CPA Practice Advisor

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Oct. 04, 2017

When researching my favorite beverage for National and International Coffee Days (Sept. 29 and Oct. 1), I discovered that coffee hyped up goats in ninth century Ethiopia and was dubbed a "bitter invention of Satan" by 17^{th} century Christian Italians. This was unexpected. Still, the history of coffee surprises me less than the taxability of coffee drinks in several states.

From the Avalara Blog.

It sometimes seems there are as many ways to tax coffee as there are varieties of coffee drinks — and anyone who's been to a Starbucks knows that's a lot. Taxability can be affected by the temperature of the coffee, and whether it's consumed on premises or sold to go. It can depend on the percentage of taxable food sales made by the seller, and if the coffee's sold separately or as part of a combination. In fact, even the sweetness of coffee can affect taxability.

Curious? Grab a cup of the tasty brew and read on.

Sit as you sip. Louisiana state sales tax often applies to hot coffee, but sales of "coffee and its substitutes" are exempt when (1) *not* prepared by the seller and (2) *not* sold by candy and nut counters, drive-ins, private clubs, snack bars, or establishments that furnish facilities for the on-premises consumption of the food.

However, this exemption isn't available to sellers that provide facilities for on-premises consumption, and it doesn't apply to most local sales taxes.

Drink it cold. Sales of brewed and hot coffee are taxable in Pennsylvania when sold

a hot prepared food, yet it's exempt when sold separately unless taxable under the 80-80 rule (see below) or under California Board of Equalization (BOE) Regulation 1574. When hot coffee is sold combined with a cold prepared food for one price, the whole sale becomes taxable — even though both are exempt when sold individually.

When for here is to go. That's not all. The taxability of coffee in California is sometimes affected by the 80-80 rule, for which there are two criteria:

- More than 80 percent of the seller's gross receipts are from the sale of food products
- More than 80 percent of the seller's retail sales of food products are taxable as provided in BOE Regulation 1603

According to the BOE, "When a seller meets both criteria of the 80-80 rule ..., tax applies to sales of cold food products (including sales of ... hot beverages such as coffee) in a form suitable for consumption on the seller's premises even [when] such food products are sold ... 'take-out' or 'to go.'" This is true no matter the quantity of the sale (e.g., 40 half-pints of milk, or 40 cups of coffee). However, tax generally doesn't apply to "sales of food products which are furnished in a form not suitable for consumption on the seller's premises." And a seller meeting both criteria of the 80-80 rule may elect to separately account for sales of to go orders that could be consumed on premises. In that case, these sales may be exempt.

Sellers that don't meet the criteria of the 80-80 rule should not charge tax on "sales of cold food products (including sales of ... hot beverages such as coffee) when sold ... 'take-out' or 'to go.'"

If you're confused, you're not alone. In fact, California's policy is so confusing, it's triggered lawsuits.

Try it black. In addition to sales tax, presweetened coffee and tea drinks are

their first known appearance in the Ottoman Empire approximately 400 years ago. In celebration of National and International Coffee Days, engage in a time-tested coffeehouse tradition: Swap wacky sales tax laws. You'll find more in the Avalara blog.

Gail Cole

Gail Cole began researching and writing about sales tax for Avalara in 2012 and has been fascinated with it ever since. She has a penchant for uncovering unusual tax facts, and endeavors to make complex sales tax laws more digestible for both experts and laypeople.

Sales Tax