



CITY OF AURORA REGULATION CONCERNING THE TAXATION OF FOOD

For the purposes of this regulation food includes food and drink.

Any food, as specified in 7 U.S.C. Section 2012(g), as such section exists on October 1, 1987, or as thereafter amended, which is purchased with the medium of exchange commonly known as food stamps or supplemental nutrition assistance program (“SNAP”) benefits, is exempt from the city’s sales and use tax.

Any food, as specified in 42 U.S.C. Section 1786, as such section exists on October 1, 1987, or as thereafter amended, which is purchased with the medium of exchange commonly known as women, infant, and children (“WIC”) vouchers, checks or similar certificates of exchange is exempt from the city’s sales and use tax.

Any food not purchased with federal food stamps, SNAP benefits or WIC vouchers, checks or similar certificate of exchange is subject to taxation or exemption as provided in paragraphs 1, 2, and 3 below:

1. a. (1) Food for domestic consumption as defined by the federal supplemental nutrition assistance program in 7 U.S.C. sec. 2012(g), as such section existed on October 1, 1987, or as thereafter amended, is exempt from taxation as provided below, except for those items specified in 1.c. (This list of food and nonfood items under the federal supplemental nutrition assistance program is intended as a guide and not a complete listing.) The federal supplemental nutrition assistance program definition of food would include, among other items, meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruit, fruit and vegetable juices, dairy products, coffee, tea, cocoa, candy, breath mints, condiments, spices, soft drinks, cakes, cookies, potato chips, special dietary foods (e.g. diabetic and dietetic) enriched or fortified foods, health food items (e.g. Metrecal, Enfamil, Sustegen, wheat germ, brewer’s yeast, sunflower seeds which are packaged for human consumption, rose hips powder which is used for preparing tea, and other food products which are substituted for more commonly used food items in the diet), infant formulas, and items incorporated into foods with other ingredients (e.g. pectin, lard, and vegetable oils).

(2) Seeds and plants which produce food for human consumption are exempt from sales and use tax only when they are purchased with food stamps.

(3) Water in containers is exempt from taxation, except for carbonated water as specified in 1.c.(1) of this regulation. Bottled water sold at locations referenced in 2 c and d of this regulation is taxable.

1. b. Items which are considered nonfood items under the federal supplemental nutrition assistance program and thus are subject to sales and use tax include:

(1) Nonfood items even if sold in grocery or similar type stores (e.g. hardware, clothing, common household items such as cooking utensils, cleaning and paper products, soaps, toiletry articles, grooming items and cosmetics);

(2) Alcoholic beverages but excluding when marketed for domestic home consumption cooking wine, wine vinegar, and non-alcoholic cocktail mixes;

(3) Tobacco and tobacco products (except cigarettes which are exempt from the sales and use tax by virtue of Aurora City Code Section 130-157 (3) and 130-198 (10)) ;

(4) Foods which are hot at the point of sale and which are kept above room temperature to make them palatable and suitable for immediate consumption, food marketed to be heated on the premises whether or not hot at the point of sale, and other food sold for consumption on the premises;

(5) Items not intended for human consumption (e.g. laundry starch, pet foods, other animal foods, and seeds marketed or packaged as birdseed);

(6) Items specifically labeled as being for use other than human consumption (e.g. decorative dye for hard cooked eggs);

(7) Food preservation equipment and items (e.g. pressure cookers, canning jars and lids, paraffin, freezer containers, and wrapping paper);

(8) Medicines (except that prescription drugs and other medical items are exempt from the city's sales and use tax by virtue of Aurora City Code Section 130-157 (21) and 130-198 (10)).

(9) Therapeutic products and deficiency correctors, (e.g. vitamins and minerals which are marketed in various forms such as tablets, capsules, powders and liquids; products such as cod liver oil which is used primarily as a source of vitamins A and D; and other such items which are primarily used for medicinal purposes or as health aids). (These products serve as supplements to food or food products rather than food and, therefore, are not eligible. Because essential vitamins and minerals occur naturally in foods, a good diet will include a

variety of foods that together will supply all nutrients needed. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible.);

(10) Health aids (e.g. patent medicines and other products used primarily as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies, and antacids);

(11) Coffee and related food products sold to offices and commercial establishments as part of a “coffee” service.

1. c. Items which may qualify as food under the federal supplemental nutrition assistance program but do not qualify as food for purposes of the sales and use tax exemption (unless purchased with federal food stamps or WIC vouchers) include:

(1) Carbonated water in containers such as sparkling or seltzer water;

(2) Chewing gum, breath mints, candy and soft drinks;

(3) Seeds and plants to grow food (e.g. tomato or other fruit or vegetable plants, or seeds, however, for city sales and use tax purposes see Aurora Code Section 130-157 (14) and 130-198 (20));

(4) Prepared salads, other than frozen salads, requiring refrigeration sold in any size or type of container (e.g. egg salad, potato salad, fruit salad, pasta salad, gelatin salad, bean salad, fish salad, poultry salad, meat salad, etc.,) whether prepared by the retailer onsite or at a warehouse, or by a manufacturer for sale to and by a retailer;

(5) Salad bars (e.g. cut up fruits and vegetables sold in various sized servings, usually by the pound or plate, along with accessory foods and condiments, such as soup, rolls, crackers and salad dressings);

(6) Cold sandwiches other than frozen sandwiches;

(7) Deli trays (e.g. meats, fish, cheeses, fruits and vegetables, etc., sold on trays prepared by the retailer);

(8) Food sold by or through vending machines; and

(9) Prepared food or food marketed for immediate consumption as specified in paragraphs 2 or 3 below.

1. d. It is not the obligation of a retailer to collect the sales tax on food marketed for domestic home consumption which after purchase is converted to or used for other purposes which are taxable. Such conversion or use is subject to any applicable sales or use tax (e.g. edible oil used to lubricate machines and food and coffee purchased for office or commercial uses).

2. While foods marketed for domestic home consumption, with exceptions noted above, generally qualify for the sales tax exemption, prepared food or food marketed for immediate consumption generally does not qualify. The following guidelines apply in determining whether food is considered food for home consumption contrasted with prepared food or food for immediate consumption:

2. a. Prepared food or food marketed for immediate consumption includes all food furnished or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer;

b. All hot foods and food marketed to be heated on the premises are considered to be prepared for immediate consumption and are, therefore, subject to tax regardless of whether immediately consumed.

c. Prepared food or food marketed for immediate consumption also includes food served or furnished in or by restaurants, cafes, lunch counters, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities;

d. The following types of establishments typically do not sell food marketed for domestic home consumption; newsstands, gift shops; stores, including shops located in public transportation centers, offices or other public or commercial buildings, entertainment facilities (e.g. theaters) and recreation facilities (e.g. sports arenas and stadiums). However, if such an establishment has been approved by the United States Department of Agriculture ("USDA") to accept food stamps and/or SNAP benefits at the store location where the sale and purchase is to occur, the establishment is considered to sell food for domestic home consumption, and the vendor is not required to collect sales tax on any items eligible to be purchased with food stamps and/or SNAP benefits, subject to paragraph number one (1) above and its subparagraphs.

e. The following types of establishments typically do sell food marketed for domestic home consumption: grocery stores, convenience stores, bakeries, butcher shops, fruit and vegetable stores, and department stores.

3. In determining whether food is considered for domestic home consumption or prepared food or food for immediate consumption, the following guidelines apply to the specialized establishments enumerated below:

3. a. Bakery and Pastry shops

(1) Sales by bakeries or pastry shops which do not have eating facilities are not subject to tax;

(2) Sales by bakeries or pastry shops which have eating facilities are taxable except for items sold on a take-out or to-go basis not to be consumed at the eating facilities provided by the retailer;

(3) Sales by bakeries or pastry shops that are delivered to the customer are taxable if the customer is a business entity; sales are not subject to tax if the customer is an individual purchasing for his/her own use.

b. Ice Cream shops

(1) Sales of ice cream cones, cups, sundaes, and the like, marketed for immediate consumption are subject to tax;

(2) Items marketed in containers or packages for domestic home consumption, such as ice cream, ice cream bars, popsicles and fudgesicles, toppings sold in cans or jars, and cakes or pies are not taxable.

c. Caterers

Normally all food sold by a caterer is subject to tax. However, if such caterer operates a retail store selling food items marketed for domestic home consumption, the rules governing taxability of food as set forth in paragraphs 1 and 2 apply. Sales by caterers of food from motor vehicles and other mobile facilities are taxable.

d. Restaurants, Snack Bars, Carry Outs, Etc.

All food sold by restaurants and similar establishments is subject to tax. However, when such restaurants also operate a pastry, ice cream, or grocery store, the rules applicable to such establishment apply to sales made from such facilities.

e. Liquor Stores

Food marketed for domestic home consumption by a liquor stores is exempt. Alcoholic beverages, including spirituous, malt or vinous liquors, are taxable. However, cocktail mixes which do not contain alcohol, cooking wines, and wine vinegars are exempt.

f. **Street Vendors**

Street vendors (e.g. pushcarts, mobile food stands, and the like) will generally be subject to tax on all their sales. Sales of vegetables, fruit, and other groceries marketed for domestic home consumption by mobile markets or door-to-door vendors are exempt.

g. **Vending machines**

All sales of food and drink vended by or through machines are taxable.