

**WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.** (1) **Introduction.** This rule explains how Washington's business and occupation (B&O) tax and retail sales tax apply to sales by restaurants and similar businesses. It discusses sales of meals, beverages, and foods at prices inclusive of the retail sales tax. This rule also explains how discounted and promotional meals are taxed. Caterers and persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 to determine their tax liability.

(a) **Restaurants, cocktail bars, and taverns.** The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

(b) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(c) **What other rules might apply?** In addition to information available on the department's website pertaining to prepared food and beverage sales, the following rules may contain other relevant information:

- WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax.
- WAC 458-20-119 Sales by caterers and food service contractors.
- WAC 458-20-131 Gambling activities.
- WAC 458-20-183 Amusement, recreation, and physical fitness services.
- WAC 458-20-187 Tax responsibility of persons owning and/or operating vending machines, amusement devices, and service machines.
- WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.
- WAC 458-20-190 Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.
- WAC 458-20-243 Litter tax.
- WAC 458-20-244 Food and food ingredients.

(2) **Retailing B&O and retail sales taxes.** Sales of meals and prepared foods to consumers by restaurants, cocktail bars, taverns, and similar businesses are subject to the retailing tax classification and generally subject to retail sales tax. Retail sales tax exemptions are available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW;

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government;

(d) Effective July 1, 2011, RCW 82.08.9995 provides a retail sales tax exemption for meals provided without specific charge by a restaurant to its employees. Such meals are also exempt from B&O tax and use tax. (RCW 82.04.750 and 82.12.9995.) If any charge is made for meals to employees, retailing B&O tax and retail sales tax apply.

For the purposes of (d) of this subsection, the following definitions apply:

(i) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of (d) of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08.0293.

(ii) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within:

- Hotels, motels, lodges, boarding houses, bed and breakfast facilities;

- Hospitals, office buildings, movie theaters; and

- Schools, colleges, or universities, if a separate charge is made for such food or beverages.

Restaurants also include:

- Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge; and

- Public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge is made for such food or beverages.

A restaurant is open to the public for purposes of this subsection if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(3) **Wholesaling B&O tax.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling B&O tax classification. Sellers must obtain a copy of the purchaser's reseller permit to document the wholesale nature of any sale as provided in WAC 458-20-102 Reseller permits.

(4) **Service B&O tax.** Compensation received from owners of vending machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. Persons operating games of chance should refer to WAC 458-20-131.

(5) **Exemptions.** Effective October 1, 2013, RCW 82.08.210 provides retail sales tax and use tax exemptions for sales to restaurants of products that impart flavor to food during the cooking process; and

- Are completely or substantially consumed by combustion during the cooking process; or

- That support the food during the cooking process and are comprised entirely of wood.

The exemption includes products such as wood chips, charcoal, charcoal briquettes, grapevines, and cedar grilling planks. The exemptions do not apply to any type of gas fuel. For the purpose of these exemptions, "restaurant" has the same meaning as found in RCW 82.08.9995. These exemptions are scheduled to expire July 1, 2017.

(6) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Retail sales tax or use tax applies to purchases of dishes, kitchen utensils, linens, and items that do not become an ingredient of the meal.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) Retail sales tax or use tax does not apply to purchases of food or beverage products that are ingredients of the meals being sold.

(d) Retail sales tax or use tax does not apply to purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles that are furnished to customers, the first actual use of which renders such articles unfit for further use, when purchased by restaurants and similar businesses making actual sales of meals.

(7) **Combination business.** Persons operating a combination of two kinds of food sales, of which one is the sale of prepared food (i.e., an establishment, such as a deli, selling food products ready for consumption and in bulk quantities), should refer to WAC 458-20-244 for taxability information.

(8) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes are calculated on the reduced price actually received by the seller.

Persons who provide meals free of charge to persons other than their employees are consumers of those meals. Persons operating restaurants or similar businesses are not required to report use tax on food and food ingredients given away, even if the food or food ingredients are part of prepared meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food and food ingredients exemption applies. Should the restaurant provide the little league team with soft drinks free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those soft drinks. Soft drinks are excluded from the exemption for food and food ingredients. (See WAC 458-20-244.)

(9) **Sales of meals, beverages and food at prices that include retail sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menus and other price information.

(10) **Spirits, beer, and wine restaurant licensees.** Restaurants operating under the authority of a license from the liquor control board to sell spirits, beer, and wine by the glass for on-premises consumption generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas may not be given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many spirits, beer, and wine restaurant licensees elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. The department presumes that no retail sales tax has been collected or is included in the gross receipts when a notice is not pos-

ted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, a spirits, beer, and wine restaurant licensee may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.

(c) Spirits, beer, and wine restaurant licensees are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

(11) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price and not subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise are part of the selling price and are subject to both the retailing B&O and retail sales taxes.

(12) **Examples.**

(a) XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices that separately state the retail sales tax. As an example, a typical well drink purchased in the bar for \$2.50 inclusive of the sales tax, is sold for \$2.50 plus sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing and retail sales tax liability.

(b) RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area that state the price of the meal exclusive of sales tax, sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that sales tax is included in the price of the drinks, RBS may factor the sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(c) Z Tavern sells all foods and drinks at a price inclusive of the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including tax. Z Tavern may not assume that the gross receipts include any sales tax and may not factor the retail sales tax out of the gross receipts.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 2015 c 86. WSR 15-21-092, § 458-20-124, filed 10/21/15, effective 11/21/15. Statutory

Authority: RCW 82.32.300, 82.01.060(2), 82.08.050, and 2013 2nd sp.s. c 13. WSR 14-01-050, § 458-20-124, filed 12/12/13, effective 1/12/14. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 2011 c 55. WSR 12-07-060, § 458-20-124, filed 3/19/12, effective 4/19/12. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-069, § 458-20-124, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300. WSR 93-23-018, § 458-20-124, filed 11/8/93, effective 12/9/93; WSR 83-07-034 (Order ET 83-17), § 458-20-124, filed 3/15/83; Order ET 70-3, § 458-20-124 (Rule 124), filed 5/29/70, effective 7/1/70.]