

Dining and Beverage Industry

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PREFACE

This publication is designed to help you understand California's Sales and Use Tax Law as it applies to businesses that sell meals, or alcoholic beverages, or both—such as restaurants, bars, hotels, and catering operations. You will also find information on complimentary food and beverages provided to guests at lodging facilities.

If you cannot find the information you are looking for in this publication, please call our Taxpayer Information Section at 800-400-7115. Customer service representatives are available to answer your questions weekdays between 8:00 a.m. and 5:00 p.m. (Pacific time), except state holidays.

This publication complements [publication 73](#), *Your California Seller's Permit*, which includes general information about obtaining a permit; using a resale certificate; collecting and reporting sales and use taxes; buying, selling, or discontinuing a business; and keeping records. Please also refer to our [website](#) or the [For More Information](#) section of this publication for the Board of Equalization (BOE) regulations and publications referenced in this publication.

We welcome your ideas on improving this or any other BOE publication. Please send your suggestions to:

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Note: This publication summarizes the law and applicable regulations in effect when the publication was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, the decision will be based on the law and not on this publication.



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SOME OF YOUR SALES MAY NOT BE TAXABLE

Although food products sold by restaurants, bars, hotels, catering operations and similar establishments are generally taxable, there are some food sales by those establishments that are not subject to tax.

For information on these establishments' nontaxable food product sales, please see [Regulation 1603, Taxable Sales of Food Products](#), visit our [website](#) or call our [Taxpayer Information Section](#). This regulation explains the availability of tax exemptions for the following:

- Student meals
- Sales of meals by religious organizations
- Meal and food sales by such institutions as hospitals
- Meal programs for low-income elderly persons
- Meals delivered to homebound elderly or disabled persons
- Meals and food products served to condominium residents age 62 or older
- Sales to air carriers engaged in interstate or foreign commerce

In addition, [Regulation 1597, Property Transferred or Sold by Certain Nonprofit Organizations](#), and [publication 18, Nonprofit Organizations](#), explain how tax applies to sales of food by nonprofit youth organizations and parent-teacher organizations.

RESTAURANTS, BARS, HOTELS, AND SIMILAR ESTABLISHMENTS

This section includes information on the taxability of food and beverage sales in restaurants and similar establishments. See [Other Tax Issues](#), for information on:

- Employee meals
- Self-consumed and complimentary food and beverages
- Items that are not reuseable sold with meals
- Tips, service charges, and cover charges
- Two meals for the price of one

If you would like information on the taxability of other types of sales, such as greeting cards, coffee mugs, promotional items, and so forth, please refer to [publication 73](#), *Your California Seller's Permit*.

Introduction

The discussion of the taxability of food and beverage sales is divided into two categories:

- Food and beverages sold for consumption at your place of business, which are generally taxable (see below), and
- Food and beverages sold to go, which may or may not be taxable (see Food sold to go).

See [Nontaxable sales](#) for information on sales to the U.S. government, sales for resale, and sales of cold food products that are not suitable for consumption at your place of business.

Food sold for consumption at your place of business

Tax generally applies to sales of food and beverages if those items are served for consumption at your place of business.

You are considered to have a place of business where customers may consume their purchases if, for example:

- You provide tables and chairs or counters for dining, or provide trays, glasses, dishes, or other tableware; or
- You are located in a shopping mall and are near dining facilities provided by the mall. In this example, you are located in or near a food court or near an area where tables and chairs are provided for dining.

Food and beverages are considered served if they are intended to be eaten at your place of business or if they are provided on, or in, an individual returnable container from which they can be eaten.

It does not matter whether a food product or beverage is sold à la carte or as part of a meal. If it is sold for consumption at your place of business, it is generally subject to tax. A meal is a combination of food products, or a combination of food products and edible nonfood products (such as carbonated or alcoholic drinks), sold for a single price.

Food sold to go

When food is sold on a to go or take-out basis, the taxability of the sale will depend in part on whether your sales meet the requirements under the 80/80 rule.

80/80 rule

The 80/80 rule applies to your business if:

- More than 80 percent of your business's gross receipts come from the sale of food products (note: alcoholic and carbonated beverages, while taxable, are not considered food products); and

- More than 80 percent of your retail food product sales are taxable because they constitute:
 - Sales of food products that you furnish, prepare, or serve for consumption at your place of business (see [Food sold for consumption at your place of business](#)); or
 - Sales of meals or hot prepared food products (see [Hot prepared food products other than beverages](#)); or
 - Sales of food products by a “drive-in.” “Drive-ins” generally offer food products ordinarily sold for immediate consumption at or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products, even though they may be sold to go.

It is especially important to test for the 80/80 rule if you have just acquired a food service business or started a new food service business. It is important to also test for the 80/80 rule if you have recently changed the product mix in an ongoing business or if there has been a change in how you serve food. For example, you may have started selling more hot prepared food products or extra seating is being provided to customers outside in good weather, thereby increasing the percentage of food served for consumption at your place of business.

Evaluation for the 80/80 rule is done on a location-by-location basis. Thus, if you own multiple locations, one location may fall under the 80/80 rule and another location may not. Each location must be considered separately. Combination locations such as restaurant-bakeries may be treated differently. (See the [Appendix](#), for more information on how to test for the 80/80 rule.)

To-go sales that come under the 80/80 rule

Although both criteria of the 80/80 rule may be met, you may elect to separately account for the sale of to-go orders of cold food products. You must report and pay tax on all food and beverages sold to go unless:

- The sale is nontaxable, see [Nontaxable sales](#), or.
- You make a special election not to report tax on to-go sales even though your sales may meet both criteria of the 80-80 rule. Such sales include:
 - Cold food products, and
 - Hot bakery goods and hot beverages that are sold for a separate price.

Sales of those products must be separately accounted for and substantiated by supporting documents, such as guest checks and cash register tapes. The cash register should have a separate key for cold food sold to go or some other way of denoting such sales. Without adequate documentation, you are liable for tax on such sales. If your sales meet both criteria under the 80/80 rule and you make this special election, you will report to-go sales in the same manner as those who do not meet both criteria under the 80/80 rule (see below).

To-go sales if you do not come under the 80/80 rule

Items sold à la carte

The following information applies only to items sold à la carte. For information on sales of combination packages (packages that include two or more items sold for a single price), see [Combination packages](#).

Beverages

Sales of the following beverages are not taxable when sold for a separate price to go:

- Hot beverages, such as coffee, hot tea, lattes, mochas, and hot chocolate. *Note:* Hot soup, bouillon, and consommé are not considered hot beverages. Their sale is taxable (see [Hot prepared food products other than beverages](#)).
- Noncarbonated beverages, such as fruit drinks, milk, and iced tea.

Sales of the following beverages are always taxable:

- Carbonated beverages such as soda or sparkling water
- Alcoholic beverages

Cold food products (other than cold beverages)

Cold food products include cold sandwiches, milkshakes, fruit smoothies, ice cream, cold salads, cold bakery items, and so forth.

A cold food product sold individually and to go is not taxable. The sale of a cold food product sold as part of a combination package may be taxable (see Combination packages).

Example. If you sell an egg salad sandwich to go, you are not liable for tax on the sale. However, if you sell an egg salad sandwich as part of a combination package, you may be liable for tax (see example below).

Hot prepared food products (other than beverages)

To-go sales of hot prepared food products are taxable see Exception for hot bakery items.

A food product is considered a hot food product if it is heated to a temperature above room temperature. Examples of heating a food product above room temperature include; grilling a sandwich, dipping a sandwich in hot gravy, or using infrared lights, steam tables, or microwave ovens. Examples of hot prepared food products include hot sandwiches, pizza, barbecued chicken, soup, consommé, bouillon, steak, and so forth.

Food is considered "hot" even if it has cooled by the time of sale since it was intended to be sold as a hot food.

If your customer buys a cold food product to go and heats the food product in a microwave oven that is accessible to the public, the sale is not taxable. It is considered a sale of a cold food product to go.

Exception: Sales of hot bakery goods are not taxable when sold to go, unless they are sold as part of a combination package (see below).

Combination packages

Combination packages are two or more items sold together for a single price. The taxability of your sale depends in part on the type of combination package being sold.

Packages that include hot items

If a combination package sold to go includes a hot prepared food, such as a hot sandwich or soup, or hot beverage, such as coffee or hot chocolate, its sale is taxable.

Examples. You sell a combination of hot coffee and a doughnut for a single price of \$1.50 or a combination hot pastrami sandwich and iced tea for \$4.50. Because each combination package includes a hot food or hot beverage, the selling price is taxable.

Packages that do not include hot items

If a combination package sold to go includes cold food and a carbonated beverage, the portion of the selling price that represents the carbonated beverage is subject to tax.

If a combination package sold to go includes cold food and a cold beverage other than a carbonated or alcoholic beverage, the sale of the package is not taxable.

Examples. You sell a value package of a cold sandwich, chips, and iced tea for a single price to go—the sale is not taxable. You sell the same package with a carbonated soda—the portion of the selling price representing the charge for the soda is taxable.

Exception—returnable containers. If you sell a combination of cold food products in an individual returnable container from which the individual serving is intended to be eaten (for example, a glass plate), the sale is subject to tax. In this instance, the sale is considered a sale of a served meal, which is generally taxable.

Nontaxable sales

Do not report tax on:

- Sales of cold food products sold *in a form that is not suitable for consumption on the premises and not eaten on the premises*. A cold food product is not “suitable for consumption on the premises” if it requires further processing by the customer, or is sold in a size not ordinarily consumed by one person. For example, the sale of a frozen pizza is not taxable because it requires further processing by the customer. The sale of a quart of potato salad, a quart of ice cream, or a whole pie would not be taxable because those amounts would not ordinarily be consumed by one person when sold without eating utensils or dishes for consumption on the premises.
See [Regulation 1603](#), *Taxable Sales of Food Products*, for more examples of food not suitable for consumption on the premises.
- Sales that are not subject to tax, such as sales to the U.S. government and sales for resale.

Banquet charges

Facility usage

Note: The following information applies to restaurants, hotels, and similar establishments.

Charges by restaurants, hotels, and similar establishments for the use of premises where meals, food, or drinks are served are taxable, whether or not the charge is separately stated on the invoice. For example, if you charge a \$100 fee for the use of a banquet room for a holiday party, the fee is taxable.

Charges for serving customer-furnished food and beverages

Charges for cutting and serving customer-furnished food and beverages are taxable. For example, a “corkage fee” for opening customer-furnished wine is taxable.

Dance floors, podiums, stage equipment

If you charge customers, who are staging an event where food and drink are being served, for the use of property that is not used in connection with the furnishing or serving of meals, food, or drinks, you are considered a lessor of the property. Examples are, charges for the use of special lighting for guest speakers, sound or video systems, dance floors, stages, and decorative props related solely to optional entertainment, and so forth.

As the lessor of the property, you may or may not be required to report and pay tax on charges to your customers for the use of that property. If you paid California sales or use tax on the purchase or rental of the property, tax does not generally apply on charges made to your customer for the use of the property. If you did not pay California sales or use tax on the purchase or rental of the property, the rental charges to your customer are generally taxable. Please see [Regulation 1660](#), *Leases of Tangible Personal Property-In General*, and [publication 46](#), *Leasing Tangible Personal Property*.

Items used to serve meals, food, and drinks

You are considered a consumer of tangible personal property normally used in the furnishing and serving of meals, food, or drinks—such as tables, chairs, glasses, eating utensils, dishes, linens, and so forth. As a consumer, you cannot issue a resale certificate to purchase or rent such items. In this example, you are considered to be using those items in connection with the sale of meals, rather than renting them to your customer.

CATERERS

This section includes information on the taxability of food and beverage sales made by caterers. Under the Sales and Use Tax Law, you are considered a caterer if you serve meals, food, or drinks on the premises of your customer, or on premises supplied by the customer. You are not considered a caterer if you sell food to go or merely deliver food. That is, you do not provide any dishes, flatware, and so forth, to serve food. See [Restaurants, Bars, Hotels, and Similar Establishments](#) for information on the taxability of such sales.

Note: This section does not apply to sales of food and beverages to guests at hotels, bed and breakfast inns, and other lodging facilities if the food and beverage charges are included in the price of the room. See [Complimentary Food and Beverages—Hotels and Similar Lodging Facilities](#), for information on the taxability of such sales.

Application of tax for catering

Food and drinks

Charges by caterers for food and drinks are taxable.

Tableware, table linens, and tables

Tableware includes items such as dishes, cutlery, and glassware used for serving and eating meals at a table. If you charge a lump-sum amount for meals that includes charges for the use of tableware, table linens, tables, and other items used in connection with preparing and serving meals, your total lump-sum charge is taxable.* In addition, you may not issue a resale certificate to purchase or rent tableware, table linens, tables, and so forth, because you are considered to be using these items in connection with the sale of the meals, rather than renting them to your customer.

However, if you separately state or itemize charges for the rental of these items (dishes, tables, and so forth), you are considered to be leasing the property to your customer. If you paid sales or use tax when you purchased or rented those items, tax does not apply to the rental to your customer. If you did not pay tax to your supplier when you purchased or rented the property, the itemized rental charges to your customer are taxable. Please see [Regulation 1660, Leases of Tangible Personal Property-In General](#), and [publication 46, Leasing Tangible Personal Property](#).

Note—disposable items. Charges for disposable tableware—such as paper plates, napkins, plastic utensils, glasses, cups, and place mats—are taxable. This is true whether or not your billings are itemized.

Disposable tableware is considered sold with meals, food, or drinks, and may be purchased with a resale certificate.

*“Other tangible personal property used to serve food and beverages” includes tents, canopies, subflooring, generators, air compressors, lighting, electrical fixtures, and so forth, which provide—or are an integral part of—temporary shelter for the service of meals, food, or drinks.

Labor charges and preparation charges

Charges for the serving and preparation of food and drinks—whether performed by you, an employee, or a subcontractor—are taxable. Tax applies even if you do not provide the food and drinks.

Charges for serving customer-furnished food and beverages

Charges for cutting and serving customer-furnished food items, such as wedding cakes, are taxable. Similarly, charges for opening and serving customer-furnished beverages are taxable. For example, a “corkage fee” for opening and serving customer-furnished wine is taxable.

Dance floors, stage equipment, and so forth

If you paid sales or use tax on the purchase or rental of a dance floor, podium, sound/video system, or other such equipment; that is, items unrelated to serving or furnishing meals, food, or drinks, tax does not generally apply to the rental of such property to your customers. However, if you did not pay tax to your supplier when you purchased

or rented the property, the rental charges to your customer are taxable. Please see [Regulation 1660](#), *Leases of Tangible Personal Property-In General*, and [publication 46](#), *Leasing Tangible Personal Property*.

Parking attendants, checkroom attendants, security guards, and entertainment

Charges for the above personnel are not subject to tax, provided those persons do not also participate in the service of food and drinks.

Miscellaneous tangible personal property

Separately stated charges for miscellaneous items such as printed programs and menus, floral or balloon decorations, ice sculptures, pads of paper, pens, flip charts, and so forth are subject to tax. Charges for photographs are also taxable without deduction for the photographer's hourly charges. For more information, please see [publication 68](#), *Photographers, Photo Finishers, and Film Processing Laboratories*.

Coordinator fees

Charges for professional planning or coordinating of events are taxable if the fees are charged in connection with the sale of tangible personal property. For example, if the main purpose of planning a wedding reception is the preparation and furnishing of food and beverages, fees charged for coordinating the reception are taxable.

Other considerations

Sales for resale

Tax does not apply if you prepare or serve food, meals, or drinks to a buyer who will sell those items at retail and report tax on their sale. In such instances, the buyer should provide you with a valid resale certificate. Please see [Regulation 1668](#), *Sales for Resale*, and [publication 103](#), *Sales for Resale*.

Sales to the U.S. government

Sales to the U.S. government are exempt from tax. To support your exempt sale, you must keep a U.S. government purchase order showing that the sale was made directly to the U.S. government. If the purchase is paid by credit card, keep copies of the sales invoice and the credit card receipt to support your claimed exemption. The credit card must belong to the U.S. government. A sale paid with a personal credit card does not qualify as an exempt sale to the U.S. government—even if the person paying will be reimbursed by the government. For more information, see [publication 102](#), *Sales to the United States Government*.

Meals served at a school

Your sales are taxable if you are:

- Hired by a school, school district, or student organization to sell meals and other food products to students at a school, and
- Paid directly by the students or their parents—rather than the school—for the meals and other food products.

However, your sales are not taxable if your contracts and records show that all of the following conditions are met:

- The facilities you use to serve lunches to the students are routinely used by the school for other purposes, such as sporting events and other school activities during the remainder of the school day;
- The fixtures and equipment you use to prepare and serve the meals are owned and maintained by the school; and
- The students purchasing the meals cannot distinguish between you or your employees from the other employees at the school.

For additional information on student meals, please see [Regulations 1603](#), *Taxable Sales of Food Products*, and [Regulation 1506](#), *Miscellaneous Service Enterprises*.

Caterer's Invoice Example A

Catering 4 U 4 Star Food & Service

125 Meals @ \$24 each	\$3,000.00 ¹
Service charge on meals 20%	600.00
Centerpieces, balloons, party favors	1,200.00
Dance floor rental	<u>500.00²</u>
Subtotal	5,300.00
Tax (\$5,300 x 8.25%)	<u>437.25</u>
Total	<u>\$5,737.25</u>

In this example, all charges to the customer are subject to tax.

Note: Even though this and other examples show tax calculated at a rate of 8.25 percent, you must use the rate in effect at your business location. Please see [publication 71](#), *California City and County Sales and Use Tax Rates*, for current tax rates.

1. Meals

There is no separate charge on the invoice for items used in connection with preparing and serving the meals. Those charges are included as part of the price for the meal. If you charge a lump-sum amount for meals that includes charges for the use of tableware, table linens, tables, and other such items used in connection with preparing and serving meals, your total lump-sum charge is taxable (see [Tableware, table linens, and tables](#)). Catering 4 U may not issue a resale certificate when they purchase or rent such items.

2. Dance floor rental

This example assumes that Catering 4 U issued a resale certificate to their supplier for rental of the floor. Consequently, tax applies to the invoice charge for the floor rental. If Catering 4 U had paid tax on the floor rental, tax would generally not apply to the \$500 rental charge on the invoice.

Please see [Regulation 1660](#), *Leases of Tangible Personal Property-In General*, and [publication 46](#), *Leasing Tangible Personal Property*.

Caterer's Invoice Example B

Ye Olde Wedding Chapel

125 Meals @ \$18 each	\$2,250.00
Service charge on meals 20%	450.00
China, crystal, silver, and linen rental	1,000.00 ¹
Centerpieces, balloons, party favors	<u>1,200.00</u>
Subtotal	4,900.00
Tax (\$4,900 x 8.25%)	<u>404.25</u>
Security officer	<u>150.00²</u>
Total	<u>\$5,454.25</u>

In this example, tax applies to all charges except those for the reception hall rental and security officer.

1. China, crystal, silverware, and linen rental

In this example, the caterer has itemized the rental charge for the china, crystal, silverware, and linens used at the event; the rental charge for those items is not included in the meal charge. We have assumed that the caterer issued a resale certificate for his or her purchase or rental of those items. As a result, the itemized charge to the customer

is subject to tax. As explained in [Tableware, table linens, and tables](#), if you do not pay tax to your supplier when you purchase or rent such property, the itemized rental charge to the customer is taxable. If you do pay sales or use tax when you purchase or rent those items, tax generally does not apply to the itemized rental charge to the customer.

2. Security officer

Charges for security officers are not subject to tax, provided those persons do not also participate in the service of food and drinks.

PLACES WHERE ADMISSION IS CHARGED

This section includes information on the taxability of food and beverage sales in places where admission is charged. If you cannot find an answer to your questions in this section, please call our [Taxpayer Information Section](#). Please see, [Other Tax Issues](#) for information on employee meals; complimentary and self-consumed meals and drinks; and tips and other charges.

Taxability of food and beverage sales

In general, tax applies to sales of food products that are sold within a place where admission is charged and the food is for consumption at that place. Places where admission is charged include sports and music events, amusement parks, county fairs, swap meets and trade shows.

There are some exceptions where tax may not apply to sales made within a place where admission is charged. Those exceptions include, but are not limited to, the following:

- *Sales made by qualified nonprofit youth organizations or nonprofit parent-teacher organizations.* Such organizations should refer to [publication 18, Nonprofit Organizations](#), for more information.
- *Cold food products sold in a form not suitable for consumption on the premises.* A cold food product is not “suitable for consumption on the premises” if it requires further processing by the customer, or is sold in a size not ordinarily consumed by one person. For example, the sale of unbaked pizzas, cookie dough, canned jams, and loaves of bread would not be taxable because those items require further processing by the customer or are sold in a size not ordinarily consumed by one person. The sale of a quart of milk, a quart of ice cream, or a whole pie would not be taxable because those amounts would not ordinarily be consumed by one person. Additional examples can be found in [Regulation 1603, Taxable Sales of Food Products](#).

Places where admission is charged—a closer look

There are instances where sales are made in places that do not qualify as places where admission is charged. Examples include the following: national and state parks, campgrounds, and recreational vehicle parks; places where admission is based on membership dues or the use of a student body card; and places where no entrance charge is made for spectators, such as golf courses and bowling alleys. When the place does not qualify as a place where admission is charged, some food sales will be taxable, while others will not. Because of the variety of rules that apply, you should contact our Taxpayer Information Section for advice on the taxability of your sales.

COMPLIMENTARY FOOD AND BEVERAGES—HOTELS AND SIMILAR LODGING FACILITIES

Who should read this section?

This section is for those who operate a hotel, motel, bed and breakfast inn, or other lodging establishment and provide complimentary food and beverages to guests as part of the guests' room rental.

American Plan hotels. The information provided in this section does not apply to American Plan hotels that charge guests a fixed daily rate for guest room accommodations, all meals, and service. The sales of meals by American Plan hotels are subject to the provisions that apply to restaurants and similar establishments (see [Restaurants, Bars, Hotels, and Similar Establishments](#)).

Sales by institutions. For information on meal and food sales by institutions such as hospitals, see [publication 45, Hospitals and Other Medical Facilities](#). For information on meals and food products served to condominium residents age 62 or older, see [Regulation 1603, Taxable Sales of Food Products](#).

Complimentary food and beverages

You are considered to be providing "complimentary food and beverages" if you:

- Provide food and beverages, including nonalcoholic and alcoholic beverages, to guests at no additional charge;
- Do not segregate food and beverage charges from room charges on your guests' bills; and
- Do not give the guests an option to refuse food and beverages in return for a discounted room rental.

General application of tax

If you operate a lodging facility and make sales as described above, you are considered a consumer or retailer.

If you are a retailer, you are liable for tax on your sales of food and beverages to your guests.

If you are a consumer, you are not liable for tax on your sales of food and beverages to your guests, but tax does apply to your purchases of:

- Nonfood products, such as alcoholic beverages and carbonated beverages, for example, soda or sparkling water.
- Containers that are not reusable and other items provided with the food and beverages such as, to-go boxes or paper cups and plastic utensils.
- Meals from outside vendors or restaurants. If you prepare the meals, tax does not apply to your purchases of ingredients that are food products.

Are you a consumer or a retailer of complimentary food and beverages?

The decision table below will help you to determine whether you are considered a retailer or consumer of complimentary food and beverages. In some cases, you will be referred to a mathematical formula to help you make the determination.

Note: You are considered a retailer and do not need to use the following decision table when:

- Your guests pay more than their complimentary allowance for food and beverages. For example, they buy an additional bottle of wine.
- You are compensated by non-guests for "complimentary" food and beverages.

In the above instances, you are liable for tax on your sales of food and beverages as described in [Restaurants, Bars, Hotels, and Similar Establishments](#).

Decision Table

- 1. Do you provide coupons or similar documents that are exchanged for the complimentary food and beverages?**
Yes (go to next step) No (see formula)
- 2. Are the complimentary meals provided in an area of the hotel where food and beverages are served on a regular basis to the public (restaurant)?**
Yes (go to next step) No (see formula)
- 3. Is the eating area (restaurant) operated by the hotel? (As opposed to being operated by an outside vendor)**
Yes (go to next step) No (you are considered a consumer)
- 4. Is the guest specifically identified by name on the coupon or similar document?**
Yes (go to next step) No (you are considered a retailer)
- 5. Are the coupons or documents transferable?**
Yes (you are considered a retailer) No (you are considered a consumer)

Formula for determining consumer or retailer status

If the decision table above directed you here, perform the following percentage test to determine whether the retail value of the complimentary food and beverages is incidental to the room rental.

$$\frac{\text{average retail value of complimentary food and beverages (ARV)}}{\text{average daily rate (ADR)}} = \quad \%$$

If the resulting percentage is 10 percent or less, the retail value of the complimentary food and beverages is "incidental" to the room rental, and you are considered a consumer. If the resulting percentage is greater than 10 percent, you are considered a retailer.

Before you start . . .

If your hotel has been in operation for less than one year, a slightly different calculation is used. Call our [Taxpayer Information Section](#) for assistance.

Concierge floors, club levels, and similar programs, are treated like independent hotels (separate from the hotels and lodging facilities in which they operate). The average daily rate and average retail value discussed below should be calculated based on the guest room accommodations to which the program privileges apply.

Step 1: Determine the average daily rate (ADR)

Divide the gross room revenue for the preceding calendar year by the number of rooms rented for that year.

Gross room revenue means the full charge to the hotel guest but does not include separately stated occupancy taxes or revenue from contract and group rentals that do not qualify for complimentary food and beverages. "Gross room revenue" also does not include revenue from special packages (for example, New Year's Eve packages), unless it can be documented that the retail value of the food and beverages provided as a part of the package is 10 percent or less of the total package charge.

Step 2: Determine the average retail value (ARV) of the complimentary food and beverages

This means the total amount of the costs of the food and beverages for the preceding calendar year, marked up by 100 percent, and divided by the number of rooms rented for that year.

"Costs of complimentary food and beverages" includes charges for delivery to the lodging establishment but do not include discounts taken or sales tax paid to vendors.

Number of rooms rented for that year *means the total number of times all rooms have been rented on a nightly basis, provided the revenue for those rooms is included in the "gross room revenue."* For example, if a room is rented out for three consecutive nights by one guest, that room will be counted as rented three times when computing the ADR.

Step 3: Apply the formula

Divide the answer in Step 2 by the answer in Step 1. If the resulting percentage of the formula is 10 percent or less, your food and beverage costs are considered incidental and you are considered a consumer, rather than a retailer. If the result is more than 10 percent, you are considered a retailer and your sales are subject to tax measured by the fair retail value of similar food products sold to the general public. If you do not sell similar items to the general public, the amount subject to tax is the cost of the complimentary food and beverages plus at least a 100 percent markup.

Examples

The following example illustrates the application of the formula:

First: Determine the average daily rate

$$\begin{aligned} & \$257,000 \text{ (gross room revenue)} \\ & \quad 2,252 \text{ (rooms rented for the year)} \\ & \$257,000 \div 2,252 = \$114.12 \text{ (ADR)} \end{aligned}$$

Second: Determine the average retail value of complimentary food and beverages

$$\begin{aligned} & \$4,166.00 \text{ (cost of complimentary food/beverages)} \\ & \underline{+ 4,166.00 \text{ (100\% markup)}} \\ & \$8,332.00 \\ & \$8,332.00 \div 2,252 \text{ rooms} = \$3.70 \text{ (ARV)} \end{aligned}$$

Third: Divide the average retail value by the average daily rate

$$\$3.70 \div \$114.12 = 3.24 \%$$

In this example, because the percentage is 10 percent or less, the hotel is considered a consumer.

OTHER TAX ISSUES

Employee meals

If you furnish meals to employees and make a *specific charge* for those meals, the meal charges are taxable and must be reported on your sales and use tax return.

A *specific charge* is considered to have been made if one or more of the following conditions exist:

- The employee pays cash for meals consumed
- The value of the meals is deducted from the employee's paycheck
- The employee receives meals in lieu of cash to bring compensation up to legal minimum wage
- The employee has the option to receive cash for meals not consumed

There is no specific charge when a value is placed on the meals solely for payroll tax purposes for employees receiving the minimum wage or more.

Sales from hotel mini-bars

Mini-bars, located in rooms and suites rented to hotel customers, generally contain carbonated beverages, alcoholic beverages and various snack food items provided as a convenience to hotel guests. At checkout, guests are charged for items consumed from the mini-bars. When the items sold are cold food products, the sale to hotel guests is not taxable. However, sales of nonfood items, such as sodas, alcoholic beverages, and so forth, are taxable whether sold from hotel mini-bars or other hotel locations.

Facility fees charged by retailers other than restaurants, or hotels

Some businesses whose facilities are not used primarily for serving food and beverages may contract to provide facilities and food and beverages for events. For example, a zoo, winery, museum, or aquarium may contract to provide meals and facilities for a wedding, retirement party, or other event.

The facility fee is not subject to tax so long as:

- The charge for the facility is stated separately on the invoice, and
- The facility is used primarily for purposes other than serving meals and beverages.

Examples

A winery has a courtyard area designed for wedding receptions. In addition to charging for meals and drinks, the winery charges a fee for use of the courtyard. Since the courtyard is used primarily for serving meals and beverages, the fee for the use of the courtyard is taxable. However, if the bridal party rented the entire winery for the reception, separately stated charges for use of the facilities would not be taxable.

An aquarium has a café that it rents out for holiday parties. If the customer rents the café for the party, the charge for the use of the facility is taxable because the café is used primarily for serving food and beverages. However, if the customer rented the entire aquarium for the party, separately stated charges for the use of the aquarium would not be taxable.

A conference center rents facilities to individuals or companies for seminars/conferences. At the conferences, meals are optional and available at a separate charge. Assuming that the patrons pay the same rental rate whether or not meals are purchased, charges for rental of its conference center are not taxable.

Self-consumed and complimentary food and beverages

If you consume or give away food, noncarbonated beverages, or nonalcoholic drinks, you do not owe any tax for those items. However, if you consume or give away nonfood items, such as carbonated or alcoholic drinks, which you purchased without payment of tax, you must pay use tax, based on your cost of those items.

Example. A pizza parlor owner gives employees pizza and soda for their dinner break. The owner did not pay tax on the items because they were nontaxable or were purchased for resale. The owner does not owe use tax for the pizza, but does owe use tax on the cost of the carbonated beverage.

There are some instances where the donation of taxable items would not be subject to use tax. For example, donations of taxable items to certain charitable organizations are considered to be exempt from tax. For more information on donations to exempt charitable organizations, please see [Regulation 1669, Demonstration, Display, and Use of Property Held for Resale—General](#), or contact our [Taxpayer Information Section](#).

For most restaurants, bars, hotels, and similar establishments, a recordkeeping system similar to that described for complimentary meals and drinks (see [Recordkeeping](#)) will prove satisfactory in most cases when recording owner or employee self consumed merchandise.

Hotels and other lodging establishments that provide complimentary meals and beverages as part of room rental charges should retain additional records if they are required to apply the formula described in [Formula for determining consumer or retailer status](#). The records should document the figures used to apply the formula.

Items that are not reusable sold with meals

In general, you are considered the retailer of paper plates, toothpicks, disposable to-go containers, straws, plastic utensils, paper napkins, and similar items that are not of a reusable character that are furnished with the foods and beverages you sell. These items are considered to be included in the price for the food or beverage. Consequently, you can issue a resale certificate to purchase those materials.

Note: You owe tax on your purchases of these items when you are the consumer rather than the retailer of the food and beverages.

Tips, service charges, and cover charges

Tips, gratuities, and service charges

Payments of tips, gratuities, and service charges are not taxable if they are paid by customers on an entirely optional basis and are retained by employees. Generally, such a payment is optional if your customer adds the amount to the bill, or leaves a separate amount in addition to the actual amount due from your sale of meals, food, and drinks that include services.

Mandatory “tips” or required service charges, on the other hand, are taxable. In the case of banquets, any gratuities that are agreed to in advance are considered required, not voluntary, and as a result are subject to tax. For example, if your standard banquet agreement states “the suggested gratuity is 15%” and prior to the event, your customer agrees to this or some other negotiated amount, the gratuity is taxable.

For more information, please see [publication 115, Tips, Gratuities, and Service Charges](#).

Cover charges

Cover charges that customers may recoup in food and beverages are taxable, whether or not the customer actually recoups those charges. On the other hand, separate charges solely for admission or for a ticket to a place furnishing entertainment are not subject to tax.

Two meals for the price of one

If you accept two-for-one coupons or other discount coupons or cards that allow customers to purchase food or beverages at a reduced price, your tax liability is based on the amount received for the sale.

Examples

You serve two \$12 meals for the price of one under a dine-out plan and charge your customer a total of \$12 for both meals. Tax applies to the \$12 total, before the optional tip.

You serve a \$15 meal and an \$11 meal, and your customer gives you a coupon which indicates the cheaper of the two meals is free. You charge your customer \$15 for the two meals. Tax applies to the \$15, before the optional tip.

Your customer uses a dine-out plan that entitles the holder to receive a 50 percent discount off the regular meal price, with a maximum discount of \$4. Your customer orders a \$10 meal and you reduce the price by \$4. Tax applies to the \$6 charged for the meal, before the optional tip.

Note: If a dine out plan provides for any reimbursement from the promoter, that amount is subject to tax and must be included as part of total (gross) sales on your sales and use tax return. If, in the first example, you receive \$2 from the promotion agency for a redeemed coupon, sales tax applies to \$14—the total of \$12 received from the customer plus \$2 received from the promotion agency. For additional information on this type of promotional program, see [publication 113, Coupons, Discounts and Rebates](#).

Sales tax reimbursement

Although you are liable for paying the sales tax on your taxable retail sales, the law provides that you can be reimbursed by your customers for the tax. You can be reimbursed under one of the following conditions:

- Printed material directed to the purchasers such as a menu or advertisement, which includes a notice to the effect that sales tax will be added to the sales price of all items or certain items, whichever is applicable.
- Sales tax is shown on the sales check or other proof of sale.
- The agreement of sale expressly provides for such addition of sales tax.
- You post on the premises, in a location visible to purchasers, the amount of tax.

Sign posting requirements

Some bar operators include sales tax in the price of drinks sold and consumed at the bar, but add tax as a separately stated amount when the waiter serves the drink at a table or elsewhere on the premises.

If you sell drinks at a tax-included price throughout the premises, including bar, cocktail lounge, and dining room and want to claim a deduction for sales tax included, the BOE will consider that sales tax is included in the total selling price if you post a notice on your premises that reads substantially as follows:

All prices of taxable items include sales tax reimbursement computed to the nearest mill.

When selling drinks at a tax-included price at the bar and in the cocktail lounge only, or at the bar only, a sign similar to that above, which indicates the areas to which the sign applies, should be prominently displayed in the areas in which the drinks are served.

When adding tax separately to the price of drinks served by a waiter at a table or elsewhere, a statement should be included on the menu, or placed on the tables, reading substantially as follows:

Sales tax will be added to the price of all food and beverage items served.

When the same type of drink is sold at both tax-included and tax-added prices as described above, a strict and accurate segregation should be made of sales under each tax reimbursement method.

If you have collected too much tax from your customer

If you collect more than the required amount of tax for a sale, the excess amount must be returned to the purchaser or paid to the state.

Inventory controls

It is recommended that bar and restaurant owners pay special attention to inventory controls. In a highly competitive environment, lax handling of inventories can mean the difference between success or failure for a business. And, of course, good inventory controls minimize the possibility of additional tax assessments.

As a business operator, you must be able to account for merchandise that you have purchased for resale to your customers. It is important that your records of purchases for resale are accurate and complete and do not include supplies or other items not for resale.

To prevent losses that cannot be accounted for, you should also maintain inventory controls from the time goods are purchased until they are sold or used.

Inventory controls—bar operators

Some methods used for proper inventory control include the following:

- All deliveries are checked in, and the manager is present while delivery is being made.
- The bulk of liquor purchases are stored in a locked storeroom. Keys to the storeroom are in the possession of the bar owner, manager, or other designated responsible person only.
- Liquor issued from the storeroom is recorded as it is issued.
- A complete inventory of all bar merchandise is taken at least monthly, and the calculated cost of liquor sold is compared with the desired percentage of cost set as the goal.
- Purchases, as shown on invoices, are posted on an inventory card by brands, and checked off the card when issued to the dispensing bars. This provides a perpetual inventory which can be easily verified by frequent counts.
- A bar schedule is established for each bar. This consists of a definite number of bottles of each brand that should be constantly stocked at each bar (such as 4 quarts of Cutty Sark, 12 quarts of Bar Vodka, 1 bottle of Gran Marnier, and so forth).
- All empty bottles are retained at the bar. The bar manager, owner, or someone in charge replaces each empty with a full bottle of the same brand out of the storeroom.
- Banquet or service bars that can be locked are handled in a similar manner. The banquet bar, if not locked, is stocked with a scheduled number of bottles of each variety prior to each banquet, and removed thereafter.

Merchandise losses from theft, fire, or natural disaster

If you have lost merchandise as the result of shoplifting, robbery, internal theft, fire, or natural disaster, it is important that you be able to document those losses if you are audited. Proof may be in the form of a report from a private agency employed to track down losses, a police report, insurance claim, or other documentary evidence.

Note: Because sales tax is measured by sales, robberies of cash are not deductible for sales tax purposes. You are required to pay sales tax on taxable sales in the usual manner despite a loss of the proceeds from those sales.

Recordkeeping

Don't mix bar and restaurant receipts and purchases

If you operate a restaurant in conjunction with a bar, ensure that all purchases and sales for the restaurant operations are segregated in your books and records from the bar operations.

The bar and the restaurant usually have different profit margins. Accurate segregation of sales and costs of goods sold will help determine whether you are realizing the desired percentage of gross profits. It will also help detect any leakage or pilferage.

Complimentary meals and drinks

Keep a written record of your policy regarding complimentary drinks to customers and drinks consumed by employees. In addition, maintain a record of complimentary merchandise. There are several good reasons for this record keeping:

- Ownership controls over business operations are greatly improved.

- You are considered the consumer rather than the seller of these complimentary meals and drinks, and as a result are liable only for the tax on the cost of nonfood items that are given away (such as alcoholic beverages and carbonated soft drinks).
- It supports the amounts reported on returns, thus avoiding the use of estimates.

The types of records you use may vary from memo sales slips prepared at the time of issuance of free meals or drinks, to a record maintained on a daily basis. At the end of the reporting period, the total cost of the taxable items given away or consumed is computed and included in the sales and use tax return for that period as self consumed merchandise. Self-consumed merchandise is reported under “Purchases subject to use tax” on your sales and use tax return. Be sure to keep all records that show your computations.

Price changes and “happy hours”

Be sure to keep evidence of price changes, changes in the size of glasses, sales during “Happy Hours,” or other variations from your usual pricing practices.

If your business is audited, the auditor may prepare a “markup test” to determine whether recorded sales are essentially accurate. Price changes and changes in glass sizes may significantly affect the outcome of this test.

We suggest you keep the following records:

- *Changes in glass sizes.* Keep dated purchase invoices which indicate the period in which a different glass size was first put into service.
- *Price changes.* Retain old menus, or make a note in the records, showing the price change and date of the change. Cash register tapes or invoices should be retained as supporting documents.
- *Happy Hours.* “Happy Hour” is a period when drinks are sold at lower prices than during normal business hours. Retain menus, “Happy Hour” sale signs, and cash register tapes showing sales made during “Happy Hours.” These should be incorporated in your business records.
- *Size of the pour.* Establish the amount of the liquor served in cocktails—both on the stem and on the rocks—as part of your control procedure.

California seller’s permit

When you sell or lease merchandise, or other tangible personal property in California, even temporarily, you are generally required to register with the BOE for a seller’s permit to report and pay sales tax on your taxable sales. If you hold a seller’s permit, you can report and pay use tax on purchases made from out-of-state vendors or items purchased for resale that you do not sell but instead use in your business operations (under, Purchases subject to use tax).

Most businesses in the dining and beverage industry are required to hold a seller’s permit.

For assistance on seller’s permit requirements please see [publication 73](#), *Your California Seller’s Permit*, or call our [Taxpayer Information Section](#).

FOR MORE INFORMATION

For additional information or assistance with how the Sales and Use Tax Law applies to your business operations, please take advantage of the resources listed below.

TAXPAYER INFORMATION SECTION

800-400-7115

TTY: 711

Customer service representatives are available weekdays from 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays. In addition to English, assistance is available in other languages.

FIELD OFFICES

City	Area Code	Number
Bakersfield	661	395-2880
Culver City	310	342-1000
El Centro	760	352-3431
Fresno	559	440-5330
Irvine	949	440-3473
Norwalk	562	466-1694
Oakland	510	622-4100
Rancho Mirage	760	770-4828
Redding	530	224-4729
Riverside	951	680-6400
Sacramento	916	227-6700
Salinas	831	443-3003
San Diego	858	385-4700
San Francisco	415	356-6600
San Jose	408	277-1231
Santa Rosa	707	576-2100
Suisun City	707	428-2041
Van Nuys	818	904-2300
Ventura	805	677-2700
West Covina	626	480-7200
Out-of-State Field Offices		
Chicago, IL	312	201-5300
Houston, TX	281	531-3450
New York, NY	212	697-4680
Sacramento, CA	916	227-6600

INTERNET

www.boe.ca.gov

You can log onto our website for additional information—such as laws, regulations, forms, publications, and policy manuals—that will help you understand how the law applies to your business.

You can also verify seller's permit numbers on the BOE website (look for "Verify a Permit/License") or call our toll-free automated verification service at 888-225-5263.

Multilingual versions of publications are available on our [website](http://www.boe.ca.gov) at www.boe.ca.gov.

Another good resource—especially for starting businesses—is the California Tax Service Center at www.taxes.ca.gov.

FAXBACK SERVICE

Our faxback service, which allows you to order selected publications, forms, and regulations, is available 24 hours a day. Call 800-400-7115 and choose the fax option. We'll fax your selection to you within 24 hours.

TAX INFORMATION BULLETIN

The quarterly Tax Information Bulletin (TIB) includes articles on the application of law to specific types of transactions, announcements about new and revised publications, and other articles of interest. You can find current and archived TIBs on our website at www.boe.ca.gov/news/tibcont.htm. Sign up for our BOE updates email list and receive notification when the latest issue of the TIB has been posted to our website.

FREE CLASSES AND SEMINARS

Most of our statewide field offices offer free basic sales and use tax classes with some classes offered in other languages. Check the Sales and Use Tax Section on our website at www.boe.ca.gov for a listing of classes and locations. You can also call your local field office for class information. We also offer online seminars including the Basic Sales and Use Tax tutorial and how to eFile that you can access on our website at any time. Some online seminars are also offered in other languages.

WRITTEN TAX ADVICE

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction if we determine that we gave you incorrect written advice regarding the transaction and that you reasonably relied on that advice in failing to pay the proper amount of tax. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstances of the transaction.

Please visit our website at: www.boe.ca.gov/info/email.html to email your request. Email encryption allows us to provide a safe and secure way of transmitting confidential information electronically. Instructions for registering and receiving encrypted emails is posted to our website. You may also send your request in a letter to: Audit and Information Section, MIC:44, State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0044.

TAXPAYERS' RIGHTS ADVOCATE

If you would like to know more about your rights as a taxpayer or if you have not been able to resolve a problem through normal channels (for example, by speaking to a supervisor), please see [publication 70](#), *Understanding Your Rights as a California Taxpayer*, or contact the [Taxpayers' Rights Advocate Office](#) for help at 916-324-2798 (or toll-free, 888-324-2798). Their fax number is 916-323-3319.

If you prefer, you can write to: Taxpayers' Rights Advocate, MIC:70; State Board of Equalization; P.O. Box 942879; Sacramento, CA 94279-0070.

Regulations, forms, and publications

Lists vary by publication

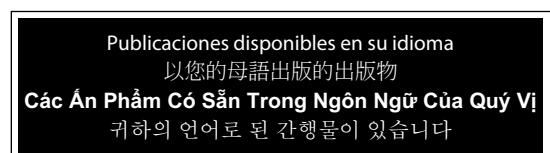
Selected regulations, forms, and publications that may interest you are listed below. A complete listing of sales and use tax [regulations](#), [forms](#), and [publications](#) appears on the [BOE website](#). Multilingual versions of our publications and other multilingual outreach materials are also available www.boe.ca.gov/languages/menu.htm.

Regulations

- 1506 *Miscellaneous Service Enterprises*
- 1597 *Property Transferred or Sold by Certain Nonprofit Organizations*
- 1602 *Food Products*
- 1603 *Taxable Sales of Food Products*
- 1660 *Leases of Tangible Personal Property—In General*
- 1668 *Sales for Resale*
- 1669 *Demonstration, Display, and Use of Property Held for Resale—General*
- 1698 *Records*
- 1700 *Reimbursement for Sales Tax*
- 1821 *Foreword—District Taxes*

Publications

- 17 *Appeals Procedures: Sales and Use Taxes and Special Taxes*
- 18 *Nonprofit Organizations*
- 44 *District Taxes*
- 45 *Hospitals and Other Medical Facilities*
- 46 *Leasing Tangible Personal Property*
- 51 *Board of Equalization Resource Guide to Free Tax Products and Services*
- 61 *Sales and Use Taxes: Exemptions and Exclusions*
- 68 *Photographers, Photo Finishers, and Film Processing Laboratories*
- 70 *Understanding Your Rights as a California Taxpayer*
- 71 *California City and County Sales and Use Tax Rates*
- 73 *Your California Seller's Permit*
- 74 *Closing Out Your Seller's Permit*
- 75 *Interest and Penalties*
- 76 *Audits*
- 102 *Sales to the United States Government*
- 103 *Sales for Resale*
- 113 *Coupons, Discounts and Rebates*
- 115 *Tips, Gratuities, and Service Charges*
- 116 *Sales and Use Tax Records*
- 126 *Mandatory Use Tax Registration for Service Enterprises*



APPENDIX

Testing for the 80/80 rule

As noted in Food sold to go, the taxability of your to-go sales will depend on whether you come under the 80/80 rule. You come under this rule if:

- More than 80 percent of your gross receipts come from the sale of food products, and
- More than 80 percent of your retail food product sales would normally be taxable. For example, food products served as meals; sold for consumption at facilities you provide; sold as hot prepared foods; or sold at an establishment defined as a drive-in.

It may be readily apparent that you qualify; most fast food restaurants qualify, for example. Or it may be necessary to use the table below to evaluate your sales more closely.

Although you may meet both criteria of the 80/80 rule, you may elect to separately account for the sale of to-go orders of cold food products or you may begin immediately to report tax as explained in, To-go sales if you come under the 80/80 rule.

If you do not qualify at this time, you should monitor your sales and at the end of every 90 days reevaluate your sales to determine whether your status has changed. You should retain the records of your 90-day tests. In the event of an audit, you may need to provide proof that you do not qualify under the 80/80 rule.

90-Day Test	Food Sales		Total		Total Sales
	Taxable	Nontaxable	Food Sales	Nonfood Sales	
Hot Prepared Food Products	\$85,000				
Cold Food Products (for example, cold salad, milk) Sold to go Sold for consumption on the seller's premises	4,000	5,000			
Nonfood Items (for example, carbonated and alcoholic beverages, cigarettes, souvenirs)				\$6,000	
TOTAL	\$89,000	\$5,000	\$94,000	\$6,000	\$100,000

Note: Do not include alcoholic and carbonated beverages as part of your food product sales. Although subject to tax, they are not considered food products.

In the above example, the retailer comes under the 80/80 rule since over 80 percent of the retailer's sales are food sales ($\$94,000 \div \$100,000 = 94\%$), and over 80 percent of food sales are taxable ($\$89,000 \div \$94,000 = 95\%$). Therefore, all food sold in a form suitable for consumption on the seller's premises is subject to tax unless the seller makes a special election for cold food sold to go, as explained under To-go sales if you come under the 80/80 Rule.

When evaluating sales under the 80/80 rule, each location must be considered separately. A combination location such as a bakery restaurant or food court location may be considered one operation for purposes of the above calculation even though the sales are segregated in the books and records.

