. Penalty will also be assessed 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. The rate is updated January 1 and July 1 of each year by using the formula in section 213.235, Florida Statutes. For current and prior period interest rates, check the Department's Internet site or contact Taxpayer Services (see back panel).

## **Reference Material**

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### **Tax Law**

Call Taxpayer Services to request a copy of 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. Tax laws are also available on the Department's Internet site. Look for Florida Tax Law Library.

## Brochures

The following brochures are available from your local DOR service center, the DOR Distribution Center, or Taxpayer Services:

- ┆ *Florida's Sales and Use Tax*
- ┆ *Florida's Annual Resale Certificate for Sales Tax*
- ┆ *Amusement Machines*
- ┆ *Vending Machines*

## For Information and Forms

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Information and forms are available on our Internet site at **[www.myflorida.com/dor](http://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 or 850-488-6800.

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

For a written reply to **tax questions**, write:

Taxpayer Services  
Florida Department of Revenue  
1379 Blountstown Hwy  
Tallahassee FL 32304-2716

To receive forms by mail:

- ┆ Order multiple copies of forms from our Internet site at [www.myflorida.com/dor/forms](http://www.myflorida.com/dor/forms) or
- ┆ Fax **form requests** to the DOR Distribution Center at 850-922-2208 or
- ┆ Mail **form requests** to:  
Distribution Center  
Florida Department of Revenue  
168A Blountstown Hwy  
Tallahassee FL 32304-2702