



## **TAXABLE AND TAX EXEMPT SALES OF FOOD AND RELATED ITEMS**

The following guidelines should be used to determine whether a food item is exempt from sales tax. The city of Aurora's principal sales tax exemption guideline is based upon what can be purchased for home consumption with food stamps [7 U.C.S. Section 2012 (k)] and WIC vouchers (WIC is the federal supplemental food program for women, infants and children.) (42 U.S.C. Section 1786). The city of Aurora also imposed other criteria, in addition to the food stamp/WIC guidelines. [Section 130-31. Definitions.]

### **FOOD PURCHASES EXEMPT FROM AURORA SALES TAX**

Exempt items eligible for purchase with food stamps or WIC vouchers include:

1. Food purchased for human consumption at home.
2. Seeds and plants which produce food for human consumption.
3. Food purchased with food stamps or WIC vouchers.

### **FOOD AND RELATED ITEMS NOT EXEMPT FROM AURORA SALES TAX**

The Department of Agriculture guidelines prohibit the use of food stamps or WIC vouchers for the purchase of the following items. These items are sales taxable:

1. Nonfood items such as soaps, paper products and household supplies, grooming items and cosmetics and food not for human consumption, such as pet and bird food.
2. Alcoholic beverages. (cooking wine, wine vinegar and, alcohol-filled candies are exempt.)
3. Cigars, tobacco and tobacco products.
4. Food to be eaten in the store, hot foods ready to eat and food marketed to be heated in the store.
5. Food preservation equipment and items.
6. Vitamins, dietary supplements, and medicines. (Prescription drugs are exempt under [Section 130-157(21)])
7. Ice.

**ITEMS EXEMPT FROM TAX IF PURCHASED WITH FOOD STAMPS OR WIC VOUCHERS – BUT TAXABLE WHEN PAID WITH CASH**

The following items, if purchased with food stamps or WIC vouchers/checks are exempt from the 3.75% Aurora sales tax, but are taxable if purchased with cash:

1. Carbonated water marketed in containers.
2. Chewing gum, breath mints, candy and soft drinks.
3. Seeds and plants to produce food for human consumption.
4. Prepared salads and salad bar items.
5. Cold/hot sandwiches.
6. Deli sandwiches.

Sales and purchases of food sold through vending machines are taxable. Sales of hot and cold beverages in unsealed containers sold by vending machines are taxable. [Section 130-156(4)]

**NOTE:** Food used by a business or commercial entity, such as coffee or bottled water served to customers or employees are subject to city of Aurora tax.

In addition, all food and drink sold by the following establishment are taxable: restaurants, snack shops, carryout shops, pushcarts and other sellers of food and drink as specified in Section 130-156(4).

However, meals sold by colleges in dormitories, by assisted living facilities to its residents, by private clubs to its members, and by restaurants at no cost to employees of restaurants and other such establishments are exempt from sales tax, but are subject to use tax by the provider.

Sales and purchases of nonessential food items and packaging provided with purchased food and beverage items are taxable at City of Aurora's sales and use tax rate of 3.75%.

Nonessential articles or containers furnished in connection with sale of taxable food.

## NONESSENTIAL ARTICLES AND CONTAINERS

An article or container is nonessential if it is primarily used for the convenience of the consumer and is not necessary to effectuate the sale of food.

Examples of nonessential articles or containers include, but are not limited to, non-reusable:

- Utensils
- Skewers
- Napkins and towelettes
- Bibs
- Serving trays, platters, and dome lid covers for plates or platters
- Placemats, tray liners and tablecloths
- Sacks
- Grocery bags
- Bags and bag ties for bulk grocery produce or bread
- Carryout containers for leftover food sold for immediate consumption
- Straws
- Toothpicks
- Stirring sticks
- Cup sleeves
- Portion dividers
- Single-use baking dishes
- 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, rather, are provided separately from the transfer of the meal to the consumer, such as at a convenience counter. Another example of condiments provided separately from the meal are the packets of ketchup placed in a bag given to the customer. Condiments sold as food for domestic home consumption (condiments sold in the grocery stores) are exempt from city sales and use tax.

Examples of essential articles of containers include, but are not limited to, non-reusable:

- Plates, cups, or bowls (and lids for such items) on, or which, unwrapped or unpackaged hot or prepared food and beverages are served to the consumer;
- Cups used in vending machines dispensing beverages;
- Disposable containers or packaging material\* on, or in which, food is transferred to the consumer, including pizza delivery boxes, sleeves for French fries, buckets or other containers if the retailer cannot transfer the food to the consumer without such article or container. However, a carryout container used by a consumer to carry leftover meals from the restaurant is not essential.

\**packaging material* used in a non-essential manner would be taxable. Example: butcher paper used as a table liner would not be considered an essential use.

## **ARTICLES OR CONTAINERS NOT FURNISHED TO THE CONSUMER**

A retailer is liable for sales or use tax for its purchase, use, storage, or consumption of an article or container, regardless of whether it is essential to the consumer, if the article or container is not transferred to the customer. An article or container is treated as transferred to the consumer if the food retailer makes the article or container available to consumers on the food retailer's premises. Examples of non-transferred articles include, but are not limited to:

- Reusable articles such as glassware, ceramic plates, cloth napkins, and silverware
- Non-reusable articles the retailer uses to cook or store food, such as plastic wrap for storage, aluminum foil used primarily for cooking, food labels, single use baking dish, and cooking tray liners.

## **TAXABLE FOOD**

Articles or containers that are essential to the consumer and, therefore, otherwise exempt under this regulation, are taxable to the food retailer if the purchase of the food by the consumer is not subject to tax. For example, a food retailer must pay tax on free beverage samples furnished in disposable paper cups and free food furnished with napkins or with disposable utensils. In such cases, there is no retail sale from the food retailer to the consumer and there is no tax due on the transfer of the free article to the consumer. However, the retailer is responsible to pay the tax on both the food and the container.

## **SEPARATE CHARGE FOR ESSENTIAL ARTICLE OR CONTAINER**

The sale of an article or container by a food retailer to a consumer is subject to tax, regardless of whether the article or container is essential to the consumer. If the food retailer separately states on the consumer's invoice a charge for such article or container or if the food retailer separately sells the article or container for a charge and not as part of a retail sale of food, it is subject to tax.

**Situation 1:** A food retailer separately charges for food and disposable utensils by the consumer.

Response: The retailer may purchase the utensils from suppliers as an exempt wholesale purchase for resale to consumer and must collect sales tax on the sale of utensils to the customer.

**Situation 2:** A food retailer sells plastic bottles or cups with beverage for a single charge, but the plastic bottles or cups are designed for reuse by the consumer.

Response: The retailer may purchase the reusable bottle or cup from the supplier as an exempt wholesale purchase and collect sales tax from the consumer.

## **WHO COLLECTS AND REMITS THIS TAX?**

Both the vendor/supplier and restaurant/retailer are responsible.

The vendor or supplier of the items known to be nonessential (forks, napkins, lids, straws) is responsible for charging and remitting the sales tax. For those items that may be essential (paper plates used in the restaurant), then become nonessential (paper plates provided along with food already in containers), the restaurant/retailer using or providing those items is responsible for remitting use tax on those items.