



April 22, 2014

Dear West Dundee Business Owner:

On April 21, 2014, the West Dundee Village Board adopted an Ordinance which establishes a one percent (1%) Food and Beverage Tax in order to address budget shortfalls within the Village's General Fund due to the recent loss of some major retailers in our Village. A copy of this Ordinance is attached for your information and reference. This tax will go into effect on June 01, 2014 and the tax will apply to the following categories:

- All prepared food to be consumed either on or off the premises
- All alcoholic beverages to be consumed on or off the premises
- All food items sold at retail which are subject to the "high tax" provisions of the Illinois Department of Revenue Regulations.

If you are currently selling such "high tax" food items (such as soft drinks, candy, certain deli foods, etc), they too will be subject to the additional 1% Village tax. **For sake of ease of administration, if the food item you sell is currently considered a "high tax" item by the Illinois Department of Revenue, this item must be charged the additional 1% Village of West Dundee tax.** A copy of the Illinois Department of Revenue's Regulations is attached for your review and reference.

**All retailers must complete the enclosed Food and Beverage Tax Registration Form and return it to Village Hall by Friday, May 30, 2014.**

This tax will go into effect on Sunday, June 01, 2014. Payment of the tax must be made to the Village of West Dundee no later than the 20th of each month following the month in which the tax is collected. For example, taxes collected during the month of June will be due no later than July 20. Along with the tax payment, business owners must submit a completed Food and Beverage Tax Return Form and a copy of the State of Illinois form ST-1.

Business may retain 2% of the tax in order to cover administrative expenses, if payment is received by the due date, Filing after the due date will result in a late penalty equal to 2% of the unpaid tax as well as possible penalties as outlined in section 3-19-10 of the Ordinance.

As directed by the West Dundee Village Board, this tax will be reviewed in January, 2016 to determine whether or not this additional 1% tax should remain in effect.

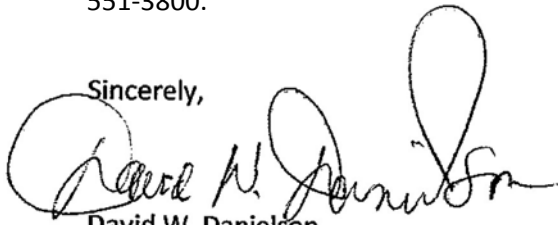
VILLAGE HALL  
102 South Second Street  
West Dundee, IL 60118  
847/551-3800  
FAX 551-3809

PUBLIC SAFETY CENTER  
555 South Eighth Street  
West Dundee, IL 60118  
Fire Dept. 847/551-3805 FAX 551-3814  
Police Dept. 847/551-3810 FAX 551-3843

PUBLIC WORKS FACILITY  
900 Angle Tarn  
West Dundee, IL 60118  
847/551-3815  
FAX 551-3842

Attached please find a packet of information, including the necessary filing materials, for your review and return to Village Hall. Should you have questions regarding this matter, please contact us at (847) 551-3800.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Danielson". The signature is fluid and cursive, with a large loop at the end of the last name.

David W. Danielson  
Finance Director

**ORDINANCE 14-08**

**AN ORDINANCE AMENDING TITLE 3 OF THE MUNICIPAL CODE OF THE VILLAGE OF WEST DUNDEE, TO ADD NEW CHAPTER 19, FOOD AND BEVERAGE TAX**

WHEREAS, the Village of West Dundee (hereinafter “the Village”) is a home-rule unit of government pursuant to Section 6(a), Article VII of the 1970 Illinois Constitution; and

WHEREAS, pursuant to its home rule power, the Village may exercise any power and perform any function relating to its government and affairs that is not specifically precluded by the State; and

WHEREAS, in addition the Illinois Statutes provide at 65 ILCS 5/8-11-6a, that home-rule municipalities may impose additional taxes on food and alcohol; and

WHEREAS, the Village Board of the Village of West Dundee hereby finds that imposing such a tax on certain food and beverages will raise needed revenue and is in the best interests of the residents of the Village of West Dundee.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE BOARD OF THE VILLAGE OF WEST DUNDEE, as follows:

SECTION 1: The above and foregoing recitals are hereby incorporated herein and made a part of the body of this Ordinance as if they were set forth again.

SECTION 2: Title 3 of the Municipal Code of the Village of West Dundee is hereby amended to add the following:

**CHAPTER 19: FOOD AND BEVERAGE TAX**

**3-19-1. Food and Beverage Tax.** A tax shall be imposed on the sale at retail of prepared food, alcoholic liquor, and certain food items which are sold in the Village. The tax imposed in the chapter shall be known and cited as the “Food and Beverage Tax”.

**3-19-2. Definitions.** For the purposes of this chapter, unless the context otherwise requires, the following words or terms shall have the following meanings:

(A) *Prepared food:*

(1) “Prepared food” means any solid, liquid (including alcoholic and nonalcoholic liquid), powder or item used or intended to be used for human internal consumption, whether simple, compound or mixed, and which has been prepared for immediate consumption.

(2) "Prepared food" includes any such item purchased for consumption within or upon the premises where it is sold or where such item may be purchased for consumption off the premises. Also included are those food items that are required to pay the higher sales tax rate as outlined in Title 86, Chapter I, Part 130 of the Illinois Department of Revenue Code pertaining to the Retailers' Occupation Tax.

(3) "Prepared food" shall include food items which are purchased hot or are otherwise purchased prepared from establishments such as, but not limited to catering establishments or food takeout/delivery establishments, for immediate on-premises or off-premises consumption.

(B) *Alcoholic Liquor* means any alcohol, spirits, wine, beer, or ale as defined, set forth and regulated in Title 3, Chapter 2 of this Code, which is sold at retail either for consumption on premises where sold or is sold in its original package for consumption off the premises.

(C) *Alcoholic liquor facility* means any establishment licensed under the provisions of Title 3, Chapter 2 of this Code and that sells alcoholic liquor on a retail basis.

(D) *Person* means any individual, firm, corporation, limited liability company or similar representative or entity.

(E) *Purchase at retail* means to obtain for use or consumption in exchange for consideration, whether in the form of money, credits, barter or in any other nature, and not for resale.

(F) *Retailer* means a person as defined herein that sells or offers for sale prepared food in/or alcoholic liquor for use or consumption and not for resale.

(G) *Prepared food facility*:

(1) "Prepared food facility" means any person or establishment which sells at retail, food prepared for immediate consumption and whether or not such prepared food facility use is conducted along with any other use(s) in a common premises or business establishment.

(2) A "prepared food facility" includes, but is not limited to, those persons or establishments, commonly called an inn, restaurant, grocery store, eating place, drive-in restaurant, bakery, buffet, cafeteria, café, lunch-counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, service station mini market; soda fountain, tavern, bar, cocktail lounge, soft drink parlor, ice cream parlor, tea room, delicatessen, movie theater, mobile food or beverage or ice cream vehicle, hotel, motel or club, or other establishment which sells at retail, food which has been prepared for immediate consumption.

(3) A “prepared food facility” does not include coin operated automatic food item dispensing machines, churches, public or private schools, boarding houses, hospitals, day care centers, nursing homes, retirement centers or similar residential care facilities or programs for the central preparation of meals to be delivered and consumed at private residences of invalids or the elderly, and other facilities of not-for-profit associations or corporations.

**3-19-3. Tax Imposed.**

Effective as set forth in Section 4 of this Ordinance, a tax, in addition to any and all other taxes, is imposed upon the purchase of prepared foods , alcoholic liquor at retail at any prepared food facility or alcoholic liquor facility, and those food/drink items that are required to pay the higher sales tax rate as outlined in Title 86, Chapter I, Part 130 of the Illinois Department of Revenue Code pertaining to the Retailers’ Occupation Tax, within the Village at a rate of one percent of the purchase price of such prepared foods, alcoholic liquor, and other applicable food/drink items as herein outlined. The liability for payment of the tax shall be borne by the purchaser.

**3-19-4. Collection of tax by retailer.**

The owner and the operator of each prepared food facility and each alcoholic liquor facility , grocery store, and other applicable retail establishment within the Village shall jointly and severally have the duty to collect and account for said tax from each purchaser at the time that the consideration for such purchase is paid.

**3-19-5. Responsibility of owner to keep daily records; right of Village to inspect.**

The owner and operator of each facility required to impose this additional tax within the Village shall jointly and severally have the duty to maintain complete and accurate books, records and accounts showing the gross receipts for sales of prepared food, alcoholic liquor, and other included items , the taxes collected each day. The applicable records shall be made available to the Village for examination and for audit by the Village upon reasonable notice and during customary business hours.

**3-19-6. Transmittal of tax collection.**

Each prepared food facility and alcoholic liquor facility within the Village shall jointly and severally have the duty to cause to be filed a sworn return with the Village for each such facility for each such licensed premises located in the Village. Said return shall be prepared and submitted in forms prescribed by the Village. Said returns shall be filed with the Village by the 20<sup>th</sup> day of the succeeding calendar month. Said return shall be accompanied by payment to the Village of all taxes imposed by this article which are due and owing for the period covered by the return. The return shall also be accompanied with a copy of the return filed with the Illinois

Department of Revenue for sales within the Village of West Dundee covering the same reporting period. In the event that the retail establishment is allowed to file sales tax returns on a schedule that is less than on a monthly basis, the schedule allowed by the State will also be acceptable to the Village of West Dundee.

**3-19-7. Transmittal of excess tax collections.**

If any person collects an amount in excess of the tax imposed by this chapter, but which amount is purported to be a collection thereof, and does not return the same to the purchaser who paid the tax, the person who collected the tax shall account for and pay over the excess amounts to the Village along with the tax properly collected.

**3-19-8. Late payment fee.**

If any tax imposed by this chapter is not paid when due, a late payment penalty equal to two percent of the unpaid tax shall be added for each month, or any portion thereof, that such tax remains unpaid, and the total of such late payment shall be paid along with the tax imposed by this article.

**3-19-9. Action to enforce payment.**

Whenever any person shall fail to pay any tax as provided in this article, the Village attorney shall, upon request of the Village, bring or cause to be brought an action to enforce the payment of such tax on behalf of the Village in any court of competent jurisdiction.

**3-19-10. Penalties**

(A) Any person found guilty of violating, disobeying, omitting, neglecting, failing to submit a correct tax return by the date or refusing to comply with any of the provisions of this article, except when otherwise specifically provided, upon conviction thereof shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00 for the first offense and not less than \$200.00, nor more than \$1,000.00 for the second and subsequent offenses. Each act of violation and each day upon which a violation occurs constitutes a separate offense.

(B) Failure to comply with any provision of this chapter can result in the suspension, revocation, or refusal to renew alcoholic liquor licenses as defined in Title 3, Chapter 2 of this Code.

**3-19-11. Confidentiality.**

All information received by the Village from returns filed pursuant to this chapter or from any investigations conducted pursuant to this article, except for official Village purposes, or as required by the Freedom of Information Act, shall be confidential.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed, to the extent of such conflict.

SECTION 4: This ordinance shall be reviewed by the Village Board of the Village of West Dundee during the month of January, 2016 in order to determine whether to continue this tax or discontinue it at a yet to be determined date.

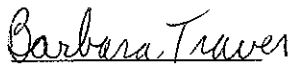
SECTION 5: This ordinance shall be in full force and effect June 1, 2014 after its passage, approval, and publication in pamphlet form as provided by law.

AYES: Trustees Kemitzky, Price, Yuscka, Pflanz and Wilbrandt

NAYS:

ABSENT: Trustee Hanley

ATTEST:



Barbara Traver

Village Clerk



Christopher Nelson

Village President

  
 Village of  
**West Dundee**  
 102 S. Second Street  
 West Dundee, IL 60118  
 847-551-3800

**FOOD AND BEVERAGE TAX REGISTRATION**

1. Business Name:		Phone:
Address:	City: <p style="text-align: center;">West Dundee</p>	State, Zip:
2. Mailing Name:		Phone:
Address:	City:	State, Zip:
3. Name of Owner or Manager:		Phone:
Address:	City:	State, Zip:
4. Nature of Business:		
5. Type of Business Organization: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other (Specify: _____)		
6. Illinois Retailer Occupation Tax No.: _____		
7. Federal Taxpayer ID No. or Social Security No.: _____		
8. Name & address of person preparing Food & Beverage Tax Return:		Phone:
<b>PLEASE RETURN THIS FORM TO VILLAGE HALL BY MAY 30, 2014</b>		

I declare that the statements contained herein are true and correct to the best of my knowledge.

\_\_\_\_\_  
Signature of Owner/Manager

\_\_\_\_\_  
Date





MONTH/YEAR OF COLLECTION: \_\_\_\_\_

**FOOD AND BEVERAGE TAX REMITTANCE FORM**

**DUE ON THE 20TH DAY OF THE FOLLOWING MONTH**

**Payer Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City/State/ZIP:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**E-Mail:** \_\_\_\_\_

**Business Name:** \_\_\_\_\_  
**Local Business Address:** \_\_\_\_\_  
**City/State/ZIP:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Illinois Business Tax (IBT) # :** \_\_\_\_\_

Under penalties of perjury and other penalties provided by law, I declare that I have examined this return and to the best of my knowledge it is true, correct and complete. I further declare that the information set forth is taken from the books and records of the business for which this return is filed.

\_\_\_\_\_  
 Printed Name \_\_\_\_\_  
 Title

\_\_\_\_\_  
 Signature \_\_\_\_\_  
 Date

<b>COMPUTATION OF TAX LIABILITY</b>			
1.	Gross Food and Beverage Receipts	\$	-
2.	1% Food and Beverage Tax (Line 1 x .01)	\$	-
3.	Timely Filing Discount (Line 2 x .02)	\$	-
4.	Net Tax Due (Line 2 minus Line 3)	\$	-
5.	Late Pay Penalty (Line 2 x .02) x _____ months late	\$	-
6.	<b>Total Tax Due (Line 4 + Line 5)</b>	<b>\$</b>	<b>-</b>

- Make check payable to the Village of West Dundee
  - Please do not staple check to tax return
  - Mail this completed and signed return, the check for the amount shown on line 6, and a copy of Illinois Department of Revenue Form ST-1 to:**
- Village of West Dundee**  
**Attn. Food and Beverage Tax**  
**102 S. Second Street**  
**West Dundee, IL 60118**

Questions? Call 847-551-3800



## **Food And Beverage Tax - Frequently Asked Questions**

**Q.** Which types of businesses must collect and pay the Food and Beverage Tax?

**A.** All businesses within the Village of West Dundee where prepared food (including drinks) is sold at retail for immediate consumption, with or without seating provided for consumption of said prepared food on the premises or not. Also included are businesses that carry food and drink items considered “high tax” as defined by the Illinois Department of Revenue.

**Q.** On what sales must I collect and pay the Food and Beverage Tax?

**A.** You must collect and pay the Food and Beverage Tax if you make retail sales of prepared food, alcoholic beverages, and other food and beverages that have been prepared for immediate consumption, whether on or off the premises. Examples of taxable sales include but are not limited to:

- All products served in restaurants.
- All alcoholic beverages purchased, whether for consumption on or off the premises.
- All other food and beverage items considered “high sales tax” items as defined by the Illinois Department of Revenue.
- Brewed coffee, fountain drinks, or other beverages prepared for immediate consumption on or off premises in a grocery store or convenience store.

**Q.** What transactions are exempt from the Food and Beverage Tax?

**A.** Food and beverage items considered “low sales tax” items as defined by the Illinois Department of Revenue.

**Q.** What is the tax rate?

**A.** The Food and Beverage Tax rate is 1 percent (.01) of gross receipts.

**Q.** Do I have to register my business as a place of eating subject to the tax?

**A.** Yes. Every owner maintaining a place for eating must register no later than May 30, 2014 or the date of becoming such an owner, whichever is later. This is a one time registration that will remain effective unless there are changes of business, management, or location. If there is a change, please notify the Village within 30 days for proper maintenance of records.

**Q.** How do I show this tax on my retail receipts?

**A.** You may either separately state this tax, or state this tax in combination with other taxes on the receipts you give your customers.

**Q.** What form must I use to report the Food and Beverage Tax?

VILLAGE HALL  
102 South Second Street  
West Dundee, IL 60118  
847/551-3800  
FAX 551-3809

PUBLIC SAFETY CENTER  
555 South Eighth Street  
West Dundee, IL 60118  
Fire Dept. 847/551-3805 FAX 551-3814  
Police Dept. 847/551-3810 FAX 551-3843

PUBLIC WORKS FACILITY  
900 Angle Tarn  
West Dundee, IL 60118  
847/551-3815  
FAX 551-3842

**A.** To pay this tax, you must file monthly the Food and Beverage Tax Return. Instructions are included on the form. The form is available at [www.wdundee.org](http://www.wdundee.org) under the Administrative & Finance tab.

**Q.** How do I file if I have more than one site?

**A.** If you make retail sales from more than one site you must file a separate Food and Beverage Tax return for each site.

**Q.** Must I file the Food and Beverage Tax Return even if I have no sales to report?

**A.** Yes. You must file a signed return form for each monthly reporting period regardless of whether or not there are receipts to report. You may file a “zero” return.

**Q.** Where do I file my return?

**A.** You should mail or deliver your return to:

Village of West Dundee  
Attn: Food and Beverage Tax  
102 South Second Street  
West Dundee, Illinois 60118

**Q.** When is my monthly Food and Beverage Tax Return and tax payment date?

**A.** The returns and tax payments are due on or before the 20<sup>th</sup> day of the month for the preceding calendar month. For example, Food and Beverage Tax payments for the month of June would be due on July 20<sup>th</sup>.

**Q.** What methods of payment can be used?

**A.** Businesses may pay by check or via ACH through First American Bank. If ACH is used, a Food and Beverage Tax Return for the applicable period must still be turned into the Village.

**Q.** Is there a discount for timely filing?

**A.** Yes. If your Food and Beverage Tax return is filed and received by the 20<sup>th</sup> of the following month, your business will receive 2% off of the total tax due.

**Q.** What if I do not file and pay by the due date?

**A.** If you do not file your return and pay the tax due by the due date, you will be assessed for any tax due plus a penalty. The penalty is 2% of the tax unpaid per month.

Please contact the Village of West Dundee at 847-551-3800 with any questions.

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 130 Section 130.310 Food, Soft Drinks and Candy**

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 130  
RETAILERS' OCCUPATION TAX

**Section 130.310 Food, Soft Drinks and Candy**

- a) Food. *With respect to food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, candy and food that has been prepared for immediate consumption), the tax is imposed at the rate of 1%. Food for human consumption that is to be consumed off the premises where it is sold includes all food sold through a vending machine, except soft drinks, candy, and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine.* (Section 2-10 of the Act) Public Acts 96-34, 96-37 and 96-38 included changes to the definition of soft drinks and provided that candy is not considered "food for human consumption that is to be consumed off the premises where it is sold". For further information on the definition and taxation of soft drinks, see subsection (d)(6). For further information regarding the definition and taxation of candy, see subsection (d)(7).
- b) The manner in which food is taxed depends upon 2 distinct factors that must both be considered in determining if food is taxed at the high rate as "food prepared for immediate consumption" or the low rate as "food prepared for consumption off the premises where sold".
  - 1) The first factor is whether the retailer selling the food provides premises for consumption of food. If so, a rebuttable presumption is created that all sales of food by that retailer are considered to be prepared for immediate consumption and subject to tax at the high rate. As a result of this presumption, even bulk food could potentially be taxable at the high rate. However, this presumption is rebutted if a retailer demonstrates that:
    - A) the area for on-premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and
    - B) the retailer has a separate means of recording and accounting for collection of receipts from sales of both high and low rate foods. For purposes of this subsection (b)(1)(B), the phrase "separate means of recording and accounting for collection of receipts" includes cash registers that separately identify high rate and low rate sales, separate cash registers, and any other methods by which the tax on high and low rate sales are recorded at the time of collection.

- 2) The second factor is the nature of the food item being sold. As provided in subsection (c), some foods, such as hot foods, are always considered to be "food prepared for immediate consumption", and thus subject to the high rate of tax.
- 3) Numerous examples applying these factors to different types of food and food retailers are provided in subsection (d)(4)(A)-(I).

c) Definitions

- 1) "Food". Food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice.
- 2) "Food Prepared for Immediate Consumption". Food prepared for immediate consumption means food that is prepared or made ready by a retailer to be eaten without substantial delay after the final stage of preparation by the retailer.

A) Food prepared for immediate consumption includes, but is not limited to, the following:

- i) all hot foods, whether sold in a restaurant, delicatessen, grocery store, discount store, concession stand, bowling alley, vending machine or any other location. At a grocery store, hot foods subject to the high rate of tax include, but are not limited to, pizza, soup, rotisserie or fried chicken and coffee; other examples of food prepared for immediate consumption include popcorn or nachos sold at a movie concession stand; hot dogs sold by a street vendor; and hot precooked meals sold to customers, such as a Thanksgiving dinner. For purposes of this Section, "hot" means any temperature that is greater than room temperature;
- ii) sandwiches, either hot or cold, prepared by a retailer to the individual order of a customer;
- iii) salad, olive or sushi bars offered by a retailer at which individuals prepare their own salads (hot or cold);
- iv) all coffee, tea, cappuccino and other drinks prepared by a retailer for individual consumption, whether hot or cold, are subject to the high rate of tax;
- v) all food sold for consumption on the premises where sold.

B) "Food prepared for immediate consumption" does not include:

- i) doughnuts, cookies, bagels or other bakery items prepared by a retailer and sold either individually or in another quantity selected by the customer, provided they are for consumption off the premises where sold;

- ii) whole breads, pies and cakes prepared by a retailer, even when prepared to the individual order of a customer;
- iii) sandwiches that are prepared by a retailer and placed in a deli case or other storage unit;
- iv) cold salads, jellos, stuffed vegetables or fruits sold by weight or by quart, pint or other quantity by a retailer;
- v) cheese, fruit, vegetable or meat trays prepared by a retailer, either to the individual order of a customer or premade and set out for sale;
- vi) food items sold by a retailer that are not prepared or otherwise manufactured by that retailer, such as pre-packaged snacks or chips, unless these items will be consumed on the premises where sold (e.g., in a sandwich shop). For grocers, such items include, but are not limited to, fruits, vegetables, meats, milk, canned goods and yogurt. In addition, effective September 1, 2009, all sales of "candy", as defined in subsection (d)(7), are subject to the high rate of tax.

C) The provisions of subsection (c)(2)(B) are subject to the rebuttable presumption described in subsection (d). That is, the items listed in subsection (c)(2)(B) are taxable at the low rate only if the retailer had a separate means of recording and accounting for high and low rate sales, and the retailer provides no on-premises facilities for consumption of the food or, if the retailer does provide such facilities, they are physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold.

3) "Premises". Premises is that area over which the retailer exercises control, whether by lease, contract, license or otherwise, and, in addition, the area in which facilities for eating are provided, including areas designated for, or devoted to, use in conjunction with the business engaged in by the vendor. Vendor premises include eating areas provided by employers for employees and common or shared eating areas in shopping centers or public buildings if customers of food vendors adjacent to those areas are permitted to use them for consumption of food products.

d) Test to Determine Applicable Rate. The rate at which food is taxable is determined as follows:

1) If retailers provide seating or facilities for on-premises consumption of food, all food sales are presumed to be taxable at the high rate as "food prepared for immediate consumption". However, this presumption can be rebutted by evidence that:

A) the area for on-premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and

- B) the retailer utilizes a means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (high rate) and the sales of food that are not prepared for immediate consumption (low rate).
- 2) If a retailer does not provide seating or facilities for on-premises consumption of food, then the low rate of tax will be applied to all food items except for "food prepared for immediate consumption by the retailer" as provided in subsection (b) and soft drinks, candy and alcoholic beverages. However, in order for the low rate of tax to apply, retailers that sell both food prepared for immediate consumption and food for consumption off the premises where sold must utilize means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (high rate) and the sales of food that are not prepared for immediate consumption (low rate). If these receipts are not maintained, all sales will be presumed to be at the high rate of tax.
- 3) Illustration C is a decision tree to assist in making high rate/low rate determinations.
- 4) Examples:
- A) Grocery Store – On-premises Facilities for Consumption of Food. Provided that the requirements of subsection (d)(1) are met, examples of high rate items include, but are not limited to, hot foods (soup, pizza, rotisserie or fried chicken, stuffed potatoes, hot dogs); all sandwiches, either hot or cold, that are prepared to the individual order of a customer; salads prepared by customers at a salad/olive/sushi bar; and all food sold for consumption on the premises. Also included are hot precooked meals sold to customers, such as a Thanksgiving dinner; however, if precooked meals are sold in an unheated state of preparation, they are considered to be low rate. Meal packages sold by a grocer (e.g., 2 or more pieces of fried chicken with choice of two sides and dinner rolls sold at one price) that include at least 1 hot food item are taxable at the high rate, even if some foods in the package, sold alone, would be taxable at the low rate. Low rate items would include, but are not limited to, doughnuts (regardless of quantity), bagels, rolls and whole breads or bakery items prepared by the retailer; sandwiches that are premade by the retailer and set out for sale to customers; cold pizzas prepared by the retailer and set out for sale to customers; stuffed olives or peppers prepared by the retailer and set out for sale in individual sized containers; and deli items sold by the retailer to customers by size or weight (prepared salads, e.g., potato, pasta, bean or fruit salads; jello; pudding; stuffed olives).
- B) Grocery Store – No On-premises Facilities for Consumption of Food. Provided that the requirements of subsection (d)(2) are met, examples of high rate items would include, but are not limited to, hot foods (soup, pizza, rotisserie or fried chicken, hot dogs); all sandwiches, either hot or cold, that are prepared to the individual order of a customer; and salads that are made by customers at a salad/olive/sushi bar. In addition, effective September 1, 2009, all sales of "candy", as defined in subsection (d)(7), are subject to the high rate of tax. Also included are hot precooked meals sold to customers, such as a Thanksgiving dinner. If precooked

meals are sold in an unheated state of preparation, however, they are considered to be low rate. Low rate items would include, but are not limited to, doughnuts (regardless of quantity), bagels, rolls and whole breads or bakery items prepared by the retailer; sandwiches that are premade by the retailer and set out for sale to customers; cold pizzas prepared by the retailer and set out for sale to customers; stuffed olives or peppers prepared by the retailer and set out for sale in individual sized containers; and deli items sold by the retailer to customers by size or weight.

- C) Restaurants and Cafeterias. All foods sold by a restaurant or a cafeteria are considered food prepared for immediate consumption. Such food can either be prepared to the individual order of a customer or premade and set out for selection by the customer. However, if a restaurant or cafeteria also sells whole pies, cakes or individual pastries for sale, these items are taxable at the low rate, as long as the requirements of subsection (d)(1) are met.
- D) Bakery. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, the following items are taxable at the low rate: doughnuts, cookies or individual pastries, regardless of quantity, sold for consumption off the premises where sold, and whole cakes or pies, such as wedding or special occasion cakes. Food sold for consumption on the premises, such as doughnuts and coffee, are subject to the high rate of tax.
- E) Delicatessen. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, meat, cheese and prepared salads sold by weight or volume are taxable at the low rate. Individual sandwiches prepared to the individual order of a customer are high rate, as well as other food sold for consumption on the premises.
- F) Ice Cream Store. Ice cream items in individual sizes, either prepared to the individual order of a customer or premade and offered for sale by a retailer, constitute "food prepared for immediate consumption" and are subject to the high rate of tax. These items include ice cream cones, cups of ice cream, sundaes, shakes and premade ice cream sandwiches, bars or cookies. However, provided that the requirements of either subsection (d)(1) or (d)(2) are met, ice cream cakes or rolls or ice cream packaged in premeasured containers, such as a pint, quart or gallon, are subject to tax at the low rate.
- G) Food Sold at Food Courts. All hot food and food prepared to the individual order of a customer by a retailer at a food court is subject to the high rate of tax. In addition, all other food sold for consumption on the premises of a food court is subject to the high rate of tax.
- H) Convenience Stores. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, prepackaged food items not prepared by a convenience store retailer are subject to the low rate of tax. These items include, but are not limited to, chips, snacks, bread products and cookies. The sale of hot food items, such as hot dogs, nachos or pretzels, are subject to the high rate of tax, as well as other food sold for consumption



on the premises. In addition, effective September 1, 2009, all sales of "candy", as defined in subsection (d)(7), are subject to the high rate of tax.

- l) Coffee Shops. Provided that the requirements of either subsection (d)(1) or (d)(2) are met, coffee, latte, cappuccino and tea (prepared either hot or cold) and food sold for consumption on the premises (e.g., pastries, cookies, snacks) are subject to the high rate of tax. Bulk coffees (beans or grounds, for instance) and teas, or pastries that are not consumed on the premises, are subject to the low rate of tax.
- 5) Alcoholic Beverages. The reduced rate does not extend to alcoholic beverages. An alcoholic beverage is any beverage subject to the tax imposed under Article VIII of the Liquor Control Act of 1934 [235 ILCS 5/Art. VIII].
  - 6) Soft Drinks. The reduced rate does not extend to soft drinks. Soft drinks are taxed at the State sales tax rate of 6.25%. Soft drinks are taxable at the high rate regardless of the type of establishment where they are sold, e.g., a grocery store, restaurant or vending machine.
    - A) Until September 1, 2009, the term "soft drinks" means any *complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in Section 3(a)(2) and (4) of the Grade A Pasteurized Milk and Milk Products Act [410 ILCS 635], or drinks containing 50% or more natural fruit or vegetable juice.* (Section 2-10 of the Act) Frozen concentrated fruit juice, dry powdered drink mixes and fruit juices that are reconstituted to natural strength are not soft drinks.
    - B) *On and after September 1, 2009, the term "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.* (Section 2-10 of the Act)
    - C) Natural and artificial sweeteners include, but are not limited to, corn syrup, high fructose corn syrup, invert sugar, dextrose, sucrose, fructose, lactose, saccharose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, Rebaudioside A (Reb A), erythritol, xylitol, aspartame, saccharin, acesulfame K, sucralose and sorbitol. Beverages that list in the ingredient list natural and/or artificial sweeteners including, but not limited to, those listed in this subsection (d)(6)(C), meet the definition of "soft drinks". (Note, for purposes of this Section, natural and artificial sweeteners do not include natural or artificial flavors.)
    - D) Examples of soft drinks include, but are not limited to:
      - i) soda pop;

- ii) carbonated and noncarbonated water that contains natural or artificial sweeteners;
- iii) root beer;
- iv) sport or energy drinks;
- v) sweetened tea or coffee (without milk or milk products; see subsection (d)(6)(E));
- vi) non-alcoholic beer;
- vii) fruit drinks containing 50% or less fruit juice; and
- viii) "ready-to-use" non-alcoholic beverage mixers containing 50% or less vegetable or fruit juice by volume, e.g., ready-to-use margarita mixes.

E) Examples of products that are not considered soft drinks include, but are not limited to:

- i) beverage powders or dry mixes;
- ii) concentrates, e.g., frozen concentrate lemonade;
- iii) ground or whole bean coffee and loose leaf tea or tea bags;
- iv) carbonated and noncarbonated water that does not contain natural or artificial sweeteners;
- v) carbonated and noncarbonated water that does not contain natural or artificial sweeteners but does contain natural or artificial flavor;
- vi) vegetable or fruit juices containing greater than 50% vegetable or fruit juice, even if these beverages contain natural or artificial sweeteners;
- vii) any drinks that contain milk or milk products, soy, rice or similar milk substitutes; and
- viii) brewed unsweetened black coffee or tea. (Note, even though brewed unsweetened black coffee and tea are not considered soft drinks, hot coffee or hot tea, regardless of whether they contain natural or artificial sweeteners or milk or milk products, are subject to tax at the 6.25% rate because they are considered to be "food prepared for immediate consumption". (See subsection (c)(2)(A)(iv).))

7) Candy. On and after September 1, 2009, the reduced rate does not extend to "candy". Candy is taxed at the State sales tax rate of 6.25%.

- A) *"Candy" means 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. "Candy" does not include any preparation that contains flour or requires refrigeration.* (Section 2-10 of the Act) To meet the definition of candy, the item must be analyzed by using four factors, as explained in subsections (d)(7)(B) through (E).
- B) Flour: Products whose ingredient list contain the word "flour", regardless of the type of flour (e.g., wheat, rice) are not candy. A product does not contain flour unless the product label specifically lists flour as an ingredient. Ingredients such as soy or whey that may be used in place of, or as a substitute for, flour are not considered to be flour for purposes of determining if the item qualifies as candy unless they are specifically labeled as flour in the ingredient list.
- i) Items that are not considered candy because they list flour as one of the ingredients on the label include, but are not limited to, certain licorice, certain candy bars, cookies and chocolate covered pretzels.
  - ii) Snack mixes that contain both candy and non-candy items, such as trail mix that contains products with flour or bags of individually wrapped candy bars in which some candy bars contain flour and others do not, are not candy if the ingredient list on the bag lists flour as an ingredient of any of the items.
- C) Refrigeration: Items that require refrigeration are not considered to be candy. For example, popsicles and ice cream bars are not candy. Items that otherwise qualify as candy and do not require refrigeration are candy even if they are sold refrigerated or frozen, e.g., a candy bar that has been frozen. Merely suggesting that the product be refrigerated (e.g., to ensure product quality, please keep this package stored in a cool place, at or below 65°F) is insufficient to meet the refrigeration requirement.
- D) Sweeteners: Candy is limited to products that contain sugar, honey or other natural or artificial sweeteners. Examples of natural or artificial sweeteners include, but are not limited to, corn syrup, high fructose corn syrup, invert sugar, dextrose, sucrose, fructose, lactose, saccharose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, Rebaudioside A (Reb A), erythritol, xylitol, aspartame, saccharin, acesulfame K, sucralose, sorbitol.
- E) Bars, drops or pieces: Items must be in the form of bars, drops or pieces to be considered candy.
- i) Examples of items that are not in the form of bars, drops or pieces and are not candy include, but are not limited to, jars of honey, syrups, peanut butter, preserves or jams, cans of fruit in syrup, cans or tubes of cake frosting and cereals.

- ii) Examples of items that are in the form of bars, drops or pieces and are candy include, but are not limited to, sweetened cooking or baking bars or chips, sweetened coconut flakes, honey glazed peanuts, baking sprinkles, caramel-coated popcorn (does not include un-popped popcorn), artificially flavored candy mints, caramel or candied apples and almond bark.
- F) Examples of items that are considered candy (provided that they meet all the requirements of subsections (d)(7)(B) through (D)) include, but are not limited to:
- i) chocolate bars, including sweet or semi-sweet bars or bits;
  - ii) chocolate molded items (e.g., bunny, snowman);
  - iii) chocolate covered or dipped strawberries, chocolate or carob covered raisins or nuts;
  - iv) chocolate covered potato chips;
  - v) chocolate covered bacon;
  - vi) caramel-coated popcorn (does not include un-popped popcorn), caramel apples, caramel corn or rice cakes;
  - vii) almond bark, peanut brittle;
  - viii) marshmallows;
  - ix) breath mints;
  - x) chewing gum;
  - xi) fruit roll-ups;
  - xii) glazed dried apricots;
  - xiii) trail mixes that contain candy ingredients, e.g., sweetened nuts;
  - xiv) granola bars;
  - xv) any type of nut that is sweetened with any natural or artificial sweetener, e.g., if the ingredient list contains any natural or artificial sweetener.
- G) Examples of items that are not considered candy because they do not meet the requirements of subsections (d)(7)(B) through (D) include, but are not limited to (note, if some of the items listed below, such as popcorn, are covered or dipped in chocolate, caramel or other candy coating, they may be considered candy):
- i) cakes, pies, cookies, pastry;

- ii) ice cream, ice cream bars, frozen yogurt, popsicles, hot fudge ice cream topping;
  - iii) pretzels;
  - iv) corn chips, potato chips, popcorn and beef jerky;
  - v) chocolate milk, strawberry milk, fruit juice, soft drinks;
  - vi) powdered hot chocolate cocoa mix and other drink mixes;
  - vii) food coloring;
  - viii) unsweetened chocolate;
  - ix) cereals; and
  - x) licorice and candy bars that contain flour as an ingredient.
- e) Reporting
- 1) The retailer must keep an actual record of all sales and must report tax at the applicable rates, based on sales as reflected in the retailer's records. Books and records must be maintained in sufficient detail so that all receipts reported with respect to food can be supported.
  - 2) A retailer who finds it difficult to maintain detailed records of receipts from sales of food at the reduced rate, as well as detailed records of receipts from all other sales of tangible personal property at the full rate, may request the use of a formula. The request must be made to the Department in writing, must state the reasons that a formula method is necessary, and must outline the proposed formula in detail. Included in the request must be a description of how the method can be audited by the Department. Upon a finding that the formula can be audited and will produce results that will reasonably approximate the actual taxable receipts in each category, the Department may issue its approval for use of the formula. If approval is granted, the Department reserves the right to withdraw approval or require a change in procedure at any time.

(Source: Amended at 34 Ill. Reg. 12935, effective August 19, 2010)