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changing overnight: Another unknown may be how to handle sales tax on takeout or delivery services.

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State and local efforts to slow the spread of the new coronavirus (COVID-19) have entirely or partially closed nonessential businesses from California to Washington, D.C. Many businesses allowed to remain open have seen a dramatic decrease in traffic due to the proliferation of stay-at-home orders. To survive in these uncertain times, a growing number of brick-and-mortar businesses are providing delivery and takeout services — some for the first time.

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Food providers are still widely considered essential, on-premises dining is temporarily prohibited [in most parts of the country](#). Fortunately, restaurants, cafés, and bars are permitted to offer takeout and delivery services; many states and localities have even relaxed liquor laws to allow them to sell alcohol to go.

Restaurant meals are subject to sales tax in some states (e.g., [Connecticut](#)) whether served at the restaurant, sold to go, or delivered to the purchaser's location. In other states, sales tax laws regarding takeout or delivery food are different than the rules for on-site consumption. Truth be told, food tends to have some of the most convoluted sales tax laws out there. Rare is the state that has the same tax policy for all food sales.

On-premises dining is almost always subject to sales tax, and in some cities, it's taxed at a higher rate than other sales. By contrast, takeout food may be exempt. The taxability of takeout food can depend on conditions such as:

- The amount of food sold to go vs. for here
- The cutlery supplied with the sale
- The temperature of the food sold

California

Most hot prepared food is subject to California sales tax, whether consumed on premises (currently impossible) or to go. To-go orders that include both hot prepared items and cold items also tend to be taxable. But to-go orders that contain only cold items may be exempt.

The taxability of cold food sold to go in California depends in large part on the [80-80 rule](#). This is: A) More than 80% of the seller's gross receipts are from the sale of food products; and B) More than 80% of the seller's retail sales of food products are taxable.

Sellers that meet both criteria of the 80-80 rule *must* collect tax on sales of cold food

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During the COVID-19 emergency, the Department of Alcoholic Beverage Control (ABC) is temporarily permitting restaurants to sell for consumption off premises the alcohol they're licensed to sell on premises. Manufacturer-sealed alcohol doesn't have to be sold in conjunction with food, but alcoholic beverages sold to go (e.g., mixed drinks or filled growlers) must be sold with food. Alcohol sales should be taxed as normal. The ABC will provide a 10-day notice of the termination of this relief. [Additional information.](#)

The person responsible for collecting the tax is generally the person responsible for making the sale — but who that is isn't always clear when a third party such as Grubhub or Uber Eats is involved. More on these food-delivery platforms, or food marketplaces, below.

New York

Food and drink sold for on-premises consumption in New York is taxable whether served hot, cold, or somewhere in between.

Food sold to go is also taxable, unless:

- The food (other than sandwiches) or drink is sold unheated; or
- The food or drink is “sold in the same way (in the same form, condition, quantities, and packaging) you would normally find it in a supermarket or grocery store.”

The [New York Department of Taxation and Finance](#) says a toasted bagel with cream cheese sold to go with a cup of iced coffee would be taxable as restaurant food, while a dozen bagels sold to go would be exempt.

A burger sold to go would be subject to sales tax; but a carton of milk and bag of potato chips that would be taxable if sold for on-premises consumption would be

exempt if sold to go because they're in the same form, condition, quantity, and

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Delivery charges in New York must be included in the total amount subject to tax, whether separately stated or not.

Ohio

“All food sold for consumption on the premises of your restaurant is taxable” in [Ohio](#), while “food sold to be consumed off the premises is not taxable.” Bars and restaurants in Ohio that normally only offer in-house dining must be sure *not* to charge tax on takeout or delivery sales made during the COVID-19 crisis.

A potential hiccup here is that a parking lot may be considered “on premises.” If it is, food sold to go that's then consumed in the parking lot would technically be a taxable sale. Fortunately, the Ohio Department of Taxation doesn't expect businesses to knock on the windows of customers eating in their cars to collect sales tax on a to-go order. Especially not in these trying times.

Only certain businesses in Ohio are permitted to sell alcohol to go; it depends on the license. [Additional details.](#)

Food-delivery platforms

While food-delivery services simplify life for consumers, especially now when so many of us are staying at home as much as possible, they can complicate sales tax compliance. That's a small price to pay if using them can help businesses stay solvent during the pandemic closures. Still, it's important to get sales tax right.

Sales tax must be collected and remitted by the seller of record, which may be the restaurant or the delivery provider. It depends on the nature of the food-delivery service, the relationship between the restaurant and the delivery provider, and the law.

In recent years, many states have adopted marketplace facilitator laws that require

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responsible for the tax.

Restaurants in Nebraska must collect tax on fees they charge to deliver food to customers. However, sales tax generally doesn't apply to delivery charges that are independent from the sale of food and arranged by the customer. As of April 1, 2019, [sales tax applies](#) to any delivery charges passed on to the customer by a food-delivery platform that's the actual seller.

Some food-delivery platforms, including [DoorDash](#) and [Uber Eats](#), are waiving delivery fees during the COVID-19 crisis. That alleviates some of the complexity, at least for now, since a fee that isn't charged can't be taxed.

How sales tax applies to takeout and delivery services is different in every state, and in some cases, it's in flux. When in doubt, talk to a trusted tax advisor or the state department of revenue, and always act in good faith. We can only hope that, in the event sales tax mistakes are made, state tax authorities won't be too hard on any business that make different types of sales in order to survive the harsh business conditions caused by the COVID-19 pandemic.

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