



PREPARED FOOD AND BEVERAGE TAX RULES AND REGULATIONS

Enabling legislation enacted by the North Carolina General Assembly defines “Prepared Food and Beverages” as any food or beverage which a retailer has added value to or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, to make the food or beverage available for immediate human consumption, whether as a single serving or in whole or bulk.

For the purpose of establishing standards and definitions which may be applied uniformly with regard to the implementation of the Wake County Prepared Food and Beverage Tax, the County Tax Administrator, in accordance with the authorization provided by Section 5 of the Wake County Ordinance to Establish and Levy a Prepared Food and Beverage Tax hereby adopts the following Rules and Regulations with regard to the Prepared Food and Beverage Tax.

GENERAL ADMINISTRATION

SUBJECT BUSINESSES

Subject businesses are any retailer within Wake County that are subject to sales tax imposed by the State of North Carolina under Section 105-164.4(a)(1) of the North Carolina General Statutes, which would include:

Restaurants, Cafes, Cafeterias, Coffee Shops, Grills, Snack Bars/Carts, Lounges, Bars, Taverns, Mobile Vendors, Vendors at sporting, cultural and entertainment events, Fast Food establishments, Drive-in establishments, Private Club Dining facilities, Caterers, Independent Bakeries, Grocer and Independent Delicatessens, Convenience store/marts, Luncheon counters/soda fountains at drugstores, pharmacies and other general retail stores, Nightclubs, Wet Bars, Concession stands, Ice Cream Parlors/Shops, Employee Cafeterias that charge for food and beverages and any other establishment, place of business or enterprise maintaining facilities, equipment, services, or inventory for the sale of any type or kind of prepared food, food product, meal or beverage sold to consumers.

PREPARED FOOD AND BEVERAGES

Any food or beverage which is prepared to the order of the purchaser, or which is cooked and/or maintained at or near the cooking temperature, or kept at or above room temperature to make it palatable and suitable prior to sale, shall be considered to be made available for immediate consumption and subject to the Prepared Food and Beverage Tax. (This applies whether it is sold as a single serving or sold in whole or bulk). Sales from vending machines are specifically exempted from the Prepared Food and Beverage Tax.

Sales of Prepared Food and Beverages are subject to the Prepared Food and Beverage Tax unless prepared by someone other than the retailer for immediate consumption and merely placed on display for sale purposes. Examples include prewrapped sandwiches, packaged crackers, prepacked ice cream, etc.

Sales of prepared foods and beverages available for immediate consumption that are sold on a “take-out,” “to-go” or delivery basis are subject to the Prepared Food and Beverage Tax.

Any alcoholic or non-alcoholic beverage sold by the drink or as part of a meal is subject to this tax. Exceptions would be soft drinks and alcoholic beverages (i) purchased in unopened package form (i.e., 6 packs, cans, bottles, cases) and (ii) not to be consumed on the premises of the retailer. Examples of taxable beverages include: a bottled drink sold by a caterer or bar for opening and consumption by a customer on the retailer’s premises or wherever served by a caterer. This tax would also apply to orange

juice and milk served at a fast-food establishment. Non-taxable beverages include can drinks sold by a convenience store and a bottle of wine sold by a retailer for “take-out” by the consumer.

Prepared Food and Beverage sales made to the general public or employees that are paid for, directly or indirectly, by cash, charge card, payroll deductions, meal ticket, voucher or other means are subject to this tax and must be collected by the retailer or employer.

Sales derived from Salad Bars (i.e. cut up fruits and vegetables) sold in various sized servings, usually by the pound or plate are subject to this tax.

Salad items such as potato salad, cole slaw, macaroni, bean and congealed salads including chicken salad, etc., and sliced or unsliced meats that the retailer has **not altered by heating or combining two or more foods** (i.e., the retailer is merely repackaging) which are sold in carry-out containers, are not subject to this tax: any of the foregoing sold as part of a meal, deli tray or otherwise as part of a steamed table product is subject to this tax.

Whole pies and cakes altered on site in any way (icing added, decorated, baked, etc.) are subject to this tax.

In addition to the foregoing, the following rules and regulations apply to the category of retailers set forth below:

INDEPENDENT BAKERIES

Food and beverages prepared by an independent bakery are subject to this tax if baked, decorated or altered in any way on the retailers’ site.

ARTISAN BAKERIES (Effective January 1, 2009)

Bakery items (bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas) sold without eating utensils by an artisan bakery are exempt from the Prepared Food and Beverage Tax. An “artisan bakery” is a bakery that derives over 80% of its gross receipts from bakery items and whose annual gross receipts, combined with the gross receipts of all related persons as defined in G.S. 105-163.010, do not exceed \$1,800,000.00.

CATERERS AND FOOD DELIVERY SERVICES

Any food or beverage prepared by a caterer or food delivery service (regardless of the primary place of business or place of food preparation) and served within Wake County is subject to the Prepared Food and Beverage Tax. All charges are subject to this tax except gratuities of 20% or less that are separately stated on the invoice and distributed to service personnel.

Any food or beverages prepared by caterers or food delivery services located within Wake County to be served outside the County will not be subject to the Prepared Food and Beverage Tax.

CONVENIENCE STORES

Examples of food and beverages subject to this tax include hot dogs (whether placed on rotisserie by customer or retailer), brewed coffee, fountain drinks and dip ice cream, etc. Prepackaged sandwiches prepared by someone other than the retailer are not subject to this tax.

TEMPORARY VENDORS

All temporary food and beverage vendors that operate as such, must make a fifty-dollar (\$50.00) cash prepayment at least one (1) week in advance prior to commencement of business to the Wake County Department of Tax Administration and any additional tax monies due must be paid with the Prepared Food and Beverage Tax Return. A refund will be made if determination is made by the Tax Administrator that the tax amount due (plus penalties, if any) is less than the original prepayment amount.

GROCCERS, INDEPENDENT DELICATESSENS AND OTHER DIVERSIFIED RETAIL ESTABLISHMENTS

The following rules and regulations shall apply to Groccers, Independent Delicatessens and other Diversified Retail Establishments.

Sales of prepared food and beverages in independent delicatessens and the delicatessen or similar department of a grocer or other diversified retail establishments that are subject to taxation under the Ordinance shall be limited to the sales of any Prepared Food or Beverage that is (i) heated when sold, (ii) sold as a single serving, (iii) sold as a steamed table product, (iv) altered in any way (except sliced or repackaged) or, (v) any two or more foods and or ingredients are combined to make a single item sold as a single serving or sold as a whole packaged item or sold in bulk. For purposes of this Regulation, a “steamed table product” shall mean any one or more foods and beverages sold collectively as a meal available for immediate consumption, including without limitation both heated and cooled foods and beverages.

Deli trays (meat, cheese, fruit, etc.) are subject to the Prepared Food and Beverage Tax.

Sales derived from Salad Bars, (i.e., cut up fruits and vegetables) sold in various sized servings, usually by the pound or plate are subject to this tax.

EFFECTIVE DATE

All above and foregoing rules and regulations become effective January 1, 1993, and may be added to, modified or rescinded by order of the Wake County Tax Administrator at any time.

Any questions, regarding the Prepared Food and Beverage Tax should be directed to the Gross Receipts Tax Division at (919) 856-5999.