

**City of Omaha
Restaurant and Drinking Places
Occupational Privilege Tax**

The City of Omaha enacted an occupation tax on restaurants and drinking establishments effective October 1, 2010. The tax ordinance is found in Chapter 19, Article XVI, of the Omaha Municipal Code. This tax must be remitted monthly, unless otherwise notified, and can be filed manually or electronically. The following questions and answers are being provided solely to help you to plan for, collect, and remit the tax as enacted. Nothing in these questions or answers changes the obligations stated in the ordinances and you should review those ordinances to determine your tax obligations.

1. Who is subject to the new restaurant tax?

Your business is subject to this tax if you are a restaurant, caterer or drinking establishment engaged in the business of selling food or beverages subject to the tax.

Examples of businesses subject to the tax include: restaurants, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters, sandwich stands, bars, taverns, night clubs, dance halls, concession stands at race tracks, golf courses, sports and meeting facilities, arenas, or stadiums. This would also include a space within a hotel motel, bed and breakfast, boarding house, hospital, grocery store, convenience store, supermarket or office building where food or drink is obtained or consumed if a separate charge is made for the food.

2. What is subject to the new restaurant tax?

All gross receipts for the sale of food or beverage that is prepared on the premises for immediate consumption either on the premises or elsewhere are subject to the new tax to the extent such items are subject to the Nebraska Sales & Use Tax.

3. How much is the tax?

The tax is 2.5% of the total gross receipts for food and/or beverage.

4. Who is exempt?

The restaurant tax does not apply to civic, charitable, educational, religious, governmental, or political organizations exempt from income taxes under the U.S. Internal Revenue Code, nor does it apply to for profit organizations located within such exempt organizations or to the payments made to a caterer for food served on the exempt organization's premises. A daycare center serving just to its employees or children or a convalescent home serving only its residents may be exempt.

5. How does my business file the tax?

The return and associated tax may be filed either online or manually through the submission of the Restaurant Tax Form. The tax may be paid online via ACH or Credit Card, or when filing manually, via check.

6. When is the first return due?

The first return is due no later than November 30, 2010, for taxes collected from October 1st through October 31, 2010. Returns are due monthly by the last day of the month following the month in which the tax is collected. Returns postmarked by the last day of the month will be considered timely filed. If the last day falls on a holiday or week-end, the next business day will be the due date. The form and a check for the full amount should be mailed to the address listed on the form (1819 Farnam Street, Room H10, Omaha, NE 68183). If paying online, a credit card payment or e-check payment made by the last day of the month is considered paid timely.

7. How is the tax calculated?

The restaurant tax is calculated on the gross receipts. The Nebraska Sales & Use Tax is calculated on the gross receipts plus the restaurant tax.

<i>Example: Meal and beverage cost:</i>	<i>\$100.00</i>
<i>2.5% restaurant tax</i>	<i><u>2.50 (a)</u></i>
<i>Total cost of the meal</i>	<i>\$102.50</i>
<i>Total cost of the meal</i>	<i>\$102.50</i>
<i>7% sales tax</i>	<i><u>7.18(b)</u></i>
<i>Total cost to the customer</i>	<i>\$109.68</i>
<i>Amount remitted to the State of Nebraska</i>	<i>\$ 7.18(b)</i>
<i>Calculation of amount sent to the City</i>	
<i>2.5% food and beverage tax</i>	<i>\$ 2.50(a)</i>
<i>Less: collection fee of 2%</i>	<i><u>.05</u></i>
<i>Amount remitted to the City of Omaha</i>	<i>\$ 2.45</i>

8. How does a business know if they are to pay the tax on a monthly or quarterly basis?

The restaurant tax is due on a monthly basis. Businesses may apply (in writing) for permission to pay the tax on a quarterly basis. Requests should be mailed to:

*City of Omaha Finance Department
ATTN: Restaurant Tax
1819 Farnam Street, Suite 1004
Omaha, Nebraska 68183*

The Finance Director will respond (in writing) if he/she consents to the quarterly payments. Until such time as written consent is received by the business, the tax will be due monthly.

9. What happens if the business pays their tax late?

Tax is due the last day of the month following collection (October tax is due November 30). The tax must be paid online by the due date or if mailed, must be postmarked by the due date in order for the tax to be considered paid on time.

If the tax is filed late, a 10% penalty will be assessed and a 1% interest charge will be assessed for each month or part of a month that the tax is overdue.

10. How do we know if we are considered a restaurant?

If the business serves prepared food and beverage and pays income tax, then the business can be considered a restaurant. Included: restaurants, bars, convenience stores, movie theaters

If the business does not pay income tax (either a non-profit or not for profit) then the entity is not a restaurant. Included are not for profit hospitals, veterans groups, private clubs and others not subject to income tax.

11. Do non-profit groups pay restaurant tax in a “for profit” restaurant?

Yes. Occupation tax is charged on the entity serving the food. For instance, if the food is being served at a local restaurant, the meals are subject to the occupational privilege tax, even for a non-profit group having an event there.

12. When does a catering business charge the restaurant tax?

If the food is prepared in Omaha, the 2.5% is applied.. The only time it would not be charged is when the facility holding the event is exempt.

If prepared food is brought into Omaha (fixed outside the City limits), then the 2.5% is not applied. The only time it would not be charged is when the facility holding the event is exempt.

13. Are baked goods exempt?

Yes, unless they have been altered since purchased or prepared (such as filling a croissant or heating pie and adding ice cream)

14. Is gratuity to be included in the cost of the meal (and therefore charged the 2.5% tax)?

A voluntary gratuity is not included but a gratuity added by the business (usually when there are larger groups), is included in the cost of the meal and subject to the 2.5% occupational tax.

15. When a caterer charges a service charge or a rental charge, is that subject to the new tax?

No, charges for labor or other items associated with the meal, such as tables or table service are not included in the cost of the meal for the purpose of charging the tax.

16. When a caterer has a dinner at a not-for-profit facility, is the 2.5% charged on the meal?

No, since the non-profit does not pay income tax, then they are not considered a restaurant and will not be subject to the tax. At a for profit facility, the 2.5% would be included.

17. Are bottles or cans of pop, beer, or other beverage that are purchased and left unopened subject to the tax?

If these are purchased at a convenience store or at a cafeteria where it is taken out of a cooler, no food and beverage tax is charged. If it is served with a meal or snack to be eaten on the premises, then it is subject to tax. Once an alcoholic beverage is opened, it cannot be taken out of an establishment (except where wine is re-corked), so it is considered taxable at the 2.5% rate. Drinks from a soda fountain and beer on tap are always charged the 2.5% if the establishment is considered to be a restaurant.

18. What is subject to the tax in a grocery store?

Subject to tax: fried chicken, rotisserie chicken and other heated foods; food bars (except where the sales price depends on the weight of the food); items ordered on a menu that is prepared and eaten on the premises or taken out.

Not subject to tax: Deli meats, cheese, and salads that were repackaged for sale in deli; bakery items; snack foods that are pre-packaged such as chips; items that are sold by weight (salad bar);

19. Is an ice cream parlor subject to the tax?

Yes, except when the ice cream is sold by the store containers (quarts, etc).

20. Is a candy store subject to the tax?

When a candy store is deemed to be a restaurant (#11), then what is served on site or for take-out, is subject to the food and beverage tax if it is subject to sales tax (coffee, pie with ice cream, etc). For candy sold by weight only or boxed candy, there would be no food and beverage tax.

21. If I have other questions, who can I contact?

Questions should be directed to the City of Omaha Finance Department at 444-6263 or 444-5472. You can also find information regarding the restaurant tax on the City of Omaha Finance Department website at <http://www.cityofomaha.org/finance/>