



Dining establishments in Colorado are considered retailers for sales tax purposes and are subject to the same licensing, collection, filing, and payment requirements as all Colorado retailers. All sales of food or drink served or furnished in or by dining establishments in Colorado are subject to Colorado sales tax. As retailers, dining establishments are required to collect sales tax on the sale of prepared food and beverages.

This publication is designed to provide general guidance regarding the tax treatment of sales and purchases made by dining establishments. Nothing in this publication modifies or is intended to modify Colorado's statutes and regulations authorizing these exemptions. Taxpayers are encouraged to consult their tax advisors for guidance regarding specific situations.

The information in this publication applies to state and local sales and use taxes administered by the Department, but not to any sales or use taxes that the Department does not administer for any home-rule cities. Please contact any applicable home-rule city directly for information about their sales and use taxes.

For information about general licensing, collection, and filing requirements, please see the *Colorado Sales Tax Guide*.

## Dining establishments

Dining establishments subject to the requirements discussed in this publication include:

- restaurants
- social clubs
- caterers
- cafes
- nightclubs
- carryout shops
- lunch counters
- cabarets
- push carts
- cafeterias
- resorts
- food trucks
- hotels
- snack bars
- any other places of business at which prepared food or beverages are regularly sold

## Mobile food vendors and caterers

Mobile food vendors and caterers making sales of food or drink in Colorado are subject to sales tax licensing, collection, and filing requirements in the same manner as any other dining establishment. They must collect and remit all state and state-administered local sales taxes applicable to the location at which they deliver food and drink to customers. For additional information about local tax rates and registration with the Department to collect local taxes, please visit:

- [Colorado.gov/pacific/tax/sales-and-use-tax-rates-lookup](https://colorado.gov/pacific/tax/sales-and-use-tax-rates-lookup)
- [Colorado.gov/pacific/tax/add-locations-sites-your-sales-tax-account](https://colorado.gov/pacific/tax/add-locations-sites-your-sales-tax-account)

## Retirement communities

The information in this publication does not apply to food, food products, snacks, beverages, or meals provided to retirement community residents for consumption within the retirement community. All such items are exempt from sales and use tax. Retirement communities that qualify for this exemption include assisted living residences, independent living facilities, and nursing care facilities as such residences and facilities are defined in section 39-26-707(2.5), C.R.S.

## Sales by dining establishments

In general, sales tax is imposed and calculated on the full amount paid by a customer for prepared food or drink served or furnished by dining establishments. Taxable food sales includes all prepared food and food marketed for immediate consumption furnished or served for consumption at tables, chairs, counters, or from trays, glasses, dishes or tableware provided by the dining establishment. Sales tax applies to the cost of all beverages served or furnished by dining establishments, including alcoholic beverages.

The following sections provide additional information about the imposition and calculation of sales tax on sales made by dining establishments.



### Coupons and discounts

The tax treatment of any coupon that reduces the amount charged by a dining establishment depends on the type of coupon presented.

#### Store coupons

A store coupon, issued by the dining establishment, whereby the dining establishment reduces the sales price of an item, does reduce the taxable price charged. Tax is due on the amount actually paid by a customer. Any coupon that entitles the dining establishment to reimbursement from another party is not a store coupon.

#### Non-store coupons

A non-store coupon, issued by anyone other than the dining establishment, that entitles the dining establishment to reimbursement by the issuer, does not reduce the taxable price, since the dining establishment still receives the full price of the item sold. Sales tax is due on the full selling price without reduction for the amount of the coupon.

### Cover charges

In general, cover charges are included in the taxable amount charged to a customer. However, cover charges are not taxable when they are for services or entertainment and are separately stated on the bill. A cover charge that entitles the customer to both food and services or entertainment is subject to tax.

### Employee meals

Meals provided to employees of dining establishments at no charge, or at a reduced charge, are exempt from both sales and use tax.

### Delivery charges

Delivery charges, whether charged by the dining establishment or a third-party meal delivery service, are not taxable if both of the following conditions are met:

- 1) The delivery charge is separable from the sales of food or drink.
- 2) The delivery charge is separately stated on the bill.

If the delivery charge is not both separable and separately stated on the bill, it is included in the taxable price.

Delivery charges are separable from the sales transaction if delivery is performed after the taxable property or service is offered for sale and the seller allows the purchaser the option to either pickup up the food themselves or to have the food delivered using the seller's delivery services.

State sales tax and state-administered local sales taxes are generally determined based on the location of delivery. For additional information about the sourcing of sales for sales tax purposes, please see the *Colorado Sales Tax Guide*.

### Tips and gratuities

Tips and gratuities are not subject to sales tax if the total amount of the tip or gratuity is distributed to the person(s) who actually provided the service, such as a server or bartender. Tips and gratuities that are not subject to tax may include cash tips, charge tips, banquet tips, and tips added to the sales check by the dining establishment at a flat rate.

Any amount that is not distributed by the dining establishment to the persons who actually render the service is included in the taxable charge to the customer.



### Purchases by dining establishments

Dining establishments make various purchases for their business operations, some of which are subject to tax and some of which may be tax-exempt. In general, a dining establishment must pay sales or use tax on any item it purchases for its own use, but will not pay tax on the purchase of items that it will resell to customers. Instead, the dining establishment will collect sales tax from customers when those items are resold.

#### Items purchased for resale

In general, a dining establishment will not owe sales or use tax on any item it purchases for resale to customers in an essentially unaltered condition. For example, if a restaurant purchases canned soda or potato chips in individual, serving size bags for resale, the dining establishment will not pay sales tax on its purchase. Instead, the dining establishment will collect sales tax from its customers when it resells the canned soda or potato chips.

#### Food ingredients

In general, purchases of ingredients by dining establishments are not subject to sales tax when the ingredients purchased are intended to become an integral or constituent part of a food product that is intended for human consumption. The exemption also applies to dining establishments' purchases of tangible personal property that does not become an integral or constituent part of a food product if the purchased property satisfies all three of the following requirements:

- 1) The property is a chemical, solvent, agent, mold, skin casing, or other like material.
- 2) The property is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition.
- 3) The property is directly utilized, consumed, dissipated, or destroyed, to the extent that it is rendered unfit for further use, in the processing of a food product intended for human consumption.

### Ice

The purchase of ice by a dining establishment may be taxable depending on how the ice will be used. For example, the purchase of ice by a dining establishment is tax-exempt if the ice is used as a component part of a beverage or used solely to supply all or a part of the water content of sausage or luncheon meats.

Ice purchased and used by a dining establishment for any purpose other than as an ingredient or component part of a finished food product is taxable and the dining establishment must pay sales or use tax on the acquisition of the ice.

#### Items given to customers free of charge

If a dining establishment gives food or drink to customers free of charge, as samples or promotions, such items have not been resold and the dining establishment is considered to be the user and consumer of the food or drink. Therefore, the dining establishment's purchase of the food, drink, and any ingredients thereof do not qualify for the exemptions discussed on this page. The dining establishment must pay use tax on a *Consumer Use Tax Return* (DR 0252) for any items the dining establishment purchased tax-free for resale, but gave to customers free of charge.

Dining establishments are not required to pay use tax on any food or drink given free of charge to employees of the dining establishment.



### Containers, Bags, and Other Articles

Purchases of containers, bags, and other articles by a dining establishment may be subject to sales and use tax. The purchase of bags, containers, and other articles by a dining establishment are exempt from sales and use tax if all five of the following conditions are met:

- 1) The item is furnished to the customer along with the purchase of food, meals, or beverages.
- 2) The item is necessary for the transfer of food, meals, or beverages to the customer.
- 3) The item becomes the property of the customer.
- 4) No separate charge is made to the customer for the item.
- 5) Sales tax is paid on the retail sale of the food.

Bags, containers, and other articles that do not meet all of the above criteria are nonessential to the customer, and sales or use tax must be paid by the dining establishment when purchasing such items.

The following table contains examples of items that are nonessential to customers and taxable when purchased by dining establishments, and examples of items that are essential for customers and tax-exempt when purchased by dining establishments, so long as all of the conditions listed above are met. The following lists are not exhaustive. See Department Rule 39-26-707 for additional information

<i>Taxable nonessential items</i>		<i>Tax-exempt essential items</i>
<ul style="list-style-type: none"> <li>➤ Utensils</li> <li>➤ Skewers</li> <li>➤ Bibs</li> <li>➤ Placemats, tray liners, and tablecloths</li> <li>➤ Sacks</li> <li>➤ Carryout containers for leftover food sold for immediate consumption</li> <li>➤ Condiments, including ketchup, mustard, relish, and spices that are not incorporated into a prepared meal at the time it is transferred to the consumer but are provided separately, such as at a convenience counter</li> </ul>	<ul style="list-style-type: none"> <li>➤ Straws</li> <li>➤ Toothpicks</li> <li>➤ Stirring sticks</li> <li>➤ Cup sleeves</li> <li>➤ Napkins and towelettes</li> </ul>	<ul style="list-style-type: none"> <li>➤ Plates, cups, or bowls (and lids for such items) on, or in which, unwrapped or unpackaged hot or prepared food and beverages are served to the consumer</li> <li>➤ Cups used in vending machines dispensing beverages</li> <li>➤ Disposable containers or packaging material on, or in which, food is transferred to the customer, including pizza delivery boxes, baskets, boxes, sleeves for french fries, buckets, clamshells, or other containers if the dining establishment cannot transfer the food to the consumer without such item</li> </ul>



### Gas and electric services

Under Colorado law, gas and electric services furnished and sold for commercial consumption are taxable, but sales of gas and electricity for use in processing, manufacturing, and all industrial uses are exempt. Gas and electricity used by dining establishments to prepare meals or beverages are exempt, but dining establishments must pay sales tax on gas and electricity purchased and used for any other purpose.

Because dining establishments typically purchase gas and electricity for both exempt and non-exempt uses, a dining establishment will generally pay tax on the full amount charged for the gas and electric services they purchase, but can then claim a credit for the tax paid on the gas and electricity used to prepare food and beverages. A dining establishment may claim a credit only if it paid the full sales tax on their utility bills and the utilities were used to process food that is subject to the Colorado sales tax when sold.

Credit typically must be claimed on an annual basis on the *Colorado Retail Sales Tax Return* (DR 0100) the dining establishment files for the month of January. The credit is claimed on line 9 of Schedule A of the DR 0100 and allowed as a deduction from taxable sales. To calculate the amount of the deduction, dining establishments must complete a *Retail Food Establishment Computation Worksheet for Sales Tax Deduction for Gas and/or Electricity* (DR 1465). The dining establishment must submit a copy of the completed DR 1465 to the Department per the instructions on the form.

### Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to dining establishments. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

#### Statutes and regulations

- § 39-26-102, C.R.S. Definitions.
- § 39-26-104, C.R.S. Property and services taxed.
- § 39-26-707, C.R.S. Food, meals, beverages, and packaging - definitions.
- Rule 39-26-102(4.5).
- Rule 39-26-707. Articles and Containers.
- Special Rule 13. Eating and Drinking Establishments.
- Special Rule 18. Transportation Charges.
- Special Rule 19. Gas and Electric Services.
- Special Rule 21. Gifts, Premiums, and Prizes.
- Special Rule 23. Ice.

#### Forms and guidance

- [Colorado.gov/Tax](https://colorado.gov/Tax)
- [Colorado.gov/tax/sales-use-tax](https://colorado.gov/tax/sales-use-tax)
- [Colorado.gov/pacific/tax/sales-and-use-tax-rates-lookup](https://colorado.gov/pacific/tax/sales-and-use-tax-rates-lookup)
- [Colorado.gov/pacific/tax/add-locations-sites-your-sales-tax-account](https://colorado.gov/pacific/tax/add-locations-sites-your-sales-tax-account)
- *Colorado Retail Sales Tax Return* (DR 0100)
- *Retail Food Establishment Computation Worksheet for Sales Tax Deduction for Gas and/or Electricity* (DR 1465)