

Sale of Food for Home Consumption General Information

Since Tempe began imposing a city privilege tax, it has taxed the sale of food for home consumption. The Tempe privilege tax rate on the sale of food for home consumption is 1.8%. This revenue is assigned Business Class Code, "18", which will appear on the tax returns.

Food for Home Consumption are items intended for human consumption at home and does not include alcoholic beverages or tobacco products. The City of Tempe follows the State of Arizona's definition.

For the City of Tempe purposes, in order to report food sales as Sale of Food for Home Consumption, you must be eligible to participate in the EBT card program.

Sec. 16-462. Retail sales—Food for home consumption.

- (a) The tax rate shall be at an amount equal to one and eight-tenths percent (1.8%) of the gross income from the business activity upon every person engaging or continuing in the business of selling food for home consumption at retail.
- (b) For the purposes of this section only, the following definitions shall be applicable:
 - (1) *Eligible grocery business* means an establishment whose sales of food are such that it is eligible to participate in the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.), according to regulations in effect on January 1, 1979. An establishment is deemed eligible to participate in the food stamp program if it is authorized to participate in the program by the United States Department of Agriculture Food and Nutrition Service Field Office on the effective date of this section, or if, prior to a reporting period for which the return is filed, such retailer proves to the satisfaction of the Tax Collector that the establishment, based on the nature of the retailer's food sales, could be eligible to participate in the Food Stamp Program established by the Food Stamp Act of 1977 according to regulations in effect on January 1, 1979.
 - (2) *Facilities for the consumption of food* means tables, chairs, benches, booths, stools, counters, and similar conveniences, trays, glasses, dishes, or other tableware and parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.
 - (3) *Food for consumption on the premises* means any of the following:
 - (A) "Hot prepared food" as defined below.
 - (B) Hot or cold sandwiches.

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- (C) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and similar conveniences and within parking areas for the convenience of in-car consumption of food.
 - (D) Food served with trays, glasses, dishes, or other tableware.
 - (E) Beverages sold in cups, glasses, or open containers.
 - (F) Food sold by caterers.
 - (G) Food sold within the premises of theatres, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches, and any business which charges admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction.
 - (H) Any items contained in subsections (a)(3)(A) through (G) above even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, wrapped, or is actually taken from the premises.
- (4) *Hot prepared food* means those products, items, or ingredients of food which are prepared and intended for consumption in a heated condition. "Hot prepared food" includes a combination of hot and cold food items or ingredients if a single price has been established.
- (5) *Premises* means the total space and facilities in or on which a vendor conducts business and which are owned or controlled, in whole or in part, by a vendor or which are made available for the use of customers of the vendor or group of vendors, including any building or part of a building, parking lot, or grounds.
- (6) *Food for home consumption* means all food, except food for consumption on the premises, if sold by any of the following:
- (A) An eligible grocery business.
 - (B) A person who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged, and sold in a similar manner as an eligible grocery business.
 - (C) A person who sells food and does not provide or make available any facilities for the consumption of food on the premises.

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- (D) A person who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers and which are used to record taxable and tax exempt sales, or a retailer who conducts a delicatessen business who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.
 - (E) Vending machines and other types of automatic retailers.
 - (F) A person's sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the State Department of Corrections, the Department of Public Safety, the Department of Juvenile Corrections or a County Sheriff.
- (c) Income derived from the following sources is exempt from the tax imposed by this section:
- (1) Sales of food for home consumption to a person regularly engaged in the business of selling such property.
 - (2) Out-of-city sales or out-of-state sales.
 - (3) Charges for delivery or other "direct customer services" as prescribed by regulation.
 - (4) Food purchased with food stamps provided through the Food Stamp Program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 U.S.C. Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food.
 - (5) Sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
 - (6) Sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, including a regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to A.R.S. Section 15-802 ; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

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- (7) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (d) Reporting. Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to Section 16-520, report to the tax collector in a manner prescribed by the tax collector all sales of food for home consumption exempted from taxes imposed by this Chapter.
- (e) Recordkeeping.
 - (1) Retailers shall maintain accurate, verifiable, and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this Chapter. A retailer may use any method of reporting that properly reflects all purchases and sales of food for home consumption, as well as all purchases and sales of items subject to taxes imposed by this Chapter, provided that such records are maintained in accordance with Article III, and regulations of the Tax Collector.
 - (2) Any person who fails to maintain records as provided herein shall be deemed to have had no sales of food for home consumption, and if upon request by the Tax Collector, a person cannot demonstrate to the Tax Collector that such records and reports do properly reflect all sales of food for home consumption, the Tax Collector may recompute the amount of tax to be paid as provided in Sections 16-370 and 16-545(b).