

Taxable and Exempt Foods and Beverages Sold at Retail Food Markets and Similar Establishments

The Tax Law exempts from sales and use taxes, food, food products, dietary foods, health supplements and certain beverages (liquid, frozen or solid) sold for human consumption, when sold in the same form and condition, quantities and packaging as is commonly used by **retail food stores** or similar establishments such as bakeries or produce stands. (See page 2 for information regarding eligible food purchases made with food stamps.)

This exemption does not apply to the sale of candy and confections; alcoholic beverages; soft drinks, fruit drinks**, sodas or beverages such as are ordinarily dispensed at soda fountains; nor does it apply to heated or prepared meals (hot or cold sandwiches, self-service salad bars, etc.); or any food or beverages sold for on-premises consumption, even when sold by a retail food store.

Note: Since restaurants, taverns or similar establishments generally sell only prepared meals and beverages, they do not qualify for the exemption stated previously and must therefore collect sales tax on their sales. However, if the establishments provide both restaurant meals and food or beverages that are ordinarily sold by food markets (e.g., bakeries, delicatessens, etc.) they do not have to collect sales tax on the exempt food or beverages sold for off premises consumption. Vendors in this position must keep accurate records of the sales of food or beverages that qualify for exemption. **See note** under food stamp purchases.

Listed below are some examples of foods and beverages that would be taxable or exempt when sold at retail food markets and similar establishments. Any brand name product shown in italics is included as an example and is not to be construed as an endorsement of the product. This list is intended to be used as a guide for cashiers in the collection of sales tax. Questions about items not included should be referred to the store manager or to the Taxpayer Assistance Bureau.

Exempt Foods and Beverages

Artificial sweeteners	Grain products	Poultry and poultry products
Baby food	Granola Bars	Preservatives
Bakery products	Gravies	Pretzels†
Baking products	Health Bars	<i>Quik</i>
Cereals	Health supplements	Relishes
<i>Chicory</i>	Herbs	Sauces
Chocolate (for baking)	Ice Cream (prepackaged)	Seafoods
<i>Clamato Juice Cocktail</i>	Iced Tea (frozen or canned)	Seasonings
Cocoa	Iced tea mix	<i>Slim Fast</i>
Coffee	Instant breakfast mix	Spices
Coffee creamers	Jelling agents	Starch (for cooking)
Condiments	Leavening agents	<i>Start</i>
Cookies	Liquid diet food	Sugar
Diet substitutes	Marshmallow fluff	Sugar substitutes
Diet supplements	Marshmallows (all sizes)	Syrups
Dressings	Meats and meat products	<i>Tang</i>
Eggs and egg products	Milk and milk products	Tea
Fats	Nonstick cooking sprays	<i>V-8 Juice</i>
Flavoring preparations	Nuts and nut products†	Vegetable juices
Food colors	Oils (cooking, salad)	Vegetable and vegetable products
Frozen desserts	<i>Ovaltine</i>	Vitamins
Fruit juices*	Peanut†	
Fruit rollups	Popcorn†	
	Potato chips	

Taxable Foods and Beverages

<i>Awake</i>	Cocktail mixes	<i>Kool Aid</i>
Beer	Collins mixer	Lemonade
Bottled water	Cranberry juice cocktail	Licorice
Candy and confectionery	Dietetic candy	Maple sugar candy
Candied apples	French burnt peanuts	<i>Orange crush</i>
Caramels	Fruit drinks**	Pet food and supplies
Carbonated beverages	Fudges	Soft drinks
Carbonated beverages (dietetic)	<i>Gatorade</i>	Soft drinks (dietetic)
Chewing gum	<i>Hi-C</i>	Vichy water
Chocolate (candy)	Ice cubes	<i>Yoo Hoo</i> (assorted flavored soda)
Coated candies††	<i>Jordan Almonds</i>	

* Containing at least 70% natural fruit juice.

† Provided they are not candy- or sugar-coated or sold heated.

** Containing less than 70% natural fruit juice — drinks, ades, punches, fruit nectars.

†† Sugar-, chocolate- or candy-coated nuts, raisins, malted milk balls and similar products.

Food stamp purchases:

Food and beverages listed on Page 1, (other than alcoholic beverages and pet foods and supplies) may be purchased tax exempt with food stamps. That is, no tax is due when you use food stamps to purchase eligible food.

When a customer purchases *taxable and nontaxable* eligible food with stamps and cash, the vendor must apply the food stamps to the payment of the taxable food first.

When a customer purchases *only taxable* eligible food with food stamps and cash, sales tax must be collected on the amount purchased with cash.

When a customer uses coupons, food stamps and cash to purchase food and beverages the vendor must:

- First, apply any **store coupon** to reduce the purchase price of the item to which the store coupon relates.
- Next, apply any **manufacturer's coupon** to the purchase price of the item to which it relates. Where the item is taxable, collect tax on the value of the manufacturer's coupon.
- Then apply the food stamps against the remaining purchase price of any taxable, eligible items and after that to the remaining purchase price of any exempt eligible items.
- Finally, if the customer does not have enough food stamps to cover the entire bill, collect the tax on any remaining balance attributable to taxable items paid for with cash.

Note: Certain restaurants are authorized by the United States Department of Agriculture to accept food stamps for the purchase of meals by the elderly and recipients of supplemental security income (SSI) benefits and spouses of those elderly and SSI recipients. Meals purchased under these circumstances are exempt from tax to the extent they are paid for with food stamps. Any balance paid with cash would be subject to tax.

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For business tax information and forms**, call the Business Tax Information Center at 1 800 972-1233. **For general information**, call toll free 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and outside Canada**, call (518) 485-6800.

Fax-on-Demand Forms Ordering System - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

Internet Access - <http://www.tax.state.ny.us>

Access our website for forms, publications, and information.

Hotline for the Hearing and Speech Impaired - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m. (eastern time), Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information numbers listed above.

Mailing Address - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.