

CHAPTER 65. SALES AND USE TAX

SUBCHAPTER 11. CREDITS AND REFUNDS

710:65-11-1. Sales tax credits and refunds

(a) Credits, other than for bad debts discussed below, may not be taken on the sales tax reporting form until or unless a valid letter of credit has been received from the Commission. The burden of establishing the right to, and the validity of, a credit or refund is on the vendor or purchaser claiming the credit or refund.

(b) Credit/refund requests submitted by a vendor shall include the information set out in paragraphs (1) through (8) of this subsection (if applicable). The application for credit may be obtained from the Oklahoma Tax Commission, 300 N. Broadway Ave, Oklahoma City, OK 73102, or online at www.tax.ok.gov.

(1) A written detailed explanation of why the credit/refund is due. (Include exemption numbers and/or an explanation on exempt customers.)

(2) Amended reports detailing the correct figures that should have been reported. (A worksheet may be used in lieu of an amended report for each month involving an extended period.)

(3) Copies or a list of the sales tax reports on which the sales were originally reported.

(4) Copies of cancelled checks used to remit the tax paid.

(5) Copies of the original invoices on which the tax was originally charged. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the customer name, invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.

(6) Copies of the credit invoices or checks showing the tax collected or charged in error has been refunded to your customer.

(7) A recap of the credit/refunds by tax type, tax period, and taxing jurisdiction.

(8) Other documentation which may be pertinent to the requested credit/refund.

(c) Except for refund requests for state sales tax paid on the purchase of food and food ingredients, credit/refund requests submitted by a purchaser shall include the information set out in paragraphs (1) through (5) of this subsection (if applicable). The application for credit may be obtained from the Oklahoma Tax Commission, 300 N. Broadway Ave, Oklahoma City, OK 73102, or online at www.tax.ok.gov.

(1) The name, address, telephone number of the contact person along with the name, address, telephone number and at least the last four digits of the purchaser's identification number.

(2) A written detailed explanation of why the credit/refund is due. Such explanation must contain sufficient factual information about the transaction and reason why the transaction is not subject to tax. (Include exemption number, if applicable).

(3) Copies of the original invoices included in the refund request, in chronological order, from the oldest to the most current. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the vendor name,

invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.

(4) Additional documents which support the refund claim, for example: executed contracts, shipping documents or bills of lading, or documentation reflecting usage of tangible personal property, if not evident from the invoice description.

(5) If the amount of the credit/refund request exceeds \$10,000.00, the purchaser must also provide the following:

(A) A statement from each vendor to whom the purchaser paid the tax setting forth each invoice included in the claim,

(B) The amount of state, city and/or county tax collected from the purchaser and reported by the vendor and the local jurisdiction(s) for which the tax was paid,

(C) The date on which the tax was remitted to the Tax Commission, and

(D) A statement that the vendor has not, and will not, refund the tax to the purchaser.

(d) Requests for a refund of state sales tax paid on the purchase of food and food ingredients shall be submitted pursuant to the provisions of Section 710:65-13-575.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 57. FOOD AND FOOD INGREDIENTS

710:65-13-570. Definitions

The following words and terms, when used in this Part, shall have the following meanings, unless the context clearly indicates otherwise:

"Bottled water" means *water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie-free and does not contain sweeteners or other additives except that it may contain:*

(A) *Antimicrobial agents;*

(B) *Fluoride;*

(C) *Carbonation;*

(D) *Vitamins, minerals, and electrolytes;*

(E) *Oxygen;*

(F) *Preservatives; and*

(G) *Only those flavors, extracts, or essences derived from a spice or fruit.* [68 O.S. § 1352(1)]

"Candy" means *a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour or requiring refrigeration.* [68 O.S. § 1352(5)]

"Dietary supplements" means any product, other than tobacco which is, required to be labeled pursuant to 21 C.F.R. Section 101.36 as a dietary supplement and are intended to supplement the diet. Dietary supplements are ingested in tablet, capsule, powder, softgel, gelcap, or liquid form. If not intended for ingestion in such form, they are not represented as conventional food and are not meant to be the sole item of a meal or of the diet. Dietary supplements contain one or more of the following dietary ingredients:

(A) *a vitamin;*

(B) *a mineral;*

(C) *an herb or other botanical;*

(D) *an amino acid;*

(E) *a dietary substance to supplement the diet by increasing the total dietary intake;*
or

(F) *a concentrate, metabolite, constituent, extract, or combination of any ingredient described in subparagraphs (A) through (E) of this paragraph. [68 O.S. § 1352(11)]*

"Eating utensil" means a useful tool or instrument used in the consumption of food.

Eating utensils does not include material that is used solely to package and transport food. The term includes, but is not limited to:

(A) Bowls

(B) Chopsticks

(C) Cups

(D) Forks

(E) Glasses

(F) Knives

(G) Napkins

(H) Plates

(I) Skewers inserted into food and handed to the customer

(J) Spoons

(K) Straws

"Food and food ingredients" means *substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients shall include bottled water, candy, and soft drinks. Food and food ingredients shall not include:*

(A) *Alcoholic beverages;*

(B) *Dietary supplements;*

(C) *Marijuana, usable marijuana, or marijuana-infused products;*

(D) *Over-the-counter medications with a drug facts box or active ingredients labeling;*

(E) *Prepared food; or*

(F) *Tobacco. [68 O.S. § 1352(16)]*

"Food sold with eating utensils provided by the seller" means *food sold with eating utensils provided by the seller who meets the following requirements:*

(A) *For a seller with a prepared food sales percentage (PFS%) of greater than 75%, the seller makes eating utensils available to purchasers or, if a food item is bottled water, candy, or soft drinks, the seller gives or hands the eating utensils to purchasers or makes plates, bowls, glasses, or cups that are necessary for the purchaser to receive the food available to purchasers. If a food item has four or more servings packaged as one food item sold for a single price, the seller must give or hand eating utensils to the purchaser. Serving sizes must be determined based on a label on an item sold, or if no label is available, then a seller shall determine the reasonable number of servings in an item, or*

(B) *For a seller with a PFS% of 75% or less, the seller's business practice is to give or hand eating utensils to purchasers. Eating utensils necessary for the purchaser to receive the food, such as bowls and cups, need only be made available to purchasers.*

(C) *Food sold with eating utensils provided by the seller does not include food items that have a utensil placed in a package with the food items by a food manufacturer.* [68 O.S. § 1352(17)]

"Prepared food" means:

- (A) *Food sold in a heated state or that is heated by the seller;*
- (B) *Two or more food ingredients mixed or combined by the seller for sale as a single item; or*
- (C) *Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws, but does not include a container or packaging used to transport the food; and*
- (D) *Prepared food shall not include:*
 - (i) *Food sold by food manufacturer, except for bakeries and tortilla manufacturers (NAICS subsector 3118);*
 - (ii) *Food sold in an unheated state by weight or volume as a single item; and*
 - (iii) *Food sold that ordinarily requires additional cooking, not including just reheating, by the consumer prior to consumption.* [68 O.S. § 1352(25)]

"Soft drinks" means any nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks shall not include beverages that contain:

- (A) *Milk or milk products;*
- (B) *Soy, rice, oat, or similar milk substitutes; or*
- (C) *Greater than 50% of vegetable or fruit juice by volume.* [68 O.S. § 1352(31)]

710:65-13-571. Food and food ingredients

- (a) Effective August 29, 2024, the gross receipts or gross proceeds derived from the sale of food and food ingredients are subject to the state sales and use tax rate of 0%, except as otherwise provided in subsection (b).
- (b) The gross receipts or gross proceeds derived from the sale of prepared food, alcoholic beverages, and dietary supplements are taxed at the state sales and use tax rate of 4.5%.
- (c) The sale of food and food ingredients remains subject to any applicable municipal and county sales and use taxes.

710:65-13-572. Prepared food

Prepared food is food generally intended for immediate consumption and is prepared to a point generally accepted as ready to be eaten without further preparation. Food which meets any of the criteria of paragraphs (1), (2) or (3) of this subsection is prepared food and taxed at the state sales tax rate of 4.5%.

(1) **Food and food ingredients sold in a heated state or that is heated by the seller.** Food that was heated by the seller at any time before the sale, is fully taxable as prepared food even if it is in an unheated state at the time of the sale. Heating includes baking, braising, boiling, broiling, dehydrating, frying, microwaving, roasting, simmering, smoking, steaming, or other forms of warming or cooking. The heating may occur at premises other than the sales location. Food heated by the customer, not the seller, on the seller's premises is not food sold in a heated state.

(2) **Two or more food ingredients mixed or combined by the seller for sale as a single item.** Prepared foods include foods made or combined by the seller. A seller who mixes or combines two or more foods or food ingredients and sells the mixture or combination as a single item, is selling prepared food. For example, meals, salads,

sandwiches, baked goods, and ice cream sundaes that are made by the seller are prepared food and are taxed at the state sales tax rate of 4.5% and any applicable municipal and county sales taxes.

(3) **Food sold with eating utensils provided by the seller.** Food is considered to be sold with an eating utensil provided by the seller when the food is intended for consumption with the utensil provided. A customer's choice not to use a provided utensil does not affect whether an item is prepared food.

(A) For a seller with a PFS% of greater than 75% calculated pursuant to Section 710:65-13-573, food is sold with eating utensils provided by the seller if:

(i) The seller physically gives or hands the utensils to the purchaser or makes the utensils available to its customers by way of self-service station or other central location on the premises;

(ii) A food item has four or more servings packaged as one food item sold for a single price and the seller physically gives or hands the eating utensils to purchasers. To determine the number of servings in the food item, use the information on the product label. If there is no product label, the seller can make a reasonable determination as to the number of servings in the food item. If the transaction is for less than four servings, or the seller does not maintain adequate records of these sales, these food sales are taxed at the state sales tax rate of 4.5%.

(B) For a seller with a PFS% of 75% or less, food is sold with eating utensils provided by the seller if the seller's business practice is to physically give or hand eating utensils to purchasers, except that plates, bowls, glasses and cups necessary for the purchaser to receive the food need only be made available to purchasers.

(C) Food is not sold with eating utensils provided by the seller if the food items have a utensil placed in a package with the food items by a person other than the seller, and that other person is a food manufacturer (NAICS sector 311). For any packager with any other NAICS classification code, the seller is considered to have provided the eating utensil.

710:65-13-573. Prepared Food Sales Percentage (PFS%)

(a) **General provisions.** All sellers with prepared food sales greater than 75% of their total food sales and utensils are made available by way of a self-serve station or otherwise, are required to collect state sales tax on all food sales, unless the item meets the serving-size exception in subsection (c). Examples of sellers that usually exceed the 75% rule include, but are not limited to:

- (1) Cafes
- (2) Restaurants
- (3) Fast food restaurants
- (4) Food court restaurants
- (5) Diners
- (6) Delicatessens
- (7) Food trucks
- (8) Concession stands
- (9) Cafeterias
- (10) Coffee shops
- (11) Sports/entertainment arena sellers

- (12) Hot dog stands
- (13) Juice bars
- (14) Popcorn/Kettle corn sellers
- (15) Sandwich shops
- (16) Ice cream shops
- (17) Sushi bars
- (18) Taverns, bars, and grills
- (19) Donut shops

(b) **Calculation of PFS%.** All sellers that primarily sell prepared food and food sold with eating utensils provided by the seller shall annually calculate their PFS%.

(1) If a seller has a PFS% of greater than 75%, food and food ingredients, bottled water, candy, and soft drinks are taxed at the state sales tax rate of 4.5%.

(2) If a seller has a PFS% of 75% or less, food and food ingredients, bottled water, candy, and soft drinks are subject to the state sales tax rate of 0%. All sales of prepared food are taxed at the state sales tax rate of 4.5%.

(3) The 75% test is determined in the following manner:

(A) The numerator is the total sales of prepared food as defined in Section 710:65-13-570.

(B) The denominator is the total sales of food, food ingredients, prepared food, bottled water, candy, and soft drinks.

(C) Exclude sales of alcoholic beverages, tobacco, motor vehicle fuels, and all other non-food sales from both the numerator and the denominator.

(4) On or before January 31 of each calendar year, sellers must calculate a PFS% using data from the prior year to calculate the PFS% for the current year. Sellers with multiple locations will only calculate one PFS%. New businesses shall make a good faith estimate of a PFS% for the first year. The good-faith estimate shall be reviewed after three months and adjusted, if appropriate.

(5) The Tax Commission may request documentation from sellers to substantiate the PFS% calculation.

(c) **Exception to the 75% rule.** Even if more than 75% of the sales of food by the seller are sales of prepared food, sales of food or food ingredients are subject to the state sales tax rate of 0% if:

(1) The food item contains four or more servings packaged as one item for a single price;

(2) The food item has not been made or heated by the seller; and

(3) Eating utensils are made available to the buyer. However, if the seller's customary practice is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction, the food item is taxed at the state sales tax rate of 4.5%.

(d) **Serving size determination.** To determine the number of servings in the food item, use the information on the product label. If there is no product label, the seller can make a reasonable determination as to the number of servings in the food item. If the transaction is for less than four servings, or the seller does not maintain adequate records of these sales, these food sales are taxed at the state sales tax rate of 4.5%.

710:65-13-574. Exclusions from prepared food

There are some items of prepared food that are exceptions to the rule and are not taxed as prepared food.

- (1) Food that contains raw eggs, fish, meat, or poultry products that require cooking after the sale to prevent food-borne illnesses and food the customer generally cooks or heats after the sale. Food that would be fully taxable prepared food because two or more ingredients were mixed or combined by the seller, or because the food was at some time heated by the seller, is not taxable when additional cooking is required (as opposed to just reheating) by the customer prior to eating.
- (2) Food that is only cut, repackaged, or pasteurized by the seller. For example, meat from a deli counter that is sliced and wrapped for a customer, or fruit sliced by the seller and packaged into containers or onto platters for sale.
- (3) Food sold in an unheated state by weight or volume as a single item and eating utensils are not provided by the seller.
- (4) Food sold by food manufacturers.
- (5) Food that ordinarily requires additional cooking to finish the product to its desired final condition. Food that would be fully taxable prepared food because two or more ingredients were mixed or combined by the seller, or because the food was at some time heated by the seller, are subject to the state sales tax rate of 0% when additional cooking is required (as opposed to just reheating) by the customer prior to eating. For example, at a specialty store, a customer purchases a take-and-bake pizza. If eating utensils are not provided by the specialty store, the take-and-bake pizza is not taxed as prepared food.

710:65-13-575. Claims for refund of state sales tax paid on food and food ingredient purchases

Claims for refund of the state portion of sales tax on food and food ingredients shall be submitted using Form 13-9-G. The following information and documentation must be included in order for the claim to be considered.

- (1) The name, address, telephone number of the person claiming a refund;
- (2) The name, address, telephone number of the vendor;
- (3) A written, detailed explanation of why the credit/refund is due;
- (4) A copy of the invoice or receipt that clearly identifies the items as qualifying for the state sales tax rate of 0% and shows the incorrect rate was charged on those specific items to qualify for a refund; and
- (5) Proof of payment, such as copies of cancelled checks, bank statements or credit card receipts. If payment was made in cash, that shall be corroborated by the receipt. If the description on the invoice or receipt does not contain enough information to make a determination, the claim for refund shall be denied.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 5. "C"

710:65-19-40. Caterers

(a) The term "**caterer**" means a person engaged in the business of preparing or serving meals, food, and drinks, without regard to whether the service is at the caterer's place of business, the customer's location, or some other location, usually for a specified price for a specific menu or offering, but not off a menu to the public. The term does **not** include wait persons hired directly by a caterer's customer, whether hired by the hour, by the day, or for the event.

- (b) Sales tax must be collected, reported and remitted on all charges made by caterers for serving meals, prepared food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals. Sales tax must be collected, reported and remitted on charges made by caterers for the rental of dishes, silverware, glasses, etc., even though no food is provided or served by the caterers in connection with such rental.
- (c) The gross receipts or gross proceeds derived from the sale of catered foods or beverages are taxed at the state sales and use tax rate of 4.5% and any applicable municipal and county sales taxes.

PART 11. "F"

710:65-19-109. Food; vendors of meals and prepared food

- (a) Vendors engaged in the business of selling meals and prepared food to purchasers must collect, report and remit sales tax on their receipts from such sales. It is immaterial that no profit is realized from the operation of any such business if the vendor is engaged in business. It is also immaterial that the class of purchasers may be a limited one, such as the employees of a particular employer who operates a cafeteria or other dining facilities for the benefit of his employees.
- (b) Meals provided to employees at no cost or at a reduced cost are subject to sales tax. The **"gross receipts"** or **"gross proceeds"** in the case of a meal sold to an employee at a reduced price is the amount received for that meal from the employee in the form of cash, check or credit card chit. Each person required to make a sales tax report shall include in the gross proceeds the sales value of all tangible personal property which has been purchased for resale and has been withdrawn from stock in trade for use or consumption. Meals provided to employees free of charge are withdrawals from inventory used or consumed by the employer and sales tax is due on the sales value. **"Sales value"** in the case of meals is the cost of materials withdrawn from inventory to provide such meals.
- (c) Complimentary meals provided free of charge to customers are subject to sales tax. Each person required to make a sales tax report shall include in the gross proceeds the sales value of all tangible personal property which has been purchased for resale and has been withdrawn from stock in trade for use or consumption and shall pay tax on such sales value. Meals provided to customers free of charge are withdrawals from inventory used or consumed by the employer and sales tax is due on the sales value.
- (d) Meals served free of any actual charge or cost to an employee or customer constitute a withdrawal from inventory of items purchased free of sales tax and such withdrawals are subject to sales tax. For purposes of calculating sales tax liability, the sales value of free or complimentary meals is presumed to be the greater of any consideration received, or the cost or price paid by the vendor/taxpayer for the food items included in the free or complimentary meal served, pursuant to OAC 710:65-1-2.
- (e) When an establishment provides a second meal in place of the first meal which was discarded because it did not meet the customer's specification, only one sale has been made and sales tax is levied only on the replacement meal. If, rather than discarding the first meal, the establishment serves the meal to another customer or employee, two sales have been made and sales tax is levied on both meals.

(f) Meals provided to customers at a reduced cost (i.e., discount or advertised special) are taxable. The "**gross receipts**" or "**gross proceeds**" in the case of a meal sold to a customer at a reduced price is the amount received for that meal from the customer in the form of cash, check or credit card chit less any amount designated by the customer as voluntary tip(s).

(g) In cases where two items are provided by a restaurant, club or similar establishment (i.e., buy one, get one free or two for one sale), the "**gross receipts**" or "**gross proceeds**" derived from the sale of two items for the price of one is the total amount of cash, check or credit card chit received less any amount designated by the customer as voluntary tip(s).

710:65-19-110. Food; eating and drinking establishments

(a) The sale of meals, or prepared food, or non-alcoholic or alcoholic beverages are subject to sales tax, and any person or establishment making such sales will be considered a vendor and will be required to hold a valid sales tax permit. Such person or establishment will then be required to charge, collect, and remit the appropriate sales tax to the Commission based on the total gross receipts, or for the sale of alcoholic beverages, based on the total retail value, as set out in 37A O.S. §5-105.

(b) Fund raising meals or non-alcoholic beverages sold in excess of the regular selling price are subject to sales tax on the gross receipts. Fund raising sales of alcoholic beverages are subject to sales tax on the total retail value, as prescribed by 37A O.S. § 5-105.

(c) The vendor of meals or beverages cannot buy exempt any tangible personal property consumed in the operation of his business, including fixtures, linens or silverware. Paper napkins, paper cups, disposable utensils, disposable hot containers and other one-way carry-out materials may be purchased exempt as purchases for resale.

(d) Meals or non-alcoholic beverages provided to employees or customers at no cost, if no valuable consideration is received or indicated in vendor's records, are not subject to sales tax on gross receipts, but sales tax is due from the vendor, as a consumer user, on the "**sales value**" of the meal or the beverage as that term is defined in OAC 710:65-1-2.

(e) Sales tax is due on the total retail value of all alcoholic beverages, including alcoholic beverages provided to employees or customers at no cost or at a reduced cost, pursuant to 37A O.S. § 5-105.

PART 25. "M"

710:65-19-212. Milk and dairy processors

(a) The sale of all tangible personal property consumed or used directly in production of dairy products prior to shipment from the place of production is not taxable.

(b) Sales of tangible personal property consumed or used in the receiving, storage, transportation, or delivery of milk are taxable. Transportation of milk from the place where it is produced, as well as the receiving and storage of the milk at the processing plant, is taxable. Processing includes all necessary operations performed on the milk prior to shipment from the plant. Sales of tools and equipment used directly in the processing of milk or milk products, and lubricants and other materials consumed or used in the maintenance of that equipment, are not taxable. Sales of tangible personal property

consumed or used in the construction, alteration, repair, or improvement of buildings and grounds are taxable.

(c) Sales of equipment used or consumed in the delivery of milk and milk products are taxable, including trucks, cases, crates, etc., and property used for the maintenance and operation of that equipment.

(d) Sales of milk bottles and milk cans to dairies for use in processing milk for sale at retail by others, together with washing machines for the same and cleaning compounds used in connection therewith by such processors, are not subject to tax. Sale of milk bottle crates or cases for transportation, receiving, storage, or delivery are subject to tax. Sales of milk cans to farmers for use in cooling milk prior to shipment to dairies are not taxable.

(e) Prior to August 29, 2024, dairy products sold by vendors to consumers for home preparation of meals are subject to sales tax. On or after August 29, 2024, dairy products sold by vendors to consumers for home preparation of meals are subject to the state sales and use tax rate of 0%. (See: 710:65-13-571)