



Restaurants and New Jersey Taxes

Tax Topic Bulletin S&U-1

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Introduction

Businesses that sell prepared food and beverages (such as restaurants, taverns, snack bars, food trucks, and caterers) are responsible for a number of New Jersey taxes. This bulletin explains the New Jersey Sales Tax rules that apply to the sale of food and beverages. It also briefly describes other taxes administered by the Division of Taxation for which a restaurant or food-related service business may be liable.

Sales and Use Tax

Prepared food and beverages (including alcoholic beverages) sold in restaurants are subject to New Jersey Sales Tax whether the food is eaten in the restaurant or taken and consumed off the premises (take-out order). This includes prepared food and beverages sold by drive-in/drive-through restaurants, food service and hot dog carts, food trucks, and other mobile service facilities.

The following establishments, as well as other establishments engaged in the sale of prepared food and beverages, are required to collect Sales Tax:

Cafes	Drive-In/Drive-Through Restaurants	Luncheonettes
Cafeterias	Fast Food Operators	Pizzerias
Carry-Out Restaurants	Food Trucks	Restaurants
Catering Halls	Hamburger and Hot Dog Stands	Sushi Bars
Diners		Taverns, Grills, Bars

For information about the current Sales Tax rate, visit our [website](#). Sales Tax is calculated based upon the sales price of the purchase.

Sales Price

Sales price, or purchase price, includes:

- The seller's cost of property sold;
- The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;
- Charges by the seller for any services necessary to complete the sale; and
- Delivery charges.

Sales price does not include any discounts that are not reimbursed by a third party. See *Meal Coupons and Discounts* below.

Meal Coupons and Discounts

Restaurants may offer their patrons discounts on meals. How the Sales Tax is calculated depends on whether the seller is reimbursed for the discount. The same rules apply regardless of the type of discount that the restaurant offers (i.e., coupons; buy one, get one free; kids eat free; etc.).

Discounts (No Coupon Required)

If a restaurant charges a reduced price for a meal or provides a free item or meal, and no coupon is required for the customer to receive the discount, New Jersey Sales Tax is charged on the amount that the customer actually pays.

Example

On Wednesday nights, patrons receive a free dessert with the purchase of every entree. There is no coupon required. Sales Tax is charged only on the amount that the customer pays.

Entrée	\$ 17.95
Dessert	6.95
Soda	<u>+ 2.95</u>
Subtotal	\$ 27.85
Wednesday Promotion	<u>- 6.95</u>
Taxable Receipt	\$ 20.90
6.625% Sales Tax	<u>+ 1.38</u>
Amount due from patron	\$ 22.28

Coupons

Seller Not Reimbursed. Whenever a customer must present a coupon or dining card to receive a reduced price or a free item, New Jersey Sales Tax is charged on the price that the customer actually pays as long as the restaurant receives no reimbursement from a manufacturer, distributor, or other third party for accepting the coupon.

Example

A coupon enables the patron to buy one meal and get the second one free, and the restaurant receives no reimbursement from a third party. Sales Tax is charged only on the price that the customer pays.

First meal	\$ 12.95
Second meal	<u>+ 10.95</u>
Subtotal	\$ 23.90
Coupon for free meal	<u>- 10.95</u>
Taxable receipt	\$ 12.95
6.625% Sales Tax	<u>+ 0.86</u>
Amount due from patron	\$ 13.81

Seller Reimbursed. When a restaurant accepts a coupon entitling a purchaser to pay a reduced price or to receive a free item, and the restaurant is reimbursed by a manufacturer, distributor, or other third party, Sales Tax is charged on the full price because that is the amount the seller ultimately receives — part of it from the customer and the balance from the manufacturer.

Example

A coupon enables the patron to buy one meal and get the second one free, and the restaurant is reimbursed by a third party. Sales Tax is charged on the total bill before the coupon is subtracted.

First meal	\$ 16.95
Second meal	<u>+ 13.95</u>
Taxable receipt	\$ 30.90
6.625% Sales Tax	<u>+ 2.05</u>
Subtotal	\$ 32.95
Coupon	<u>- 13.95</u>
Amount due from patron	\$ 19.00

NOTE: If a coupon involves a reimbursement by a third party, and that fact is not disclosed either on the coupon or in an accompanying advertisement, a seller that accepts the coupon charges the customer Sales Tax on the reduced price but is required to remit Sales Tax to New Jersey on the entire receipt (i.e., the amount the customer paid plus the reimbursement received for the coupon).

For more information on coupons and discounts, see [Coupons, Discounts & New Jersey Sales Tax](#).

Caterers

Catering charges are considered part of the sales price and are subject to Sales Tax. This applies whether the food is prepared for eating on the caterer's premises or for delivery to the purchaser's home.

Cover Charges

Cover or entertainment charges are considered to be fees for admission and are subject to Sales Tax. Minimum charges also are subject to Sales Tax.

Example

A night club has a \$50 minimum charge. A patron gets a check that includes \$27 for food, \$22 for cocktails, and \$1 for the minimum charge. The patron pays Sales Tax on the entire \$50 check.

Credit Card Surcharges

Credit card surcharges added to the check when a customer pays by credit or debit card are considered part of the sales price and are subject to Sales Tax.

Example

A patron gets a check for a meal that includes \$55 for food and drinks, and a \$3 surcharge for paying by credit card. The patron pays Sales Tax on the entire \$58 check.

Delivery Charges

Delivery charges imposed by the seller are considered part of the sales price and are subject to Sales Tax.

Example

A customer places an order for delivery. The total check includes \$50 for food, and a \$3 delivery charge. The customer pays Sales Tax on the entire \$53 check.

Gratuities

Charges made for tips and gratuities are not subject to tax when:

1. The charge is separately stated on the bill or guest check given to the customer; and
2. The charge is specifically designated as a gratuity or tip; and
3. All such monies received by management are paid in total to employees.

Exempt Organizations

Meals purchased in restaurants by representatives of organizations that are registered as tax-exempt with the New Jersey Division of Taxation are not subject to Sales Tax when:

1. The meals are paid for *directly from organization funds*, and
2. A representative provides the restaurant with a photocopy of the organization's New Jersey Exempt Organization Certificate (Form ST-5). The copy must include the date, the name of the restaurant, a description of the transaction, and the signature and title of an officer of the organization.

If a representative pays for the meal personally (even with the intention of being reimbursed by the tax-exempt organization), the representative cannot use an Exempt Organization Certificate (Form ST-5) and must pay Sales Tax on the price of the meal.

For more information, see [Nonprofit Organizations and Government Entities](#).

Government Agencies.

Any New Jersey State agency, political subdivision of the State of New Jersey, federal agency, the United Nations, or any other international organization of which the United States is a member is exempt from paying Sales Tax on otherwise taxable meals.

In transactions with government agencies, the acceptable proof of exemption from Sales Tax is a copy of a government purchase order, official contract, or an order on official government letterhead signed by a qualified officer. Payment must be made by the agency's check or voucher for the exemption to apply. If payment is made from an individual's account, the purchase is subject to Sales Tax regardless of the method of payment (personal check, credit card, cash, etc.) and irrespective of the agency's intent to subsequently reimburse the individual.

Federal employees are exempt if payment is made by a GSA SmartPay credit card having a 0, 6, 7, 8, or 9 as the sixth digit of the account number (credit card centrally billed to and paid by the federal government). If payment is made with a GSA SmartPay card having a 1, 2, 3, 4, or 5 as the sixth digit, the card is individually billed to and paid by the employee, and the federal government exemption does not apply.

In addition, certain exemptions are granted to qualified foreign diplomatic and consular personnel who reside in the United States. For information concerning the exemptions, see [Diplomatic/Consular Sales Tax Exemptions](#).

Alcoholic Beverages

All retail sales of alcoholic beverages are subject to New Jersey Sales Tax. Alcoholic beverages include all liquors, mixed drinks, wines, sparkling wines, cordials, and beer. As with other retail sales, the tax must be separately charged and stated to the customer.

Purchases by Restaurants

In general, restaurants, caterers, and other food service establishments must pay Sales or Use Tax on supplies purchased for use in their businesses. However, because the Sales and Use Tax Act provides certain exemptions from Sales Tax, a restaurant may purchase some property and services from a supplier without paying Sales Tax.

For example, when a restaurant purchases taxable items of prepared food and beverages, such as candy, soft drinks, and alcoholic beverages that are to be resold, the restaurant gives the supplier a completed resale certificate to document that the purchase is exempt from Sales Tax. Acceptable resale certificates include [Form ST-3](#), [Form ST-3NR](#), or [Form ST-SST](#), depending on how the company is registered. The most commonly used certificate for New Jersey-based businesses is [Form ST-3](#).

The purchaser must fully complete all fields on the exemption certificate in order to claim the exemption. The restaurant will charge Sales Tax on these items when they are sold.

The Act also provides an exemption for products that are: (1) nonreturnable containers or wrapping supplies and (2) incidental to the delivery of prepared food to the customer. When purchasing these items, the restaurant gives the supplier a completed New Jersey Exempt Use Certificate ([Form ST-4](#)) or the Streamlined Sales and Use Tax Certificate of Exemption ([Form ST-SST](#)) and does not pay Sales Tax. The purchaser must complete all fields on the exemption certificate in order to claim the exemption.

The following disposable items are exempt from Sales Tax when used to deliver prepared food and beverages to patrons:

Aluminum Foil	Paper Buckets
Aluminum Plates	Paper Cups
Baking Cups	Plastic Cups
Boxes for Take-Out Orders	Sandwich Plastic Wrap
Cake Boxes	Take-Out Order Trays
Cellophane Paper	Twine
Cup Carriers	Waxed Bags

Cup Lids
Paper Bags

Waxed Paper
Wrapping Paper

A restaurant must pay Sales or Use Tax on purchases of taxable items used in the business that are not resold or that are not otherwise exempt, e.g., soaps, detergents, floor waxes, paper towels, and other similar items.

A restaurant must pay Sales or Use Tax when it purchases the following items:

Ashtrays
Butter Trays
Dispensers
Doilies
Flatware
Freezer Paper
Guest Checks
Janitorial Supplies
Napkins
Paper Napkins
Placemats

Plastic Can Liners
Plastic Forks
Plastic Knives
Plastic Spoons
Plastic Stirrers
Plastic Trays
Straws
Table and Counter Equipment
Toilet and Tissue Paper
Toothpicks
Towels

A restaurant must pay Sales or Use Tax on the purchase of food preparation equipment such as coffee and soda machines, ice makers, blenders, food processors, etc. A restaurant is not considered a manufacturer and cannot claim an exemption for machinery and equipment used to produce prepared food and beverages.

For more information, see [Sales Tax Exemption Administration](#) and [Business Purchases](#).

Services to Property

All cleaning and janitorial services (indoor and outdoor) are subject to Sales Tax, whether the services are performed on a regular contractual basis or not. Charges for parking lot sweeping, snow plowing, and lawn maintenance are subject to Sales Tax. Rodent and pest control services also are taxable; however, charges for an initial inspection or re-inspection of real property are exempt from tax. Rug and carpet cleaning services, including picking up and relaying cleaned rugs and carpets, are subject to Sales Tax. Charges for cleaning upholstered fabrics, including draperies and other textile furnishings, also are taxable.

Charges for the removal of contained waste including garbage, rubbish, trash, and recyclables are exempt from Sales Tax when the services are performed on a regular contractual basis for a term of at least 30 days. This service must be performed at least once a month for consecutive months for the exemption to apply.

Laundered Items

Charges for laundering and/or the rental of the following types of items are subject to Sales Tax: cloths, mats, mops, industrial wiping cloths, table linens, towels, and similar items.

Urban Enterprise Zones

Qualified businesses located within New Jersey's designated Urban Enterprise Zones and UEZ-impacted business districts are eligible for certain tax advantages.

A qualified business in an Urban Enterprise Zone is entitled to an exemption from Sales Tax when it purchases most equipment and supplies (except motor vehicles) and taxable services (except telecommunications services) that are for the exclusive use of the business within the Zone. For example, this purchase exemption would apply to the purchase of industrial kitchen equipment or patron tables for use at the Zone location. To claim the exemption, the business must provide the seller with an Urban Enterprise Zone Exempt Purchase Certificate (Form UZ-5) when making these purchases. There is no exemption for a qualified business's purchase of natural gas, electricity, or utility service.

Although a qualified business that is a certified, reduced-rate seller may charge Sales Tax at 50% of the regular rate on most retail sales of tangible personal property within the Zone or UEZ-impacted business district, the reduced Sales Tax rate does not apply to sales of prepared food or beverages. A business must collect Sales Tax at the full rate on these items. Sales of taxable services by a qualified business also are subject to tax at the full Sales Tax rate.

For more information about Urban Enterprise Zones or UEZ-impacted business districts, visit the [New Jersey Department of Community Affairs](#). Information also is available on the Division of Taxation's [website](#).

Litter Control Fee

New Jersey imposes a Litter Control Fee, due March 15 annually, on the gross receipts of wholesale and retail sales of litter-generating products sold within or into New Jersey by manufacturers, wholesalers, distributors, or retailers. Litter-generating products include but are not limited to: beer and other malt beverages, cigarettes and tobacco products, distilled spirits, food for human consumption, soft drinks, carbonated waters, and wine.

“Retailer” includes the owner or operator of a take-out or drive-through restaurant, snack bar, or similar establishment, when the majority of the restaurant’s food and beverage gross receipts are derived from sales made for consumption off the premises. It does not include owners or operators of restaurants, the principal activity of which consists of selling prepared food on the premises of the restaurant. A restaurant’s *principal activity* is one that accounts for more than half of the business’s gross receipts relating to food and beverage sales.

Any retailer with less than \$500,000 in gross receipts from the sales of litter-generating products is excluded from payment of the fee for that calendar year.

Corporation Business Tax

C Corporations (filing separate returns)

The New Jersey Corporation Business Tax Act imposes an annual Franchise Tax on every New Jersey Corporation and every out-of-state corporation that acquires a taxable status in New Jersey by doing business, employing or owning capital or property, maintaining an office, or deriving receipts, or engaging in contacts within New Jersey. Both domestic and foreign C corporations are required to file a New Jersey Corporation Business Tax Return (Form [CBT-100](#)) regardless of whether they had any assets or conducted any business activities in New Jersey.

S Corporations (filing separate returns)

A federal S corporation may elect to be treated as a New Jersey S corporation if they have filed the New Jersey S Corporation or New Jersey QSSS Election ([Form CBT-2553](#)). S corporations pay a reduced rate of Corporation Business Tax. New Jersey S corporations are required to file a New Jersey Corporation Business Tax Return (Form [CBT-100S](#)).

S corporations that elect to be a member of a combined group are treated as C corporations for tax purposes.

Combined Groups

A combined group is a group of companies that have a common ownership and are engaged in a unitary business, if at least one company is subject to New Jersey Corporation Business Tax. These groups are required to calculate their Corporation Business Tax on a combined basis. The managerial member of the combined group is responsible for addressing all tax matters, including paying tax and filing the [CBT-100U](#) on behalf of the group.

For more information on Corporation Business Tax, visit our [website](#).

Employer Responsibilities

Every New Jersey employer is required to register with the State for tax purposes and to withhold New Jersey Income Tax from wages paid to both resident and nonresident employees working in this State (except Pennsylvania residents covered under the Reciprocal Personal Income Tax Agreement between New Jersey and Pennsylvania). Employers also have Department of Labor and Workforce Development responsibilities to withhold New Jersey unemployment insurance, health care subsidy fund, workforce development partnership fund, disability insurance, and/or family leave insurance contributions. See *New Jersey Income Tax Withholding Instructions* ([NJ-WT](#)) for more information.

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This document is designed to provide guidance to taxpayers and is accurate as of the date issued.

Rev. 03/23 to include information about payments made with a GSA SmartPay credit card that has 5 as the sixth digit.