

TAX EXEMPT FOOD

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This publication is for general information about the transaction privilege tax (TPT) exemption for food sales. For complete details, refer to the Arizona Revised Statutes and the Arizona Administrative Code. In case of inconsistency or omission in this publication, the language of the Arizona Revised Statutes and the Arizona Administrative Code will prevail.

Food items intended for human consumption generally are exempt from the state's transaction privilege tax. However, food items must fall within the Department of Revenue's guidelines to be tax exempt. These guidelines are compatible with the Food Stamp Act of 1977. Pursuant to Arizona statute, tax exempt foods are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979 to be purchased with food coupons issued by the United States Department of Agriculture. Tax exempt food also includes new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979. The guidelines provided by the supplemental nutrition assistance program (SNAP) established under the Food and Nutrition Act of 2008 do not apply.

The Department of Revenue has prepared a general listing of tax-exempt food categories, which is included in this pamphlet for your information.

What the Law Says

Food items sold by a qualified retailer and intended for home consumption are exempt by law from the Arizona transaction privilege tax. Food sold and intended for on-premises consumption, such as restaurant sales, remains fully taxable.

In addition to the tax exemption for sales of food by qualifying retailers to persons for home consumption, transaction privilege tax does not apply to sales of food items by a retailer to the following types of organizations:

1. Private or parochial schools for grades 12 and under.
2. Licensed day care centers.
3. Qualifying facilities which provide care and supervision for persons mentally or physically unable to care for themselves.
4. Certain IRC 501(c)(3) tax-exempt organizations.
5. Most prisons, jails or similar institutions.

6. Commercial airlines, if the food is provided without additional charge to passengers for consumption in flight.

What is a Qualified Retailer?

There are six categories of retailers who can sell food tax exempt.

1. Retailers participating in the USDA food stamp program. This category also includes those retailers who could participate in the food stamp program, but do not. This category includes the following types of businesses:
 - grocery and convenience stores
 - dairy and cheese stores
 - butcher shops and farmers markets
 - bakeries
2. Retailers whose primary business is not the sale of food, but who sell some food in a manner similar to grocery stores. This category includes the following types of businesses:
 - department stores
 - drug stores
 - gas stations
3. Retailers who sell food and are not eligible to participate in the food stamp program and who do not provide facilities for consumption on the premises.

Facilities for the consumption of food means appropriate furniture, tableware or parking areas for sitting, both in or on the premises of the business, either in or out of a motor vehicle. Premises means the total space and facilities, including buildings, grounds and parking lots that are used by the retailer and customers. This category includes:

 - health food stores
 - outlets retailing soda and other similar beverages
4. Delicatessen businesses. Only food items for home consumption sold by a delicatessen may be tax exempt.
5. Street or sidewalk vendors who use a pushcart, motor vehicle or some similar conveyance from which to sell their food.
6. Vending machines and other automatic retailers.

Categories 5 and 6 sell food intended for immediate consumption, which is taxable, as well as tax-exempt food. Items always taxable include hot and cold sandwiches, hot prepared food, and beverages sold in a glass, cup or open container. Tax-exempt sales may include candy, gum, bagged or wrapped snack foods and beverages sold in their original containers.

TAX EXEMPT FOOD

What is Food for Consumption on the Premises?

Food for consumption on the premises is defined by law and is taxable, unless specifically exempted. It includes the following:

- Hot prepared food, including products, items or ingredients of food which are prepared and sold or are intended to be sold in a heated condition. This also includes combinations of hot and cold food items or ingredients if a single price is charged by the retailer.
- Hot or cold sandwiches.
- Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and within parking areas (for in-car consumption). Food served with trays, glasses, dishes or other tableware.
- Beverages sold in cups, glasses or open containers.
- Food sold by caterers.
- Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events and other shows or contests, and any businesses which charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction.

Any item mentioned here which is sold on a "takeout" or "to-go" basis is still considered to be food for consumption on the premises and therefore taxable. It makes no difference in this case whether or not the food item was actually taken from the premises. In many instances, a retail business which is eligible to make tax-exempt sales of food will be required to tax certain food sales because of the type of food item sold. For example, the law specifically taxes sales of hot and cold sandwiches, and beverages such as coffee or sodas sold in cups, glasses or open containers, irrespective of whether they are sold in a grocery store, from a sidewalk vendor or from a vending machine.

What is Exempt Food?

The following categories of food items are compatible with the United States Department of Agriculture guidelines of items which could have been purchased with food stamps as of January 1, 1979 or which would have been eligible for purchase if such items existed for sale on January 1, 1979 and are therefore tax exempt when sold by qualified businesses and when intended for home consumption:

- Bread and flour products; cereal and cereal products.
- Vegetables and vegetable products; fruit and fruit products.

- Candy and confectionery; sugar, sugar products and substitutes; cocoa and cocoa products.
- Butter, oleomargarine, shortening and cooking oils; spices, condiments, extracts and food colorings.
- Milk and milk products; eggs and egg products.
- Coffee, coffee substitutes and tea; soft drinks and sodas.
- Meat and meat products.
- Packaged ice cream products.
- Dietary substitutes; diabetic and reduced calorie foods.
- Bottled water, carbonated and mineral water; ice cubes.
- Seeds and plants for use in gardens to produce food items for personal consumption.

What is Not Exempt?

Examples of categories which are taxable include:

- Pet foods and supplies.
- Soaps, paper products and household supplies; cosmetics and grooming items.
- Alcoholic beverages and tobacco products.
- Hot, cold and frozen sandwiches.
- Vitamins, non-prescription medicines and dietary supplements such as minerals and protein powders; weight reduction aids regardless of manufacturer nutrition or supplement labeling.

FOR ADDITIONAL INFORMATION:

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