Taxation of Chips and Soft Drinks in Vermont

Depending on the circumstances, chips and soft drinks may be subject to Vermont Sales and Use Tax, Vermont Meals and Rooms Tax, or not be subject to any tax in Vermont. The first step is to determine what kind of business you are operating—a grocery, a restaurant, or some combination of these. If the chips and soft drinks are sold from a vending machine, they may also be subject to meals tax. The last step is to determine whether an exemption based on location, customers served, or type of organization applies to make the sales nontaxable.

Definition of Soft Drink

Sales of soft drinks are subject to the Vermont Sales and Use Tax when they are neither taxed under nor exempted from the meals tax. 32 V.S.A. §§ 9701(31), (53) and 9741 (10) https://legislature.vermont.gov). A soft drink is a nonalcoholic beverage that contains natural or artificial sweeteners. 32 V.S.A. § 9701(53) (https://legislature.vermont.gov). Soft drinks are not beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or beverages that contain greater than 50% of vegetable or fruit juice by volume. For general guidelines regarding whether a beverage is taxable as a soft drink, see Understanding Taxation of Chips and Soft Drinks in Vermont (http://tax.vermont.gov).

Local Option Tax

In a jurisdiction (city or town) that charges a 1% local option tax on sales of taxable meals, vendors must also collect local option tax on every transaction to which the state taxes apply (sales tax or meals tax). 24 V.S.A. § 138 (https://legislature.vermont.gov). The City of Burlington and the City of Rutland impose their own meals, entertainment, and lodging taxes under their city charters. These two cities administer and collect their taxes. Vendors who do business in Burlington or Rutland should contact the city for information about these taxes. See the Vermont Department of Taxes website for more information on Local Option Tax: (https://tax.vermont.gov).

Questions

Please use the question and answer format below to determine whether you must charge tax on chips and soft drinks.

1. Is your establishment a restaurant?

<u>Under 32 V.S.A. § 9202(15) (https://legislature.vermont.gov)</u> and the <u>Vermont Meals and Rooms Tax Regulations, § 1.9202(15)-1, (15)-2 (https://tax.vermont.gov)</u>, your establishment is a restaurant if you answer "yes" to any of these questions:



- Does your establishment charge for food or beverage intended for immediate consumption?
- Has your establishment made total sales of food or beverage in the previous taxable year of at least 80% taxable food and beverage?
- Are you a new establishment that projects its total sales for the first year to be at least 80% taxable food and beverage?



The following are examples of types of establishments that are considered to be a restaurant <u>under 32 V.S.A. §</u> 9202(15)(A) (https://legislature.vermont.gov) and Vt. Reg. § 1.9202(15)-2 (https://tax.vermont.gov):

- Bar or tavern
- Café
- Cafeteria
- Caterer

- Diner
- Dining room
- Lunch counter
- Private or social club

- Salad bar
- Snack bar—no seating
- Street vendor, food cart, or food truck
- Theater concessions

As these establishments are considered restaurants, the food or beverage sold there is generally subject to meals tax.

The 80% rule for restaurants

As a result of the 80% rule, less traditional venues, such as all or portions of grocery or convenience stores that serve taxable food or beverage, may be restaurants for meals and rooms tax purposes. <u>Vt. Reg. § 1.9202(15)-2 (https://tax.vermont.gov)</u>.

A bag of chips or any type of soft drink sold by a restaurant is subject to the meals tax. <u>32 V.S.A. § 9202</u> (https://legislature.vermont.gov). To see if you may benefit from an exemption, continue to Question 4.



If you answered no to all questions, then your establishment is not a restaurant. <u>32 V.S.A. § 9202</u> (https://legislature.vermont.gov). Continue to Question 2.

2. Is your establishment a grocery or convenience store?

YES Meals Tax

A bag of chips or a bottled or canned soft drink sold in a grocery or convenience store is exempt from meals tax. 32 V.S.A. § 9202(10)(B), (14) (https://legislature.vermont.gov); Vt. Reg. § 1.9202(10)-1(B)(1) (https://tax.vermont.gov). Fountain drinks, however, are subject to meals tax. Vt. Reg. § 1.9202(10)-1(B)(3) (https://tax.vermont.gov). In addition, if your establishment sells food or beverage through a vending machine, see Question 3.

Sales Tax

A bottled or canned soft drink sold in a grocery or convenience store is generally subject to sales tax. 32 V.S.A. § 9701(31), (53) (https://legislature.vermont.gov).

Exception for SNAP Benefits

Bottled or canned soft drinks purchased with 3SquaresVT (SNAP) benefits only, which includes an EBT card, but not cash, check, or debit, are not subject to sales tax. 32 V.S.A. § 9741(13) (https://legislature.vermont.gov).

Exception for a Snack Bar

A snack bar is a counter with no seating where prepared food is only offered for self-service. 32 V.S.A. § 9202(17) (https://legislature.vermont.gov). Typically, meals sold from a snack bar are taxable. 32 V.S.A. § 9202(15)(A) (https://legislature.vermont.gov). However, a snack bar located in a grocery or convenience store is not a restaurant under the meals tax, and so no meals tax is due on a bag of chips or bottled or canned soft drink, but meals tax is due on fountain drinks. In addition,

^{*}There is no excise tax on soda in Vermont.

sales tax is due on a bottled or canned soft drink. 32 V.S.A. § 9202(15)(C); Vt. Reg. § 1.9202(15)-2(E).

Continue to Questions 3 and 4.

3. Are the sales made from a vending machine?



A bag of chips or a soft drink sold through a vending machine is subject to meals tax. 32 V.S.A. § 9202(10)(C)(4) (https://legislature.vermont.gov).

Exemptions

Many exceptions exist depending on:

- 1. Where the vending machine is located,
- 2. The customer served, and
- 3. The organization that operates it.

To see if sales from the vending machine may benefit from one of these exemptions, continue to the next question.

NO Stop! Tax does not apply.

4. Are the sales subject to an exemption?

Under 32 V.S.A. § 9202(10)(D)(ii) (https://legislature.vermont.gov), Vermont exempts sales of food and beverage, including from a vending machine, from meals and rooms tax depending on:

- 1. The location of the meals sold,
- 2. The customer served, and
- 3. The organization selling the meals.
- A bag of chips or a soft drink sold as a meal in one of these exempt locations, to one of these exempt persons, or by one of these exempt organizations is exempt from meals tax. 32 V.S.A. § 9202(10)(D)(ii) (https://legislature.vermont.gov).
- NO Stop! The exemption does not apply.

The following charts explain these factors to help determine whether or not the meals you sell are subject to tax. **All of these exemptions apply to vending machines.**

Exemptions by Location Type

Location Type	Not Taxable	Taxable	Resources
Schools	Sales of meals served or furnished in schools are not taxable, regardless of the purchaser. 32 V.S.A. § 9202(10) (D) (ii)(II).	N/A	See 32 V.S.A. § 9202(9) for the definition of a school. See Technical Bulletin 48 for more guidance.
Government Property	Sales of meals located on local, state, or federal government properties that serve or furnish food or beverage to government employees are not taxable. 32 V.S.A. § 9202(10)(D)(ii)(III)	The exemption is limited to government employees. Sales of meals that are open to the public, even though on government property, are taxable.	See Technical Bulletin 48 for more guidance.
Correctional Facilities	Sales in any local, state, or federal correctional facility that serves or furnishes food or beverage to inmates and employees of the correctional facility are not taxable. 32 V.S.A. § 9202(10)(D)(ii)(III).	Sales in any local, state, or federal correctional facility that serves or furnishes food or beverage to inmates and employees of the correctional facility are not taxable. 32 V.S.A. § 9202 (10)(D)(ii)(III).	N/A
Hospitals	Sales of meals in licensed hospitals are not taxable if the vending machine contents are prepared by hospital employees. 32 V.S.A. § 9202(10)(D)(ii) (IV).	Sales of meals in licensed hospitals are taxable if the contents in the machine are not prepared by hospital employees.	See 18 V.S.A. § 1902 for the definition of a licensed hospital.
Trains, Buses, or Airplanes	Sales of meals in trains, buses, or airplanes transporting passengers for hire are not taxable. 32 V.S.A. § 9202 (10)(D) (ii)(V).	Sales of meals in train stations, bus stations, or airports are taxable.	N/A
Summer	Sales of meals in summer camps for children are not taxable while they are operating as summer camps for children. 32 V.S.A. § 9202(10)(D)(ii) (VI).	Sales of meals in camps are taxable when the camps are not operating as summer camps for children.	Camps for Children. See also Technical Bulletin 50 for other types of campgrounds.
Continuing Care Retirement Community	Sales of meals on the premises of certified continuing care retirement communities are not taxable. 32 V.S.A. § 9202(10)(D) (ii)(XI).	N/A	See 8 V.S.A. § 8001 for the definition of certified continuing care retirement community.

Location Type	Not Taxable	Taxable	Resources
Nursing Home and Similar Care Facilities	Sales of meals at nursing homes, residential care homes, assisted living residences, homes for the terminally ill, therapeutic community residences, or independent living facilities are not taxable if the contents are prepared by the employees, volunteers, or contractors. 32 V.S.A. § 9202(10)(D)(ii)(XII).	Sales of meals at nursing homes, residential care homes, assisted living residences, homes for the terminally ill, therapeutic community residences, or independent living facilities are taxable if the contents are not prepared by the employees, volunteers, or contractors, but instead are provided by a restaurant and are not otherwise available generally to residents of the facility. 32 V.S.A. § 9202(10) (D)(ii)(XII).	N/A

Exemptions on Meals Sold to Specific Customers

Customer	Not Taxable	Taxable	Resources
Sales to SNAP Beneficiaries	Purchases made using 3SquareVT/SNAP benefits are not taxable. 32 V.S.A. § 9202(10) (D)(ii)(X).	SNAP beneficiaries who pay with cash or another form of payment, even if the cash is an EBT benefit, or paid with an EBT card, will pay the tax.	N/A
Government Employees	Sales of meals on local, state, or federal government properties that serve or furnish food or beverage to government employees are not taxable. 32 V.S.A. § 9202(10)(D)(ii)(III).	The exemption is limited to government employees. Sales of meals that are open to the public, even though on government property, are taxable.	See also Technical Bulletins 48 and 13 for more guidance.
Hotels	Meals furnished by a hotel operator to employees as remuneration for their employment are not taxable. 32 V.S.A. § 9202(10)(D)(ii)(VIII).	N/A	N/A
Meals for the Elderly	Meals provided to the elderly under the Older Americans Act are not taxable. 32 V.S.A. § 9202(10)(D)(ii)(IX).	N/A	N/A

Exemptions on Meals Sold By Nonprofits

Nonprofit	Not Taxable	Taxable	Resources
Meals Sold on Premises of Nonprofits	Sales of meals on the premises of nonprofit corporations and associations are not taxable if all of the following apply: 1. Nonprofit is organized and operated exclusively for religious or charitable purposes. 2. Sale furthers the purposes of the organization. 3. Net proceeds are used exclusively for the purposes of the organization. 32 V.S.A. § 9202(10) (D)(ii)(I)	A third-party vendor must charge tax on sales of meals on the premises of a nonprofit if any of the net proceeds go to a person or organization other than the nonprofit. 32 V.S.A. § 9202(10)(D) (ii)(I).	N/A
Sales of Meals by a Nonprofit at an Event	Sales of meals by nonprofits are not taxable when made at bazaars, fairs, picnics, church suppers, or similar events, on or off premises. To use this exemption, nonprofits can only sell taxable meals at these types of events for four days or fewer per calendar year. Nonprofits may rent vending machines for use at events, but they must keep all of the net proceeds in order to benefit from this exemption. 32 V.S.A. § 9202(10)(D)(ii)(VII).	No exemption is available if sales are made by an organization required to have a meals and rooms license or otherwise required to have a license because its selling events are more than four days during the calendar year. No exemption is available if third parties keep the net proceeds from sales at events, because sales are then considered to be by the third parties, and not by the nonprofits.	N/A

Contact Us

If you have questions about how to properly apply the Vermont Sales Tax or Meals Tax to your sales of food or beverage, please contact the Department of Taxes at tax.business@vermont.gov or call (802) 828-2551.

<u>Visit our website (https://tax.vermont.gov)</u> for more information, guides, and fact sheets.