

Prepared Food and Beverage Delivery Service

Overview

Food delivery service companies that sell prepared food and beverages are retailers. This includes businesses that make sales through their app, website, or similar platform. These prepared food delivery service companies have Nebraska sales tax collection and remittance responsibilities. Prepared food delivery service companies utilize several transaction types and only some of the transaction types fit within the Multivendor Marketplace Platform (MMP) definition. Food delivery service companies that are not within the definition of MMP may also have sales tax collection and remittance responsibilities. All food delivery service companies with Nebraska sales tax collection responsibilities, including MMPs, have an immediate obligation to obtain a sales tax permit.

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Terms

Prepared Food and Beverage Delivery Service. Food delivery service means the delivery of prepared food and beverages to customers for a fee or payment, whether paid by the customer or the restaurant.

Multivendor Marketplace Platform (MMP). MMP means a platform that (i) acts as intermediary between the buyer and seller and either directly or indirectly transmits or otherwise communicates the offer and acceptance between the buyer and seller and (ii) either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser and transmits payment to the seller. An MMP includes a website or service where customers can buy goods and services from many different vendors.

Sales Price. Sales price means the total amount of the sale without deduction for any of the following: the retailer's cost of the property; the retailer's cost of materials used, labor or services, cost of transportation to the retailer, taxes imposed on the retailer, and other expenses of the retailer; charges by the retailer for services necessary to complete the sale; delivery charges, or mandatory gratuities.

Types of Food Delivery Service Transactions

Delivery fees that are included in transactions for the sale of food and passed on to the end customer are part of the sales price. The entire amount of the sales price for each transaction is subject to sales tax.

The food delivery service transaction type determines what is included in the sales tax base and who is responsible for collecting and remitting the sales tax.

Restaurant - Free Delivery

Transaction Type A. The delivery charge is absorbed by the restaurant. The customer is not charged a separate fee for the delivery of the food and beverage. The delivery may be performed by a restaurant employee or a third party delivery service.

Transaction Type B. The restaurant increases the cost of food to account for the delivery cost. The delivery charge is not separately stated on the receipt to the customer. The delivery may be performed by the restaurant or a third party delivery service.

In transaction type A and B the customer is not charged directly for the delivery charge so the charge is not subject to tax directly. Sales tax should be collected and remitted by the restaurant on the total sales price of the food, beverage, and any municipal occupation taxes passed on to the customer as a separately stated item.

Restaurant - Delivery Fee Charged

Transaction Type C. The restaurant's employees deliver food to the customer. The delivery charge is separately stated on the customer's receipt.

Transaction Type D. The restaurant sells the food and beverage directly to the customer, and processes the payment. The restaurant contracts with a third party food delivery service as an independent contractor to deliver the food. The delivery charge is recovered by the restaurant by separately stating the charge on the customer's receipt.

In transaction type C and D the customer is charged directly for the cost of delivery. Sales tax must be collected and remitted by the restaurant on the total sales price of the food and beverage, including the separately stated delivery charge and any occupation taxes where the restaurant passes on the occupation tax to the customer as a separately stated item.

Third Party Food Delivery Service – Delivery Fee Charged

Transaction Type E. The customer arranges for food delivery by using a third party food delivery service. The third party food delivery service is acting on behalf of the customer, not the restaurant, and is not an agent of the restaurant. The customer pays the restaurant for the food and separately pays the third party food delivery service for delivery.

Transaction type E includes two separate transactions. The first transaction, the sale of the food and beverage, is taxable. Sales tax must be collected and remitted by the restaurant on the sales price of food, beverage, and any occupation taxes passed on to the customer as a separately stated item. The second transaction is the delivery service. Delivery services arranged by the customer that are independent from the sale of food are not taxable in Nebraska.

MMP – Delivery Fee Charged

Transaction Type F. The customer purchases food, beverage, and delivery services through an MMP. The customer pays the MMP for both the food and the delivery service, typically through the use of the MMP's website, app or other platform. The delivery charges may or may not be separately stated on the receipt. This transaction type has always been taxable in Nebraska. Prior to the enactment of LB 284 (2019) these transactions were sale-for-resale and the restaurant should have collected a [Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13](#) from the prepared food delivery service company. The food delivery service company should have collected and remitted tax based on the total charge to the customer. After LB 284, the restaurant no longer needs a Form 13 for these transactions.

From the customer’s perspective, this is one transaction for the purchase of the food, beverage, and delivery. The MMP is a retailer under Nebraska law. The sales price is the total amount charged to the customer, including the cost of food, delivery fees, service charges and any occupation taxes passed on to the customer as a separately stated item. The MMP is responsible for collecting and remitting sales tax on the entire charge under this transaction type but the restaurant is jointly liable if the MMP does not collect and remit the required taxes to DOR.

Example: A customer places an order through the MMP’s app or website for food and beverage from ABC Restaurant. The MMP Delivery Service uses food delivery service transaction type F. Below is a sample receipt showing the correct calculation of sales and occupation taxes from the MMP to the customer.

Chicken Salad	\$10.79
Medium soft drink	2.00
Sugar Cookie.	1.75
Subtotal	\$14.54
City Occupation Tax	0.22

In this example, an occupation tax of 1.5% is imposed by the city.

Total Sales **\$14.76**

Total sales is the cost of the food and the city occupation tax.

Delivery Fee.	4.00
Service Fee	2.16
Taxable Amount	20.92

Total amount subject to sales tax includes, the cost of the food, occupation tax, delivery fees and services fees.

State and City Sales Tax 1.46

Because the city imposes a 1.5% sales tax in this example, the combined city (1.5%) and state (5.5%) sales tax is 7% and is imposed on the entire taxable amount.

Total Due**\$22.38**

Tax Collection and Remittance

Restaurants. Restaurants are relieved of sales tax collection and remittance responsibilities if the MMP has collected and remitted sales tax on the sales price to DOR. Restaurants are jointly liable for sales taxes not remitted to DOR by the MMP.

MMP. MMPs are responsible for collecting and remitting sales tax on the entire sales price of any prepared food sold through its platform. This includes delivery charges, mandatory gratuities, and any service charges or fees passed on to the customer.

Occupation Tax. Some restaurants are required to pay a local occupation tax. By law, this tax is imposed on the restaurant. If the restaurant absorbs this tax by not passing the tax on to its customer as a separately stated item, then the restaurant will continue to report the occupation tax on the form provided by the local city or village. If the restaurant passes the occupation tax on to the end customer by separately stating the occupation tax on the receipt, then the occupation tax becomes part of the sales price subject to sales tax that must be collected and remitted by the MMP. Additional information on occupation taxes may be found at revenue.nebraska.gov/government/occupation-taxes.

Reporting

MMPs. MMPs will report their Nebraska sales on the [Nebraska and Local Sales and Use Tax Return, Form 10](#).

Restaurants. Restaurants will continue to account for their gross sales on the Form 10. The “Multivendor Marketplace Platform Users Only” section of Schedule I is used to account for the restaurant’s Nebraska sales made through an MMP, where the MMP has collected and remitted sales tax on the restaurant’s behalf. Restaurants are allowed a deduction from gross sales for these MMP sales which will be reflected in the restaurant’s “Nebraska Net Taxable Sales” on the Form 10. The [Nebraska Net Taxable Sales and Use Tax Worksheet](#) must be used to calculate Nebraska net taxable sales. Normally, restaurants would obtain a properly completed [Form 13](#), from the purchaser for the purpose of resale; however, in the case of sales facilitated by the MMP, the restaurant does not use a Form 13 from the MMP.

Sourcing

Nebraska’s general sourcing rules apply to all prepared food and beverage delivery service transaction types. If the prepared food and beverage is not received by the customer at the business location of the retailer, then the sale is sourced to the location where the customer receives the prepared food and beverage. Sales tax rates in effect at the location of delivery must be applied to the food and beverage delivery transaction.

Resource List

Statutes

- ❖ [Neb. Rev. Stat. § 77-2701.32](#)
- ❖ [Neb. Rev. Stat. § 77-2701.35](#)
- ❖ [Neb. Rev. Stat. § 77-2703.01](#)
- ❖ [Neb. Rev. Stat. § 77-2708](#)

Forms

- ❖ [Nebraska and Local Sales and Use Tax Return, Form 10](#)
- ❖ [Nebraska Net Taxable Sales and Use Tax Worksheets](#)

DOR Website Information

- ❖ revenue.nebraska.gov/government/occupation-taxes

revenue.nebraska.gov

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