

GROCERY AND CONVENIENCE STORES



Texas Comptroller of
Public Accounts

WHAT IS TAXABLE AND NONTAXABLE?

Food products (such as flour, sugar, bread, milk, eggs, fruits, vegetables and similar groceries) are not taxable. Tax is due, however, on many other items sold by grocery and convenience stores, such as paper goods, pet care products, beauty and hygiene products, clothing and books, as well as any edible goods. The following information provides guidance on the taxability of products sold by grocery and convenience stores.

TAX RATES

Retailers must collect state sales tax on all taxable items. Local sales tax for cities, counties, special purpose districts or transit authorities may also be due depending on the location of the store.

DISCOUNTS, COUPONS, GIFT CERTIFICATES AND REBATES DEALS

DISCOUNTS

Cash discounts are offers to customers that reduce an item's sales price. For example, a retailer may offer a customer a 10 percent discount on all purchases paid with cash. If the customer buys a taxable item marked at \$150, the discounted price is \$135 after the 10 percent discount of \$15 is deducted. Tax is due on the final discounted sales price of \$135.

COUPONS

A coupon is a cash discount. If the product sold is taxable, the value of the coupon is subtracted from the sales price and tax should be collected on the resulting cost to the customer.

GIFT CARDS AND GIFT CERTIFICATES

Sales tax is not due on the sale of a gift card or certificate. When the gift card or certificate is



redeemed for merchandise, either by the original purchaser or someone who may have received the card as a gift, the gift card or certificate is treated the same as cash given for the purchase of the item.

If the item purchased is taxable, sales tax is due on the full sales price including any amount paid with the use of the gift card.

REBATES

There are generally two types of rebates that may be available to purchasers: manufacturer's rebates

Sales **tax is not due** on the sale of a gift card or certificate.

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and retailer rebates. Rebates are generally refunds of a portion of the sales price of an item. Most rebates are issued after a transaction occurs.

A mail-in manufacturer's rebate that is given after the sale does not reduce the sales price charged by the retailer to the customer because the rebate is given by a third party (the manufacturer) after the transaction between the retailer and purchaser has occurred.

For example, a \$250 camera comes with a \$50 manufacturer's mail-in rebate offer. A customer buys the camera for \$250 and mails in proof of purchase and any required documentation to receive the \$50 rebate from the manufacturer.

The retailer must collect tax on the \$250 sales price of the camera, the amount charged the customer.

A manufacturer's rebate that is deducted at checkout is treated as a cash discount. If a \$250 camera has a \$50 rebate taken at the time of sale, tax is due on the final selling price of \$200.

A mail-in rebate from the retailer may be used to reduce the taxable sales price of the item when the rebate is processed and the refund is issued. In this scenario, the customer must pay tax on the original sales price of the item at the time the sale occurs (without deducting the amount of the rebate). When the seller subsequently processes the rebate request, it should also refund the proportionate amount of sales tax that was collected on the part of the sales price that was rebated to the customer.

For example, a customer buys software for \$150 with an available mail-in rebate from the retailer of \$25. The amount of tax due at the time the sale occurs is calculated on the sales price of \$150. When the retailer rebates the \$25, the retailer should also rebate the tax the customer paid on the \$25. In this example, if the tax rate on the initial transaction was 8.25 percent, the total tax due at the time the sale occurred is \$12.38. When the rebate is processed, the amount the retailer should refund is \$27.06 which equals the \$25 rebate plus \$2.06 ($25 \times .0825$) in state and local tax.

TAXABLE ITEMS

BEER AND WINE

Tax is due on beer and wine.

CANDY AND GUM

Candy and gum are taxable. Candy is any confection made of natural or artificial sweeteners and includes bars, gum, drops and taffy. Candy also includes items such as nuts, chips, hard pretzels, popcorn, raisins and other fruits that are coated with chocolate, yogurt, caramel or similar sweet flavorings.

Products used exclusively for cooking, such as chocolate bits and cake sprinkles, are not candy.

ICE

Tax is due on ice and dry ice.

ICE CREAM AND POPSICLES

Ice pops, juice pops and popsicles that do not contain milk products or more than 50 percent fruit juice are taxable. These items are taxable regardless of how many are in a package.

Tax is also due on ice cream sundries, including sherbet and frozen yogurt, sold in individual units, including ice cream, sherbet and frozen yogurt served on cones; in cups or dishes; ice cream sandwiches, bars, sticks, specialties or similar ice cream sundries and half pints of ice cream, sherbet or frozen yogurt.

Tax is not due on pre-packaged ice cream sundries that contain two or more items, or on popsicles that contain more than 50 percent juice. For example, prepackaged boxes containing two or more ice cream sandwiches, sherbet push-up pops or ice cream cones are not taxable. (In the past, pre-packaged ice-cream products were only exempt from tax if the package included six or more items.)

Whole ice cream cakes, whole ice cream pies and ice cream, sherbet and frozen yogurt sold in pint containers or larger are not taxable, unless the seller provides plates or other eating utensils.

A **manufacturer's rebate** that is deducted at checkout is treated as a cash discount. If a \$250 camera has a \$50 rebate taken at the time of sale, tax is due on the final selling price of \$200.

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SOFT DRINKS AND ENERGY DRINKS

Soft drinks are taxable. Soft drinks are carbonated and non-carbonated, non-alcoholic beverages that contain natural or artificial sweeteners, and include flavored waters.

Soft drinks also include canned, bottled, frozen or powdered drinks and drink mixes, including all ades and punches that do not contain more than 50 percent vegetable or fruit juice by volume. Soft drinks do not include beverages that contain milk or milk products; soy, rice or similar milk substitutes; or juices that contain more than 50 percent vegetable or fruit juice by volume. The term also does not include unflavored water, spring water, sparkling water or mineral water.

Energy drinks, sports drinks and naturally or artificially sweetened electrolyte drinks are taxable as soft drinks, unless they contain milk, milk products, soy, rice or similar milk substitutes; or juices that contain more than 50 percent vegetable or fruit juice by volume; or are labeled with a Supplements Facts panel.



Energy drinks labeled with a Nutrition Facts panel that contain milk or more than 50 percent fruit or vegetable juice by volume are food, as defined in Rule 3.293. A drink meeting the definition of food is not taxable unless sold in an individual-sized container of eight ounces or less (such as a juice box or half-pint carton of milk) by a seller who provides eating facilities (seats/tables); or sold ready for immediate consumption such as with a meal or served in a cup or glass or with a straw, if eating facilities are not provided.

An “individual-sized beverage” is a bottle or carton of a half-pint (8 ounces) or less. Bottles or cartons greater than a half-pint, that are more than 50 percent fruit or vegetable juice by volume, or that contain milk, milk products or milk substitutes, are exempt from sales and use tax when sold by a retailer providing eating facilities, unless sold ready for immediate consumption.

SUPPLEMENT FACTS PANEL OR LABELED AS DIETARY SUPPLEMENT

Dietary supplements are exempt from Texas sales and use tax. Therefore, if an item, such as an energy drink meets the definition of a dietary supplement, it is not subject to sales tax even if it is sold ready for immediate consumption or by a place of business with eating facilities.

A dietary supplement is defined in Texas Tax Code 151.313 as a product that:

- contains one or more vitamins, minerals, herbs or botanicals, amino acids, or substances that supplement the daily dietary intake;
- is not represented as food or the sole item of a meal or the diet; and
- is labeled “dietary supplement” or “supplement.”

PHOTO PROCESSING

Tax is due on film processing, including processing performed at self-use kiosks, negatives, prints, pictures-on-disk, slides, enlargements, retouching services and similar items.

Whole ice cream cakes, whole ice cream pies and ice cream, sherbet and frozen yogurt **sold in pint containers or larger** are not taxable, unless the seller provides plates or other eating utensils.

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Prepared food also includes any item created at the store by **mixing or combining two or more food ingredients that is offered for sale** by weight or volume as a single item such as salad, salsa, pesto and hummus.

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RENTALS

Rentals of DVDs, videos, video players, floor-cleaning equipment or similar property are taxable.

CIGARETTES AND TOBACCO PRODUCTS

Sales tax is due on cigarettes, cigars and all other tobacco products.

BOOKS AND MAGAZINES

Books, comics and magazines are taxable.

PHONE CARDS

For Texas tax and fee purposes, there are two types of phone cards: telephone prepaid calling cards and prepaid wireless telecommunications service cards. Both types of cards are subject to sales tax.

A telephone prepaid calling card is a card or other item, including an access code, that represents the right to access telecommunications services, other than prepaid telecommunications services as defined in Rule 3.344(a) (9), through multiple devices, regardless of the network providing direct service to the device used, for which payment is made in incremental amounts and before the call or transmission is initiated. For example, a calling card that allows a user to access a long distance telecommunications network for the purpose of making international calls through a pay phone is a telephone prepaid calling card. Sales tax is collected on telephone prepaid calling cards.

A prepaid wireless telecommunications service card is a card, PIN number, access code or similar device that allows a user to access only a specific wireless network, or that is intended for use with a specific user account or device (e.g., to add more minutes to an existing account). For example, a card that allows a purchaser to “add minutes” to a cell phone is a prepaid wireless telecommunications service card.

Sales of prepaid wireless telecommunications service cards and devices are subject to the Prepaid Wireless 9-1-1 Emergency Services Fee in addition to sales tax. The amount of the fee is 2 percent of the retail price on the sale of

prepaid wireless telecommunications service, which includes phones, cards and other wireless telecommunications devices. The fee is collected from the customer at the time of the sale in addition to sales tax.

PREPARED FOOD

Prepared food is taxable.

Prepared food includes:

- all food (except bakery items sold without eating utensils) sold in a heated state;
- hot drinks such as cocoa, coffee and tea;
- all cold drinks, except water, sold in a cup or glass or with a straw;
- all food sold on a plate, in a bowl or with eating utensils; and
- all sandwiches (unless sold frozen).

Prepared food also includes any item created at the store by mixing or combining two or more food ingredients that is offered for sale by weight or volume as a single item such as salad, salsa, pesto and hummus. Tax is not due, however, on items that are typically reheated prior to eating (e.g., macaroni and cheese) or on food that has merely been cut, repackaged or pasteurized such as fruit or vegetable trays.

Foods “sold in a heated state” as listed above are items that are cooked by the seller and sold hot such as barbecued beef, fried or rotisserie chicken, French fries, chili and soup. The term also includes foods that are sold frozen or cold if the seller heats them for the purchaser. Tax is not due on such foods, however, if the store simply has a microwave on the premises that the purchaser can use to heat the food. For example, no tax is due on the sale of a frozen burrito if the purchaser uses a microwave in the store to heat the burrito before consumption. Tax is due, however, if the seller heats the burrito for the purchaser.

DINING AREA

If a store has eating facilities, sales tax is due on individual-sized packages of snack items such as chips, crackers, and peanuts; individual-sized

servings of beverages such as milk or juice, when sold at a register located in or adjacent to the dining area or where ready-to-eat food or beverages are sold. For example, a grocery store that sells hot fried chicken in an area with tables and chairs should collect tax on individual-sized bags of chips sold in the dining area, but should not collect tax on individual sized bags of chips sold at the main registers used primarily to sell groceries.

Eating facilities include tables, benches, booths and chairs. Individual-sized packages of beverages are those that are eight ounces or less. Individual-sized packages of snack items are those that are less than five ounces, but do not include cookies or other bakery items. Bakery goods, such as doughnuts and cookies, are only taxable if sold with a plate or eating utensils. If a store doesn't have eating facilities, sales tax should not be collected on chips, crackers, peanuts, juice, milk or similar items, even if sold in individual-sized packages.

A combination business that contains a restaurant, deli, fast-food franchise or similar operation in part of the building and a convenience store in the other part must collect tax on individual servings of snack items and drinks sold at the register located in the restaurant area of the store, regardless of whether there are eating facilities in that area. Sales of such items at the register located in the convenience store side of the building, however, are only taxable if the store has eating facilities.

NONTAXABLE ITEMS

While the list below is not all-inclusive, it illustrates the types of products that are not subject to sales tax.

BAKERY ITEMS

Tax is not due on bakery items such as cookies, doughnuts, bread and tortillas, unless sold with eating utensils.

COFFEE, TEA AND MILK PRODUCTS

Tax is not due on coffee, tea or milk products, unless sold in a heated state or in a cup or glass or with a straw.

NEWSPAPERS

To be nontaxable, newspapers must be printed on newsprint, distributed at intervals of four weeks or less, sold for an average price of \$3.00 or less per day over a 30-day period and must provide general interest news and advertisements. Publications that do not meet all of these criteria are taxable.

LONE STAR CARD – FOOD STAMPS

Anything that can be bought legally with the Lone Star Card is not taxable. For example, candy, soft drinks and ice are usually taxable, but are nontaxable if bought using the Lone Star Card. If a customer buys milk, fruit, bread, soft drinks and candy and pays with the Lone Star Card and cash, the Lone Star Card should first be used to pay for the soft drinks and candy. In other words, sales tax is not due on the candy and soft drinks as long as they are purchased with the Lone Star Card.

OVER-THE-COUNTER DRUGS AND MEDICINES

Over-the-counter drugs and medicines that are required by the Food and Drug Administration (FDA) to be labeled with a Drug Facts panel are not taxable. For more information, see *Sales Tax Exemptions for Over-the-Counter Drugs and Medicines* (Publication 94-155).



Anything that can be bought legally with the **Lone Star Card** is not taxable.

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EXAMPLES OF TAXABLE ITEMS

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| <ul style="list-style-type: none"> • adhesive tape • alarm clocks • ale • aluminum foil • ammonia • ammunition • appliances • automotive items (oil, transmission fluid, antifreeze, etc.) • baby care products (oil, lotion, powder, etc.)** • baby clothing • bags • baskets • batteries • beauty supplies • beer • birdseed (except wild birdseed) • bleach • books • breath mints • brooms • brushes • bubble bath • calendars • cameras • candles • candy* • canning supplies • carbonated beverages* • cards • cassette tapes • charcoal briquettes • charcoal lighter fluid • Christmas trees and decorations • cigarettes • cigarette lighters • cleaners • clothespins • clothing • coffee pots • cologne • contact lens care items*** • cosmetics • costumes • cotton balls*** • cough drops** • dental floss • detergent • deodorant (not including antiperspirant) | <ul style="list-style-type: none"> • deodorizers • diapers • diluted juices (50 percent or less fruit juice)* • dishcloths and towels • dishes • disinfectant • distilled spirits • drinks (soft drinks – canned, bottled, frozen or powdered, including all ades and punches)* • dye • eating utensils • electrical supplies • electronic equipment • eyeglasses • fabric softeners • fertilizer • film • fishing tackle • firearms • flashlights • floor wax • flower seeds • flowers • flyswatters • freezer paper and tape • furniture • fuses • garbage bags • garden supplies • gift wrap • glassware • gum • hair care products (shampoo, spray, conditioner, etc.) • hair coloring • hairpins and accessories • hammers • hardware • housewares • ice • ice chests • ice cream salt • ice cream sundries (sold individually; not taxable when sold in packages of two or more) • insecticides • irons • jars • jewelry | <ul style="list-style-type: none"> • keys • kitchenware • laundry detergent and additives • lawn chairs • light bulbs • liquor • lotions** • lubricants • lye • matches • magazines • mops, mop handles and mop heads • mothballs and spray • motor oil • mousetraps • movies • nails • notebooks • nuts (candy-coated)* • nursery stock (except annual vegetable plants) • paper items (all) • paraffin • peat moss • pencils and pens • perfume • pet food • pet supplies • photo processing • pictures and frames • pipes • plastic items • poisons • polish • popsicles • popcorn (when candy-coated or sold hot in the store) • pots and pans • powder (face, body and cleaning) • prophylactics • razors and blades • rental items • ribbons • sandwiches (except frozen) • sandwich bags • school supplies • scouring pads • shaving cream and lotion • shampoo and rinses • shoelaces | <ul style="list-style-type: none"> • silverware • snuff • socks • soap and detergent • soft drinks (carbonated and non-carbonated)* • sponges • sports equipment • sprays • starch • stationery and cards • sunglasses • tape (packaging) • tape recorders • thread and sundries • toilet tissue • tools • toothbrushes • toothpaste (non-fluoride)** • toothpicks • toys • tobacco products • towels • videotape (sales and rentals) • watches and clocks • water softeners • water softener salt • wax removers • whisk brooms • wine • wire • water (when flavored) |
|--|---|---|---|

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* Unless purchased with food stamps or the Lone Star Card

** Unless required by the FDA to be labeled with a Drug Facts panel or sold to an individual with a prescription

*** Unless the customer presents an exemption certificate stating that the cotton balls will be used exclusively for wound care

EXAMPLES OF NONTAXABLE ITEMS

BABY PRODUCTS

- baby food – canned, packaged, etc.
- milk – canned, dry, etc.
- formula
- medicated products

BAKERY ITEMS – FRESH, CANNED, OR FROZEN

- biscuits
- bread
- cakes
- cookies
- croutons (plain and seasoned)
- dinner rolls
- doughnuts
- pies
- pizza crusts
- soft pretzels
- tortillas

BAKING SUPPLIES

- almond paste, marzipan
- baking chocolate (blocks and chips)
- cake mixes
- canned fillings
- cookie mixes
- cooking oils, shortening and lard
- cornmeal
- dried fruits
- edible cake decorations (sprinkles, confetti, etc.)
- flour
- food coloring (liquid, gel and powdered)
- icing and icing mixes
- leavening agents (baking powder, baking soda, yeast)
- marshmallows
- molasses
- muffin mixes
- nuts (not candy-coated)
- seasonings (salt, pepper, herbs, spices, etc.)
- spices
- sugar
- sugar substitutes
- syrups

CONDIMENTS AND SPICES

- catsup
- herbs
- mayonnaise
- mustard
- pickle relish
- pickles
- salad dressings (mixes or bottled)
- salsas (canned and fresh)
- sauces and liquid seasonings (fresh, canned and bottled)
- spices
- vinegar

DAIRY PRODUCTS

- butter and margarine
- cheese and cheese foods, including cottage cheese and cream cheese
- cream (whipping, half and half, heavy, etc.)
- creamers
- lactose-reduced milks and dairy products
- milk and milk substitutes (canned and dry)
- sour cream
- yogurt

BEVERAGES

- coffee (beans, ground and instant)
- coffee flavorings (powdered and liquid)
- fruit and vegetable juices (more than 50 percent fruit or vegetable juice, canned, bottled or frozen)
- meal replacements
- tea (including herbal teas)
- water (carbonated or non-carbonated, non-flavored)

EGGS AND EGG SUBSTITUTES

- egg substitutes (fresh and frozen)
- fresh eggs

GRAINS AND PASTA

- beans
- cereals
- granola (bulk and packaged)
- pastas (fresh, canned and dried)
- pasta mixes
- rice
- spaghetti

ICE CREAM, ICE CREAM SUBSTITUTES AND ICE CREAM SUNDRIES

- frozen yogurt
- ice cream (pint or larger containers)
- ice cream sundries (ice cream bars, ice cream sandwiches, etc. sold in prepackaged units containing two or more sundries. Popsicles that are not ice cream sundries are taxable regardless of the quantity in a package unless the popsicles are more than 50 percent juice.)
- sherbet

MEAT, POULTRY AND FISH

- canned meats
- dried meats
- deli meats
- fresh and frozen beef, poultry, pork and fish
- lunch meats
- meat substitutes
- sausages

NUTRITIONAL SUPPLEMENTS (PRODUCT MUST CONTAIN A SUPPLEMENT FACTS PANEL)

- herbal products
- mineral products
- vitamins

OVER-THE-COUNTER DRUGS AND MEDICINES (WHEN REQUIRED BY THE FDA TO BE LABELED WITH A DRUG FACTS PANEL)

- acne treatment products
- allergy treatment products
- analgesics
- antacids
- antibacterial personal care items (hand sanitizer, wipes, soap)
- antibiotic topical ointment
- anti-diarrhea and anti-nausea products
- anti-fungal products
- antihistamines
- antiperspirants
- antiseptic sprays, creams and lozenges
- cold remedies
- cough suppressants
- dandruff products
- expectorants
- head lice treatments
- hemorrhoid treatments
- insect bite treatments
- laxatives
- nicotine gum or patches and smoking cessation aids
- pain relievers (aspirin, ibuprofen, acetaminophen)
- sedatives and sleep aids
- sunscreen
- toothache treatments

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EXAMPLES OF NONTAXABLE ITEMS (CONTINUED)

PRODUCE

- canned fruits and vegetables
- dried fruits and vegetables
- fresh fruits and vegetables (bulk, wrapped or packaged)
- frozen fruits and vegetables

OTHER CATEGORIES

- frozen meals
- meal replacements (bars, powders and drinks)
- packaged mixes for beef, fish, pork and poultry
- packaged mixes for vegetables, beans and rice
- sauces (pasta, tomatoes, garlic)
- soups (canned, dry mix or frozen)

SNACKS

- breakfast bars
- chips
- crackers
- granola bars
- nuts (not candy-coated)
- popcorn
- pretzels
- protein, nutrition or sports bars (unless labeled and marketed as candy)
- snack mix
- trail mix
- yogurt bars

WOUND CARE ITEMS

- adhesive bandages (including strip adhesive bandages, large adhesive bandages and butterfly closures)
- corn cushions
- gauze rolls and pads
- liquid bandage products
- medical tape



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Equipment Surcharge
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Sales and Use Taxes

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Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

1-800-531-5441, ext. 3-3630
WebFile Help

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Bank Franchise
Franchise Tax

1-800-252-7875
Spanish

1-800-531-1441
Fax on Demand (Most frequently requested
Sales and Franchise tax forms)

1-800-252-1382
Clean Vehicle Incentive Program
Manufactured Housing Tax
Motor Vehicle Sales Surcharge,
Rental and Seller Financed Sales Tax
Motor Vehicle Registration Surcharge

1-800-252-1383
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Petroleum Products Delivery Fee
School Fund Benefit Fee

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Coastal Protection
Crude Oil Production Tax
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