

EXEMPTION FROM SALES TAX ON PURCHASES OF
ELIGIBLE FOOD WITH FOOD STAMPS

As of October 1, 1987, an exemption applies to the purchase of certain foods and meals which would ordinarily be subject to New York's state and local sales and use taxes. To qualify for the exemption from sales and use taxes, the food or meal must be an "eligible food" or an "eligible meal" as defined on page 3, and must be purchased with food stamps. For these purposes, the term "eligible food" includes:

- o any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot food or hot food products prepared for immediate consumption (excluding those that qualify as eligible meals); and
- o seeds and plants used to grow food for personal consumption.

Ordinarily, items such as candy and confectionery, fruit drinks containing less than 70% of natural fruit juice, soft drinks, sodas, cold sandwiches, bottled water, ice, vegetable seeds, vegetable and fruit plants, and non-stick cooking spray are subject to state and local sales and use taxes. Section 1115 of the Tax Law was amended by adding a new subdivision (k) which exempts from such taxes these otherwise taxable items when they are paid for with food stamps. The exemption is effective October 1, 1987. See page 4 for a more detailed listing of items which are exempt when purchased with food stamps.

Payment In Food Stamps and Cash

If eligible food is paid for with a combination of food stamps and cash, then the food stamps are presumed to be used first and are to be applied first to the eligible food that would ordinarily be subject to sales tax (candy, soda, fruit drinks, etc.) The balance of food stamps, if any, is then applied to other eligible food. The tax is forgiven only on the portion of a purchase of eligible food actually paid for with food stamps.

Example 1. A customer purchases \$200 in groceries consisting of \$30 worth of soap and paper products (which are not eligible to be purchased with food stamps) and \$170 worth of eligible food. Included in the \$170 worth of eligible food are \$50 worth of taxable items. The customer pays for the groceries with \$40 in food stamps and \$160 in cash. Under these circumstances, the vendor is required to apply the \$40 worth of food stamps to the \$50 in taxable items first. Since the customer does not have enough food stamps to pay for all of the taxable eligible food, the vendor is required to collect sales tax on the \$10 worth of eligible food paid for with cash, plus the \$30 in soap and paper products.

Example 2. Assume the same facts as in Example 1, except the customer pays for the groceries with \$60 in food stamps and \$140 in cash.

Under these circumstances, the vendor is required to collect sales tax only on the \$30 worth of soap and paper products since the customer has enough food stamps to pay for the \$50 worth of otherwise taxable eligible food.

Purchases With Manufacturers' Or Store Coupons

Discount coupons issued by manufacturers or stores are frequently used to purchase food. The sales and use tax regulations provide that when a taxable item is purchased with a combination of a manufacturer's coupon and cash or with just a manufacturer's coupon, tax is due on the *full* purchase price, since the purchase price is not reduced by the manufacturer's coupon. Rather, the manufacturer's coupon represents cash reimbursement by the manufacturer to the purchaser.

However, when a taxable item is purchased with a combination of a store coupon and cash, or with just a store coupon, the purchase price the store receives is actually reduced by the amount of the coupon, and tax is due on the *reduced* amount.

Treatment of such coupons does not change because a customer purchases eligible food with food stamps or a combination of food stamps and cash. Thus, when a customer purchases eligible food with food stamps and manufacturers' coupons, tax will be due on the face value of the manufacturers' coupon, since such coupon represents cash reimbursement to the customer. When a customer purchases eligible food with food stamps and store coupons, for which the store is not reimbursed, no tax is due on the value of the store coupon.

When eligible food is purchased with a manufacturers' or store coupon, the coupon is first applied to the eligible food to which it relates, and food stamps (or food stamps and cash) are to be accepted only in payment of the *balance* of the purchase price of such food.

Example 3. A customer purchases \$200 in groceries consisting of \$30 worth of soap and paper products (which are not eligible to be purchased with food stamps) and \$170 worth of eligible food. Included in the \$170 worth of eligible food are \$50 worth of taxable items. The customer pays for the groceries with \$168 in food stamps, \$30 in cash, and \$2 in manufacturers' coupons which relate to the eligible taxable items. In this instance, the store first applies the \$2 in manufacturers' coupons to the eligible food to which they relate and then accepts the \$168 in food stamps for the balance of the eligible food. The store must collect tax on the \$2 paid for with the manufacturers' coupons and on the \$30 worth of soap and paper products.

Example 4. A customer purchases \$200 in groceries consisting of \$30 worth of soap and paper products (which are not eligible to be purchased with food stamps), and \$170 worth of eligible food. The customer has \$2 in store coupons for which the store receives no reimbursement, and the customer pays for the groceries with \$48 in food stamps, \$150 in cash, and the \$2 in store coupons. The store coupons relate to the \$50 in taxable eligible food, reducing the retail selling price of this food to \$48.

The store will, under these circumstances, be required to collect tax only on the \$30 worth of soap and paper products that were paid for with cash since the customer paid for the taxable portion (\$48) of the eligible food with food stamps.

When manufacturers' coupons are redeemed at "double" their face value, so-called "double coupons," the sales tax is due on the full amount of the purchase price less the store's portion of the "double coupon."

Example 5. A customer purchases \$200 in groceries consisting of \$30 worth of soap and paper products (which are not eligible to be purchased with food stamps) and \$170 worth of eligible food. The customer has \$2 in manufacturers' coupons which will give the customer a \$4 discount under the store's "double coupon" policy. The coupons relate to the \$50 in taxable eligible food. The customer pays for the groceries with \$60 in food stamps and \$136 in cash. Under these circumstances, the store will be required to collect tax on \$32, consisting of the \$30 worth of soap and paper products plus the \$2 attributable to the manufacturer's portion of the "double coupon." No tax is required to be collected on the store's portion of the double coupon discount.

Exemption for Meals

Subdivision (k) of Section 1115 of the Tax Law also exempts from sales and use taxes those eligible meals that would otherwise be taxable under Section 1105(d) of the Tax Law. For these purposes, eligible meals are:

- o meals prepared and delivered by an authorized meal delivery service to households eligible to use food stamps to purchase delivered meals;
- o meals served by an authorized communal dining facility for the elderly or for Supplemental Security Income (SSI) households to households eligible to use food stamps for communal dining;
- o meals prepared and served by a drug addiction or alcoholic treatment and rehabilitation center to eligible households;
- o meals prepared and served by a group living arrangement facility to residents who are blind or disabled recipients of benefits under Title II or Title XVI of the Social Security Act;
- o meals prepared and served by a shelter for battered women and children to its eligible residents; and
- o meals served by those restaurants participating in the Food Stamp Restaurant Program for the Elderly and Disabled (the Restaurant Program). The Food Stamp Restaurant Program allows food stamp recipients who are age 60 or older, or who receive SSI benefits, and the spouses of these recipients, to use food stamps to purchase meals at a discount in restaurants certified by the U.S. Department of Agriculture.

The above rules relating to allocating food stamps to taxable and nontaxable food purchases and to applying discount coupons also apply to meals purchased under the Restaurant Program.

Recordkeeping Requirements

In addition to other records required to be kept, as outlined in section 533.2 of the sales and use tax regulations, vendors who accept food stamps as payment are also required to keep all of the following records: invoices which show the following –

- o date of sale;
- o description of each item sold;
- o price of each item;
- o amount of food stamps accepted as payment, if any;
- o amount of sales tax collected, if any;

as well as copies of applications, updates of applications, redemption certificates, returns and reports required to be filed with the federal or state government or received from the federal or state government, and copies of all bank deposit slips showing the amount of food stamps deposited with the bank.

If the vendor's records are incomplete or inadequate so that it cannot be determined on audit which specific items were exempt from sales and use tax, including those exempted because they were purchased with food stamps, the Tax Department will use external indices to determine the correctness of a sales and use tax return.

Food Stamp Exempt Purchases

Following is a list of some food and accessory food items, ordinarily taxable, that will be exempt from sales and use taxes when purchased with food stamps on or after October 1, 1987.

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| Baking non-stick spray | Gum |
| Beverages containing less than 70% natural fruit juice | Ice (cubes and blocks) |
| Candy | Lemonade or limeade containing less than 70% natural fruit juice |
| Candy-covered fruits and nuts | Lollipops |
| Carbonated water | Non-stick vegetable sprays |
| Carob-coated nuts, fruits and candy | Nuts (sugar- or chocolate-coated) |
| Chocolate-flavored drinks | Orange-flavored drinks |
| Chocolate-covered fruits and nuts | Popcorn (candy-coated) |
| Cocktails (non-alcoholic) containing less than 70% natural fruit juice | Punch |
| Cold cuts sliced and arranged on a platter | Raisins (sugar- or candy-coated) |
| Fruit (candy- or chocolate-covered) | Salad (purchased at grocery store salad bars) |
| Fruit drinks containing less than 70% natural fruit juices | Sandwiches (cold) |
| Fruit plants | Seeds (vegetable) |
| Fudge | Soft drinks (including dietetic) |
| Grapefruit juice cocktail (non-alcoholic) | Soft drink beverage mixes |
| | Vegetable plants |
| | Water |