

**Rule 041**  
**Food, Meals, or Drinks**  
**Discussion Draft 1**

**041. FOOD, MEALS, OR DRINKS (RULE 041).**

**01. In General.** This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations. (7-1-93)

**02. Commercial Establishments.** Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

**03. Clubs and Organizations.** Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

**a.** When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example, an organization holds a dinner dance in its own building. It charges twenty dollars (\$20) for dinner and dancing and twelve dollars (\$12) for registration and speakers. Since the two (2) amounts are stated separately, tax is only imposed on twenty dollars (\$20). The amount of the tax must also be stated separately. Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (4-2-08)

**b.** The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

**c.** When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

**04. Colleges, Universities, and Schools.** A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

**a.** If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and

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collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

**b.** Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

**05. Fraternities, Sororities, and Cooperative Living Group.** Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

**a.** If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

**b.** If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

**c.** Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (4-11-06)

**06. Boarding Houses.** Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

**07. Honor System Snack Sales.** Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

**a.** Sales tax applies to the total sales. The posted price must include a statement that sales tax is included. (4-2-08)

**b.** The formula for computing the taxable amount is:  $TS / (100\% + TR)$  where TS is

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total sales and TR is the tax rate. (4-2-08)

**08. Church Organizations.** Special rules apply to religious organizations. See Rule 086 of these rules. (4-11-06)

**09. Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)

**10. Food or Beverage Tastings.** If a participant must pay to participate in a food or beverage tasting, the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. (3-20-14)

**11. Nontaxable Purchases by Establishments Selling Meals or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

**a.** Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

**b.** Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

**c.** Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

**12. Taxable Purchases by Establishments Selling Meals or Beverages.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

**a.** Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

**b.** Any tangible personal property available to the general public, such as restroom

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supplies and matches.

(7-1-93)

c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. Different rules apply to prepared food given away by a commercial establishment to its employees. See subsection 13 of this rule. (7-1-93)( )

**13. Free Giveaways to Employees.** It is common practice for a retailer to give away prepared food and beverage, including full meals, to its employees free of charge. Giveaways of this nature normally trigger a use tax liability for the retailer calculated on the value of the items given away. However, if the retailer is in the business of selling prepared food and beverage, giveaways of prepared food and beverage to its employees are not taxable. Retailers that would qualify include restaurants and grocery stores with a deli or similar section that sells prepared food. ( )

**a.** For purposes of this subsection, prepared food means food intended for human consumption that: ( )

i. Is heated when given away; or ( )

ii. Consists of two or more ingredients combined by the retailer and given away as a single item; or ( )

iii. Is customarily served with utensils provided by the retailer. ( )

**b.** For purposes of this subsection, prepared beverage means any beverage intended for human consumption. ( )