

GUIDELINES FOR THE APPLICATION OF MEALS (FOOD AND BEVERAGE) TAX

The Meals, (Food and Beverage), Tax was not intended to apply to groceries. However, it does recognize that some grocery stores and convenience stores include prepared food operations. The 1999 General Assembly modified State code sections 58.1-3833 and 58.1 -3840 to prohibit imposition of a tax on some foods. These sections were further modified in the 2000 General Assembly (see the following underlined additions) to provide that the tax may not be imposed: "Notwithstanding any other provision of this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. & 2012, as amended and federal regulation adopted pursuant to that act, except, for the following items; sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of and assortment of vegetables, and non-factory sealed beverages.

The 2000 amendment also eliminated from State Code Section 58.1-3833 (A) the provisions which pertain specifically to counties that "...the food and beverage tax levied on meals sold by grocery store delicatessens and convenience stores shall be limited to prepared sandwiches and single meal platters."

"Food purchased for human consumption," means food for home consumption by humans, as defined under the Food Stamp Act of 1977, 7 U.S.C. & 2012. The definition includes most staple grocery food items and cold prepared foods packages for home consumption. The tax is to be imposed on the purchaser of food and beverages served, sold, or delivered from a food establishment, whether prepared in such food establishment or not and whether consumed on the premises or not or furnished by a cater.

Many food items prepared by a restaurant, cafeteria, fast food chain, delicatessen, and in many convenience stores would be subject to the food and beverage tax. Food sales by the other vendors are presumed to be taxable including but not limited to the following: caterers, concession vendors, theme parks, sports arenas, stadiums, fair and carnival vendors, gift shops, hamburger and hot dog stands, honor snack vendors, ice cream stands and trucks, mobile food vendors, movie theaters, and newsstands.

THE TAX APPLIES TO:

- . All sandwiches, hot or cold
- . All hot foods
- . All non-factory sealed beverages, fountain drinks, hot or cold coffee or chocolate, milkshakes, floats, Slurpee's, Ices, or similar frozen ice drinks regardless of whether it has a lid.
- . Ice cream or frozen yogurt in a cone, dish, or single serving sized open container sold by an ice cream type store or food establishment.
- . Frozen or chilled factor packaged, single serving sandwiches, burritos, and the like, marketed and sold in a food establishment that provides a heating device to render the item palatable.
- . Salads, commonly referred to as Chef, Cobb, or other similar garden style salads, that are packaged or prepared in a manner similar to those provided in a restaurant or purchased in a grocery delicatessen or convenience store and packaged in containers affixed with lids or tops ready for immediate consumption.
- . Alcoholic beverages sold in restaurants, drinking establishments, festivals, receptions, sporting events, and other similar events.

THE TAX IS NOT CONSIDERED TO APPLY TO:

- . A frozen TV dinner.
- . Garden type salads in factory sealed packages that is considered to be for additional home preparation. These salads are usually sold in the produce section of grocery stores in factory sealed stay-crisp style bags, and usually require additional preparation before consumption.
- . Salads, such as potato, macaroni, chicken coleslaw, sold by the pound and not for immediate consumption on premises. These salads are commonly sold in the grocery delicatessens in containers with lids.
- . Frozen seafood, sold by the pound in grocery stores that provide employee operated steam cooking at no additional charge and when the item is not to be consumed on premise.
- . Ice cream or frozen yogurt in factory packaged or bulk packed containers sold at a store or by a street or ice cream truck vendor.
- . Alcoholic and non-alcoholic beverages, in factory sealed containers, sold for off-premises consumption.

TIPS are not taxable unless:

1. The seller keeps part or all of a tip.
2. The seller adds a specific amount or percentage to the gross price of the food and beverage and requires the customer to pay this amount.
Example: Some restaurants advertise on their menus that a 15% gratuity is automatically added for parties of 8 or more. This percentage is **TAXABLE.**