

# Welcome to the **FOOD INDUSTRY SEMINAR**



# OBJECTIVES

## for the Restaurant Seminar

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- ✓ Provide basic understanding of the sales and use tax law.
  - ✓ Teach how to avoid common mistakes.
  - ✓ Discuss Board of Equalization services available.
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# SALES TAX vs. USE TAX

- Tax imposed on retail selling price.
- Sales tax is the responsibility of the retailer (seller).

- Tax imposed on the purchase price or cost.
- Typically applies to purchases from out of state vendors or if property is purchased with a resale certificate and is not resold:
  - Purchase of equipment
  - Consumable supplies
  - Personal use
- Same tax rate as sales tax.

# Common Definition

## DRIVE-IN

An establishment where parking spaces are primarily for consumption of food and beverages.



# Common Definition

## FACILITIES

Tables, chairs, and counters provided by the seller. Also includes trays, glasses, dishes, or other tableware.





# Common Definitions

## Combination Meal

A combination of different food and beverage items sold for a single price.



# When Sales of Food Products Are Taxable

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- Furnished, prepared, or served for consumption at the facilities provided by the seller.
  - Hot prepared food products.
  - Sold at a drive-in.
  - Some combination packages.
  - Sold for consumption within a place where admission is charged.
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# Sales of Food Products (General Tax Application)

	Consumed on the premises	Sold "to go"
Meals	<i>TAXABLE</i>	<i>TAXABLE <u>OR</u> EXEMPT</i>
Hot prepared food	<i>TAXABLE</i>	<i>TAXABLE</i>
Cold food and noncarbonated beverages	<i>TAXABLE</i>	<i>TAXABLE <u>OR</u> EXEMPT (80/80 Rule)</i>
Carbonated and alcoholic beverages (nonfood products)	<i>TAXABLE</i>	<i>TAXABLE</i>



# HOT FOOD

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- Sales of hot prepared food are always taxable (even if sold "to go").
- Food product heated above room temperature is considered hot food.

## Exceptions to the Rules:

- "To go" sales of hot beverages (coffee, tea) and hot bakery goods (a toasted bagel) are exempt when sold for a separate price.
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# Combination Packages

## Sold "To Go"

### Combo Package #2

A cold turkey sandwich  
and coffee

*The entire charge for a  
combination sale that includes  
a hot prepared food or hot  
beverage is taxable.*

**TAXABLE**



# Combination Packages

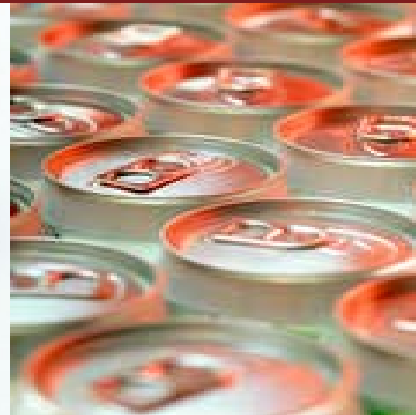
## Sold "To Go"

### Combo Package #3

A cold turkey sandwich  
and a can of soda

*ONLY the selling portion of  
the carbonated beverage is  
taxable when a combination  
package includes a cold food  
and a carbonated beverage.*

**PARTLY  
TAXABLE**



## EXAMPLE:

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Soda	\$2.00
Cold Turkey Sandwich	\$4.00
Combo Meal (Includes a soda and a sandwich)	\$5.00
What is the taxable amount of the combo meal?	\$1.65

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# EXAMPLE CALCULATION:

Soda

\$2.00

Cold Turkey Sandwich

\$4.00

Total

\$6.00

Combo Meal?

\$5.00

$\$2.00 / \$6.00 = 33\%$

$33\% \times \$5.00 = \$1.65$

# When Sales of Food Products are Non-Taxable (Exempt)

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- Some combination packages.
  - Sales of cold food not ordinarily sold for immediate consumption.
  - Hot beverages and hot bakery goods “to go” when sold for a separate price.
  - Entire charge for a combination sale of a cold food and a non-carbonated beverage “to go”.
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# Combination Packages

## Sold "To Go"

### Combo Package #1

A cold turkey sandwich  
and milk

*The entire charge for a combination sale of a cold food and a non-carbonated beverage "to go" is not subject to tax.*

**EXEMPT**



# Common Definitions

FOOD NOT  
ORDINARILY SOLD  
FOR IMMEDIATE  
CONSUMPTION

- 1) Food requiring further processing/cooking, or
- 2) Sold in a size that cannot ordinarily be consumed by one person  
(generally larger than one pint).



# Examples of Food *Not* Ordinarily Sold for Immediate Consumption

- 1) Quart of ice cream.
- 2) A whole pie.
- 3) Party tray of cold cuts and cheeses or assorted fruits.





# Common Definition

## 80/80 RULE

Criteria to be met to determine if sales of cold food products “to go” are taxable.



# 80/80 RULE

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If your food sales are  $\geq 80\%$  total sales  
(excluding alcoholic and carbonated beverages)

and

If 80% of those food sales are taxable  
(based on consumption at your facilities,  
or they are hot prepared foods).

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# 80/80 Rule

Tax is required when you meet the following criteria:

(unless you choose a special election)

- Cold food and noncarbonated beverages are sold “to go”

AND

- Are suitable for immediate consumption.

Note: Food sold in a form NOT ordinarily sold for immediate consumption is still exempt



# 80/80 Rule

## *(Special Election)*

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- Sales of cold food and noncarbonated beverages are generally taxable unless the seller chooses to make a special election.
- This election requires the seller to keep separate accounting records for sale of cold food and noncarbonated beverages.
- Seller may then claim these sales as exempt.

Note: See Regulation 1603 for a listing of records needed to support deductions.

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# COMPLIMENTARY MEALS

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- No tax is due on *food* given to customers for free.
  - Use tax due on the cost of carbonated and alcoholic beverages.
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# EMPLOYEE MEALS

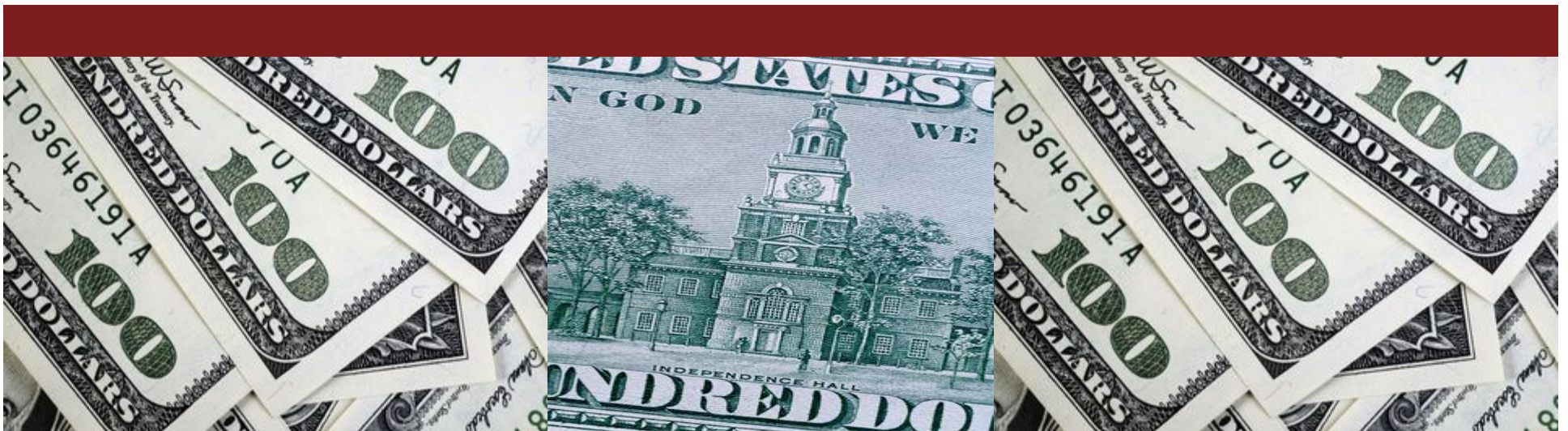
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Tax applies when employees are charged for food and drinks if:

- Employee pays cash.
  - Value of meal is deducted from employee's wages.
  - Employee has the option to receive cash for meals not consumed.
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# GRATUITIES & TIPS

- Voluntary tips are exempt
- Mandatory tips are taxable



# GRATUITIES & TIPS

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## Voluntary Tip includes

- Cash left by guest after paying bill.
- Amount voluntarily written by guest after total amount is billed by restaurant.
- Amount added to check by restaurant at the direction of the guest.

## Mandatory Tip includes

- Percentage or amount of tip negotiated with guest in advance.
- Amount added by restaurant, unless first directed to do so by the guest.

*\*A tip added by the restaurant without being first requested by the customer is mandatory whether or not the bill or menu labels it "suggested gratuity"*

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# GRATUITIES & TIPS

Example: mandatory tip automatically added by restaurant or server

Incorrect tax = \$5.97

Correct tax = \$7.05\*

Food Item A	\$ 70.10 T	\$70.10 T
Beverage Item B	<u>4.50 I</u>	<u>4.50 I</u>
Subtotal	\$ 74.60	\$74.60
Tax (at 8%)	<u>5.97</u>	<u>7.05</u>
Total	\$ 80.57	\$81.65
18% Gratuity	<u>13.43</u>	<u>13.43 I</u>
Total due	\$ 94.00	\$95.08

\* The amount on which the tax is computed should include the \$13.43 mandatory tip since it was not added voluntarily by the guest.



# 2 for 1 Coupons

The amount received from the customer is subject to tax.



# Self-Consumption

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- No tax due on food served to yourself or employees for free.
  - Tax due on the cost of carbonated and alcoholic beverages consumed by you, your employees, or given free of charge to customers.
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# Items That Can Be Purchased For Resale

- Carbonated Beverages.
- Alcoholic Beverages.
- Straws, paper napkins, and toothpicks.
- Nonreturnable “to go” containers, cups, and lids.
- Disposable utensils.



# Tax Included Selling Prices

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- Post sign on business premise.
- Indicate on menu.

*Regulation 1700, Reimbursement for Sales Tax*

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# Mobile Food Vendors

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Those who operate food truck, carts, or stands that do not have a physical location:

- Must register for a seller's permit.
  - Must keep adequate books and records to support sales and any deductions taken.
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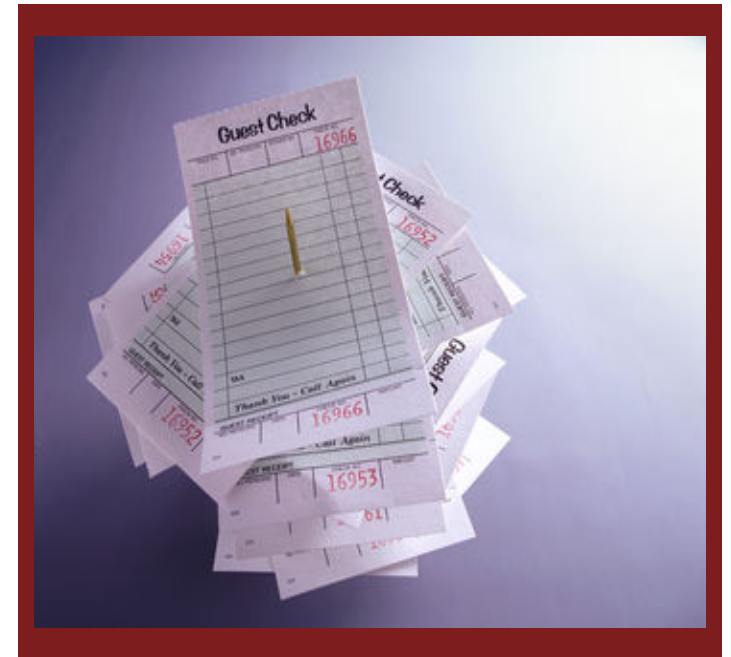
# Mobile Food Vendors

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- Same tax requirements as restaurants with a physical location.
  - Sales tax is due at the location where the food is sold.
  - District taxes are also due if applicable (may pay multiple district taxes in the same day)
  - 80/80 rule may also apply.
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# Record Keeping

- Cash Register Tapes/Receipts.
- Guest Checks.
- Daily Sales Summary.
- Sales Journals/Summary.
- Purchase Invoices.
- Merchant Statements from Credit Card Providers
- Catering contracts
- Sales Reports



*Remember to maintain adequate books and records for a minimum of four (4) years. Also, consider having a separate bank account for sales tax collected so when your return is due, the money is available.*

# Record Keeping

- Purchase Journal.
- Cancelled Checks.
- Bank Statements.
- Profit and Loss Statements.
- Income Tax Returns.
- Inventory Counts/Reports.



*Remember to maintain adequate books and records for a minimum of four (4) years*



# Other Records To Keep

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- Guest receipts to support optional tips.
- Old Menus.
- Customer and Employee Complimentary Drink Policy.
- Theft, Fire, or Other Type of Losses (including police reports and insurance claims).
- Coupons.
- Sales Contract or Agreement.
- Other Sources of Income.
- Lease and/or Franchise Agreement.



# AUDITS

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- Initial contact by telephone or letter.
- Records to review.
- Discussion with auditor.
- Publication 76, *Audits*.

*Please remember the auditor is auditing the business,  
not just the financial records.*

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# Common Errors – Sales Tax

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- Lack of adequate supporting documents.
  - Complimentary meals.
  - Not reporting use tax.
  - Tax-paid purchases resold, not claimed.
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# Common Errors – Sales Tax

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- Difference between reported and recorded sales.
  - Misunderstanding of 80/80 rule.
  - Mandatory tips.
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# New Rule

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40 % Penalty\*  
(effective 1-1-07)

\*can apply to a person who knowingly collects and fails to pay sales tax reimbursement or use tax to the BOE (exemptions apply).

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# Online Services Available

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BOE Website ([www.boe.ca.gov](http://www.boe.ca.gov))

[http://www.boe.ca.gov/industry/nonprofit\\_organizations.html](http://www.boe.ca.gov/industry/nonprofit_organizations.html)



# Online Services Available

BOE Website ([www.boe.ca.gov](http://www.boe.ca.gov))

<http://www.boe.ca.gov/industry/caterers.html>





# Other Online Services Available

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## BOE Website ([www.boe.ca.gov](http://www.boe.ca.gov))

- ❖ Online Verification of Seller's Permit Numbers
- ❖ Enhanced Tutorials
- ❖ Email Notification Lists
- ❖ Class & Seminar Schedules
- ❖ Publications Specific to Your Type of Business
- ❖ Frequently Asked Questions (FAQ's)
- ❖ Directory of BOE Offices
- ❖ Tax News, Special Notices
- ❖ Credit Card Payments
- ❖ Documents in Other Languages
- ❖ Useful Links to Other Websites

# BOE Social Media Services

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Connect with the BOE on the following social media outlets



# Taxpayer Information Section



**Taxpayer Information Section  
(general tax questions  
answered)**  
**1-800-400-7115**  
**Mon – Fri, 8:00 a.m. to 5:00 p.m.**

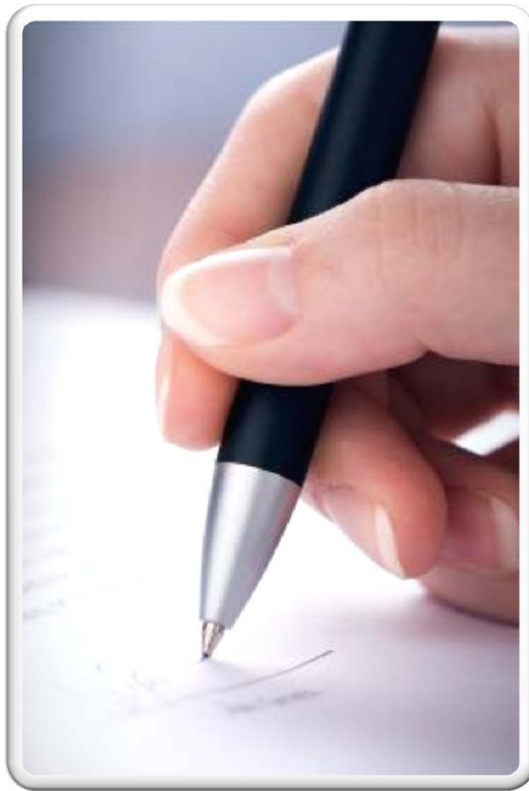


**24 hr. fax-back service for  
commonly requested forms  
and publications to choose  
from automatically faxed back  
to you.**



# Get It in Writing

Revenue and Taxation Code section 6596 - Excusable Delay-Reliance on Advice, states:



“If the Board finds that a person’s failure to make a timely return or payment is due to the person’s reasonable reliance on written advice from the Board, the person may be relieved of taxes imposed by §6051 and §6201 and any penalty or interest added thereto...”.

# Taxpayers' Rights Advocate

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888-324-2798

If you have been unable to resolve a disagreement with the BOE and you would like to know more about your rights under the law.



[www.boe.ca.gov/tra/tra.htm](http://www.boe.ca.gov/tra/tra.htm)





THANK  
YOU