

Definition of Meal for State Meals Taxes

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Issue

Compare how states with statewide meals taxes define “meals,” particularly with respect to meals sold at grocery stores.

Summary

Meals taxes, also called prepared foods or restaurant taxes, are taxes on sales of prepared meals and beverages that are imposed at a rate higher than, or in addition to, the general sales tax rate. They generally do not apply to groceries or food products that are not intended for immediate consumption. We identified five states with statewide meals taxes: Connecticut (beginning October 1, 2019), Maine, New Hampshire, Rhode Island, and Vermont.

State and Local Meals Taxes

In addition to the five states that impose a statewide meals tax, local governments in 17 other states also impose meals taxes.

OLR Report [2019-R-0133](#) lists these two groups of states and provides the meals tax rate (or range of rates) they impose.

All five of these states generally apply similar definitions of prepared foods or meals, but they differ significantly in the special rules they apply for determining when the tax applies to specific categories of foods (e.g., prepackaged foods and grocery staples) or business types (e.g., sandwich shops and bakeries). They also apply different rules for sales of meals at grocery stores; the rules generally (1) specify the types of prepared foods that are considered meals when sold at a grocery store and (2) limit the areas within a grocery store in which prepared foods are considered taxable meals.

Prepared Foods or Meals

Attachment 1 provides the meals tax rate for each of the selected states, summarizes the definition of prepared foods or meals, and indicates the businesses subject to the tax. As it shows, all five of the states apply similar definitions of prepared foods or meals, but some apply special rules for determining when the tax applies to specific categories of foods (e.g., prepackaged foods) or business types (e.g., sandwich shops, bakeries, and supermarkets). (We discuss each state's rules with respect to grocery stores separately below.)

In Connecticut, the 7.35% meals tax rate applies to taxable meals (and certain drinks) sold by eating establishments, caterers, and in certain cases, supermarkets. Maine, on the other hand, applies its 8% meals tax broadly to any retailer that sells prepared food. It also applies a "75% rule" that requires certain retailers to charge the 8% rate (as opposed to its 5.5% general sales tax rate) on all of their food and drink sales if prepared foods account for 75% or more of their total gross receipts. The 75% rule applies to sandwich shops, pizza shops, dairy bars, bakeries, and donut and bagel shops.

In New Hampshire, the 9% meals tax applies to restaurants and any other eating place or establishment where meals are served. However, the tax does not apply to (1) prepackaged foods and drinks (e.g., chips, crackers, candy, bottled soda, and prepackaged ice cream) except for sandwiches, (2) beverages in unsealed containers, and (3) catered meals that are delivered to the location where the meal is consumed.

Like the other states, Rhode Island's 8% meals tax applies to sales of prepared foods and beverages at eating and drinking establishments in the state. But unlike the others, Rhode Island specifies that food sold with eating utensils (e.g., plates, cutlery, cups, napkins, or straws) provided by the seller is included in the definition of prepared food, and it applies a threshold test for determining the taxability of such food sales. The test is based on the seller's percentage of prepared food sales compared to sales of all food and food ingredients. In short, sellers with a sales percentage of 75% or less are considered to have provided utensils if their practice is to physically give or hand the utensil to the customer; sellers with a sales percentage greater than 75% are considered to have provided utensils if they are merely made available to purchasers at a kiosk or common area.

Vermont's 9% meals tax generally applies to any food or beverage sold by a restaurant and only nonprepackaged food or beverages sold by sellers other than restaurants (e.g., supermarkets). But the tax also applies to specified items regardless of where they are sold and whether or not they are prepackaged. These include sandwiches, salad bars, and heated food or drinks. Like Maine,

Vermont applies an 80% rule for determining whether a business is considered a restaurant and must charge meals tax on all of its food and drinks.

Grocery Food

All of the selected states exempt grocery food or food products from meals tax, and four of them also exempt such food from sales and use tax. (New Hampshire does not impose a general sales tax.) The exemptions generally extend to items that are considered grocery staples, such as vegetables, meat, dairy, bread, and breakfast cereal. But the exemptions exclude certain food products, thereby subjecting them to tax.

For comparison purposes, Table 1 shows how the states treat three commonly excluded “non-food” items – alcoholic beverages, candy, and soft drinks – for sales and use tax purposes. As it shows, four states tax alcoholic beverages and soft drinks, but only three of them (Connecticut, Maine, and Rhode Island) tax candy.

Table 1: Sales and Use Tax on Grocery Food in Select States

State	Grocery Food	Commonly Excluded Items		
		Alcoholic Beverages	Candy	Soft Drinks
Connecticut	Exempt	Taxable	Taxable	Taxable
Maine	Exempt	Taxable	Taxable	Taxable
New Hampshire	N/A	N/A	N/A	N/A
Rhode Island	Exempt	Taxable	Taxable (excluding candy containing flour)	Taxable
Vermont	Exempt	Taxable	Exempt	Taxable

Source: Compiled by OLR based on state statutes and tax department guidance

Prepared Foods Sold at Grocery Stores

Table 2 (1) summarizes the rules each state has established for determining whether meals sold by grocery stores are subject to the meals tax and (2) provides three examples to help illustrate how the rules apply to specific purchases. The rules generally specify the types of prepared foods that are considered meals when sold at a grocery store and, in some cases, limit the areas within a grocery store in which prepared foods are considered taxable meals.

In three of the states, Maine, New Hampshire, and Vermont, meals are taxable when sold anywhere in a grocery store. Vermont, however, defines the categories of foods that are taxable at grocery stores more narrowly than it does for restaurants. It also subjects grocery stores to the 80% rule used to determine whether the grocery store is considered a restaurant for meals tax purposes.

In Rhode Island, meals are taxable at a grocery store only if the store has a snack bar or food court area that is considered an eating or drinking establishment. If the snack bar area has a separate register, only sales of meals in that area are taxable. If there is no separate register in that area, all meals purchased throughout the store are taxable.

Connecticut’s rules are unique in that only catering services and four specified items (sandwiches, grinders, coffee, and tea) are taxable meals when sold anywhere in a grocery store. If the grocery store has a snack bar area, sales of meals in that area are also taxable.

Table 2: Tax Treatment of Meals Sold By Grocery Stores in Select States

State	Taxable Meals at Grocery Stores	Examples		
		Hot Soup	Bagel	Sandwich
CT	<p>The following are taxable sales of meals by a supermarket:</p> <ul style="list-style-type: none"> catering services sales of sandwiches, grinders, coffee, or tea prepared and sold anywhere in a supermarket for takeout sales of meals in areas of a supermarket where food is intended to be consumed (e.g. snack bars or food courts) <p>(Department of Revenue Services PS 2002(2), Sales and Use Tax on Meals)</p>	Taxable only if sold at snack bar	Taxable only if sold at snack bar in quantities of five or fewer	Taxable
ME	<p>Prepared food is taxable when sold by a grocery or convenience store (Maine Revenue Services Instructional Bulletin No. 27, Sales of Prepared Food)</p>	Taxable	Exempt (as grocery staple) but taxable if prepared by the store	Taxable
NH	<p>The following categories of meals are taxable at a grocery store:</p> <ul style="list-style-type: none"> sandwiches (except if frozen or uncooked) beverages in unsealed containers salad bar and self-serve food carts (except olive bars) hot food items (e.g., soups) party platters or combination plates prepared, ready-to-eat products whether or not they have been warmed or cooled to a preferred temperature (New Hampshire Department of Revenue Administration TIR 2007-005, Meals and Rentals Tax Guidelines for Grocery Stores) 	Taxable	Taxable in quantities of five or fewer, unless prepackaged	Taxable
RI	<p>Grocery stores are typically not considered eating and/or drinking establishments, but some areas of the stores may be considered as such when selling prepared food and beverages. The tax treatment turns on whether there is a separate register in that area:</p> <ul style="list-style-type: none"> If the grocery store provides a snack bar or food court area but there is no separate register to ring up the prepared food in that area, the entire store is considered an eating establishment and all prepared food and beverages 	Taxable if the store has a snack bar (see left)	Exempt unless sold with utensils	Taxable if the store has a snack bar (see left)

State	Taxable Meals at Grocery Stores	Examples		
		Hot Soup	Bagel	Sandwich
	<p>purchased throughout the store are taxable as prepared foods.</p> <ul style="list-style-type: none"> If, in the same situation, the grocery store maintains a separate register in the snack bar area, only the sales of prepared food and beverages from that specific area are subject to the tax (280 R.I. Code R. 20-70-4). 			
VT	<p>The following are taxable at grocery stores (and any other business that is not defined as a restaurant):</p> <ul style="list-style-type: none"> sandwiches of any kind, except frozen salad bars heated food or beverage <p>Snack bars with no seating are not considered restaurants when located on the premises of a retail grocery or convenience store; grocery stores may be considered restaurants if 80% or more of their total gross receipts come from the sale of taxable meals (Vermont Department of Taxes, Vermont Meals Tax for Business and Meals and Rooms Tax Regulations)</p>	Taxable	Taxable in quantities of less than three	Taxable

Attachment 1: Prepared Foods Subject to Meals Tax in Selected States

State	Meals Tax Rate	Definition of Prepared Foods or Meals	Businesses Subject to the Tax
CT	7.35% on taxable meals and beverages by eating establishments, caterers, and grocery stores (beginning October 1, 2019)	<p>“Meal” means food products sold in ready-to-eat form or wrapped as “take-out” or “to go” to be eaten elsewhere</p> <p>Includes (1) all food and beverages sold for human consumption at the seller’s location and (2) food products ordinarily sold in ready-to-eat form and in portions for immediate consumption at or near the seller’s location (e.g., prepared foods, prepackaged foods, and hot foods)</p>	<p>Eating establishments and caterers (e.g., restaurants, cafeterias, grinder shops, pizzerias, fast food outlets, ice cream trucks, hot dog carts, refreshment stands, sandwich shops, private and social clubs, cocktail lounges, taverns, diners, snack bars, and hotels or boarding houses)</p> <p>Special rules apply to supermarkets (Department of Revenue Services PS 2002(2), Sales and Use Tax on Meals)</p>
ME	8% on taxable sales of prepared foods	<p>Prepared foods are the following:</p> <ul style="list-style-type: none"> • Meals served on or off the premises of the retailer (e.g., sandwiches and heated food) • Food and drinks that are prepared by the retailer and ready for consumption without further preparation (e.g., salad bars, pizza, rotisserie chicken, bakery items, and deli platters) • Food and drinks sold by a retailer at a particular retail location when the sales of food and drinks at that location that are prepared by the retailer account for more than 75% of the gross receipts reported for that location by the retailer 	<p>Any retailer that sells prepared food, regardless of the location from which it is sold and whether for consumption on premises or for take-out; Includes:</p> <ul style="list-style-type: none"> • restaurants, caterers, and street vendors • grocery and convenience stores • sandwich shops, pizzerias, dairy bars, bakeries, donut and bagel shops (must charge the prepared foods rate on all of their food and drink sales if prepared foods constitute 75% or more of their total gross receipts) • personal chefs and retailers providing cooking demonstrations (special rules apply)(Maine Revenue Services Instructional Bulletin No. 27, Sales of Prepared Food)
NH	9% on taxable meals	<p>“Meal” means any food or beverage prepared for human consumption and served by a restaurant, including those sold on a “take out” or “to go” basis</p> <p>Excludes prepackaged food and drinks except sandwiches, beverages in unsealed containers, and catered meals that are delivered to the location where the meal is consumed</p>	<p>Restaurants, including cafes, lunch counters, private or social clubs, cocktail lounges, hotel dining rooms, caterers, taverns, snack bars, dining rooms, vending machines, and any other eating place or establishment where meals are served (includes grocery stores, convenience stores, and gas stations with restaurant-type sales)(with certain exceptions)</p> <p>Special rules apply to bakeries (N.H. Code Admin. R. § 700 et seq.; (New Hampshire Department of Revenue Administration TIR 2007-005, Meals and Rentals Tax Guidelines for Grocery Stores)</p>

State	Meals Tax Rate	Definition of Prepared Foods or Meals	Businesses Subject to the Tax
RI	8% on taxable meals and beverages	<p>“Meal” means any prepared food or beverage offered for sale by an eating and/or drinking establishment for the purpose of being consumed by a person to satisfy the appetite and which is ready for immediate consumption</p> <p>“Prepared food” means any of the following:</p> <ul style="list-style-type: none"> • food sold in a heated state or heated by the seller • food items that are a result of the combination of two or more food ingredients by the seller to make single items, with some exceptions (e.g., bakery items and food sold in an unheated state) • food sold with eating utensils (threshold test applies to determine how utensils are treated) 	<p>“Eating and/or drinking establishments,” including restaurants, bars, taverns, lounges, cafeterias, lunch counters, caterers, and other like places of business (including grocery stores) which provide facilities for immediate consumption of food at tables, chairs, or counters or from trays, plates, cups or other tableware provide for the use of patrons in consuming products purchased at the location (280 R.I. Code R. 20-70-4)</p>
VT	9% on taxable meals and beverages (10% on alcoholic beverages)	<p>“Taxable meal” means the following:</p> <ul style="list-style-type: none"> • any food or beverage sold by a restaurant, whether furnished for on- or off-premises consumption • non-prepackaged food or beverages sold by sellers other than restaurants (with certain exclusions) • specified items regardless of where they are sold and whether or not they are prepackaged (i.e., sandwiches of any kind except frozen, salad bars, heated food or beverages, and food or beverages sold through a vending machine) 	<ul style="list-style-type: none"> • Restaurants, including cafes, cafeterias, dining rooms, diners, lunch counters, salad bars, private or social clubs, bars or taverns, theater concessions, street vendors, street carts, food trucks, and catering businesses; other businesses may be considered restaurants if 80% or more of their gross receipts come from taxable food and beverages • Grocery and convenience stores if they offer taxable meals • Vending machines • Transient vendors (Vermont Department of Taxes, Vermont Meals Tax for Business and Meals and Rooms Tax Regulations)

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