

Sales Tax Information for Restaurants

Utah State Tax Commission

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 Salt Lake City, Utah 84134
 801-297-2200
 1-800-662-4335
 tax.utah.gov



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Introduction

This publication provides sales tax information relating to restaurants. See Publication 25 for general sales and use tax information.

Tax Commission publications are reference tools. They are not all-inclusive and should not be used as legal references.

Tax laws may change due to legislative action. Changes to law will supersede information in this publication.

Restaurant Definition

A restaurant is any retail establishment whose primary business is selling prepared food for immediate consumption. "Retail establishment" means a single outlet, whether or not at a fixed location. "Primary business" means the source of more than 50 percent of the revenues at the retail establishment.

Examples of restaurants include:

- full-service dining
- fast food
- coffee shops
- cafeterias
- luncheonettes
- soda fountains
- catering facilities
- clubs and taverns
- sidewalk vendors
- food concessions in malls

Restaurants do not include:

- retail establishments whose primary business is selling fuel or food items for off-premise, but not immediate, consumption; or
- theaters that sell food. A theater is an indoor or outdoor location for the presentation of movies, plays or musicals, but does not include a dinner theater. The food sales at dinner theaters or concerts is subject to the restaurant tax. Food courts, even if near a theater, are considered restaurants and are subject to the restaurant tax.

Multiple Lines of Business at One Location

If a retail establishment has more than one line of business, the one that generates the highest revenues is the primary business.

Example:

A candy store sells both loose candy for immediate consumption and prepackaged boxes of candy. Its loose candy sales account for 20 percent of its overall revenue, and the boxed candy sales are 80 percent. This store is not considered a restaurant and the restaurant tax does not apply to its sales of loose candy for immediate consumption.

Multiple Retail Establishments at One Location

A single seller with multiple lines of business at one location is operating multiple retail establishments if:

1. the lines of business are not usually regarded as a single retail establishment, OR
2. there are other factors showing the lines of business should be treated separately.

Example:

A stadium owner charges admission to an event and also sells prepared food at a concession stand inside the stadium. The concession stand operation is considered a separate line of business, so the concession stand is a restaurant and its sales are subject to the restaurant tax. Any ticket sales for events are considered a separate retail establishment and are not subject to the restaurant tax.

If you sell food or beverages for immediate consumption, but are not sure if the business is a restaurant for purposes of this tax, you must collect the restaurant tax unless you get an exemption from the Tax Commission. Send your request to:

Taxpayer Services Division
 Technical Research Unit
 Utah State Tax Commission
 210 North 1950 West
 Salt Lake City, Utah 84134

Restaurant Tax

In addition to sales and use tax, county governments may impose a tourism tax of up to 1 percent on food and alcoholic beverage sales by restaurants.

The restaurant tax is reported and paid on form TC-62F, *Restaurant Tax Return*, due when the *Sales and Use Tax Return* is due.

Restaurants and caterers in counties that impose the restaurant tax must charge the additional 1 percent tax on all sales, even if prepared foods are delivered to locations that do not impose the restaurant tax.

Restaurants and caterers in counties that do not impose the tax do not charge the restaurant tax on any sales.

The following are subject to both sales and restaurant tax:

- corkage
- set ups
- required gratuities
- charges for room service meals and beverages

The following are not subject to restaurant tax:

- restaurant sales of items other than food and beverages, such as souvenir T-shirts
- equipment rental
- use of flowers and decorations
- sales of ice carvings for banquets

See Utah Code §§59-12-602 and 59-12-603.

Restaurant Operations

1. A restaurant must pay sales or use tax on purchases of:
 - items for advertising, such as matchbooks and complimentary menus;
 - utensils and supplies (disposable products are exempt); and
 - ingredients for meals furnished free to employees.
2. Vending machine sales are taxable at either the full rate for prepared food and non-food items or the reduced rate for food and food ingredients. Use the following formula to calculate the taxable sales:

Total proceeds / Tax rate = Taxable sales

For example, if the tax rate is 6.125 percent and proceeds are \$550.00, the taxable sales are \$518.26. ($\$550 \div 1.06125 = \518.26)

Optional method: When the vended price of food or drink is \$1 or less, you may choose to pay tax on 150 percent of the purchase price and treat the sale itself as exempt. See Tax Commission Rule R865-19S-74.

3. Restaurant tax applies to prepackaged food sales if a restaurant sells the prepackaged foods as incidental to its prepared food sales.
4. You must also collect sales and use tax on the sales price of any meal tickets or coupons you sell.

Tips and Gratuities

Tips, gratuities and other service charges are subject to tax if they are included as a line item on a customer's bill that the customer must pay. These charges are not taxable ONLY IF the front of the bill includes a statement — in the same size font as the charge — that the charge is voluntary and may be increased or decreased by the customer.

Any charges subject to sales tax are also subject to restaurant tax.

Cover Charges

Cover charges to enter a restaurant, tavern, club or similar establishment are subject to sales tax as an admission, but are not subject to restaurant tax.

Admission Charges

Admissions and user fees for any amusement, entertainment, recreational, exhibition, cultural or athletic activity are subject to Utah sales tax.

Taxable activities include, but are not limited to, admissions and user fees for: theaters, movies, operas, museums, planetariums, shows of all types, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing and wrestling matches, closed-circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, jeep tours and horseback rides.

Exceptions

Admission and user fees include season passes, but do not include annual membership dues paid to a private organization whose members — directly or indirectly — establish the level of the membership dues.

Fees other than annual membership dues, such as a country club's fees for golf course or pool use, are considered admission and user fees and are taxable. See Tax Commission Rule R865-19S-33.

Amounts paid for the following activities are not admission or user fees:

- Public or private lessons.
- Sign-ups for participation in amateur athletics if the activity is sponsored by a state government or a nonprofit organization with the primary purpose of promoting amateur athletics.
- Sign-ups for participation in school activities. This does not include attendance as a spectator at school activities.

Fees for the above activities are subject to tax unless they are listed separately on an invoice. For example, if fees for a golf lesson are included with fees for using the golf course, the entire amount is subject to sales tax.

Alcoholic Beverages

Alcoholic beverage sales are subject to sales tax when sold in restaurants, taverns and clubs. The sales price of an alcoholic beverage is also subject to the 1 percent restaurant tax when sold by restaurants, taverns and clubs located in jurisdictions that impose the restaurant tax.

Private Organizations

A member of a private organization is either an equity or non-equity member.

- A. An equity member directly or indirectly (by voting for the club's board of directors) sets the level of dues. Membership dues paid by equity members are not subject to sales tax.

- B. A non-equity member does not set the level of dues. Membership dues paid by non-equity members are subject to sales tax as admissions or user fees.

Country clubs often set a minimum patronage amount for purchases of food at the club. If a member does not purchase the minimum amount of food in a given time period, the member is charged the difference between the minimum patronage amount and the amount of food actually purchased. **Minimum patronage amounts** charged to:

- **equity members** are part of the dues and **ARE NOT** subject to sales tax.
- **non-equity members** are part of the dues and **ARE** subject to sales tax.

See Also

- Utah Code §§59-12-601 through 59-12-603
- Administrative Rule R865-19S-94

Sales tax publications provide general guidance only. They do not contain all sales or use tax laws or rules. If you need additional information, call 801-297-7705 or 1-800-662-4335, ext. 7705 (outside the Salt Lake area), or email taxmaster@utah.gov.