

**SECTION 19 - FOOD AND FOOD PRODUCTS****19-1 RETAIL SALES AND PURCHASES OF FOOD****A. Taxable Sales**

All retail sales of food or food products are subject to the applicable State and local sales or use tax unless there is an exemption or exclusion provided in the statutes.

**B. Exempt Sales**

The following sales are excluded from the tax as sales for resale:

1. sales of food products to registered merchants for resale, including sales to registered restaurants, if such sales are supported by a properly executed **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**, and
2. sales of food products to schools if such food products are to be sold not for profit by public or private school cafeterias within school buildings during the regular school day and sales of food products to State or private educational institutions, or student organizations thereof, if such food products are to be served to students in dining rooms regularly operated by such institutions or organizations.

The following sales are exempt from the tax under the provisions of G.S. 105-164.13:

3. sales of products of farms, forests, mines, quarries and waters if sold in their original or unmanufactured state by the producer in his capacity as the producer and not as a retail merchant; ice used to preserve agriculture, aquaculture and commercial fishery until the products are sold at retail; fish and seafoods when sold by fishermen in that capacity;
4. sales of food sold not for profit by public or private school cafeterias within school buildings during the regular school day;
5. food sold not for profit by a public school cafeteria to a child day care center that participates in the Child and Adult Care Food Program of the Department of Public Instruction;
6. sales of meals and food products to students in dining rooms regularly operated by State or private educational institutions, or student organizations thereof;
7. sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to refunds pursuant to G.S. 105-164.14(b) when the meals are delivered to the purchasers at home;
8. sales of food by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities;
9. tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes;
10. food and other items lawfully purchased with debit cards issued under the Food Stamp Program, 7 U.S.C. Subsection 51, and supplemental foods lawfully purchased with a

food instrument issued under the Special Supplemental Food Program, 42 U.S.C. Subsection 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program. Under the Food Stamp Program, “**food**” means any food or food product for human consumption and also includes seeds and plants for use in home gardens to produce food for consumption by food stamp households. Items which may not be purchased with a debit card include alcoholic beverages, tobacco, hot foods ready to eat and foods intended to be heated in the store, lunch counter items or foods to be eaten in the store, vitamins or medicines, pet foods and any nonfood items. The supplemental foods list currently includes whole, skim, evaporated and nonfat milk; specific cereals; certain juices; cheese; eggs; dry beans and peas; dry infant cereal and infant juice; and other special formulas. The items on the supplemental food list are subject to change.

### C. Use of Certificate of Exemption By Schools, Institutions and Organizations Making Exempt Sales

The schools, institutions and organizations making exempt sales in accordance with G.S. 105-164.13(26), (26a) and (27) will not be required to register with the Department and, therefore, unless otherwise required to register by reason of making other sales or purchases subject to the sales or use tax, cannot furnish the **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**, to their suppliers. When making purchases of food products to be sold, such nonregistered schools, institutions and organizations must furnish their suppliers with information to the effect that the food products purchased are to be sold in connection with their school lunchroom programs or their dining rooms, and the suppliers must enter such information on their records and on the sales invoices. Otherwise, such transactions may be subject to the tax. Registered schools, institutions and organizations shall furnish properly executed Certificates of Exemption where applicable.

History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.13;  
105-164.28; 105-264;  
Issued: June 1, 1996;  
Revised: January 1, 2007; July 1, 2005; February 1, 2004;  
June 1, 2002; October 1, 1999; October 15, 1998; March 1, 1997.

## 19-2 REDUCED FOOD TAX

### A. Application of Sales and Use Tax to Retail Sales and Purchases of Food

Sales and purchases of food as defined in G.S. 105-164.3(10) are exempt from the State sales and use tax and subject to only the 2% local tax unless the food is included in one of the categories listed below. The following items are subject to the State and applicable local tax:

1. alcoholic beverages as defined in G.S. 105-113.68;
2. dietary supplements;
3. food sold through a vending machine;
4. prepared food (**prior to January 1, 2009**); (**effective January 1, 2009**), prepared food other than bakery items sold without eating utensils by an artisan bakery. Refer to Section 19-2 D. of this Bulletin for more information.
5. soft drinks; and
6. candy (**effective October 1, 2005**).

**Effective October 1, 2005**, the term “**alcoholic beverages**” was deleted from the list since alcoholic beverages are not considered “**food**.” Alcoholic beverages continue to be subject to the State and applicable local sales and use tax.

**B. Definitions**

The following definitions are in effect except as otherwise noted.

1. **“Food”** is defined as “substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include tobacco products as defined in G.S. 105-113.4. **(Effective October 1, 2005, an “alcoholic beverage,”** as defined in G.S. 105-113.68, is no longer considered a **“food.”)**
2. **“Dietary Supplement”** is defined as “a product that is intended to supplement the diet of humans and is required to be labeled as a dietary supplement under federal law, identifiable by the ‘Supplements Facts’ box found on the label.” A dietary supplement contains one or more of the following ingredients:
  - a. a vitamin;
  - b. a mineral;
  - c. an herb or other botanical;
  - d. an amino acid;
  - e. a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or
  - f. a concentrate, metabolite, constituent, extract, or combination of any ingredient described above. A dietary supplement is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet.
3. **“Food sold through a vending machine”** is defined as “food dispensed from a machine or another mechanical device that accepts payment.”
4. **“Candy”** is defined as “a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces that do not require refrigeration. The term does not include any preparation that contains flour.”
5. **“Prepared food”** is defined as food that meets at least one of the following conditions:
  - a. It is sold in a heated state or it is heated by the retailer.
  - b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. Foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses are not considered prepared foods.
  - c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws.

The term **“prepared food”** does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils. For example, if a retailer purchases food items and combines two or more of the items in a package or gift box for sale as a single item, the gift box containing food items does not constitute **“prepared food.”**

For purposes of this Bulletin, the following interpretations apply regarding the meaning of the phrase “**provided by the seller or retailer**” with respect to utensils:

- (1) Utensils need only be made available to purchasers if a seller’s sales of prepared food in a. and b. of the “**prepared food**” definition at an establishment are more than 75% of the seller’s total sales at the establishment. The numerator includes sales of (1) prepared food if under a. and b. of the definition of prepared food; and (2) food where plates, bowls, glasses, or cups are necessary to receive the food. The denominator includes sales of all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in the numerator or denominator.

The prepared food sales percentage is determined annually for all of the seller’s establishments in the State. The percentage is calculated by the seller for each tax year or business fiscal year, based on the seller’s data from the prior tax year or business fiscal year, as soon as possible after records are available, but not later than 90 days after the beginning of the tax or business fiscal year. A new business should make a good faith estimate for its first year and adjust the estimate after the first three months of operation if actual prepared food sales percentages materially affect the 75% threshold test.

- (2) For sellers with a sales percentage of 75% or less, seller’s customary practice is to physically give the utensil to the purchaser, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food or food ingredients need only be made available.
- (3) For sellers with a sales percentage greater than 75% who sell items that contain four or more servings packaged as one item for a single price, an item does not become prepared food due to the seller having utensils available. However, if the seller provides utensils for the item as in (2) above, then the item is considered prepared food. Serving sizes are determined based on the label on the item, if available, or based on the seller’s reasonable determination.
- (4) If a person other than the seller originally placed the utensil in the package, and that person’s North American Industry Classification System (NAICS) classification code is that of a manufacturer, the seller is not considered to have provided it to the purchaser when the package is transferred to the purchaser unless the seller exceeds the “75% test.” (Example: ready-to-eat lunches or snacks containing utensils that were placed in the package by the manufacturer.)

6. “**Soft Drink**” is defined as “a nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include beverages that contain one or more of the following:
  - a. milk or milk products;
  - b. soy, rice, or similar milk substitutes; or
  - c. more than 50% vegetable or fruit juice.”

In addition, the term does not include powdered fruit drinks, powdered tea with flavoring and sweeteners, and frozen fruit drink concentrate.

### C. Bread Sold at Bakery Thrift Store

1. For the purposes of this Section, a **“bakery thrift store”** is defined as a “retail outlet of a bakery that sells at wholesale over ninety percent (90%) of the items it makes and sells at the retail outlet day-old bread, rolls, and buns returned to it by retailers that acquired those items from the bakery.”
2. **Prior to October 1, 2007**, sales of bread, rolls, and buns at a bakery thrift store were considered to be sales of prepared food and subject to the State and applicable local sales and use tax. **Effective October 1, 2007**, sales of bread, rolls, and buns at a bakery thrift store are only subject to the 2% local sales and use tax applicable to sales of qualifying food.

#### D. Bakery Items Sold Without Eating Utensils by an Artisan Bakery

##### 1. Definitions

- a. **“Artisan bakery”** is defined as “a bakery that meets all of the following requirements:
    - (1) It derives over eighty percent (80%) of its gross receipts from bakery items; and
    - (2) Its annual gross receipts, combined with the gross receipts of all related persons, as defined in G.S. 105-163.010, do not exceed one million eight hundred thousand dollars (\$1,800,000).”
  - b. **“Bakery item”** includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
2. **Prior to January 1, 2009**, sales of **“bakery items”** sold without eating utensils by an **“artisan bakery”** was considered prepared food and subject to the State and applicable local rates of sales and use tax. **Effective January 1, 2009**, sales of **“bakery items”** sold without eating utensils by an **“artisan bakery”** are only subject to the 2% local sales and use tax applicable to sales of qualifying food.

**Note:** Refer to Section 19-2 B. 5. to explain what is meant by **“sold without eating utensils.”**

#### E. Mecklenburg County Local Sales and Use Tax For Public Transportation

The ½% Mecklenburg County Local Sales and Use Tax for Public Transportation, which became effective April 1, 1999, does not apply to food that is exempt from the State sales and use tax.

#### F. Packages Containing Eligible and Ineligible Food Items (Prior to October 1, 2007)

These transactions are subject to sales or use tax as follows:

1. When a combination of **eligible food and nonfood items** are prepackaged and sold for a single price, the transaction is subject to the general rate of State tax and any applicable local sales or use tax. For example, a package containing food items and a stuffed animal is subject to the general rate of State tax and any applicable local sales or use tax. If the items are priced and sold individually, the eligible food items are subject to only the 2% local tax. The stuffed animal is taxable at the general rate of State tax and any applicable local sales or use tax notwithstanding that all of the items are assembled into a single package by the retailer.

2. When a combination of **eligible and ineligible foods** are prepackaged and sold for a single price, the transaction is subject to the general rate of State tax and any applicable local sales or use tax. For example, a package containing meat, cheese, crackers and a bottle of alcoholic wine is subject to the general rate of State tax and any applicable local rates of tax. If the items are priced and sold individually, the meat, cheese and crackers are subject to only the 2% local tax. The wine is taxable at the general rate of State tax and any applicable local rates of tax notwithstanding that all of the items are assembled into a single package by the retailer.

#### G. Bundled Transactions Containing Food (Effective October 1, 2007)

##### 1. Definition

A “**bundled transaction**” is defined as “A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

- A A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
- b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
- c. A sale of a product accompanied by a transfer of another product with no additional consideration.
- d. A product and the delivery or installation of the product.
- e. A product and any service necessary to complete the sale.”

##### 2. Application of Tax to Bundled Transactions Containing Food

The applicable rate of tax imposed on a bundled transaction that only includes tangible personal property and contains food items that are exempt from State sales and use tax depends on the percentage of products included in the bundle. For a bundled transaction that only includes tangible personal property and consists of 50% or more of food items that are exempt from State sales and use tax, the total charge for the bundle is subject to the 2% local tax on food. For a bundled transaction that only includes tangible personal property and consists of less than 50% of food items that are exempt from State sales and use tax, the total charge for the bundle is subject to the applicable State and local rates of sales and use tax.

In determining the percentage of products included in a bundle, a retailer may use either the cost of products included in the bundle or the sales price of the products when sold separately. A retailer cannot use a combination of the cost price and sales price of products to make this determination.

##### 3. Example

A gift basket containing meats, cheeses, and a carving board sells for \$50.00. The sales price of the meats and cheeses is \$45.00 when sold separately and the sales price of a separate sale of the carving board is \$15.00. Since the sales price of the food items (meats and cheeses) that are exempt from State sales and use tax when sold separately is more than 50% of the combined sales priced of products in the bundle sold separately, the total charge for the bundle is subject to the 2% local tax on food.

**Note:** For additional information pertaining to “**bundled transactions**,” refer to Sales and Use Tax Technical Bulletin 34-25.

#### H. Miscellaneous Items

The following items are subject to the general rate of State tax and any applicable local sales and use tax even though they may be purchased at a food store:

1. beer, wine, nonprescription medicines, cooking utensils, cleaning and paper products, soaps, toiletry articles and cosmetics;
2. items not intended for human consumption, such as pet food and animal food; and
3. vitamins and minerals in various forms such as tablets, capsules, powders and liquids that are supplements to food rather than food.

#### I. Records

Food vendors are required to maintain suitable records to account for sales of food which are subject to the applicable State and local sales or use tax or are exempt from tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.13B; 105-264.28; 105-264;  
Issued: March 1, 1997;  
Revised: January 15, 2009; January 1, 2007; July 1, 2005;  
February 1, 2004; June 1, 2002; October 1, 1999;  
January 15, 1999; October 15, 1998.

### 19-3 CATERERS

All charges by persons engaged in the catering business that are connected with the furnishing, preparing or serving of meals, foods, and other tangible personal property to users or consumers are subject to the general rate of State tax and any applicable local sales or use tax. If such persons perform other services that are not a part of the charges for the furnishing, preparing or serving of meals, foods, and other tangible personal property, the charges for such services rendered are exempt from tax provided such charges are separately stated from the charges for the tangible personal property on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to the tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996;  
Revised: June 1, 2002.

### 19-4 FRATERNITY AND SORORITY MEALS

Fraternities and sororities are considered to be student organizations within the meaning of G.S. 105-164.13(27) and when fraternities and sororities operate dining rooms which serve meals or foodstuffs to students at educational institutions, such meals and food products are exempt from sales tax. Since fraternities and sororities are not required to collect and remit tax on sales of meals to students, most fraternities and sororities are not registered for sales tax purposes and cannot furnish a properly completed **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**, in connection with their purchases. Firms making sales of foodstuffs to the above-described dining rooms shall make a notation on their bills of sale to the effect that the sales are to fraternity and sorority dining rooms. This information will suffice as a Certificate of Exemption.

History Note: Authority G.S. 105-164.13; 105-264;  
Issued: June 1, 1996;  
Revised: January 1, 2007; July 1, 2005.

#### 19-5 MEALS AT SUMMER CAMPS

- A. Summer camps that make a weekly or monthly charge to persons who are enrolled in the courses or activities carried on by the summer camps are not liable for collecting tax on such charges.
- B. Sales of food to summer camps for use in providing meals to campers as part of the operation of the camp and its programs are subject only to the 2% local sales or use tax except items such as prepared food, soft drinks, and candy which are subject to the combined State and local tax.
- C. Camps that operate cafeterias or restaurants where they make sales of meals and other tangible personal property to students or other users or consumers shall register and collect and remit the general rate of State tax and any applicable local sales or use tax on the sales price of such property. Camps where rooms, lodgings or accommodations are regularly furnished to transients for a consideration are deemed to be retailers and must collect and remit the tax on such receipts.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996;  
Revised: January 1, 2007; February 1, 2004; June 1, 2002;  
October 1, 1999.

#### 19-6 MEALS ON TRAINS, PLANES, ETC.

Sales of prepared foods or meals by railroads, Pullman cars, steamships, airlines or other transportation company diners, while within this State, are subject to the general rate of State tax and any applicable local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996;  
Revised: June 1, 2002.

#### 19-7 SALES OF SEAFOOD

A person who purchases fish or other seafood and sells them at retail is liable for collecting the 2% local sales or use tax due on the sales unless the sales are considered sales of **“prepared food.”** Sales of fish and seafood are exempt when sold in their original or unmanufactured state by the fisherman in his capacity as a fisherman. **For information on sales of prepared food, refer to Sales and Use Tax Technical Bulletin 19-2.**

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-264;  
Issued: June 1, 1996;  
Revised: January 1, 2007; February 1, 2004; June 1, 2002;  
January 15, 1999; October 15, 1998; March 1, 1997.

#### 19-8 SCHOOL STORES' SALES

Sales of tangible personal property by school stores to students and other users or consumers are subject to the general rate of State tax and any applicable local sales or use tax. Such school stores must register with the Department of Revenue and collect and remit the tax on such sales.



History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996;  
Revised: June 1, 2002.

## 19-9 VENDING MACHINES

### A. Sales Through Vending Machines

Any person who makes sales of tangible personal property through vending machines is required to register with the Department of Revenue and pay sales tax on the sales price of tangible personal property in excess of one cent per sale. One cent sales through vending machines are exempt from sales tax when made by the owner or lessee of the vending machines. The sales price of tobacco products is taxed on 100% of the total amount for which the property is sold in the vending machine. Other items sold through a vending machine are taxed on 50% of their sales price. Vending machine operators are permitted to separate their receipts which are 100% taxable from their receipts which are 50% taxable and, after calculating the taxable amounts of each, may divide those total taxable amounts by 100% plus the combined percentage of State and local rates of tax to arrive at taxable sales reportable on their sales and use tax returns. **For example**, if the combined State and local rate is 6.5% in the county where the vending machine is located, the vending machine operator may divide the taxable amount by 106.5% to arrive at the taxable sales to be reported on the sales and use tax return. Records must be kept to support such sales as provided by G.S. 105-164.22 and G.S. 105-164.24.

### B. Sales of Vending Machines

Sales of vending machines to any person for use are subject to the general rate of State tax and any applicable local sales or use tax. The lease or rental of vending machines to users are subject to the general rate of State tax and any applicable local sales or use tax. Sales of vending machines to registered merchants for leasing purposes or for the purpose of resale are not subject to the tax when supported by a properly executed **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13;  
105-164.13B; 105-264;  
Issued: June 1, 1996;  
Revised: January 1, 2007; July 1, 2005; February 1, 2004;  
June 1, 2002; January 15, 1999; October 15, 1998.

## 19-10 COMPLIMENTARY MEALS BY HOTELS, MOTELS, AND BED AND BREAKFAST INNS

- A. When a hotel, motel, bed and breakfast inn, or similar business provides a complimentary meal or snack without charge and does not operate a restaurant or similar place in which it sells prepared food, **qualifying food is subject to only the 2% local tax and prepared food, soft drinks, and candy are subject to the combined State and local tax at the time of purchase.** The food is used by the business rather than resold and is an operating expense similar to other expenses subject to sales or use tax such as linens, toiletries and cleaning supplies.
- B. If, in addition to providing complimentary food, the hotel, motel, or bed and breakfast inn operates a restaurant or similar place that sells prepared food, the food used in providing the complimentary meal or snack is considered sold along with the prepared food and is not subject to sales or use tax. The business should purchase all food for resale without paying tax on the food by completing a **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**. The business is liable for collecting and remitting the general rate of State tax and any applicable local sales tax on the retail sales price of the prepared meals or snacks when

sold. This interpretation is based upon the definition of “**sale or selling**” found in G.S. 105-164.3(36).

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.5; 105-164.6;  
105-164.28; 105-264;  
Issued: June 1, 1996;  
Revised: January 1, 2007; July 1, 2005; February 1, 2004;  
June 1, 2002; January 15, 1999; October 15, 1998; March 1, 1997.

## 19-11 EMPLOYEE MEALS, BAR FOOD AND MATCHES

### A. Restaurants

Pursuant to a decision by the North Carolina Court of Appeals, taxpayers are not liable for use tax on the cost of meals furnished to employees, food served to bar patrons and matches when these items are furnished without charge.

In the case in which the ruling was rendered, the taxpayer was operating restaurants and made retail sales of beverages, sandwiches and meals. The restaurants issued **Certificates of Resale, Form E-590**, to their suppliers and purchased foodstuffs without payment of sales taxes. The restaurants utilized the foodstuffs, in part, to provide snacks, sandwiches and hors d'oeuvres (bar food) to bar patrons and meals to employees. The restaurants did not charge patrons for bar food and provided meals to employees without charge. Cigarettes were also sold at each of the taxpayer's locations through vending machines and the taxpayer acquired matches from nonresident suppliers which they furnished to customers without charge.

- B. G.S. 105-164.3(36) defines the words “**sale**” or “**selling**” to include certain transactions where retailers who sell prepared food and drink for immediate or on-premises consumption also give prepared food or drink to its patrons or employees free of charge. The free food and drink is considered sold along with the property sold. It also provides that if a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.

History Note: Authority G.S. 105-164.3; 105-164.5; 105-164.6;  
105-264; 105-266;  
Issued: June 1, 1996;  
Revised: February 1, 2004; June 1, 2002; October 1, 1999;  
March 1, 1997.

## 19-12 FOOD SERVICE SUPPLIES

### A. Exempt Purchases

Paper doilies, paper place mats, paper coasters, paper cups, paper napkins, drinking straws and similar disposable items which become a part of the sale or service of food and are expended by customers in consuming their meals are exempt from sales or use tax when sold to school lunchrooms, restaurants, cafes, cafeterias and other such places of business selling and serving prepared meals and foods.

### B. Taxable Purchases

Sales of plastic or cloth place mats, cork, plastic or china coasters, china, silverware, cloth napkins, tablecloths or other reusable items to restaurants, cafes, cafeterias and other similar places of business for use in serving meals and not for resale are subject to the general rate of State tax and any applicable local sales or use tax. In addition, sales of brooms, mops, soaps and other supplies and equipment to such businesses are subject to the general rate of State tax and any applicable local sales or use tax. Sales of patty paper and paper containers to restaurants for use in storing food are subject to the general rate of State tax and any applicable local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-264;  
Issued: June 1, 1996;  
Revised: June 1, 2002.

### 19-13 SERVICE CHARGE OR GRATUITY IMPOSED ON FOOD, BEVERAGES OR MEALS

- A. When a service charge is imposed on food, beverages, or meals, so much of said service charge as does not exceed 20% of the sales price is considered a tip and is exempt from sales tax if it meets both of the following conditions:
1. is separately stated in the price list, menu or written proposal and also in the invoice or bill; and
  2. is turned over to the personnel directly involved in the service of the food, beverages, or meals, on the regular payday.
- B. The exemption does not apply to service charges when any portion thereof is distributed to chefs, bartenders, bus boys, hosts, maitre d's, valets, coat checkers, managers and supervisors notwithstanding such groups may occasionally serve food or drinks directly to customers. If any part of the 20% gratuity is shared with personnel not directly involved in the service of food, beverages or meals, the entire 20% gratuity is a part of the sales price on which the tax is to be computed.
- C. Where a service charge or gratuity is in excess of 20% of the sales price and 20% of such a charge is given to the personnel directly involved in the service of the food, beverages or meals, the 20% given to food service personnel is exempt from tax when the other conditions of the statutory exemption are met and the amount of the service charge or gratuity in excess of 20% is taxable as part of the sales price. If persons other than those directly involved in the service of food share in the 20% service charge or gratuity, the total service charge or gratuity is taxable as part of the sales price.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;  
Issued: June 1, 1996;  
Revised: January 15, 2009; February 1, 2004; December 1, 2002;  
October 1, 1999; October 15, 1998.

### 19-14 COVER CHARGES

Cover charges, as such, are not subject to sales tax when separately stated. That portion of a minimum charge which represents tangible personal property that is delivered to the customer is subject to tax and shall be separated from the unused portion of any minimum charge; otherwise, the total charge is subject to the tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996.