

**CITY OF CHICAGO
DEPARTMENT OF REVENUE
ADDENDUM TO NOTICE PUBLISHED MAY 13, 2004**

In addition to the Rules and Regulations published in the Chicago Sun-Times on May 13, 2004, the Chicago Restaurant And Other Places For Eating Tax Regulations, previously published and effective April 1, 2004, remain in full force and effect. Those Regulations read as set forth below.

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City of Chicago

**CITY OF CHICAGO
DEPARTMENT OF REVENUE
RESTAURANT TAX REGULATIONS**

Effective Date: April 1, 2004

1. The Tax. Effective April 1, 2004, a tax is imposed on each place for eating located in the City, at the rate of 0.25 per cent of the selling price of all food and beverages sold at retail by the place for eating. See section 3-30-030 of the Municipal Code of Chicago (“Code”).

2. Place for Eating. The term “place for eating” means any restaurant or other business, by whatever name, that is a place for eating under 65 ILCS 5/11-42-5, which provides that “[t]he corporate authorities of each municipality may ... license, tax, and regulate all places for eating.” See section 3-30-020 of the Code. More specifically, a “place for eating” means any place at which a business (a) is engaged in the sale at retail of “food prepared for immediate consumption” (see ¶ 3 below) and (b) provides for on-premises consumption of the food it sells (see ¶ 4).

3. Food Prepared for Immediate Consumption. The term “food prepared for immediate consumption” has the meaning set forth in the Illinois Retailers’ Occupation Tax Act regulations. See 86 Ill. Adm. Code 130.310. In general, it means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Because the “reduced” sales tax rate provided by section 2-10 of the Illinois Retailers’ Occupation Tax Act, 35 ILCS 120/2-10, does not apply to food prepared for immediate consumption, any food that qualifies for the “reduced” sales tax rate provided by section 2-10 of the Illinois Retailers’ Occupation Tax Act, 35 ILCS 120/2-10, is not food prepared for immediate consumption.

4. On-Premises Consumption. A business provides for on-premises consumption of the food it sells when it provides accommodations for eating the food on the premises. The term “premises” has the meaning set forth in the Illinois Retailers’ Occupation Tax Act regulations. See 86 Ill. Adm. Code 130.310. In general, it means

the area over which the business exercises control, whether by lease, contract, license or otherwise. For example, a restaurant in a food court with a lease allowing its patrons to use a common seating area provides for on-premises consumption and is a place for eating.

5. Mixed Facilities or Operations. If a place for eating is a part of a larger facility or operation run by the same business, then only the place for eating and its operations are subject to the tax. For example:

- a. If a grocery or department store includes a café that sells food prepared for immediate consumption and provides for on-premises consumption of the food it sells, then the café is a place for eating, but the rest of the store is not, and only the sales of the café will be taxed.
- b. If an establishment includes both a restaurant selling food and a bar selling only drinks, then the restaurant is a place for eating, but the bar is not, and only the sales of the restaurant operation will be taxed.
- c. If a business operates as a bar during the week, selling only drinks, but operates as a place for eating on weekends, then the tax will apply only to its sales of food and beverages on weekends, when it is operating as a place for eating.

A business wishing to take advantage of this “mixed facilities or operations” provision must utilize a reliable means of documenting, recording and accounting for receipts that clearly separates the taxable sales from the non-taxable sales, so that the amount of its tax liability can be correctly determined and confirmed. In the absence of such a reliable means of documenting, recording and accounting for receipts, it will be presumed that all sales of food and beverages are attributable to the place for eating, operating in its capacity as a place for eating, and are therefore taxable.

6. Sale At Retail. The term “sale at retail” has the meaning set forth in the Illinois Retailers’ Occupation Tax Act, as amended, 35 ILCS 120/1 and following. See section 3-30-020 (A) (6) of the Code. In general, it means the transfer of ownership of food or beverages to a purchaser for the purpose of consumption, and not for the purpose of resale.

7. Exemptions. Section 3-30-040 exempts from the tax all sales of food and beverages which are exempt from tax under the provisions of the Illinois Retailers’ Occupation Tax, as amended, 35 ILCS 120/1 and following. Therefore, if a retailer is exempt from the State tax on a particular sale of food or beverage, the retailer will be exempt from the Chicago tax on the same sale of food or beverage. For example, cafeteria food sold by schools to their students and food sold by hospitals to their patients are not subject to the tax. Section 3-30-040 also exempts all sales of food and beverages which may not be taxed by the City under applicable law.

8. Occasional or de minimis sales. Section 3-30-050 provides that a place for eating whose liability for the tax would, in the absence of that section, be less than or equal to \$200 in an annual tax year (July 1 through June 30) shall not be required to file a return or make any payment of tax with regard to that tax and annual tax year. At the stated rate of .25 percent, this exempts places for eating with up to \$80,000 in taxable sales. The provision applies to each place for eating, which means that separate locations of commonly-owned chains, for example, will each be entitled to take advantage of the exemption. The provision is not available to any place for eating that has separately stated and charged the tax to its customers during that annual tax year, as any amounts separately stated and charged to customers must be remitted to the City's Department of Revenue (the "Department"). See Code section 3-4-280. For the three-month period beginning April 1, 2004 and ending June 30, 2004, the exemption shall be for places for eating whose liability for the tax would, in the absence of the exemption, be less than or equal to \$50 (i.e., one-quarter of the annual \$200 exemption), thus exempting up to \$20,000 in taxable sales taking place during those three months.

9. Payments. Places for eating must pay the tax to the Department in accordance with either Code section 3-4-187 (providing for the payment of actual tax liabilities on a monthly basis under certain conditions, with an option to pay on an annual basis where the taxpayer's total liability for the tax was less than or equal to \$1,200 for the twelve month period immediately preceding the current annual tax year) or section 3-4-188 (providing the option of paying estimated taxes on a monthly basis under certain conditions). For the three-month period beginning April 1, 2004 and ending June 30, 2004, along with the annual tax year beginning July 1, 2004 and ending June 30, 2005, payments must be made monthly, based on actual tax liabilities.

10. Returns. A place for eating must file a tax return with the Department on or before August 15 in accordance with Code sections 3-4-186 (providing for the filing of returns on an annual basis under certain conditions) and 3-4-189 (providing for the filing of consolidated returns under certain conditions).

11. Billing. The legal incidence of the tax is on the place for eating. A place for eating is permitted but not required to pass the tax on to its customers by separately stating the tax as an additional charge, which charge may be stated in combination, in a single amount, with other taxes imposed at the federal, state or local level. The decision to pass the tax on to customers may carry certain consequences, such as the unavailability of the "occasional or de minimis sales" provision (§ 8 above) and the inability of a place for eating to obtain a refund under certain circumstances (see section 3-4-100 of the Code).

12. Bracketing. When determining the amount of tax to be paid and/or passed on in connection with a given meal or other order of food or beverage, a place for eating may employ the same system of rounding (also known as "bracketing") that is accepted by the Illinois Department of Revenue in connection with the Illinois Retailers' Occupation Tax, as amended, 35 ILCS 120/1 and following.

13. Questions. As with most taxes, there will be situations that require clarification in their application, and taxpayers are encouraged to contact the Department for guidance.