



Restaurant Industry

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The restaurant industry has an array of taxable transactions as well as many opportunities for exemptions. This publication addresses both. It covers not only charges for meals and services, but also discusses what may be purchase exempt on a wholesale for resale basis and the taxability of other business purchases. This publication is simply a reference for many questions the Department receives on a regular basis regarding the restaurant industry.

Prepared Food

Wyoming imposes sales tax on all meals at any place where they are regularly sold to the public. Similarly mandated, all establishments of any nature which sell and serve food and meals to the general public shall collect tax on the amount charged for all meals sold. Furthermore, prepared meals are not included in the exemption of "food for domestic home consumption." Prepared food for immediate consumption is subject to sales tax. Prepared foods may be served in a restaurant, prepared in a restaurant for takeout or bar, and through a drive-thru, among others. Prepared food includes: Food sold in a heated state or heated by the seller; Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A container or package used to

transport the food is not an eating utensil. Prepared food also includes foods like nachos or hot dogs at a convenience store where the seller heats up the cheese or hot dogs as the food is being sold in a heated state or heated by the seller, it is subject to sales tax.

In situations where a vendor may sell both prepared foods and exempt foods, Wyoming requires that the vendor adopt a seventy-five/twenty-five (75/25) policy. What this means is when a food vendor's sales are comprised of both prepared food and nonprepared food, and seventy-five percent (75%) or more of the sales are prepared food, the vendor must impose sales tax on all food sales, with one exception for multiple serving packages as discussed in the next paragraph. A good example of the seventy-five/twenty-five (75/25) policy is a coffee shop that sells individually wrapped candies, which would normally be tax exempt. However, because the vendor sells in excess of seventy-five percent (75%) prepared food, the sales of the candies are taxable as well. Or when a sandwich shop makes a sandwich for you (prepared food), and then sells it with a bag of chips (normally tax exempt), the chips are taxable because the vendor sells 75% or more prepared food.

For sellers with a sales percentage of seventy-five percent (75%) or greater prepared food, who also sell items that contain four (4) or more servings packaged as one item sold for a single price, the item does not become prepared food. A one-pound bag of ground coffee is not taxable as it contains more than

four (4) servings and is sold for a single price. Another example could be a six-pack of soda, as it exceeds four (4) servings and is sold for one single price, would also not be subject to sales tax. Whenever available, serving sizes will be determined based on a label on an item sold. If no label is available, a seller will reasonably determine the number of servings in an item.

Employee Meals, Manager Meals

Meals provided for consumption on the premises to employees at no charge are exempt from sales tax. Wyoming exempts the cost of food or meals furnished by a food establishment licensed under W.S. 35-7-124 without charge to an employee for consumption on the premises. The meal is not taxable to the establishment or the employee. However, meals that are provided at a charge, whether at full price or a discounted price, are subject to sales tax, and tax is based on the sales price paid for the meal. For instance, if the establishment charges half price for a meal, say \$15.00, sales tax would be collected on the sales price of \$15.00.

Coupons

Please be aware that if the establishment offers promotions such as discounts or coupons to patrons, the establishment is voluntarily lowering the sales price of the meal which is not being reimbursed by a third party for the discount offered. Since sales tax is based on the actual sales price of the meal sold, the discount lowers the taxable base.

For example, should the establishment offer a meal that is discounted by thirty percent (30%), the establishment would collect sales tax after the thirty percent (30%) discount has been applied. So, if a customer presents a

coupon that reads “meals purchased between 4 P.M. and 5 P.M. will receive a 30% discount,” if the meal is \$20, the discount is \$6; therefore, sales tax is due on the final price of \$14.

As for “buy one get one” discounts, if a customer presents this coupon, and each meal they purchase costs \$15, the customer pays sales tax on the \$15 they paid. Essentially, with the free meal, your offer lowers each meal to \$7.50, and the customer pays the sales tax on the \$15 total.

Groupon/LivingSocial discounts

When an out-of-state third-party social media coupon company (*e.g.*, Groupon or LivingSocial) issues coupons that allow consumers to purchase items at a restaurant at a discount, and the price the customer paid for the coupon is disclosed on the document, sales tax will be calculated based on the discounted amount. For example, a coupon for a restaurant meal valued at \$100 can be purchased for \$50. Sales tax on the transaction is to be collected by the restaurant when the coupon is redeemed for the meal price of \$50. These types of coupons are generally considered an unreimbursed reduction of the sales price of a product or service by a retailer. The retailer typically collects and remits tax based on the reduced price. As stated above, when a taxable product or service is purchased utilizing one of these coupons, and the price the customer paid for the coupon is disclosed on the document, sales tax will be calculated based on the discounted amount, \$50. When a taxable product or service is purchased utilizing one of these coupons, and the certificate does not indicate the purchase price of the coupon along with the face value

of the coupon, tax is calculated on the full purchase price of the product or service.

Catering

Catering services, which entail supplying the food and preparing the meals, are viewed no differently than prepared meals by a restaurant, which are subject to sales tax. Please be aware that the act of food preparation is also subject to sales tax as a component of the “sales price” paid for the prepared food. For example, the proprietor charges \$500 for a catered lunch, which includes the cost of the ingredients, preparation, energy used, profit, etc. Sales tax is charged on the entire prepared meal of \$500. Although the food preparation cost is not separately stated, it is essentially taxable as a part of the sales price.

Gratuities

While Wyoming does impose sales tax on meals and cover charges where meals are regularly served to the public, all gratuities, whether mandatory or voluntary, are excluded from the sales price of the meal and therefore exempt from sales tax.

Equipment

Any equipment, materials, or supplies that are purchased by a business to perform the service would be subject to tax to the business at the time of purchase. This would include office computers, linens, tools, utensils, glassware, place settings, etc. For business purchases that are purchased from a non-licensed vendor and no sales tax was collected at the time of purchase, the business is responsible to remit use tax to the

Department on these purchases. As a licensed vendor in Wyoming, the business would remit the use tax due on their periodic sales/use tax return.

Wholesale Items

Purchases of disposable Styrofoam containers, i.e., “doggie bags”, plastic silverware, napkins, food, beverages, etc., are purchases for resale and not subject to the sales or use tax if the cost of such items is part of the overall charge for a meal. Wyoming licensed vendors are allowed to purchase on the basis of wholesale for resale, as sales tax will be collected from that customer at the point of sale on the marked-up retail sales price of the meal. “Wholesale sale” means a sale of tangible personal property or services to a vendor for subsequent sale.”

In order to purchase on a wholesale basis, licensed vendors must provide their suppliers with a completed Streamlined Sales and Use Tax Agreement Certificate of Exemption.

When completing the form, licensed vendors should in section 5 (Reason for exemption) circle “G - Resale” and include their Wyoming Sales/Use Tax license number in the space provided.

The Streamlined Sales/Use Tax Agreement Certificate of Exemption may be located at the Department of Revenue’s website: <http://revenue.wyo.gov/>. On the left of the main page, the locate column titled “Home” >” Excise Tax” > Forms > Sales/Use/Lodging Forms > Exemption Certificate. Wyoming's expectation is that vendors accept their purchaser’s exemption certificate in good faith. The Certificate of Exemption, if not received at the time of the sale, may be provided by the purchaser up to

ninety (90) days after the transaction, and any tax collected may be refunded to the purchaser at that time.

Customer Satisfaction

Complimentary meals or beverages given free of charge as a gesture of goodwill for a negative experience or similar circumstance are not subject to sales tax to the patron. However, the restaurant would owe tax based on the wholesale cost of the food and ingredients. This is due to the fact that when a business removes items from inventory located in Wyoming to give away for free, those items were originally purchased on a wholesale for resale basis without the payment of tax under the pretense that sales tax would be collected when the food was resold. In this instance, the food is not being resold but given away, and a tax liability exists.

Beverages and Alcohol

Beverages sold by a restaurant, bar, or similar establishment are subject to sales tax as prepared food. Wyoming also imposes sales tax on the sales price paid for alcoholic beverages. We do not make a distinction between beer, wine, liquor, and other spirits for sales tax purposes. Alcoholic beverages, whether served for immediate consumption in the restaurant/bar or available as “package liquor,” are subject to Wyoming sales tax. Bars may set beverage prices, which include the sales tax, so that the customer may pay an even amount, such as \$4.00, when making a purchase. However, in a county with a tax rate of six (6%) percent, this would mean that the alcoholic beverage actually cost \$3.77 plus \$0.23 sales tax. In such situations, vendors must be able to compute the tax when the price includes sales tax. To find the

price excluding tax, the vendor must divide the total amount collected by one hundred percent plus the tax rate in effect in the county of the sale. For example, using the following formula: $\text{Tax} = \text{Gross Receipts} - (\text{Gross Receipts} \div (1 + \text{Tax Rate}))$, in a county with a 6% sales tax rate, sales collected totaling \$4.00 (including sales tax) amounts to \$ 0.23 in sales tax. The vendor would collect a total of \$ 4.00, of which \$0.23 in sales tax would be forwarded to the Department.

Sales Price of beverage:	\$4.00
Divided by $1.00 + \text{Tax Rate} =$	\$1.06
Taxable Sales =	\$3.77
Multiplied by Tax Rate 6%	
Sales Tax Remitted to	
Dept. of Revenue =	\$ 0.23

Live Entertainment

Unless an exemption exists, admission fees are subject to sales tax as Wyoming imposes sales tax on the sales price paid for each admission to any place of amusement, entertainment, recreation, games or athletic event.

Furthermore, persons or firms who sell tickets for admission to a place of amusement, entertainment, recreation, games, or athletic events shall be responsible for licensing and collecting and remitting sales tax on the admission charges. Admission charges shall include charges commonly referred to as “cover charges” when these charges are paid for entrance into a place of amusement, entertainment, recreation, games or athletic events. Public schools are not municipally or county-owned facilities and shall collect sales tax on admissions unless exempted as a political subdivision of the State of Wyoming. Therefore, if a bar or restaurant charges a

cover charge for live entertainment, that cover charge is subject to sales tax.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:

DOR_taxability@wyo.gov

Supporting Authority -

W.S. 39-15-101(a)(viii) states:

"Sales price":

(A) Shall apply to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property and services for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(I) The seller's cost of property sold;

(II) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller and any other expense of the seller;

(III) Charges by the seller for any services necessary to complete the sale other than delivery and installation charges; (IV) Delivery charges;

(V) Installation charges;

(VI) Repealed by Laws 2007, Ch. 10, 2.

(B) Shall not include:

(I) Discounts, including cash, terms or coupons which are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;

(II) Interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(III) Any tax legally imposed directly on the consumer which is separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to the price reduction or discount on the sale;

(II) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(III) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(IV) One (1) of the following criteria is met:

(1) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

- (2) The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron shall not constitute membership in such a group; or
- (3) The price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

W.S. 39-15-101(a)(ix) states:

"Tangible personal property" means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and prewritten computer software; and includes any controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

W.S. 39-15-101(a)(xvi) states:

"Wholesale sale" means a sale of tangible personal property or services to a vendor for subsequent sale.

W.S. 39-15-101(a)(xli) states:

"Food for domestic home consumption" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food for domestic home consumption" does not include alcoholic beverages, tobacco or prepared foods.

W.S. 39-15-101(a)(xlv) states:

"Prepared food"

(A) Includes:

- (I) Food sold in a heated state or heated by the seller;
- (II) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or
- (III) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A container or package used to transport the food is not an eating utensil.

(B) Does not include:

- (I) Food that is only cut, repackaged, or pasteurized by the seller;
- (II) Eggs, fish, meat, poultry, or foods containing raw animal and which are required or recommended to be cooked by the consumer to prevent food borne illness;
- (III) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 dealing with bakeries;
- (IV) Food sold in an unheated state by weight or volume as a single item;
- (V) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas and other bakery goods unless the item is sold as a prepared food under subdivision (xlv)(A)(III) of this subsection.

W.S. 39-15-103(a)(i)(A) states:

Taxable event. The following shall apply:

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price of every retail sale of tangible personal property within the state and upon the purchase price of

persons making first use of taxable services or storing, using or consuming taxable personal property or specified digital products in this state;

W.S. 39-15-103(a)(i)(H) states:

Taxable event. The following shall apply: Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price paid for each admission to any place of amusement, entertainment, recreation, games or athletic event.

W.S. 39-15-103(a)(i)(J) states:

Taxable event. The following shall apply: Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price paid for services performed for the repair, alteration or improvement of tangible personal property;

W.S. 39-15-105(a)(iii)(F) states:

The following sales or leases are exempt from the excise tax imposed by this article: For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

Wholesale sales excluding sales of controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

W.S. 39-15-105(a)(iii)(J) states:

The following sales or leases are exempt from the excise tax imposed by this article: For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

The cost of food or meals furnished by a food establishment licensed under W.S. 35-7-124 without charge to an employee for consumption on the premises is not taxable either to the establishment or the employee.”

W.S. 39-15-105(a)(vi)(E) states:

The following sales or leases are exempt from the excise tax imposed by this article: For the purpose of exempting sales of services and tangible personal property which are essential human goods and services, the following are exempt:

Sales of food for domestic home consumption.

WY Dept. of Rev Rules, Chap 2, Sec 5(h) states:

Merchandise Used or Consumed by Vendors.

Tangible personal property removed from inventory by the vendor for business or personal consumption shall be subject to sales/use tax. The purchase price of the property shall be the tax basis.

WY Dept. of Rev. Rules, Chap 2, Sec 5(k) states:

Taxes Calculated on Gross Receipts. This method of taxing sales is only allowed when a receipt is not generally provided to the consumer as part of the sale. Where receipts do not accompany each sale (e.g., coin operated vending sales, bar sales, cover charges, admission tickets and concessions, vendors shall maintain records of tax calculated using the following formula:

$$\text{Tax} = \text{Gross Receipts} - (\text{Gross Receipts} \div (1 + \text{Tax Rate}))$$
$$\text{Example Gross Receipts} = \$1,000$$
$$\text{Tax Rate} = 6\%$$
$$\text{Tax} = \$1,000 - (\$1,000 \div (1 + .06))$$
$$\text{Tax} = \$1,000 - \$943.40$$
$$\text{Tax} = \$56.60$$

WY Dept. of Rev. Rules, Chap. 2, Sec. 7(b)
states:

Certificates of Exemption.

(i) Vendors shall obtain completed exemption certificates for all sales transactions, other than those qualifying under Section 6 of these rules, where sales tax is not collected from the purchaser at the time of sale. Purchasers shall file a single exemption certificate with each selling vendor for exempt purchases made. The certificates shall be in a format as prescribed by the Streamlined Sales and Use Tax Agreement and shall be retained in the seller's records. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase. A purchaser is not required to provide a signature to claim an exemption from tax unless the paper exemption certificate is used. The seller shall use the standard format for claiming an exemption electronically when that format is adopted by the Streamlined Sales Tax Project Governing Board.

(ii) Vendors shall be relieved of the tax otherwise due if the seller obtains a fully completed exemption certificate or captures the relevant data elements listed in subsection (i) above within ninety (90) days of the date of the sale.

(iii) Should the vendor not obtain an exemption certificate or the required relevant information the vendor shall be allowed 120 days subsequent to a request for substantiation:

(A) To obtain a fully completed exemption certificate from the purchaser taken in good faith which

means that the vendor obtains a certificate that claims an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, could be applicable to the item being purchased, and is reasonable for the purchaser's type of business; or

(B) To obtain other information Establishing that the transaction was not subject to the tax."

WY Dept. of Rev Rules, Chap 2, Sec. 12(a)
states:

Admission Charges.

(i) Persons or firms who sell tickets for admission to a place of amusement, entertainment, recreation, games, or athletic events shall be responsible for licensing and

collecting and remitting sales tax on the admission charges. Admission charges shall include charges commonly referred to as "cover charges" when these charges are paid for entrance into a place of amusement, entertainment, recreation, games or athletic events. Public schools are not municipally or county-owned facilities and shall collect sales tax on admissions unless exempted under W.S. 39-15-105.

(ii) To ensure the collection of the tax on admissions when the place of amusement, entertainment, recreation, games, or athletic events has been leased or rented, the lessor may collect and remit the tax on the admissions to the Department. The

lessee's name shall appear on the record of remittance. In the event the lessor chooses not to assume the responsibility of collecting the tax, the lessee shall register with the Department and collect all applicable taxes as required under Wyoming law and these rules.

WY Dept. of Rev Rules, Chap 2, Sec 12(q)

states:

Meals Not Regularly Served to the Public.

Meals sold or furnished by hospitals to patients and staff, by schools to students and staff, and nursing homes to occupants and staff shall not be subject to the sales tax if the establishments do not hold themselves out as selling to the public at large. The establishments shall be considered to be purchasers of the food and shall pay sales or use tax on those purchases, unless otherwise exempt. Meals sold by senior citizen centers shall not be subject to the sales tax.

(i) All establishments of any nature which sell and serve food and meals to the general public shall collect tax on the amount charged for all meals sold. Tax shall not be collected on food or meals furnished without charge to employees. Napkins, disposable food containers, and similar consumable items sold with the food at no additional charge to the customer shall be considered to be wholesale for resale purchases.

WY Dept. of Rev Rules Chap 2, Sec. 12(w)

states:

Purchases by Businesses. Purchases by businesses and professional persons of equipment, tools, and supplies for use in conducting their businesses or professions are the end consumer and shall be subject to the sales or use tax.