



CITY & COUNTY OF DENVER, COLORADO

DEPARTMENT OF FINANCE

TREASURY TAX RULE 002

RULES IMPLEMENTING THE EXEMPTION FOR CERTAIN FOOD AND DRINK UNDER THE CITY RETAIL SALES AND CITY USE TAX ARTICLES OF THE DENVER REVISED MUNICIPAL CODE

EFFECTIVE 4/1/2021

The following Rules are promulgated in accordance with the requirements of Section 53-3 of the *Denver Revised Municipal Code* and by virtue of the authority vested in the Manager of Finance by Articles II and III of Chapter 53 of said Code.

Section 53-55 of the Retail Sales Tax Article of the *Denver Revised Municipal Code* pertaining to exemptions provides for the sale of certain food for domestic, home, or household use and the sale of food as defined in certain provisions of federal law as of and after October 1, 1987, to be exempt from the City Retail Sales Tax notwithstanding the imposition of the tax generally on such items as prescribed in Section 53-54 of the article. Similarly, Section 53-104 and Section 53-105 of the City Use Tax Article exemption certain items of food and drink.

For the purpose of establishing standards and definitions which may be applied uniformly with regard to the application of the City Retail Sales and City Use Tax Articles, the Manager hereby adopts the following rules and regulations:

For purposes of this regulation food includes food and drink.

Any food, as specified in 7 U.S.C. §2012(k), as such section existed on October 1, 1987, or as thereafter amended, which is purchased with the medium of exchange commonly known as food stamps or supplemental nutrition assistance program ("SNAP") benefits, is exempt from the sales tax and use tax.

Any food, as specified in 42 U.S.C. §1786, as such section existed on October 1, 1987, or as thereafter amended, which is purchased with the medium of exchange commonly known as women, infant, and children ("WIC") vouchers, checks or similar certificates of exchange, is exempt from the sales tax and use tax.

Any food not purchased with federal food stamps, SNAP benefits, or WIC vouchers, checks or similar certificate of exchange is subject to taxation or exemption as provided in paragraphs 1, 2, and 3 below

1. a. (1) Food for domestic home consumption as defined by the federal supplemental nutrition assistance program in 7 U.S.C. sec. 2012(k), as such section existed on October 1, 1987, or as thereafter amended, is exempt from taxation as provided below when sold by a retail food store as defined in 7. U.S.C. sec 2012(o), except for those items specified in 1.c. (This list of food and nonfood items under the federal supplemental nutrition assistance program is intended as a guide and not a complete listing.) The federal supplemental nutrition assistance program definition of food would include, among other items, meat, poultry, fish, bread, and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, dairy products, coffee, tea, cocoa, candy, breath mints, condiments, spices, soft drinks, cakes, cookies, potato chips, special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, healthfood items (e.g., Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, rose hips powder which is used for preparing tea, and other food products which are substituted for more commonly used food items in the diet), infant formulas, and items incorporated into foods with other ingredients (e.g., pectin, lard and vegetable oils);
 - (2) Seeds and plants which produce food for human consumption are exempt from sales and use taxes only when they are purchased with food stamps;
 - (3) Water is exempt from taxation, except for carbonated water as specified in 1.c. (1) of this regulation.
- b. Items which are considered nonfood items under the federal supplemental nutrition assistance program and thus are subject to sales tax include:
 - (1) Nonfood items even if sold in grocery or similar type stores (e.g., hardware, clothing, common household items such as cooking utensils, cleaning and paper products, soaps, toiletry articles, grooming items and cosmetics);
 - (2) Alcoholic beverages but excluding when marketed for domestic home consumption cooking wine, wine vinegar, and nonalcoholic cocktail mixes;
 - (3) Tobacco and tobacco products (except that cigarettes are exempt by ordinance from the sales and use taxes);
 - (4) Foods which are hot at the point of sale and which are kept above room temperature to make them palatable and suitable for immediate consumption, food marketed to be heated on the premises whether or not hot at the point of sale, and other food sold for consumption on the premises;
 - (5) Items not intended for human consumption (e.g., laundry starch, pet foods, other animal foods, and seeds marketed or packaged as birdseed);
 - (6) Items specifically labeled as being for use other than human consumption (e.g., decorative dye for hard cooked eggs);
 - (7) Food preservation equipment and items (e.g., pressure cookers, canning jars and lids, paraffin, freezer containers, and wrapping paper);
 - (8) Medicines (except that some prescription drugs and other medical items are exempt from sales and use tax by virtue of ordinance);
 - (9) Therapeutic products and deficiency correctors (e.g., vitamins and minerals which are marketed in various forms such as tablets, capsules, powders and liquids; products such as cod liver oil which is used primarily as a source of vitamins A and D; and other such

items which are primarily used for medicinal purposes or as health aids). (These products serve as supplements to food or food products rather than as food and, therefore, are not eligible. Because essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible.);

- (10) Health aids (e.g., patent medicines and other products used primarily as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies, and antacids);
- (11) Coffee and related food products sold to offices and commercial establishments as part of a "coffee" service.

c. Items which may qualify as food under the federal supplemental nutrition assistance program but do not qualify as food for purposes of the sales and use tax exemption (unless purchased with federal food stamps or WIC vouchers or checks) include:

- (1) Carbonated water marketed in containers (e.g., sparkling or seltzer water; however, tonic water, pop and other sugar or sugar substitute carbonated beverages do qualify for the sales tax exemption);
- (2) Chewing gum and breath mints;
- (3) Seeds and plants to grow food (e.g., tomato or other fruit or vegetable plants or seeds);
- (4) Prepared salads, other than frozen salads, requiring refrigeration sold in any size or type of container (e.g. egg salad, potato salad, fruit salad, pasta salad, gelatin salad, bean salad, fish salad, poultry salad, meat salad, etc.), whether prepared by the retailer on site or at a warehouse, or by a manufacturer for sale to and by a retailer;
- (5) Salad bars (i.e., cut up fruits and vegetables sold in various sized servings, usually by the pound or plate, along with accessory foods and condiments, such as soup, rolls, crackers and salad dressings);
- (6) Cold sandwiches other than frozen sandwiches;
- (7) Deli trays (e.g., meats, fish, cheeses, fruits or vegetables, etc., sold on trays prepared by or for the retailer);
- (8) Food sold by or through vending machines; and
- (9) Prepared food or food marketed for immediate consumption as specified in paragraphs 2 or 3 below.

a. It is not the obligation of a retailer who meets the definition of a "Retail Food Store" as defined by 7 U.S.C. sec 2012(o); to collect the sales tax on food marketed for domestic home consumption which after purchase is converted to or used for other purposes which are taxable. Such conversion or use is subject to any applicable sales or use tax (e.g., edible oil used to lubricate machines and food and coffee purchased for office or commercial uses).

2. While food marketed for domestic home consumption, with exceptions noted above, generally qualifies for the sales tax exemption, prepared food or food marketed for immediate consumption does not qualify. The following guidelines apply in determining whether food is considered food for home consumption contrasted with prepared food or food for immediate consumption:

a. Prepared food or food marketed for immediate consumption includes all food furnished or

served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer;

- b. All hot foods and food marketed to be heated on the premises are considered to be prepared for immediate consumption and are therefore subject to tax regardless of the nature of the business making such sale and regardless of whether immediately consumed;
 - c. Prepared food or food marketed for immediate consumption also includes food served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carry out shops, and other like places of business at which prepared food is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities;
 - d. The following types of establishments typically do sell food marketed for domestic home consumption: grocery stores, convenience stores; bakeries, butcher shops, fruit and vegetable stores, and other establishments who meet the definition of a "Retail Food Store" as defined by 7 U.S.C. sec 2012(o);
 - e. The following types of establishments typically do not sell food marketed for domestic home consumption: department stores, newsstands; gift shops; stores, including convenience stores, located in public transportation centers, offices or other public or commercial buildings; entertainment facilities (e.g., theaters); and recreation facilities (e.g., sports arenas and stadiums). However, if such an establishment has been approved by the United States Department of Agriculture ("USDA") to accept food stamps and/or SNAP benefits at the store location where the sale and purchase is to occur, the establishment is considered to sell food for domestic home consumption, and the vendor is not required to collect sales tax on any items eligible to be purchased with food stamps and/or SNAP benefits, subject to paragraph number one (1) above and its subparagraphs.
3. In determining whether food is considered for domestic home consumption or prepared food or food for immediate consumption, the following guidelines apply to the specialized establishments enumerated below:
- a. Bakery and Pastry Shop
 - (1) To-go sales by bakeries or pastry shops which do not have eating facilities are not subject to tax;
 - (2) Sales by bakeries or pastry shops which have eating facilities are taxable except for items sold on a take-out or to-go basis not to be consumed at the eating facilities provided by the retailer.
 - (3) Sales by bakeries or pastry shops that are delivered to the customer are taxable if the customer is a business entity or if the delivery is made to a commercial location; sales are not subject to tax if the customer is an individual purchasing for his or her own use and delivery is made to a residential location.
 - b. Ice Cream Shops
 - (1) of ice cream cones, cups, sundaes, and the like, marketed for immediate consumption are subject to tax;
 - (2) Items marketed in containers or packages for domestic home consumption, such as ice cream, ice cream bars, popsicles and fudgesicles, toppings sold in cans or jars, and cakes or pies, are not taxable.

c. Caterers

Normally all food sold by a caterer is subject to tax. However, if such caterer operates a retail store selling food items marketed for domestic home consumption, the rules governing taxability of food as set forth in paragraphs 1 and 2 apply. Sales by caterers of food from motor vehicles and other facilities are taxable.

d. Restaurants, Snack Bars, Carry-outs, etc.

All food sold by restaurants and similar establishments is subject to tax. However, when such restaurants also operate a pastry shop, ice cream shop, or grocery store, the rules applicable to such establishments apply to sales made from such facilities.

e. Liquor Stores

Food marketed for domestic home consumption by liquor stores is exempt. Alcoholic beverages, including spirituous, malt vinous liquors, are taxable. However, cocktail mixes which do not contain alcohol, cooking wines, and wine vinegars when any of which is marketed for domestic home consumption are exempt.

f. Street Vendors

Street Vendors (e.g., push carts, mobile food stands, food trucks and the like) will generally be subject to tax on all their sales. Sales of vegetables, fruit, and other groceries marketed for domestic home consumption by mobile markets or door-to-door vendors are exempt.

g. Vending Machines

All sales of food vended by or through machines are taxable.

BY ORDER OF THE MANAGER OF FINANCE

BRENDAN J. HANLON
Manager of Finance

Approved by the City Attorney this 22nd day of March, 2021.

KRISTIN M. BRONSON
City Attorney

By
CHARLES T. SOLOMON
Assistant City Attorney