

City and County of Denver, Colorado

TAX GUIDE

Topic No. 55

MANDATORY SERVICE CHARGES

Sales tax at the rate of 4% is imposed upon the amount paid for food or drink served or furnished in or by restaurants and other places at which prepared food or drink is regularly sold. In addition, cover charges, admission or entrance fees, and mandatory service or service-related charges, whether described as tips, gratuities, or otherwise, are included as part of the amount paid for such food and drink.

MANDATORY SERVICE CHARGES

While the DRMC imposes the tax on all such mandatory service charges, these charges may be exempt, in certain cases, for State of Colorado sales tax purposes. The difference between Denver's and the State's treatment of gratuities is that if the gratuity is mandatory, it is subject to Denver tax, but may not be subject to State tax if distributed to the service person.

In order for a proprietor-determined service charge to not be subject to Denver sales tax, both of the following conditions must apply. First, the charge must be labeled on the customers' guest check as either "suggested" or "discretionary" and as a "tip" or a "gratuity." Second, the "total" line on the credit card receipt, where applicable, must be left blank, to enable the customer to decide what amount will actually be paid. Under these conditions, the gratuity is considered to be voluntary, and thus is not subject to Denver sales tax.

COVERCHARGES

Per the DRMC 53-53(a)(9) "Cover charge" means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

If both of the following criteria are met, a cover or admission charge is deemed to be a separate transaction from the purchase price of food or drink, and hence not subject to taxation:

- 1 a. Live entertainment by paid performers is offered. Examples of live entertainment include, but are not limited to, musicians and musical bands, comedians, actors or dancers. Recorded dance music played by a disc jockey who is an employee of a nightclub does not constitute live entertainment.

OR

- b. Free use of recreational, mechanical, or video equipment by patrons is offered. Examples include, but are not limited to, pool tables, video game or karaoke machines, or pay-per-view television events or movie theater viewing.

AND

2. No categorical food or drink specials are offered when a cover charge is imposed or increased. Examples of such specials include, but are not limited to, complimentary food buffets, reduced prices for broad categories of food or drink (such as all beer, wine and well drinks), and two-for-one drink specials. Individual food entrée specials or discounts on specific branded alcoholic beverages do not impact the taxability of cover charges.

A stand-alone transaction, as defined above, solely for admission to a facility, not owned by the City, is not subject to sales tax or Facilities Development Admission Tax.

EXAMPLES

1. Mary stopped at the neighborhood cafe for breakfast. She was pleased with the food and service she received and, accordingly, left a \$1.25 tip on the table prior to paying her check. Tips of this nature are considered to be voluntary, and as such, are not taxable for either Denver or State purposes.
2. Bill's Suds & Brats imposes a mandatory 15% gratuity for parties of six or more. Such a statement appears on both the menu and the customers' guest check. This gratuity is distributed directly to the waiter or waitress who actually rendered the service. The mandatory 15% gratuity is subject to Denver tax.
3. Twenty co-workers go to a retirement luncheon at a favorite restaurant. The restaurant, as is its practice for parties of six or more, prints a line on the guest check labeled "15% Suggested Gratuity" and includes the 15% in the total amount due on the guest check. However, on the credit card receipt, the total line is left blank to enable the patron to decide what amount will actually be paid. This suggested gratuity is considered voluntary and is thus not subject to the imposition of Denver tax.
4. ABC Nightclub normally does not impose a cover charge. However, on Mondays from 4:00 p.m. to 7:00 p.m. patrons pay a \$3.00 per person cover charge. During these hours, ABC provides a complimentary food buffet which includes prime rib and shrimp. In addition, every Thursday night from 9:00 p.m. until closing ABC imposes a \$5.00 cover charge. Patrons are offered all domestic beer, wine and well drinks for \$1.00. These drinks usually are sold for \$3.00 each. These cover charges collected by ABC are subject to Denver tax.
5. XYZ Billiards Pub normally does not impose a cover charge. However, on Mondays from 4:00 p.m. to 7:00 p.m. patrons pay a \$5.00 per person cover charge. During these hours, XYZ allows patrons to rent the billiard equipment free-of-charge. In addition, every Saturday night from 9:00 p.m. until midnight XYZ imposes a \$5.00 cover charge. XYZ pays a five-piece jazz band to perform during these hours. (No drink specials are offered during the times the cover charges are imposed.) The cover charges collected by XYZ Billiards are not subject to Denver tax because the charges are entirely unrelated to the sale of food and drink.

- * DRMC Section 53-53(a)(9) Definitions – Cover Charges
- * DRMC Section 53-54(a)(5). Imposition of tax.
- * DRMC Section 53-104(a)(1). Imposition of tax.
- * CRS 39-26-104.1(e). Property and services taxed.
- * State of Colorado Special Regulation SR-13 - Eating and Drinking Establishments

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT DENVER TAX LAW FOR THIS INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE DRMC AND APPLICABLE RULES AND REGULATIONS.

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