

## DEPARTMENT OF STATE REVENUE

## Information Bulletin #203

## General Tax

March 2023

Effective Date: Upon Publication

(Replaces Bulletin #203, dated September 2020)

**SUBJECT:** Local Food and Beverage Taxes**REFERENCES:** [IC 6-9-12](#); [IC 6-9-20](#); [IC 6-9-21](#); [IC 6-9-24](#); [IC 6-9-25](#); [IC 6-9-26](#); [IC 6-9-27](#); [IC 6-9-33](#); [IC 6-9-35](#); [IC 6-9-36](#); [IC 6-9-38](#); [IC 6-9-40](#); [IC 6-9-41](#); [IC 6-9-43](#); [IC 6-9-45](#); [IC 6-9-45.5](#); [IC 6-9-47.5](#); [IC 6-9-48](#); [IC 6-9-49](#); [IC 6-9-50](#); [IC 6-9-51](#)

**DISCLAIMER:** Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUMMARY OF CHANGES**

Only nonsubstantive, technical changes have been made to this bulletin. It has been primarily changed to reflect updated formatting.

**INTRODUCTION**

The purpose of this directive is to assist retail merchants in the proper application of the food and beverage tax (also referred to as "FAB" or "FAB tax"). Generally, in counties or municipalities that adopt a food and beverage tax, the rate is 1% of the gross retail income received from taxable food and beverage transactions. In some instances where **both a county and municipality within the county** have adopted the food and beverage tax, the total tax rate for a taxable transaction inside the municipality is 2%.

In addition to the counties or municipalities authorized by law to have food and beverage taxes, Indiana has adopted a 2% food and beverage tax for transactions occurring at the historic hotels resort in Orange County. Any reference to municipality shall include the Orange County historic hotels resort.

Various jurisdictions have been authorized to enact food and beverage taxes but have not done so at this time. These jurisdictions are not separately listed in this directive.

**LOCATION OF TRANSACTION**

The food and beverage tax applies only to transactions that take place in a county or municipality that adopts the tax. With regard to retail merchants that cater, the tax is not sourced to (i.e., based on) where the retail merchant is located. Rather, the tax is sourced to where the catering is provided. A retail merchant that caters in counties or municipalities that have not adopted the tax will not collect the tax on transactions in those counties and municipalities.

When collected by a marketplace facilitator (meaning a business that connects sellers to purchasers by use of the business's marketplace and facilitates the sales of the seller's products in Indiana through the marketplace, such as a food delivery service that connects multiple restaurants to purchasers through their app), the food and beverage tax is sourced to the location of the retail merchant that prepared the food, even if the transaction requires delivery to a location outside of the county or municipality that has adopted the tax. For more information on marketplace facilitators, please refer to Sales Tax Information Bulletin #89, available online at [in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/](http://in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/).

**TRANSACTIONS SUBJECT TO TAX**

The food and beverage tax applies to any transaction in which food or beverage is furnished, prepared, or served by a retail merchant for consumption at a location or on equipment provided by the retail merchant in a county or municipality that adopts the tax.

"For consumption at a location or on equipment provided by the retail merchant" includes transactions in which food or beverage is (1) served by a retail merchant off the merchant's premises, (2) sold in a heated state or heated by a retail merchant, (3) made of two or more food ingredients, mixed or combined by a retail merchant for

sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration), or (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A container or package used to transport the food is not considered a plate.

Taxable transactions include:

- Food sold and served by a retail merchant that is performing catering activities;
- Food sold at a deli counter in a grocery store that is cooked or heated on the premises of the retail merchant; and
- Where the seller provides eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

Transactions not subject to tax include:

- Sales of food that is only cut, repackaged, or pasteurized by the seller; and
- Sales of eggs, fish, meat, and poultry requiring cooking by the consumer.

### EXEMPT TRANSACTIONS

The food and beverage tax does not apply to the sale of food and beverages if the transaction is exempt from the sales tax. Please refer to Sales Tax Information Bulletins 4, 7, 10, and 11 for further information on how the sales tax exemptions for government entities and nonprofits apply in the context of transactions involving food and beverages, available online at

[in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/](https://www.in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/).

### COLLECTION AND REMITTANCE OF THE TAX

The food and beverage tax is imposed, paid, and collected in the same manner as the sales tax. The filing of the return and the remittance of the tax collected are due 30 days after the end of the month in which the transaction occurs. The return for the food and beverage tax is a separate return from the sales and use tax return. A retailer that is required to collect and remit the tax may file a consolidated food and beverage tax return if the retailer operates multiple locations in the same county. A separate return is required to be filed by the retailer if the retailer has locations in different adopting counties. Furthermore, the retailer is required to file a separate return for the municipality and for the county if the retail establishment is located in a municipality inside a county where both units of government have adopted a food and beverage tax.

With the exception of Johnson County, all tax returns and remittances for the food and beverage tax are required to be filed with the Indiana Department of Revenue. Retailers will need to register their business online by visiting the State of Indiana's INBiz website, which allows businesses to register with multiple state agencies, at [inbiz.in.gov](https://inbiz.in.gov). The merchant will then remit FAB taxes monthly via the Indiana Taxpayer Information Management Engine (INTIME), the department's online e-services portal for filing returns and making payments, which can be accessed at [intime.dor.in.gov](https://intime.dor.in.gov). Marketplace facilitators that facilitate the sales of food are also required to register with the state using INBiz to collect and remit food and beverage tax, both on their own transactions and the transactions facilitated on behalf of their sellers, and must comply with all applicable procedures and requirements imposed on any other retail merchant in such transactions.

**NOTE:** even though Johnson County has passed an ordinance to have the tax remitted to the county treasurer, if the Johnson County FAB is collected by a marketplace facilitator, it **must** be remitted DOR.

Upon request by the department or a political subdivision, marketplace facilitators are required to provide information listing the tax it collected on behalf of each of its sellers for the period specified by the requesting entity (in the case of a political subdivision, for only the food and beverage tax collected for transactions occurring within the subdivision). If the department requests the information, the department may only share information with the political subdivision where the transactions occurred.

### UNITS IMPOSING THE FOOD AND BEVERAGE TAX

A list of counties and municipalities that have enacted food and beverage taxes and the rates at which the taxes are imposed is provided at [in.gov/dor/business-tax/food-and-beverage-tax/](https://www.in.gov/dor/business-tax/food-and-beverage-tax/).

**NOTE:** The total rate that applies to a transaction is the county rate plus the municipal rate, if applicable. For example, the total food and beverage tax rate for a transaction occurring in Carmel is 2%. The rate is based on Hamilton County's rate of 1% plus Carmel's rate of 1%.

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Commissioner

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