

# Nebraska Sales and Use Tax Guide for Prepared Food

Revised March, 2007

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**Bars, Taverns, and Restaurants**  
**Food, Food Ingredients, and Dietary**  
**Supplements**



The purpose of this information guide is to explain the sales and use tax responsibilities for sellers of prepared food. It is not designed to answer all questions which may arise, but is intended to enable a person to become familiar with sales tax provisions related to prepared food.

## Overview

Sales of prepared food are subject to tax. Prepared food is food intended for, and which is generally ready for, immediate consumption, either on or off the premises of the seller. Prepared food means food that meets **ANY** of the following conditions:

- A. Food sold with eating utensils (see page 2) provided by the seller, such as plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws;
- B. Two or more food ingredients mixed or combined by the seller for sale as a single item. Examples include meals, sandwiches, self-service fountain drinks, and ice cream sundaes; or
- C. Food sold in a heated state or heated by the seller. Examples include hamburgers, rotisserie chicken, baked beans, soups, and coffee.

Establishments generally determined to be engaged in the sale of prepared food include, but are not limited to:

Sandwich Shops	Mobile Food Vendors
Cafes	Food Vendors in Sports/ Entertainment Arenas
Caterers	Food Courts
Cafeterias	Hot Dog Stands
Coffee Shops	Ice Cream Shops
Convenience Stores	Juice Bars
Delicatessens	Pizzerias
Diners	Restaurants
Fast Food Restaurants	
Taverns, Grills, Bars	

Prepared food **does not** include:

- Food that is only sliced, repackaged, or pasteurized by the seller, other than caterers – such as luncheon meats, cheeses, meat and cheese trays, and fruits;
- Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the FDA – such as marinated meats;
- Food sold in an unheated state by weight or volume as a single item – such as bagged popcorn, and containers of deli salad;
- Food sold by food manufacturers; and
- Bakery items, such as bagels, bread, donuts, cakes, pies, and tortillas.

## Sales by Delicatessens

All heated foods sold by a delicatessen, such as pizza, meat loaf, fried chicken, rice, macaroni & cheese, egg rolls, baked beans, soup, hot coffee, and potatoes and gravy, are prepared food and are taxable.

Sandwiches, whether packaged or unpackaged, **which are prepared by the seller**, fountain drinks, or soft serve ice cream are also taxable as prepared food.

Delicatessen foods maintained at room temperature or below, such as potato salad, cole slaw, fruit salad, olives, and pudding are not taxable when served in a container with a lid and measured and sold by weight or volume. These foods are taxable when sold as part of a meal, when catered, or when served on a plate or with a fork, spoon, or other utensils.

## Sales by Convenience Stores

Convenience stores often sell both prepared food, which is subject to tax, and food and food ingredients, which are exempt from tax.

**Prepared food.** All food sold by convenience stores in a **heated** state is taxable and includes items such as hot dogs, hot coffee, pizza, and pretzels. Food that is **heated by the purchaser** is not

taxable even if using a microwave oven located on the seller's premises. Sales of fountain drinks are taxable.

Sales of food maintained at room temperature or cooler **are not taxable unless** the seller physically gives the customer an eating utensil with the food (see "Eating Utensils"). For example, sales of sandwiches, donuts, or cookies which are not packaged by the seller are exempt **unless** the seller's customary practice is to give a napkin, plate, or other eating utensil to the purchaser.

**Food and food ingredients.** Sales of food and food ingredients, **which are not classified as prepared food**, are exempt from tax. Food and food ingredients include staple foods such as milk, flour, eggs, meats, vegetable oils, gelatins, salt, ketchup, potato chips, candy, chewing gum, and soft drinks in bottles or cans (see Information Guide on Food, Food Ingredients, and Dietary Supplements).

### Caterers

Individuals or businesses providing catered foods or beverages must collect sales tax on receipts from preparing or serving such foods and beverages. Charges for food, wages, bartenders, wait staff, chefs, use of dishes, room service, chairs, tables, etc., are taxable even though separately stated on the billing invoice. The tax applies whether the food is served by the seller or merely provided to the purchaser for consumption. Sales tax does not apply to separately stated charges for announcers, doormen, or other persons not connected with the preparation or serving of prepared food and beverages.

### Concessionaires

Concession sales are sales of food and beverages made during the conduct of another event, such as a movie, concert, sporting event, or craft fair. All concession sales of food and beverages are subject to tax, except those made by elementary and secondary schools. Concessionaires are permitted to include the sales tax in the selling price.

### Vending Machine Sales

All food sold through a vending machine is subject to tax. The location of the machine determines the applicable **local option** (city or county) sales tax that applies to the sales. The gross receipts from vending machine sales includes the state and local sales tax. The sales tax does not have to be separately stated on vending machine sales.

### Exempt Sales of Prepared Food

Sales and use tax does not apply to the following sales of prepared food:

- ✓ Meals and food served or sold by schools, school groups, churches, and organizations licensed by the State for the care of human beings;
- ✓ Meals and food sold at political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees;
- ✓ Meals and food sold by residential facilities with communal dining rooms;
- ✓ Meals and food sold by organizations for the elderly, handicapped, or recipients of Supplemental Security Income authorized to accept electronic benefits transfer or food coupons; and
- ✓ Concession sales of food only when sold by elementary and secondary schools at school events.

### Sales of Alcoholic Beverages

Sales of alcoholic beverages are taxable, whether sold packaged as "off-sale", or by-the-drink as "on-sale." Bars, taverns, and restaurants that hold a liquor license are permitted to include the sales tax in the selling price of beverages that are consumed on their premises. Sales of soft drinks from such establishments may

be treated in the same manner. See Regulation 1-040, Alcoholic Liquors Consumed on the Premises.

Consumer's use tax is due on the seller's cost of alcoholic beverages provided free-of-charge.

### Eating Utensils

Food sold with eating utensils provided by the seller are taxable. Eating utensils include plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws.

Utensils need only be made available to purchasers if a seller's sales of prepared food in categories B and C of the Overview are more than 75 percent of the seller's total sales. Examples of taxable sales are:

- *Bagel sold with a knife;*
- *Box or sack lunch sold with a napkin or plastic fork;*
- *Can of soda when straws are available on seller's counter.*

For sellers with a sales percentage greater than 75 percent who sell items that contain four or more servings packaged as one item sold for a single price, the item does not become prepared food due to the seller having utensils available (e.g., dozen donuts, loaf of bread). Whenever available, service sizes will be determined based on the "Nutrition Facts" label. If no label is available, a seller will reasonably determine the number of servings in an item.

### Tips and Gratuities

When an amount or percentage for a tip or gratuity is set and added by the seller to the purchaser's bill, the total charge is taxable. Discretionary tips or gratuities given by the purchaser are not taxable even when charged to the customer's bill instead of the customer giving the tip directly to the server.

### Employee Meals

Amounts charged to employees for prepared food are taxable even if they are discounted. If prepared food is provided to employees without charge, consumer's use tax is not due on the cost of the prepared food.

### Records

Sellers must maintain adequate accounting records to distinguish taxable sales of prepared food from exempt sales of food and food ingredients.

### Exempt Sales of Food or Food Ingredients

Bars and taverns which also sell a limited number of nontaxable food items, such as milk, cheese, and eggs, may sell such items exempt from tax when separate records are maintained.

The information shown on the customer's invoice or cash register tape should provide an adequate description of the nontaxable food items sold.

### Purchases by Sellers of Prepared Food

The following items may be purchased tax-free by sellers of prepared food:

- Food, food ingredients, and alcoholic beverages that will be resold to customers. Examples include: ingredients used to prepare meals, soft drinks, candy, chips, beer, liquor.
- Single-use disposable food service items provided to the customers. Examples include: paper napkins, paper place mats, straws, plastic utensils, foam and paper cups.

### Sales to Exempt Entities

Sales to entities that are exempt from sales tax must be supported by a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section B. A list of entities that are exempt from tax is provided in Nebraska Sales and Use Tax Regulation 1-012, EXEMPTIONS.

**For Taxpayer Assistance.** For additional information, please visit our Web site at: [www.revenue.ne.gov](http://www.revenue.ne.gov) or contact the Nebraska Department of Revenue at 1-800-742-7474 (toll free in NE or IA) or 1-402-471-5729 if calling from outside of Nebraska or Iowa.