

This Tax Facts Sheet is to explain how Municipal Gross Receipts Tax applies to prepared food. If your specific question is not answered in this Tax Fact Sheet, please call our toll-free helpline at 1-800-829-9188 weekdays from 8-5 CST.

Information found in this document rescinds and replaces all previous written information on this subject. All readers and users of this publication are responsible for keeping informed about changes in tax laws and regulations by reading the Department of Revenue newsletters, press releases, Tax Facts, and other documents published by the department.

Taxes and Rates that may apply to a retail business.

State Sales and Use Tax.....	4.5%
Tourism Tax.....	1.5%
Municipal Sales and Use Tax	1 to 2%
Municipal Gross Receipts Tax1%
Motor Vehicle Gross Receipts or Leasing Tax	4.5%
Wireless Gross Receipts Tax4%

Municipal Gross Receipts Tax

Municipalities in South Dakota have the option of imposing a 1% municipal gross receipts tax (MGRT) on the following:

1. Admissions to Places of Amusement, Athletic, and Cultural Events
2. Alcoholic Beverages
3. Eating Establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption
4. Lodging Accommodations

This bulletin addresses the MGRT on establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption. The 1% MGRT is in addition to the state sales tax and municipal sales tax.

To be subject to the 1% MGRT tax, the food must be prepared by the seller and be for immediate consumption.

The MGRT does not apply to food that is subject to use tax such as food that is given away.

Immediate consumption includes any prepared food that can be consumed immediately and is generally meant to be eaten soon after it is purchased.

Food that generally requires additional preparation by the customer after it is purchased, such as cooking, heating, or combining with other food products is not prepared food for immediate consumption.

Prepared Food

There are three questions to ask to determine if it is prepared food:

1. Did the seller heat the food or drink?
2. Did the seller mix or combine two or more food ingredients to make a single product?
3. Did the seller provide utensils?

If the answer to any of these questions is yes, and the food is for immediate consumption; the MGRT applies to the sale of that food.

1. Heated by the seller. The following are considered for immediate consumption and are subject to the MGRT:

- a. Food or drink that is sold in a heated state; and
- b. Food or drink that is heated by the seller at any time before the sale, even if it's not warm at the time of sale, that the customer would generally eat without reheating.

Examples of heated or previously heated foods are:

- Chicken (whole chicken or pieces that are hot or cold that was previously heated)
- Hot dogs
- Hot chocolate
- Hot coffee
- Nachos
- Pizza
- Popcorn

2. Two or more food ingredients that are mixed or combined by the seller for sale as a single item. Not all mixed or combined foods are for immediate consumption. Foods that need additional preparation, such as heating or combining with other products, are not for immediate consumption.

Examples of foods subject to the MGRT when made by the seller:

Donuts and Bakery Items* (see Bakery/Donut Shops)
Ice cream
Salads
Sandwiches

Examples of food not subject to MGRT (unless seller provides utensils - see #3):

- a. Food made by another business and prepackaged food purchased from a manufacturer, provided the seller does not heat, combine with other food products, or provide utensils for (see #3).

b. Food that is only cut, repackaged or pasteurized by the seller.

- Fruit trays or fruit bouquets
- Meat or cheese from a deli counter that is sliced and wrapped.
- Meat and cheese party trays
- Salads purchased in large quantities by a seller, then repackaged into smaller containers (without further preparation)
- Vegetable trays

c. Items that are heated, mixed or combined by the seller that require additional preparation by the consumer.

- Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illnesses.
- Frozen or cold soups that require reheating
- Meals that require heating or baking
- Pizza, take and bake

3. Food sold with eating utensils. Any food or drink sold when eating utensils are provided by the seller is prepared food for immediate consumption.

Plates, bowls, glasses, and cups need only be available for the customer's use. If a container is required to hold the food, the food is prepared food for immediate consumption and subject to the applicable MGRT.

Trays, bags, or sacks used to carry products are not utensils.

Examples of places or food requiring utensils that are subject to MGRT:

- Cafeteria courts
- Fountain pop
- Hot food bars
- Pizza by the slice
- Salads - salad bar food
- Soups

Food not subject to MGRT:

Food that is not heated or combined by the seller such as:

- a. Foods, with a utensil included in the manufacturer's packing, such as crackers and cheese that includes a spreader.
- b. Prepackaged food such as candy bars, chips, or ice cream bars sold at convenience stores.

Eating Establishments

Eating establishments include any business that sells prepared food for immediate consumption that the public can purchase, eat there, or take with them. Generally all food sold at eating establishments is for immediate consumption and is subject to state tax, applicable municipal tax, and the applicable municipal gross receipts tax. Exceptions to the municipal gross receipts tax are noted under the specific businesses that follow this section.

Eating establishments located on the grounds of a visitor attraction or at a spectator event are also subject to the tourism tax. (See Tourism Tax facts for further information.)

Eating establishments may be mobile or immobile and may or may not provide seating for their customers.

Examples of eating establishments are bagel shops, bars, cafeterias, caterers, coffee or donut shops, concession stands at a fair or a mall, convenience shops, delis, diners, drive-ins, fast food restaurants, hot dog carts, lunch counters, night clubs, pizzerias, private and social clubs, refreshment stands, restaurants, sandwich shops, sidewalk vendors, snack bars, taverns, yogurt or ice cream stores/stands, or other places where food is served and is meant to be eaten soon after it is served.

Bakery - Donut Shops

Bakery and Donut shops are places where the public is invited to purchase and carry out prepared food. In some shops the public may also eat at that shop.

All bakery items are prepared food; however, some items are not for immediate consumption. If the food generally requires further preparation by the customer such as heating, cooking, or combining with other products, then it is not subject to the MGRT.

Examples of bakery items made by the seller that are subject to MGRT are:

- Rolls, such as cinnamon rolls
- Biscuits
- Bagels
- Bars
- Cakes - if delivered (see caterers)
- Cookies - cookie bouquets
- Croissants
- Donuts
- Danish
- Pastries
- Tortes
- Tarts
- Muffins

Examples of bakery items not subject to MGRT:

a. Breads, buns, whole pies or cakes sold for home consumption are not considered for immediate consumption, therefore not subject to the MGRT. Cakes, such as wedding cakes or special occasion cakes that are delivered is catering and subject to MGRT.

b. Bakery items sold by a business other than the bakery (such as a convenience or grocery store) are subject to the MGRT when the seller further prepares the bakery item (such as heating or combining with other products) or they serve the bakery item on a plate or with utensils. If sold without further preparation or utensils, then it is not subject to the MGRT.

Prepared Food

Caterers

Individuals or businesses providing catered prepared foods or beverages owe state tax, applicable municipal tax, and applicable MGRT on their receipts from preparing or serving such foods and beverages. If the catering is on the grounds of a visitor attraction or at a spectator event, the receipts are also subject to tourism tax.

A cake delivered to the customer is catering and is subject to the MGRT.

A cake that is picked up at the store is subject to state and applicable municipal sales tax only, not the MGRT.

Concession Stands

Receipts from sales of all food and drinks at a concession or snack stand are subject to state tax, applicable municipal tax, and applicable MGRT. Concession stands may be located at sporting events, lounges, bowling alleys, movie theaters and other areas. Concessions stands on the grounds of a visitor attraction or at a spectator event such as a concert, ball game, or exposition are also subject to tourism tax. (See Tourism Tax facts for further information.)

Convenience Stores

Convenience stores may sell prepared food for immediate consumption. Restaurants or fast food places might also be located in convenience stores. All food sales by the restaurant or fast food place are subject to the applicable MGRT.

Other prepared food sold by a convenience store that is subject to the applicable MGRT includes:

- a. All food the store prepared by heating, baking, or combining two or more ingredients. Examples: hot dogs, hot coffee, pizza, pretzels, chicken, nachos, popcorn, and donuts.
- b. Food sold where containers such as plates, glasses, cups, or bowls are provided or available for use. Examples: fountain pop, tea, coffee, hot chocolate.

Food sold by a convenience store not subject to MGRT:

- a. Food that is heated by the purchaser is not subject to MGRT even if the purchaser uses a microwave oven located on the seller's premises. Examples: prepackaged sandwiches and frozen pizzas.
- b. Foods that are prepared by another business but sold by the convenience store when utensils are not provided. Examples: donuts, muffins, prepackaged sandwiches, and cookies. If a plate, bowl, cup, or glass is necessary to receive the food or drink, then the item is subject to the applicable MGRT.
- c. Prepackaged foods such as chips, candy bars, canned or bottled pop if they are sold by a convenience store and are not part of a meal served by restaurants located in the convenience store.

Grocery Store - Grocery Store Deli

Grocery stores and delis at grocery stores sell an assortment of food products. Some delis also provide a place to eat. Items may be picked up in other parts of the store, paid for at the deli and eaten there. The deli may charge the applicable MGRT on all sales at

the deli. If they choose to charge MGRT on all sales at the deli they need to be sure to remit the additional tax collected.

Food subject to the MGRT when sold at a grocery store or grocery store deli include:

- a. Food sold heated or that was heated by the grocery store or deli.
- b. Food made by the grocery store or deli.
- c. Food sold with utensils - such as bowls, cups, plates, glasses that hold the product.

Examples of grocery or deli items subject to MGRT:

- Bakery items - cookies, donuts, rolls, (excluding whole breads and buns -See section on Bakery)
- Chicken (whole or pieces)
- Dessert items (excluding whole cakes or pies)
- Fountain pop, tea, or coffee
- Puddings
- Salads
- Soups
- Sandwiches

Food not subject to the MGRT when sold at a grocery store or grocery store deli include:

- a. Food prepackaged by the manufacturer.
- b. Food that is just sliced and repackaged.
- c. Food that requires further preparation by the purchaser, such as heating or combining with other food products.

Examples:

- Canned or bottled pop, water, tea, or other drinks
- Chips (prepacked chips or candy bars)
- Cold or frozen foods, such as soups or casseroles that require heating or cooking
- Meats and cheeses sliced and repackaged
- Prepackaged salads, sandwiches, and desserts
- Take n bake pizzas
- Whole breads, buns, pies, or cakes (see bakery section)

Reporting Municipal and Tourism Tax

The Municipal Tax Information Bulletin has a listing of all municipal sales and use tax rates and information on the Municipal Gross Receipts Tax. This bulletin may be obtained by calling 1-800-829-9188 or online at <http://dor.sd.gov>. Changes in municipal taxes are published in the department newsletter every January and July.

All municipal and tourism tax is reported on the state sales tax return.

Each tax must be reported separately, using the designated code for that tax. Do not combine taxes or report all tax under one code.

Example: Aberdeen

- Imposes a 2% Municipal Sales Tax that is reported using code 001-2.
- Imposes a 1% Municipal Gross Receipts Tax that is reported using code 001-1. The Municipal Gross Receipts tax applies to:
 - Lodging
 - Eating Establishments
 - Alcohol Sales
 - Admissions

Municipal Tax Information Bulletin Listing for Aberdeen - effective January 2011.

City	Municipal Tax Rate		Gross Receipts Tax - In Addition to Municipal Sales Tax					
	Rate	General Code	Gross Receipts Tax	Tax Code	Lodging	Eateries	Alcohol	Admissions
Aberdeen	2.00%	001-2	1.00%	001-1	X	X	X	X

Tourism tax is reported under the city and special jurisdiction section of the return using the code 700-1. On the Standing Rock Reservation tourism tax is reported using code 413-5.

Example: An Aberdeen restaurant has \$10,000 in receipts. Eating establishments in Aberdeen are subject to 2% Municipal sales tax and 1% Municipal Gross Receipts Tax. This tax is reported under the City tax calculation section of the return.

9. City and Special Jurisdiction Tax Calculation Detail:	Code	Taxable	Rate	Tax Due
10. City/Special Jurisdiction Name				
11. Aberdeen-ST	001-2	10,000	2.00%	\$200
12. Aberdeen-MGRT	001-1	10,000	1.00%	\$100

Talk to Us!

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at 1-800-829-9188. Visit us on the web at <http://dor.sd.gov>, email us at bustax@state.sd.us or write us:

South Dakota
 Department of Revenue
 445 East Capitol Ave.
 Pierre, SD 57501

Aberdeen
 14 South Main, Suite 1-C
 Aberdeen, SD 57401

Mitchell
 417 N. Main, Suite 112
 Mitchell, SD 57301

Rapid City
 1520 Haines Avenue, Suite 3
 Rapid City, SD 57701

Sioux Falls
 300 S Sycamore Ave Suite 102
 Sioux Falls, SD 57110

Watertown
 715 S Maple
 Watertown, SD 57201

Yankton
 1900 Summit Street
 Yankton, SD 57078

Tax Application on Prepared Food Sales	What Sales are Prepared Food?	4.5% State Sales Tax	Applicable Municipal Tax	1% Applicable Municipal Gross Receipts Tax	1.5% Tourism Tax
Restaurants, including dine-in, carry out, and drive thru	all food sales	X	X	X	
Catering	all food sales	X	X	X	
Concession stands	all food sales	X	X	X	
Concession stands at amusement parks & spectator events	all food sales	X	X	X	X
Special event temporary vendor stands	all food sales	X	X	X	X
Juice bars	all food sales	X	X	X	
Grocery store deli - prepared food	Prepared food ¹	X	X	X	
Convenience store - prepared food	Prepared food ¹	X	X	X	
Fountain drinks	all fountain drinks	X	X	X	
Prepared food sold at any establishment	Prepared food ¹	X	X	X	
Prepared food sold at visitor attractions	Prepared food ¹	X	X	X	X
Food services at colleges / universities	Prepared food ¹	X	X	X	

¹ Includes:

- All food heated or that was heated
- All food served with utensils - containers, or
- Food where 2 or more ingredients were combined to create a single product