



FOOD AND BEVERAGE TAX GUIDE



Welcome to the City of Harrisonburg! It is our hope that this guide will give you a clear understanding of the food & beverage tax ordinance as it applies to your business, organization, or establishment.

The guidelines presented here are a summary of the laws and regulations concerning the food and beverage tax in the City of Harrisonburg. All applicable provisions of the Code of Virginia and the Code of the City of Harrisonburg are controlling in all matters concerning the food and beverage tax in the City of Harrisonburg.

The code of Virginia 58.1-3840 grants cities and towns the authority to impose excise taxes on prepared food and beverages (meals). Unlike Virginia counties, state statutes do not limit the tax rate that cities may assess for the food & beverage tax. Cities and towns do, however, follow the food & beverage tax guidelines established for counties pursuant to Code Virginia 58.1.3833 with the exception of the 6% tax rate cap placed on counties.

Sec. 4-2-86. - Definitions.

The following words and phrases, when used in this article shall have, for the purposes of this article, the following respective meanings except where the context clearly indicates a different meaning:

Cater: The furnishing of food, beverages, or both on the premises of another, for compensation.

Collector: The commissioner of the revenue of the city or their designee.

Commissioner: The commissioner of the revenue of the city and any duly designated deputies, assistants, inspectors or other employees.

Food: All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

Food establishment: Any place in or from which food or food products are prepared, sold or distributed in the city, including but not limited to, any restaurant, dining room, grill, coffeeshop, cafeteria, cafe, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

Meal: Meal shall mean any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service. (Ord. of 6-27-00)

WHAT IS THE FOOD AND BEVERAGE TAX?

The food and beverage tax is a **seven percent (7%)** tax levied on food and beverages sold by food establishments, businesses, and organizations as the term is defined in the City of Harrisonburg Code.

Food Establishments include but are not limited to:

Amusement Parks	Hot dog stands
Billiard parlors	Lunchrooms
Bowling Alleys	Mobile food services
Buffets	Nightclubs
Ice Cream Shops	Grills
Snack Bars	Gas Stations
Cafés	Office/Government cafeterias
Cafeterias	Public and Private Clubs
Caterers (Licensed in Harrisonburg)	Push and Street Carts
Coffee Shops	Short order places
Concession Stands	Skating Rinks
Delicatessens	Sporting Venues
Dining Rooms	Taverns
Health Clubs	Theaters
Motel/Hotels	Doughnut shops
Bakeries	Bed & Breakfast
Fast-food	Drive-in Restaurant

Also included on a limited basis are:

- ❖ Colleges and Universities when selling to non-students or non-employees
- ❖ Hospitals and Nursing Homes when selling to employees and the general public
- ❖ Industrial Cafeterias when selling to the general public

WHO COLLECTS THE FOOD AND BEVERAGE TAX?

All food establishments listed above, or any others that meet the definition of “food establishment” are responsible for collecting the tax on food and beverages that they sell unless an exemption applies. Taxation shall be the locality in which sales are made (where the place of business is located) without regard to the locality of delivery or possible use by the purchaser (i.e., caterers). The tax is collected from the purchaser and is remitted to the city. All funds collected are held in trust for the city. Failure to report and remit the collected food and beverage tax constitutes embezzlement under state statutes.

City Code /City of Harrisonburg

Sec. 4-2-89. - Exemptions; limits on application.

(a) The tax imposed under this article shall not be levied on the following items when served exclusively for off-premises consumption:

- (1) Factory-prepackaged candy, gum, nuts and other items of essentially the same nature.
- (2) Factory-prepackaged donuts, ice cream, crackers, nabs, chips, cookies and items of essentially the same nature.
- (3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
- (4) Alcoholic and nonalcoholic beverages sold in factory sealed containers.
- (5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
- (6) Any food or food product purchased for home consumption as defined in the Federal Food Stamp Act of 1977, 7 U.S.C. section 2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the Federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (c)(3), (4) and (5) hereinbelow.

(b) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(c) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

- (1) Food and beverages furnished by restaurants, as defined in Virginia Code § 35.1-1, to employees as part of their compensation when no charge is made to the employee.
- (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

- (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth of Virginia, any political subdivision of the Commonwealth of Virginia or the United States.
- (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for aged or infirm individuals, individuals with disabilities, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
- (5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth of Virginia to offer meals at concession prices to elderly, infirm, or needy individuals or individuals with blindness or other disabilities in their homes or at central locations.
- (6) Food and beverages sold on an occasional basis by volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, not exceeding the first three (3) times per calendar year, and beginning with the fourth time, on the first one hundred thousand dollars (\$100,000.00) of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three (3) times) as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent or religious purposes.
- (7) Food and beverages sold through vending machines.
- (8) Food and beverage furnished by churches that serve meals to their members as a regular part of their religious observances or age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served, and fees are charged for such food and beverages and are included in rental fees.
- (9) Age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served, and fees are charged for such food and beverages and are included in rental fees.
- (10) Sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed two thousand five hundred dollars (\$2,500.00). The seller's annual income for this exemption shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the City of Harrisonburg.

(Ord. of 6-27-00; Ord. of 3-22-16 (2); Ord. of 12-12-23)

DEFINITION OF “BULK” FOOD CLARIFIED

The food & beverage tax should be collected on all prepared food except for the sale of bulk food items. The established rule that excludes bulk purchases of items from the food & beverage tax are items such as the sale of half or whole cakes or pies, or bakery items in quantities of six (6) or more are considered bulk sales and will not be subject to the city’s food & beverage tax. When items are sold in quantities of five (5) or less, the food & beverage tax must be applied.

GRATUITY AND SERVICE CHARGES

Sec. 4-2-90. - Gratuities and service charges.

Where a purchaser provides a tip or gratuity for an employee of a seller, and the amount of the tip or gratuity is wholly in the discretion of the purchaser, the tip is **not** subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided, in the latter case, the full amount of the tip or gratuity is turned over to the employee by the seller.

An amount or percent, whether designated as a tip, gratuity, or a service charge, that’s added to the price of the meal by the seller, and required to be paid by the purchaser, shall be exempt from the tax imposed by this article to the extent that the mandatory tip, gratuity, or service charge is less than twenty (20) percent of the sales price. Any portion of the mandatory tip, gratuity or service charge that exceeds twenty (20) percent of the sales price is a part of the selling price of the meal and is subject to the tax imposed by this article. (Ord. of 6-27-00; Ord. of 11-9-10(1))

REMITTANCE OF TAX COLLECTED

The food establishment must file a completed tax return and remit to the city any food and beverage taxes collected on or before the **20th day of each month**, covering the amount of tax collected during the preceding month. This includes seasonal businesses also.

If a business collects tax in error or due to the register/point of sale (POS) system not being set up properly on item(s) and it cannot be refunded to the purchaser, the business is required to file and remit such tax to the city.

If no food & beverage tax is collected for the month, the seller must file a ZERO return.

FOOD & BEVERAGE TAX and DELIVERY SERVICES

Some food establishments use an online food ordering company to deliver food to the purchaser. The use of an agent is clearly up to the food establishment and the responsibility for collection and remittance of food & beverage tax rests with the food establishment. The use of an agent does not in any way decrease the responsibility of the food establishment from collecting the food & beverage tax as established by both city and state code. The legal entity preparing the food is responsible for the collection and remittance of food & beverage tax, to include all meals, prepared food, or other transactions subject to the local meal tax and would be included in the monthly reports and remittance.

Our office will not accept meal taxes from delivery companies. Should your business currently contract or plan to contract with a delivery service, it is your responsibility to collect and remit all food & beverage taxes for those meals sold through the delivery service. Please ensure your delivery companies are aware of this.

PENALTIES AND INTEREST

A penalty of ten percent (10%) of the taxed assessable or ten dollars (\$ 10.00) whichever is greater, and not to exceed the taxable total amount; shall be assessed for failure of a seller to **file and pay** by the due date. The penalty becomes part of the tax due, and interest shall be assessed at the rate of ten percent (10%) per year on the amount of tax and penalty from the date upon which the tax is due. The interest will commence on the day following the day on which the tax was due and continue until paid.

Sec. 4-2-92. - Penalty for violation of article.

(a) Any person willfully failing or refusing to file a return as required by this article shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less. Any person violating or failing to comply with any other provision of this article shall be guilty of a class 1 misdemeanor.

(Ord. of 6-27-00; Ord. of 11-12-02; Ord. of 9-23-03; Ord. of 3-22-16 (2); Ord. of 12-12-23)

RECORD RETENTION AND COMPLIANCE AUDIT

Each seller is required to keep and preserve for a period of **five years** records showing gross sales of all food and beverages, the amount charged to the purchaser for each such purchase, the date of the purchase, the taxes collected on the purchase, and the amount of tax required to be collected.

The Commissioner of the Revenue or their duly authorized agents have the power to examine a seller's records at reasonable times and without unreasonable interference with the business of the seller and to make copies of all or any parts of the records.

GOING OUT OF BUSINESS

Whenever a business ceases operation or otherwise disposes of a business that was required to collect or pay the food and beverage tax, any tax collected but not yet remitted shall become **immediately** due and payable, and such person shall immediately make a report and pay the tax due. A going out of business form must be completed and is available at the Commissioner of the Revenue office or on the city website at <https://www.harrisonburgva.gov/business-taxes>.

**Allowable deductions from Gross Sales as reported on the Monthly Food & Beverage Tax Return
(Report on Line 2, Non-applicable Sales)**

Tips	<i>Tips are considered non-taxable sales and are therefore deductible from Gross Sales only to the extent that the transactions are recorded on a cash register and included in the Gross Sales (basis of food & beverage tax).</i>
Service Charges / Tips / Gratuity	<i>The first 20% of any automatic service charge, or mandatory gratuity, separately stated on the bill, is a non-taxable sale. This is usually an amount added to the ticket for services provided to a large group and is therefore deductible from Gross Sales to the extent that the transactions are recorded on a cash register and included in the Gross Sales (basis of food & beverage tax). The amount that exceeds 20% of the cost of the meal(s) is <u>not</u> deductible.</i>
Vending machines sales of food and beverages	<i>Vending machine sales are non-taxable. If the sales are recorded on the cash register and included in the Gross Sales (basis of food & beverage tax), the amount of those sales may be deducted as "non-applicable sales".</i>
Food Stamp Program tangible personal property purchased with food coupons issued by the United States Department of Agriculture	<i>The sales of tangible personal property purchased with food coupons issued by the U.S. Dept. of Agriculture, under the Food Stamp Program are non-taxable. If the sales are recorded on the cash register and included in the Gross Sales (basis of food & beverage tax), the amount of those sales may be deducted as "non-applicable sales".</i>
WIC Drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.	<i>Goods purchased with WIC drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children are non-taxable. If the sales are recorded on the cash register and included in the Gross Sales (basis of food & beverage tax), the amount of those sales may be deducted as "non-applicable sales".</i>
Employee meals provided as part of his/her compensation when no charge is made to the employee.	<i>Meals sold to employees are non-taxable provided the meals are considered compensation. Such sales are exempt from the local food & beverage tax. If the sales are recorded on the cash register and included in the Gross Sales (basis of food & beverage tax), the amount of those sales may be deducted as "non-applicable sales". Please review IRS Publication 15 to determine if the food & beverage are reportable to the employee as compensation.</i>
Food & Beverages, when used or <u>consumed, and paid for</u> by the United States or any its political subdivisions.	<i>Such sales are exempt from the local food & beverage tax. If the sales are recorded on the cash register and included in the Gross Sales (basis of food & beverage tax), the amount of those sales may be deducted as "non-applicable sales". Please review IRS Publication 15 to determine if the meals are reportable to the employee as compensation.</i>
Meals provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.	<i>Such sales are exempt from the local food & beverage tax. If the sales are recorded on the cash register and included in the Gross Sales (basis of food & beverage tax), the amount of those sales may be deducted as "non-applicable sales". Please review IRS Publication 15 to determine if the meals are reportable to the employee as compensation.</i>
Gift Certificates	<i>The value of Gift Certificates sold within the reporting month and not yet redeemed are deductible, in the month they are sold only if the sales are recorded on the cash register and included in the Gross Sales (basis of food & beverage tax).</i>
Coupons / Discounts	<p><i>Two for one meal / food purchases or coupons that offer a percentage, or a certain dollar amount off a meal are taxed based on the amount actually paid by the purchaser.</i></p> <p><i>"Entertainer coupons" and store coupons do not possess a currency exchange value. Therefore, tax is based on the cash price actually paid by the purchaser.</i></p> <p><i>Manufacturer coupons do possess a redemption factor and the establishment is compensated for coupon acceptance. The food & beverage tax is applied to the whole, standard, non-discounted price that would have been paid for the two items.¹</i></p> <p>¹ <i>These guidelines were developed from those published by the Virginia Municipal League, the Virginia Association of Counties and the Commissioners of Revenue Association of Virginia in in conjunction with various food industry groups to provide guidance regarding what items are subject to the meals or food and beverage tax.</i></p>

Guide for Virginia Sales & Use Tax and Harrisonburg Food & Beverage Tax

		Virginia Sales & Use Tax	Harrisonburg Food & Beverage Tax
<u>General Rule</u>	All types of food and beverage, hot or cold, including factory sealed beverages, sold ready for immediate consumption.	X	X
<u>Bakery</u>	Pastries (e.g. doughnuts, bagels, scones, muffins, cookies, pastries, etc.)	X	X
	Baked goods sold in quantities of six (6) or more pre-boxed and generally to be consumed off-premises. (e.g. Doughnuts, bagels, scones, muffins, cookies, pastries, etc.)	X*	
	Coffee sold in containers or cardboard “pots” in volumes exceeding 24 oz and generally to be consumed off-premises.	X	
	Whole or half loaves of bread, pies, cakes, or similar bakery items for home consumption.	X*	
	All sandwiches (hot or cold).	X	X
	Ice cream cones, shakes, sherbets, sorbets, etc. in quantities generally to be eaten by a single person in one setting.	X	X
<u>Grocery Stores/Convenience Store</u>	Factory-sealed containers <i>sold as part of a meal</i> (e.g. Canned or bottled soft drinks, beer, juices, water, etc.)	X	X
	Factory-sealed containers sold for off-premises consumption. (e.g. soft drinks, beer, water, juice, etc.)	X	
	Fountain drinks	X	X
	Coffee or similar hot beverages, in a cup for immediate consumption. (e.g. Coffee, Tea, Hot Cocoa, etc.)	X	X
	Frozen beverages intended for immediate consumption, (e.g. Slurpees, Icees, fruit slushies, etc.)	X	X
	Sandwiches, burritos, and other similar single serving frozen or chilled food items sold in an establishment with a customer operated heating device to render the item palatable, whether consumed on or off-premises.	X	X
	Foods that are cooked and then chilled in accordance with health and food handling regulations but packaged for home consumption.	X	
	Fruit, singular, in bulk, or sliced in a container sold for off-premises consumption. (e.g. Apples, bananas, oranges, tangerines, plums, etc.)	X	
	Fruit, cut-up and/or packaged in a single serving container and intended to be consumed by a single person at a single setting.	X	X
	Hot or cooked foods combined with other food products and sold warm or hot as a meal replacement. (e.g. Hot dogs, sausages, chicken strips, salads, etc.)	X	X
	Ice sold in bags for non-immediate consumption.	X	
	Salad bar items sold from a salad bar.	X	X
	Prepackaged single serving salads, whether consumed on or off-premises.	X	X
	Seafood sold by the pound cooked by an employee-operated steam cooker at no additional charge.	X	
	Salads factory packaged for off- premise_consumption.	X	
Salads sold by the pound (Potato, macaroni, cold slaw)	X		
Cold deli trays and party platters including food items sold by the pound	X		
Food, fruit, and gift baskets (not containing alcoholic beverages)	X		
<u>Movie Theaters, Sporting Arenas, Festivals, etc.</u>	All types of foods and beverages sold and generally considered to be consumed at and/or during the event.	X	X
<u>Bars</u>	All beverages consumed on-premises, purchased with or without a meal and regardless of whether they are factory-sealed.	X	X
<u>Breweries</u>	All beverages consumed on-premises, purchased with or without a meal and regardless of whether they are factory-sealed.	X	X
<u>Wineries</u>	All beverages consumed on-premises, purchased with or without a meal and regardless of whether they are factory-sealed.	X	X
<u>Food Trucks</u>	All types of food and beverage, hot or cold, including factory sealed beverages regardless of whether the meal or beverages is consumed in the proximity of the seller.	X	X
<u>Delivery Services</u>	The legal entity preparing the food is responsible for the collection and remittance of the food & beverage tax if using third-party delivery services (i.e. Uber, Grub Hub, Door Dash, etc.).	X	X
<u>Catering</u>	All food and beverage sales. Catering services are considered to be as “on premises consumption”. Tax is charged and remitted for the locality where the business is located.	X	X

*Reduced State Rate