

Business Tax Tip #27

Sales and Use Tax Exemption for Caterers

Introduction

In general, a licensed caterer's charges for food, beverages, and any services provided for a customer's specific event are subject to sales tax. If you are not a licensed caterer as defined below, the exemptions detailed in this section are not applicable.

Who is considered a licensed caterer?

A licensed caterer is any business or individual that offers catering services in connection with a specific event and holds a food service facility license issued by the Department of Health and Human Services. A caterer provides prepared food or beverages pursuant to a written or oral contract for a fee and may also provide labor to serve the food or beverages, whether on its own premises, the premises of the customer, or the premises of a third party.

A licensed caterer does not include any business, individual or a food service facility that is primarily engaged in the preparation and service of food to the general public at the facility. Primarily engaged in the preparation and service of food to the general public at the facility means more than 50% of gross sales revenue received by the food service facility is derived from sales of non-catered specific events.

Sales by caterers

In general, all charges by caterers related to service of food and beverage at a customer's event are taxable. Any expenses incurred by the caterer for an event that are included in the overall charge to the customer are also taxable. This is true even if the charges are separately listed on the customer's bill or invoice. Examples of taxable charges include, but are not limited to:

- Food and beverages
- Linens, tablecloths, chair covers, napkins and other coverings
- Tables, tabletops, chairs, portable bars, tray tables
- Plates, silverware, utensils, glasses, and stemware
- Chafing dishes, trays, sterno pots, coffee pots, pans, containers, serving utensils, food heating and chilling devices and ice
- Cleaning charges

- Fountains, slides, luges, fondue equipment and other items that are used to provide or serve any food or drink
- Flowers
- Decorations and balloons
- Ice Sculptures
- Security services
- Tents, temporary carpeting and flooring
- Generators, HVAC systems and portable restrooms
- Portable coolers, portable refrigerators and portable hot boxes
- Lighting
- Audio or visual equipment
- Pipes and Drapes
- Charges for bartenders, cashiers, shuckers and carvers
- Mandatory gratuity charges for groups of more than 10
- Games and other children's activities, photo booths, casino tables and services

Separately stated charges by caterers that are not related to service of food and beverages at a customer's event are not taxable. Examples of non-taxable separately stated charges include:

- Charges for valet car parking
- Charges for a coat check
- Charges to deliver the food, beverages or equipment directly to the buyer by the caterer or by another person acting for the caterer, but not including any charge to transport the property from a third party to any location of the caterer or to transport the property from any location of the caterer to another location of the caterer
- Gratuities and tips that a customer leaves voluntarily for the wait staff

Room Rental Charges

Hotels and banquet facilities may charge a separate fee for the use of a room to hold a banquet or other catered event. When the catering service is sold by a hotel or a caterer hired by the hotel, the charge for rental of the room is not taxable *only if* the room charge is separately stated on the bill to the customer. When a customer rents a room from a banquet facility but hires a separate caterer to conduct the event, the room rental charge is also not taxable.

Purchases by caterers

In general, a licensed caterer's purchases of tangible personal property and taxable services are subject to sales and use tax.

Food and Beverages

A caterer may purchase food and beverage for resale provided a valid resale certificate is given to the seller. The caterer will collect tax when the food and beverage are resold as part of the catered event.

Certain food and beverage items, such as produce, seafood, meat, canned goods, and similar food items, are not taxable. No exemption certificate is needed to make these purchases without paying sales tax.

Materials, Equipment and Supplies

The sales and use tax does not apply to purchases of materials, equipment, or supplies made by a licensed caterer if the materials, equipment or supplies meet all the following conditions:

- 1) Are to be used by the caterer to perform a contract for catering services; and
- 2) Are intended for resale by the caterer; and
- 3) Are to be used directly and predominantly by the caterer performing a catering contract that includes the provision of food and beverages.

To qualify for the exemption, the materials, equipment and supplies are required to be used directly and predominantly by the caterer to perform a catering contract that includes the provision of food and beverages. Items used in non-catering services satisfy the predominant use test if at least 50% of their use was dedicated to the performance of catering contracts.

Qualified Caterer Purchases

Purchases that meet all three conditions are “qualified caterer purchases.” A caterer’s purchase of these “qualified caterer purchases” from a vendor is excluded from the sales and use tax as a resale exclusion, provided that the caterer:

1. separately itemizes the qualified caterer purchases on its customer contracts; and
2. invoices and provides a resale certificate to its vendors at the time of purchase.

Materials, equipment and supplies purchased by a licensed caterer to be used by the caterer to perform a catering contract include any items intended for display, use by an event attendee, or use by the caterer, for the benefit of an event attendee.

“Qualified caterer purchases” include the following items:

- Tents, temporary carpeting and flooring
- Generators, HVAC Systems, portable restrooms
- Lighting
- Audio or visual equipment
- Pipe and drape
- Fresh flower arrangements and live plants acquired by the caterer under a contract with its customers that provides the customer with the right to take the fresh flower arrangements and live plants with them at the conclusion of the event.
- Decorations and balloons
- Ice sculptures
- Games and other children’s activities, photo booths, casino tables and services
- Costumes (but not standard uniforms for staff)
- Security services

“Qualified caterer purchases” do not include the following:

- Linens, tablecloths, chair covers, napkins, and other coverings
- Tables, chairs, portable bars, tray tables
- China, silverware, utensils, tabletop and glass rentals
- Items used in preparing and serving the meal, such as chafing dishes, trays, sterno, pots, pans, containers, serving utensils, food heating and chilling devices, and ice
- Items used to deliver the food and supplies, including any vehicles, boxes, and containers
- Items used in the clean-up of the party, event or function, including cleaning agents, trash bags, trash cans, and other waste receptacles, mops, brooms, vacuums, buckets, sponges, and cloths.
- Uniforms for servers and other employees
- Fountains, slides, luges, fondue equipment and other items that are used to provide or serve any food or drink.
- Any purchases that are returned to the caterer’s inventory for use at other parties, events, or functions.

Kitchen Equipment and Supplies

Kitchen equipment and supplies that are used to prepare and cook food and beverages are not “qualified caterer purchases” and thus, are taxable when purchased, leased, or rented by a caterer. Equipment and supplies include:

- Ovens (standard, convection, microwave)
- Grills
- Stoves
- Fryers
- Portable coolers or hot boxes
- Prep tables
- Mixers
- Coffee pots
- Hot plates
- Refrigerators and portable refrigerators
- Freezers