12A-1.0115 Sales of Food Products Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies.

1. SCOPE.

(a) The purpose of this rule is to clarify the application of tax on food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business where food products are sold for immediate consumption on the seller’s premises or packaged or wrapped and taken away from the seller’s premises.

(b) Rule 12A-1.011, F.A.C., is intended to clarify the application of tax to the sale of food products generally sold by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business, the sale of bakery products by bakeries, pastry shops, and like establishments, and the sale of drinking water or ice.

2. FOOD PRODUCTS SERVED, PREPARED, OR SOLD IN OR BY RESTAURANTS OR SIMILAR PLACES OF BUSINESS.

(a) Food products served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other similar places of business are subject to tax.

(b) Food products that are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware are subject to tax. The food products are subject to tax, even though the tables, chairs, or counters and the trays, glasses, dishes, and other tableware may be provided by a person with whom the dealer contracts to furnish, prepare, or serve the food products to others.

(c) Food products that are ordinarily sold for immediate consumption on the seller’s premises or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location are subject to tax. The food products remain subject to tax even when the product is sold on a “take out” or “to go” basis and are packaged or wrapped and taken away from the dealer’s facility. The customary practices prevailing at the dealer’s facility will be used to determine whether a food product is sold for immediate consumption at the selling facility. The premises of a caterer, with respect to catered meals or beverages, is the place where such meals or beverages are served.

(d) Restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business that also maintain a separate department that includes groceries are not required to collect tax on tax-exempt sales of food products, as provided in Rule 12A-1.011, F.A.C., when separate records are maintained for the separate department; however, food products that are sold as prepared food through a separate department are subject to tax.

3. VENDING MACHINES AND MOBILE VENDORS. Food products sold through a vending machine, push cart, motor vehicle, or any other form of vehicle are subject to tax. Drinking water in bottles, cans, or other containers sold through a vending machine, push cart, motor vehicle, or any other form of vehicle is exempt. See Rule 12A-1.044, F.A.C., for sales through vending machines.

4. COUPONS, DISCOUNTS, AND DONATED FOOD PRODUCTS.

(a) When a dealer sells two meals for the price of one meal, the dealer is required to collect tax on the total amount charged. No tax is due on the second meal.

(b) The sale of a meal ticket or coupon book to be redeemed for the purchase of taxable food products is not subject to tax at the time of sale. When the ticket or coupon is redeemed by a customer, the seller is required to collect the tax on the total consideration received, including the value of the ticket or coupon redeemed and any additional compensation received by the seller.

(c) When the seller provides a customer taxable food products without charge after purchasing a designated number of taxable food products, tax is due on the sales price of the taxable food products sold. No tax is due on the item provided to the customer without charge. For example, a sandwich shop offers customers a coupon that will entitle the customer to receive a free sandwich after purchasing five sandwiches. When the customer’s coupon indicates that the customer has purchased five sandwiches, the customer redeems the coupon for the free sandwich. The sandwich shop is required to collect tax on the sale of the first five sandwiches. No tax is due on the sandwich provided, without charge, to the customer, who has purchased the required five sandwiches.

(d) Dealers that sell food products at retail are not subject to tax on any food or beverage donated to a food bank or to an organization determined to be currently exempt from federal income tax pursuant to s. 501(c) of the Internal Revenue Code of 1986, as amended.

5. FOOD PRODUCTS SOLD OR FURNISHED BY RESTAURANTS OR SIMILAR PLACES OF BUSINESS TO EMPLOYEES.
(a) Food products furnished by an employer to its employees are not subject to tax, provided no cash changes hands as payment for the food products furnished and the assigned value of the food products is not required to be reported as income to the employee for federal income tax purposes.

(b) Food products sold by a restaurant to its employees are subject to tax.

(c) Food products consumed by the owner and his family are not subject to sales tax.

(6) TRANSPORTATION COMPANIES.

(a) Food products sold ready for immediate consumption by airlines, railroads (except Amtrak), vessels, or other transportation companies to their passengers, while within Florida, are subject to tax. A transportation company may extend a copy of its Annual Resale Certificate to the selling dealer instead of paying tax on the purchase of food products ready for immediate consumption for purposes of resale to its passengers.

(b) Transportation companies, except Amtrak, are required to pay tax on their purchases of meals and food products ready for immediate consumption when:
   a. The food products are delivered to the transportation company in this state, whether consumed in this state or outside this state;
   b. The food products are furnished to the passengers; and
   c. There is no separately itemized charge to the passenger for the food product.

2. For the partial exemption available to airlines, see Section 212.0598, F.S. For the partial exemption available to vessels engaged in interstate or foreign commerce under Section 212.08(8), F.S., see Rule 12A-1.0641, F.A.C.

(c) The purchase or sale of food products ready for immediate consumption by Amtrak, an instrumentality of the United States government, is not subject to tax.

(7) GRATUITIES.

(a) Any charge made by a dealer to a customer for gratuities, tips, or similar charges is a part of the taxable sales price of the food or drinks except when:
   1. The charge is separately stated as a gratuity, tip, or other charge on the customer’s receipt or other tangible evidence of sale; and,
   2. The dealer receives no monetary benefit from the gratuity. Money withheld by the dealer for purposes of payment of the employee’s share of social security or federal income tax or any fee imposed by a credit card company on the amount of the gratuity, or money withheld pursuant to judicial or administrative orders, is not a monetary benefit for purposes of this rule.

(b) The charge for room service made by hotels for serving meals in guests’ rooms is included in the total price of the meal and is subject to tax.

(c) Service charges, minimum charges, corkage fees, setup fees, or similar charges imposed by a restaurant, tavern, nightclub, or other like place of business as part of the charge for furnishing, serving, or preparing food products are subject to tax.

(d) The charge for the preparation of food products furnished by the customer to the preparer is subject to tax, whether prepared for immediate consumption on the preparer’s premises or for consumption off the premises.

(8) FOOD OR DRINKS FURNISHED WITH LIVING OR SLEEPING ACCOMMODATIONS.

(a) Food or drinks served or sold at community colleges, junior colleges, and other institutions of higher learning, or at fraternities and sororities, are subject to tax. If a lump sum amount is charged by the institution for living or sleeping accommodations and meals, a portion of the lump sum amount must be allocated to the sale of food or drinks to reasonably reflect the value of the food or drinks. Tax is due on the portion that is reasonably allocated to the sale of the food or drinks.

(b) Public lodging establishments that advertise that they provide complimentary food and drinks are not required to pay sales or use tax on food or drinks when:
   a. The food or drinks are furnished as part of a packaged room rate;
   b. No separate charge or specific amount is stated to the guest for such food or drinks;
   c. The public lodging establishment is licensed with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; and
   d. The public lodging establishment rents or leases transient accommodations that are subject to sales and use tax.

2. The public lodging establishment may extend a copy of its Annual Resale Certificate to the selling dealer to purchase food and drinks used for this purpose tax-exempt, as provided in Rule 12A-1.039, F.A.C.

(9) DAY NURSERIES AND CUSTODIAL CAMPS. Day care facilities, nurseries, kindergartens, day camps, and custodial
camps that primarily provide professional and personal supervisory and instructional services are not required to collect tax on their charges to the students or campers for providing food or drinks as part of their services. However, when the charges for furnishing food or drinks are separately itemized and separately priced to the student or camper, tax is required to be collected on the sales price of food or drinks.

(10) MEALS SERVED AT LABOR CAMPS.
(a) Labor camps and commercially operated public housing quarters are operated to house and feed workers on a contract basis. The provisions of this subsection are intended to provide the taxability of the housing and meals provided to workers under such contracts.
(b) When the contract provides for meals, and no housing is furnished under the contract, the charge for the meals is subject to tax.
(c) 1. When the contract provides for housing and meals for the workers, the charge for meals is subject to tax.
   2. When the contract provides for housing for the workers, but the workers buy groceries and prepare their own meals, no tax is due on the prepared meals.
(d) Workers residing in public housing quarters or labor camps may enter into agreements under which one worker is appointed to purchase groceries and prepare all meals. The worker may be selected and directed by the group of workers or may be designated and directed by the employer. The employer may deduct from each employee’s wages the pro rata share of the groceries purchased for the group or a contracted charge for the meals prepared and served by the employer’s designated cook.
   1. When the employees select the designated worker to purchase groceries and prepare meals, no tax is due on the amount deducted by the employer for each employee’s pro rata share of the cost of the groceries purchased by the designated worker.
   2. When the employer selects the worker to be the designated cook who prepares all meals, tax is due on the amount deducted from the employee’s wages by the employer for the meals.

(11) HOSPITALS AND HOMES FOR THE AGED.
(a) Meals furnished to residents of homes for the aged, as defined in Section 212.08(7)(i), F.S., are exempt.
(b) Meals furnished to patients and inmates of any hospital or other institution designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated, or for any reason dependent upon special care or attention are exempt.
(c) Meals sold and delivered as a charitable function by a nonprofit volunteer organization to handicapped, elderly, or indigent persons at their residences are exempt.

(12) NONPROFIT ORGANIZATIONS; SOCIAL OR CIVIC CLUBS.
(a) Food or drinks sold at fundraisers and similar types of events are subject to tax, unless such sales qualify as occasional sales, as provided in Rule 12A-1.037, F.A.C.
(b) Organizations that hold a valid Florida Consumer’s Certificate of Exemption may extend a copy of their certificate to purchase meals and beverages used in the normal nonprofit activities of the organization tax-exempt.
(c) Food or drinks sold by a religious institution that holds a valid Florida Consumer’s Certificate of Exemption and has an established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on are exempt.
(d) Food or drinks served or sold to or by social, civic, and similar organizations are subject to tax.
(e) When charges for meals and beverages to members of an organization are separately itemized and priced from the dues for membership, the charges for meals and beverages are subject to tax. If the organization indicates on its dues invoices, membership billing statements, dues notices, or membership applications that a specified portion of the dues payment is attributed to the furnishing of meals and beverages, the specified portion attributed to the furnishing of the meals and beverages is subject to tax.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(c), (20), 212.05(1)(a)1.a., 212.06(1)(a), 212.07(1)(b), (2), 212.08(1), (4)(a)1., (6), (7), (7)(i), (k), (m), (oo), (pp), 212.18(3)(c), 213.37 FS. History–New 11-3-09.