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Prepared Food

The purpose of this tax fact is to explain how Municipal Gross Receipts Tax applies to prepared food. It is not intended to answer all questions that may arise. The information contained in this fact sheet is current as of the date of publication.

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Municipal Gross Receipts Tax

Municipalities in South Dakota have the option of imposing a municipal gross receipts tax (MGRT) on the following:

1. Admissions to Places of Amusement, Athletic, and Cultural Events
2. Alcoholic Beverages
3. Eating Establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption
4. Lodging Accommodations

This bulletin addresses the MGRT on establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption. The MGRT is in addition to the state sales tax and municipal sales tax.

To be subject to the MGRT tax, the food must be prepared by the seller and be for immediate consumption.

The MGRT does not apply to food that is subject to use tax such as food that is given away.

Immediate consumption includes any prepared food that can be consumed immediately and is generally meant to be eaten soon after it is purchased.

Food that generally requires additional preparation by the customer after it is purchased, such as cooking, heating, or combining with other food products is not prepared food for immediate consumption.

Prepared Food

There are three questions to ask to determine if it is prepared food:

1. **Did the seller heat the food or drink?**
2. **Did the seller mix or combine two or more food ingredients to make a single product?**
3. **Did the seller provide utensils?**

If the answer to any of these questions is yes, and the food is for immediate consumption; the MGRT applies to the sale of that food.

South Dakota Taxes and Rates

State Sales Tax and Use Tax – Applies to all sales or purchases of taxable products and services.	4.2%
Municipal Sales Tax and Use Tax – Applies to all sales of products and services that are subject to the state sales tax or use tax if the purchaser receives or uses the product or service in a municipality that imposes a sales tax or use tax.	1 to 2%
Municipal Gross Receipts Tax (MGRT) – Imposed on alcoholic beverages, eating establishments, lodging accommodations, admissions to places of amusement, athletic, and cultural events. MGRT is in addition to municipal sales tax and use tax.	1%
Tourism Tax – Applies to certain lodging and amusement services and the rental of certain motor vehicles. Tourism tax does not apply when remitting use tax.	1.5%

Prepared Food (cont.)

1. **Heated by the seller.** The following are considered for immediate consumption and are subject to the MGRT:
 - a. Food or drink that is sold in a heated state; and
 - b. Food or drink that is heated by the seller at any time before the sale, even if it's not warm at the time of sale, that the customer would generally eat without reheating.
2. **Two or more food ingredients that are mixed or combined by the seller** for sale as a single item. Not all mixed or combined foods are for immediate consumption. Foods that need additional preparation, such as heating or combining with other products, are not for immediate consumption.
3. **Food sold with eating utensils.** Any food or drink sold when eating utensils are provided by the seller is prepared food for immediate consumption.

Plates, bowls, glasses, and cups need only be available for the customer's use. If a container is required to hold the food, the food is prepared food for immediate consumption and subject to the applicable MGRT.

Examples of heated or previously heated foods:

- Chicken (whole chicken or pieces that are hot or cold that was previously heated)
- Hot dogs
- Hot chocolate
- Hot coffee
- Nachos
- Pizza
- Popcorn

Examples of foods subject to the MGRT when made by the seller:

- Donuts and Bakery Items* (see Bakery/Donut Shops)
- Ice cream
- Salads
- Sandwiches

Examples of food NOT subject to MGRT (unless seller provides utensils - see #3):

- a. Food made by another business and prepackaged food purchased from a manufacturer, provided the seller does not heat, combine with other food products, or provide utensils for (see #3).
- b. Food that is only cut, repackaged or pasteurized by the seller.
 - Fruit trays or fruit bouquets
 - Meat or cheese from a deli counter that is sliced and wrapped.
 - Meat and cheese party trays
 - Salads purchased in large quantities by a seller, then repackaged into smaller containers (without further preparation)
 - Vegetable trays
- c. Items that are heated, mixed or combined by the seller that require additional preparation by the consumer.
 - Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illnesses.
 - Frozen or cold soups that require reheating
 - Meals that require heating or baking
 - Pizza, take and bake

Prepared Food (cont.)

Examples of places or food requiring utensils that are subject to MGRT:

- Cafeteria courts
- Fountain pop
- Hot food bars
- Pizza by the slice
- Salads - salad bar food
- Soups

Trays, bags, or sacks used to carry products are not utensils.

Examples of food NOT subject to MGRT:

Food that is not heated or combined by the seller such as:

- a. Foods, with a utensil included in the manufacturer's packing, such as crackers and cheese that includes a spreader.
- b. Prepackaged food such as candy bars, chips, or ice cream bars sold at convenience stores.

Eating Establishments

Eating establishments include any business that sells prepared food for immediate consumption that the public can purchase, eat there, or take with them. Generally all food sold at eating establishments is for immediate consumption and is subject to state tax, applicable municipal tax, and the applicable municipal gross receipts tax. Exceptions to the municipal gross receipts tax are noted under the specific businesses that follow this section.

Eating establishments located on the grounds of a visitor attraction or at a spectator event are also subject to the tourism tax. (See Tourism Tax facts for further information.)

Eating establishments may be mobile or immobile and may or may not provide seating for their customers.

Examples of eating establishments are:

- Bagel shops
- Bars
- Cafeterias
- Caterers
- Coffee or Donut shops
- Concession stands at a fair or a mall
- Convenience shops
- Delis
- Diners
- Drive-ins
- Fast food restaurants
- Hot dog carts
- Lunch counters
- Night clubs
- Pizzerias
- Private and Social clubs
- Refreshment stands
- Restaurants
- Sandwich shops
- Sidewalk vendors
- Snack bars
- Taverns
- Yogurt or Ice cream stores/stands
- Other places where food is served and is meant to be eaten soon after it is served

Bakery - Donut Shops

Bakery and Donut shops are places where the public is invited to purchase and carry out prepared food. In some shops the public may also eat at that shop.

All bakery items are prepared food; however, some items are not for immediate consumption. If the food generally requires further preparation by the customer such as heating, cooking, or combining with other products, then it is not subject to the MGRT.

Eating Establishments (cont.)

Examples of bakery items made by the seller that are subject to MGRT are:

- Rolls, such as cinnamon rolls
- Biscuits
- Bagels
- Bars
- Cakes - if delivered (see caterers)
- Cookies - cookie bouquets
- Croissants
- Donuts
- Danish
- Pastries
- Tortes
- Tarts
- Muffins

Examples of bakery items NOT subject to MGRT:

- a. Breads, buns, whole pies or cakes sold for home consumption are not considered for immediate consumption, therefore not subject to the MGRT. Cakes, such as wedding cakes or special occasion cakes that are delivered is catering and subject to MGRT.
- b. Bakery items sold by a business other than the bakery (such as a convenience or grocery store) are subject to the MGRT when the seller further prepares the bakery item (such as heating or combining with other products) or they serve the bakery item on a plate or with utensils. If sold without further preparation or utensils, then it is not subject to the MGRT.

Caterers

Individuals or businesses providing catered prepared foods or beverages owe state tax, applicable municipal tax, and applicable MGRT on their receipts from preparing or serving such foods and beverages. If the catering is on the grounds of a visitor attraction or at a spectator event, the receipts are also subject to tourism tax.

A cake delivered to the customer is catering and is subject to the MGRT.

A cake that is picked up at the store is subject to state and applicable municipal sales tax only, not the MGRT.

Concession Stands

Receipts from sales of all food and drinks at a concession or snack stand are subject to state tax, applicable municipal tax, and applicable MGRT. Concession stands may be located at sporting events, lounges, bowling alleys, movie theaters and other areas. Concessions stands on the grounds of a visitor attraction or at a spectator event such as a concert, ball game, or exposition are also subject to tourism tax. (See Tourism Tax facts for further information.)

Other prepared food sold by a convenience store that is subject to the applicable MGRT includes:

- a. All food the store prepared by heating, baking, or combining two or more ingredients. Examples: hot dogs, hot coffee, pizza, pretzels, chicken, nachos, popcorn, and donuts.
- b. Food sold where containers such as plates, glasses, cups, or bowls are provided or available for use. Examples: fountain pop, tea, coffee, hot chocolate.

Food sold by a convenience store NOT subject to MGRT:

- a. Food that is heated by the purchaser is not subject to MGRT even if the purchaser uses a microwave oven located on the seller's premises. Examples: prepackaged sandwiches and frozen pizzas.
- b. Foods that are prepared by another business but sold by the convenience store when utensils are not provided. Examples: donuts, muffins, prepackaged sandwiches, and cookies. If a plate, bowl, cup, or glass is necessary to receive the food or drink, then the item is subject to the applicable MGRT.
- c. Prepackaged foods such as chips, candy bars, canned or bottled pop if they are sold by a convenience store and are not part of a meal served by restaurants located in the convenience store.

Grocery Store - Grocery Store Deli

Grocery stores and delis at grocery stores sell an assortment of food products. Some delis also provide a place to eat. Items may be picked up in other parts of the store, paid for at the deli and eaten there. The deli may charge the applicable MGRT on all sales at the deli. If they choose to charge MGRT on all sales at the deli they need to be sure to remit the additional tax collected.

Eating Establishments (cont.)

Food subject to the MGRT when sold at a grocery store or grocery store deli include:

- Food sold heated or that was heated by the grocery store or deli.
- Food made by the grocery store or deli.
- Food sold with utensils - such as bowls, cups, plates, glasses that hold the product.

Food NOT subject to the MGRT when sold at a grocery store or grocery store deli include:

- Food prepackaged by the manufacturer.
- Food that is just sliced and repackaged.
- Food that requires further preparation by the purchaser, such as heating or combining with other food products.

Examples of grocery or deli items subject to MGRT:

- Bakery items - cookies, donuts, rolls, (excluding whole breads and buns -See section on Bakery)
- Chicken (whole or pieces)
- Dessert items (excluding whole cakes or pies)
- Fountain pop, tea, or coffee
- Puddings
- Salads
- Soups
- Sandwiches

Examples of grocery or deli items NOT subject to MGRT:

- Canned or bottled pop, water, tea, or other drinks
- Chips (prepacked chips or candy bars)
- Cold or frozen foods, such as soups or casseroles that require heating or cooking
- Meats and cheeses sliced and repackaged
- Prepackaged salads, sandwiches, and desserts
- Take n bake pizzas
- Whole breads, buns, pies, or cakes (see bakery section)

Reporting Municipal and Tourism Tax

The Municipal Tax Information Bulletin has a listing of all municipal sales and use tax rates and information on the Municipal Gross Receipts Tax. This bulletin may be obtained by calling 1-800-829-9188 or online at <https://dor.sd.gov>. Changes in municipal taxes are published in the department newsletter every January and July.

All municipal and tourism tax is reported on the state sales tax return.

Each tax must be reported separately, using the designated code for that tax. Do not combine taxes or report all tax under one code.

The Municipal Gross Receipts tax applies to:

- Lodging
- Eating Establishments
- Alcohol Sales
- Admissions

Example: Aberdeen

Imposes a 2% Municipal Sales Tax that is reported using code 001-2. Imposes a 1% Municipal Gross Receipts Tax that is reported using code 001-1.

Tourism tax is reported under the city and special jurisdiction section of the return using the code 700-1. On the Standing Rock Reservation tourism tax is reported using code 413-5.

Example: An Aberdeen restaurant has \$10,000 in receipts. Eating establishments in Aberdeen are subject to **Municipal Sales Tax** and **Municipal Gross Receipts Tax**. This tax is reported under the City tax calculation section of the return.

City	Municipal Tax Rate		Gross Receipts Tax - In Addition to Municipal Sales Tax					
	Rate	General Code	Gross Receipts Tax	Tax Code	Lodging	Eateries	Alcohol	Admissions
Aberdeen	2.00%	001-2	1.00%	001-1	X	X	X	X
9. City and Special Jurisdiction Tax Calculation Detail:								
10. City/Special Jurisdiction Name				Code	Taxable	Rate	Tax Due	
11. Aberdeen-ST				001-2	10,000	2.00%	\$200	
12. Aberdeen-MGRT				001-1	10,000	1.00%	\$100	

Tax Application on Prepared Food Sales	What Sales are Prepared Food?	State Sales Tax	Applicable Municipal Tax	Applicable Municipal Gross Receipts Tax	Tourism Tax
Restaurants, including dine-in, carry-out, and drive thru	All food sales	X	X	X	
Catering	All food sales	X	X	X	
Concession stands	All food sales	X	X	X	
Concession stands at amusement parks & spectator events	All food sales	X	X	X	X
Special event temporary vendor stands	All food sales	X	X	X	X
Juice bars	All food sales	X	X	X	
Grocery store deli - prepared food	Prepared food ¹	X	X	X	
Convenience store - prepared food	Prepared food ¹	X	X	X	
Fountain drinks	All fountain drinks	X	X	X	
Prepared food sold at any establishment	Prepared food ¹	X	X	X	
Prepared food sold at visitor attractions	Prepared food ¹	X	X	X	X
Food services at colleges / universities	Prepared food ¹	X	X	X	

¹ Includes:

All food heated or that was heated

All food served with utensils - containers, or

Food where 2 or more ingredients were combined to create a single product

Contact Us

If you have any questions, please contact the **South Dakota Department of Revenue.**

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