



# Restaurants and New Jersey Taxes

Tax Topic Bulletin S&U-1

## **Introduction**

Businesses that sell prepared food and beverages (such as restaurants, taverns, snack bars, 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, 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:

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

## **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 for 2017 is charged only on the amount that the customer pays.*

Entree	\$17.95
Dessert	6.95
Soda	<u>+ 2.95</u>
Subtotal	\$27.85
Wednesday promotion	<u>- 6.95</u>
Taxable receipt	\$20.90
6.875% Sales Tax	<u>+ 1.44</u>
Amount due from patron	\$22.34

**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
6.875% Sales Tax	<u>+ .89</u>
Amount due from patron	\$13.84

***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
6.875% Sales Tax	<u>+ 2.12</u>
Subtotal	\$33.02
Coupon	<u>-13.95</u>
Amount due from patron	\$19.07

**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 [ANJ-9](#), *Coupons, Discounts & New Jersey Sales Tax*.

**Caterers**

Catering charges 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.

**Service 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 \$5 minimum charge. A patron gets a check that includes \$2 for food, \$2 for cocktails, and \$1 for the minimum charge. The patron pays Sales Tax on the entire \$5 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 Tax Topic Bulletin [MISC-3](#), *Tax Treatment of 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 regardless of the agency's intent to subsequently reimburse the individual.

Federal employees are exempt from New Jersey Sales Tax if payment is made by a GSA SmartPay 2 credit card having a 0, 6, 7, 8, or 9 as the sixth digit of the account number (which indicates a credit card charged to and paid directly by the federal government). If payment is made with a GSA SmartPay card having a 1, 2, 3, or 4 as the sixth digit, the federal government exemption does not apply because the card is billed to and paid by the employee.

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 Technical Bulletin [TB-53](#), *Diplomat/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 New Jersey Resale Certificate ([Form ST-3](#)) 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 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	Waxed Paper
Paper Bags	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	Plastic Forks
Butter Trays	Plastic Knives
Dispensers	Plastic Spoons
Doilies	Plastic Stirrers
Flatware	Plastic Trays
Freezer Paper	Straws
Guest Checks	Table and Counter
Janitorial Supplies	Equipment
Napkins	Toilet and Tissue Paper
Paper Napkins	Toothpicks
Placemats	Towels
Plastic Can Liners	

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 Tax Topic Bulletins [S&U-6](#), *Sales Tax Exemption Administration*, and [S&U-9](#), *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 not less than 30 days.

## **Laundered Items**

Charges for laundering and/or the rental of the following types of items are subject to Sales Tax: cloths, mats, mops, industrial wiper 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**

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 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**

A corporation may elect to be treated as a New Jersey S corporation if the corporation is or will be an S corporation for federal purposes and has filed the New Jersey S Corporation or New Jersey QSSS Election ([Form CBT-2553](#)). S corporations pay a reduced rate of corporation business tax.

For more information on Corporation Business tax, see the instructions for Forms [CBT-100](#) or [CBT-100S](#).

## **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.

## **For More Information**

### **Online**

- Division of Taxation [website](#);
- [Email](#) general State tax questions.  
Do not include confidential information such as Social Security or federal tax identification numbers, liability or payment amounts, dates of birth, or bank account numbers in your email;
- Subscribe to [NJ Tax E-News](#), the Division of Taxation's online information service.

### **By Phone**

- Call the Division of Taxation's Customer Service Center at **609-292-6400**;
- Text Telephone Service (TTY/TDD) for Hearing-Impaired Users: **1-800-286-6613** (toll-free within NJ, NY, PA, DE, and MD) or **609-984-7300**. These numbers are accessible *only* from TTY devices. Submit a text message on any New Jersey tax matter and receive a reply through NJ Relay Services (711).

### **In Person**

Visit a New Jersey Division of Taxation Regional Information Center. For the address of the center nearest you, visit our [website](#) or call the Automated Tax Information System at 1-800-323-4400.

### **Forms and Publications**

- Visit the Division of Taxation's website for [forms](#) and [publications](#);
- Call the Forms Request System at **1-800-323-4400** (within NJ, NY, PA, DE, and MD) or **609-826-4400** (touch-tone phones only) to have printed forms or publications mailed to you. **NOTE:** Due to budgetary constraints, supplies are limited and only certain forms and publications can be ordered through this system.