

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 130 Section 130.2145 Vendors of Meals**

**TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130  
RETAILERS' OCCUPATION TAX**

**Section 130.2145 Vendors of Meals**

- a) Vendors of Meals – When Liable For Tax
  - 1) Persons engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their receipts from those sales. It is immaterial that no profit is realized from the operation of this type of business if the seller is engaged in a commercial enterprise, or if the seller engages in activities that make him/her taxable under the terms of Section 130.2005 of this Part. It is also immaterial that the class of purchasers may be a limited one, such as the employees of a particular employer who operates a cafeteria or other dining facilities for the benefit of his/her employees.
  - 2) Subsection (a)(1) includes, but is not limited to, the following types of vendors:
    - A) hotels;
    - B) restaurants;
    - C) caterers;
    - D) boarding houses;
    - E) concessionaires;
    - F) nonprofit service organizations and institutions to the extent indicated in Section 130.2005(a), (b) and (c) of this Part, and similar enterprises when conducted with a view to profit to the extent indicated in Section 130.2005(o) of this Part;
    - G) employers who operate dining facilities for the benefit of their employees, except to the extent noted in Section 130.2005(b) of this Part; and
    - H) sellers of food and beverages, delivered in Illinois to airlines, for use in serving passengers on aircraft without a separate charge for the food or beverages being made by the airline, regardless of whether the airline may serve the food and beverages in Illinois or outside Illinois; sales of meals to airlines for use on their aircraft in serving crews, where the cost is deducted from a food allowance, are nontaxable sales for resale, but if

the meals are delivered to the airline in Illinois, the airline incurs Retailers' Occupation Tax liability on its receipts (consideration in the form of compensation for service rendered) from reselling the meals to crews, regardless of whether the aircraft is in Illinois or outside Illinois when it serves the meals to its crew.

b) Vendors of Meals to Organizations or Their Members

- 1) Effective August 1, 1961, when members of an organization meet at a hotel, restaurant or other place of business where food or drinks are sold and pay for those items, the hotel, or other vendor of meals, is considered to be selling such tangible personal property directly to members as users or consumers, and the sales shall be considered to be taxable. This is true even if the organization collects from the members and makes payment to the vendor, and even if the organization is permitted to retain a portion of what it collects for its own purposes.
- 2) In this situation, the organization is deemed to be acting for the accommodation of all concerned and is not deemed to be standing in the role of a purchaser and reseller.
- 3) The measure of the tax is the amount received by the hotel, etc., for the tangible personal property that it furnishes.
- 4) The principles stated in this Section apply also when the tangible personal property that is being sold is something other than food and drinks, but this Section is concerned primarily with vendors of food and drinks.

c) Cover Charges and Minimum Charges

- 1) Cover Charges
  - A) Cover charges are not included in the taxable receipts of persons operating restaurants, hotels and other places of business that come within the Act, when cover charges are made exclusively for the privilege of occupying space within the eating place, and when the payment of a cover charge by a patron does not entitle the patron to use or consume any food or beverage or other tangible personal property.
  - B) In such an instance, the cover charge is a receipt on account of a service rendered, whether the service be entertainment or otherwise, and does not accrue on account of the sale of tangible personal property at retail.
- 2) Minimum Charges
  - A) The provisions regarding cover charges do not apply to so-called "minimum charges" that are made by night clubs, public eating places, private clubs or other retailers of food or beverages or both, and that entitle the persons paying the charge to use or consume some tangible personal property, such as food or beverages, without additional payment. The retailer's receipts from these charges are subject to Retailers' Occupation Tax.

- B) Similarly, when a single charge is made for both entertainment and food and the charge for food is not separately stated on the customer's bill, the entire charge is subject to tax. For example, when a dinner theater charges \$50 for a show and includes food and beverages, the entire \$50 is subject to tax unless a separate charge is made for the food and beverages.
- C) However, minimum charges imposed by country clubs that must be paid regardless of whether the member purchases food or beverages are subject to tax only to the extent they are incurred for actual food or beverage purchases. (See *Aurora Country Club, Inc. v. Department of Revenue*, 50 Ill.App.3d 756, 365 N.E.2d 229 (2d Dist. 1977).)

d) **Mandatory Service Charges**

Mandatory gratuities are not included in the taxable receipts of persons operating restaurants, hotels and other places of business that come under the Act, if the mandatory gratuity is added to banquet or dinner checks in the form of a percentage of the total bill, or as a flat rate, to the extent that *the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed.* (Section 2-5(15) of the Act) If any part of the service charges are used to fund or pay wages, labor costs, employee benefits or employer costs of doing business, that part of the service charge is includable in gross receipts.

e) **Rentals of Banquet, Meeting and Conference Rooms – True-object Test**

The taxation of charges for the rental of a banquet, meeting, conference or similar room in conjunction with the providing of food or beverages will depend upon the nature of the transaction. The Department uses a "true-object" test to characterize the nature of these transactions.

- 1) If the true object of the transaction is the rental of the room and if food or beverages are provided incidentally to the rental of the room, no tax is incurred on the charges for the rental of the room. If no separate charge is made under the contract for the incidental amount of food or beverages provided, the renter is considered the user of the food or beverages and incurs Use Tax on its cost price of the food or beverages transferred incidentally to the rental of the room. If a separate charge is made for any food and beverages transferred incidentally to the rental of the room, the renter incurs Retailers' Occupation Tax on the selling price of the food or beverages. See Section 130.310 of this Part regarding the appropriate tax rate for sales of food.
- 2) If the true object of the transaction is the sale of food or beverages, any room rental charges are part of the seller's costs of doing business and are includable in the seller's taxable gross receipts even if the charges for the room rental are separately stated on the agreement or bill between the seller and its customers. See Section 130.410 of this Part. The rental of the room is considered an inseparable link in the sale of the food and beverages to the customer and is not merely incidental to the seller's business of selling food or beverages.

- 3) If the rental contract requires that alcoholic beverages or food and other beverages be provided or sold by a specific third party or from a choice of providers specified by the rentor, the rentor shall be deemed to be the provider of the alcoholic beverages, food and other beverages for purposes of determining the taxation of the room rental charge.
- 4) This subsection (e) is applicable to rentals of rooms in situations in which those rentals are not subject to tax under the Hotel Operators' Occupation Tax Act.

f) True Object – Rental of Room

The Department deems an incidental provision of food or beverages to include the providing of non-alcoholic beverages, such as coffee, tea and soft drinks, and the providing of snacks, such as cookies, popcorn, candy, doughnuts, fruits and raw vegetables.

EXAMPLE 1: A person contracts for the rental of a meeting room at a hotel for a business meeting. As part of the contract, the hotel agrees to provide coffee, tea, soft drinks and cookies at no extra charge to the participants of the meeting. The true object of this transaction is deemed to be the rental of the room and any food and beverages provided are incidental to the renting of the room. The hotel does not incur Retailers' Occupation Tax on the charges for the rental of the room and the incidental providing of food and beverages. The hotel does incur Use Tax on its cost price of the coffee, tea, soft drinks and cookies provided incidental to the rental of the room.

EXAMPLE 2: A person contracts for the rental of a meeting room at a hotel for a business meeting. The hotel agrees to provide coffee, tea, soft drinks and cookies at the meeting for a separately stated charge as part of the contract. The true object of this transaction is deemed to be the rental of the room and any food and beverages provided are incidental to the renting of the room. In this transaction, the hotel incurs Retailers' Occupation Tax on the charge for sale of the coffee, tea, soft drinks and cookies. The gross receipts subject to Retailers' Occupation Tax do not include the separate charge for the rental of the room.

EXAMPLE 3: A person rents a room for a wedding reception from a hotel, but that person separately contracts for the food and beverages with a caterer instead of the hotel. The contract between the hotel and the customer did not specify any particular caterers. The true object of the transaction is deemed to be the rental of the room since the caterer and not the hotel provides the food and beverages. No Retailers' Occupation Tax is incurred on the hotel's rental charges in this instance.

g) True Object – Sale of Food and Beverages

The Department deems the providing of any food other than snacks to be the true object of the transaction and not the rental of the room. If alcoholic beverages are either provided or sold by the rentor to the persons attending the event for which the room is rented, the true object of the transaction will always be deemed the sale of food or beverages and not the rental of the room. If the rental contract requires that the alcoholic beverages or the food and other beverages be provided or sold by a specific third party or from a choice of providers specified by the rentor, the rentor shall be deemed to be the provider of those alcoholic beverages, food and other beverages for purposes of determining the taxation of the room rental charge.

EXAMPLE 1: A person contracts for the rental of a meeting room at a hotel for a business luncheon. As part of the contract, the hotel agrees to provide coffee, tea, soda, soup, sandwiches and various desserts to the participants of the luncheon meeting for no extra charge. The true object of this transaction is deemed to be the sale of food and beverages and not the rental of the room. The hotel incurs Retailers' Occupation Tax on its gross receipts from the sale of the food and beverages, including the charges for the rental of the room.

EXAMPLE 2: A person contracts for the rental of a meeting room at a hotel for a business after hours gathering with a speaker from a local business group. The hotel provides snacks and non-alcoholic beverages for a separately stated charge as part of the contract. The hotel provides for a bartender and agrees to sell alcoholic beverages to the participants at the gathering. The true object of this transaction is deemed to be the sale of food and beverages and not the rental of the room. The hotel incurs Retailers' Occupation Tax on its gross receipts from the sale of the food and beverages, including the charges for the rental of the room.

EXAMPLE 3: A person contracts with a hotel for the rental of a banquet room for a wedding reception. As part of the contract, the hotel charges that person a specific amount for each individual who attends the reception in exchange for providing beverages and a buffet meal to those individuals. The true object of this transaction is deemed to be the sale of food and beverages and not the rental of the room. The hotel incurs Retailers' Occupation Tax on its gross receipts from the sale of the food and beverages, which includes the specific charge for each individual who attends the reception, along with any charges for the rental of the room.

EXAMPLE 4: A person contracts with a hotel for a room for a cocktail reception. The hotel's rental contract requires that all alcoholic beverages and food be provided by a restaurant located on the hotel premises. The restaurant is a separate legal entity from the hotel. Because the hotel's rental contract requires the restaurant to provide the food and beverages, the hotel is considered to be the provider of the food and beverages, for purposes of determining taxation of the room charge. The true object of the transaction is the provision of food and beverages, since alcoholic beverages and food are provided. As a result, the hotel's charge for the room rental is subject to Retailers' Occupation Tax. The restaurant is subject to Retailers' Occupation Tax on the sale of the alcoholic beverages and food. If the hotel's rental contract had not required a specific third party to provide food and beverages, the charges for the room rental would not be subject to tax.

h) Other Charges

Charges that are related to the provision of food or beverages are always part of the gross receipts from the sale of the food or beverages. The reason the charges are part of the gross receipts subject to tax is because those charges are part of a seller's costs of doing business and are not deductible from a seller's gross receipts. See Section 130.410 of this Part. Examples of charges that are related to the provision of food and beverages include, but are not limited to, fees for food serving or carving and corkage, and charges for linens, chairs, tables, dishes, glassware, flowers and centerpieces. Examples of charges that are not related to the provision of food or beverages include, but are not limited to, charges for security, valet, coat check, entertainment, audiovisual and telecommunications services, and cancellation fees.

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