

## **Article XVI: Food and Beverage Tax**

### Section 325: Definitions.

For purposes of this Chapter, whenever any of the following words, terms or definitions are used herein, they shall have the meaning ascribed to them in this Section:

"Alcoholic Liquor" means any spirits, wine, beer, ale or other liquid containing more than one-half of one percent of alcohol by volume, which is capable of being consumed as a beverage by a human being.

"Prepared Food Item for Immediate Consumption" means and includes any and all material, whether solid, semi-solid or liquid used or intended to be used for human consumption and for nourishment of the human body. The term defined herein includes any and all alcoholic liquor beverages, except for alcoholic liquor purchased in the original package for consumption off the premises where sold. The term shall include and be limited to:

1. Food items purchased at a restaurant, bar or other establishment where facilities are provided for on-premise consumption, but such term shall not include food items not intended for immediate consumption purchased from other areas of any such establishment where such facilities providing on-premise consumption utilize a separate means of collecting receipts for such food purchased for immediate consumption and are physically separated from such other areas in the establishment.
2. Food items purchased from concession stands, snack shops and other establishments which sell food items primarily in individual sized servings, such as ice cream cones, candy bars and individually serve sandwiches, for immediate on-premise or off-premises consumption; and
3. Food items which are purchased hot or are otherwise purchased prepared for immediate on-premise or off-premise consumption from catering establishments and restaurants with delivery services, except food items prepared off the premises.

For purposes of this Section, "food items prepared off the premises" means food items which are grilled, broiled, baked, fried or cooked in some other similar manner off the premises of the retailer. Such term shall not include food items which are precooked and then heated or warmed-up off the premises or food items which were previously cooked or prepared and then reheated off the premises.

"Retailer" means any person or persons having a sufficient proprietary interest in conducting a business which sells prepared food items for immediate consumption or alcoholic liquor so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof.

"Person" means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.

"Restaurant" means and includes any public place kept, used, maintained, advertised and held out to the public, as a place at which prepared food items for immediate consumption are served and/or prepared, whether or not consumed or intended to be consumed on the premises, but shall not include coin-operated automatic food dispensing machines.

"Bar" means and includes an establishment for the serving of alcoholic liquor. (Ordinance No. 2017-28)

#### Section 326: Imposition of Tax.

(a) There is hereby levied and imposed upon the privilege of purchasing prepared food items for immediate consumption and alcoholic liquor served or prepared at a restaurant bar or other establishment covered by this Article in the City of Bloomington, a tax of two (2%) percent of the purchase price, exclusive of any other tax charged for such food items and/or alcoholic liquor. (Ordinance No. 2002-92)

(b) Exempt from the tax imposed above are persons purchasing prepared food items for immediate consumption served or prepared at:

1. A restaurant owned by a church, grade school, junior high school or high school within the City of Bloomington.
2. Restaurants used primarily in conjunction with institutional living establishments within the City of Bloomington, including but not limited to dormitories, fraternities, sororities, residential care facilities and hospitals;
3. Premises or operations of not-for-profit organizations who serve prepared food items for immediate consumption on an occasional and irregular basis. (Ordinance No. 2002-92)

#### Section 327: Liability for Payment.

(a) The ultimate incidence of and liability for payment of said tax shall be borne by the person who seeks the privilege of occupying any such restaurant, bar or other establishment covered by this Article, said person hereinafter referred to as "consumer". (Ordinance No. 2002-92)

(b) All retailers shall jointly and severally have the duty to collect and shall collect and account for the tax imposed in Section 326(a) from each consumer at the time that the consideration for such purchase is paid. Such retailers shall be the trustee for the City in the collection and remittance of said taxes. (Ordinance No. 2002-92)

#### Section 328: Collection of Tax.

Every person required to collect the tax levied by this Section shall secure said tax from the consumer at the time he collects payment for the service of food or alcoholic beverage. Upon the invoice receipt or other statement or memorandum of the payment given to the consumer at the time of payment, the

amount due under the tax provided in this Section shall be stated separately on said documents or combined with the amount of the Illinois Retailer's Occupation Tax Act. (Ordinance No. 2002-92)

#### Section 329: Rules and Regulations.

The Finance Director of the City of Bloomington may promulgate rules and regulations not inconsistent with the provisions of this Article XVI concerning the enforcement and application of this Article XVI. The term "rules and regulations" includes, but is not limited to, a case by case determination whether or not the tax imposed by this Article XVI applies. (Ordinance No. 2017-28)

#### Section 330: Filing of Application.

The owner of each restaurant, bar or other establishment covered by this Article shall complete a City of Bloomington Application for Registration within thirty (30) days of opening for business. The application shall be filed with the Finance Division of the City. (Ordinance No. 2002-92)

#### Section 331: Filing of Return.

(a) All retailers shall pay to the City all taxes collected. The owner of each restaurant, bar or other establishment covered by this Article within the City of Bloomington shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Finance Director. The return shall be filed on or before the 25th day of the calendar month next succeeding the month for which the return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said return. (Ordinance No. 2018-30)

(b) The first taxing period for the purpose of this Section shall commence on January 1, 2003, and the tax return and payment for such period shall be due on or before February 25, 2003. Thereafter, reporting periods and tax payments shall be in accordance with the provisions of this Section. (Ordinance No. 2002-92)

(c) Any payment made by check which is returned to the City because of insufficient funds may result in the Finance Director requiring the retailer to make future payments by cashier's check or money order. (Ordinance No. 2002-92)

#### Section 332: Compensation for Collection Services.

As compensation for services rendered in the collection and payment of this tax, retailers filing a tax return may retain an amount of money equal to one percent (1%) of the tax due. (Ordinance No. 2014-21)

#### Section 333: Financial Records.

(a) All retailers shall cause complete and accurate books, records and accounts showing the gross receipts for sales of taxable prepared food items for immediate consumption and alcoholic liquor and the taxes collected each day, which shall be made available in the City for examination by the City upon reasonable notice and during customary business hours. (Ordinance No. 2002-92)

(b) The financial records of any restaurant, bar or other establishment covered by this Article submitted pursuant to this article or any rule and regulation promulgated thereunder shall be considered confidential proprietary information and shall not be disclosed except as permitted by law. (Ordinance No. 2002-92)

#### Section 334: Failure to Remit; Licensing.

Payment and collection of said tax may be enforced by action in any court of competent jurisdiction and failure to collect, account for and pay over any tax collected from purchasers of taxable items shall be cause for revocation of any City license of such retailer or applicable to the premises thereof, in addition to any other penalty provided in this Ordinance. (Ordinance No. 2002-92)

#### Section 335: Violations; Penalties.

Any retailer found guilty of violating, disobeying, omitting, neglecting or refusing to comply with, or resisting or opposing the enforcement of any of the provisions of this Chapter, except when otherwise specifically provided, upon conviction thereof shall be deemed to have committed a misdemeanor and punished by a fine of not less than Seventy-five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first offense, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second offense, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand (\$5,000.00) for the third offense, and not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for the fourth and each subsequent offense, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent offense. A separate and distinct offense shall be regarded as committed each day upon said retailer shall continue any such violation, or permit any such violation to exist after notification thereof. (Ordinance No. 2002-92)