

**TAX ON SALE OF FOOD AND
BEVERAGES PREPARED FOR
IMMEDIATE CONSUMPTION**

§ 35.085 DEFINITIONS.

For purposes of this subchapter, the following definitions shall apply unless the context clearly indicates of requires a different meaning.

FARM PRODUCE STAND. Those temporary and sometimes semi-permanent stands utilized by farmers and other produce growers to sell primarily their own products in season.

FOOD AND BEVERAGES PREPARED FOR IMMEDIATE CONSUMPTION.

(1) Unless otherwise exempted herein, any food and/or beverages prepared at any food service establishment which is required to hold a St. Clair County food service sanitation permit.

(2) Such prepared food or beverage may be purchased at retail for consumption within or upon the premises where it is sold or may be purchased for consumption off the premises. However, with respect to food and/or beverages purchased for consumption off the premises, **FOOD AND/OR BEVERAGE** does not include any food and/or beverage which is sold, in a closed or sealed bottle, can, carton, or container of the manufacturer or wholesaler, or which has not been prepared for immediate consumption. Notwithstanding

any other provisions of this section, **PREPARED FOOD** also does not include any food sold through a coin operated automatic food item dispensing machine, or by wholesalers, churches, public or private schools, daycare centers, nursing homes, retirement centers or similar residential care facilities or programs for the central preparation of meals to be delivered to and consumed at private residences of the elderly or the disabled.

FOOD SERVICE ESTABLISHMENT. Any person which sells at retail, food prepared for immediate consumption, whether consumed on premises or not, and whether or not such food service establishment use is conducted along with any other use(s) in a common premise or business establishment including, but not limited to those establishments commonly described as a restaurant, eating place, drive in restaurant, buffet, bakery, banquet facility, cafeteria, cafe, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, tavern, bar, cocktail lounge, ice cream parlor, delicatessen, quick shop, convenience store, mobile food or beverage vehicles, hospitals, hotel, motel, club or any other establishment which sells, at retail, food which has been prepared for immediate consumption.

The term **FOOD SERVICE ESTABLISHMENT** does not include farm produce stands, coin operated automatic food item dispensing machines, wholesalers, churches, public or private schools, daycare centers, nursing homes, retirement centers or similar residential care facilities or programs for the central preparation of meals to be delivered to and consumed at private residences of the elderly or the disabled and those persons that are exempt from the Illinois Retailers Occupation Tax (ILCS Ch. 35, Act 120, §§ 1 et seq.) or the Illinois Service Occupation Tax (ILCS Ch. 35, Act 115, §§ 1 et seq.).

PERSON. Any individual, firm, unincorporated association, partnership, joint venture, limited partnership, corporation, limited liability company, representative or other entity.

SOLD AT RETAIL. To sell for use or consumption in exchange for consideration, whether in the form of money, credits, barter or any other nature and not for resale, with said transaction being subject to either the Illinois Retailers Occupation Tax (ILCS Ch. 35, Act 120, §§ 1 et seq.) or the Illinois Service Occupation Tax (ILCS Ch. 35, Act 115, §§ 1 et seq.).

(Ord. 3898, passed 9-21-2015)

§ 35.086 IMPOSITION OF TAX.

A tax is hereby imposed upon all retail sales of food and beverages that have been prepared for immediate consumption within the city at the rate of 1% of the selling price of such food and/or beverages. This tax is imposed in addition to any other tax imposed by the city or any other governmental entity with respect to such food and beverages. The purchaser of such food and beverages shall be liable for the payment of the tax imposed, but the person engaged in the business of selling such food and beverages at retail assumes the responsibility of collecting and paying said tax to the city.

(Ord. 3898, passed 9-21-2015)

§ 35.087 SALES TAX RETURNS TO CITY.

Every person engaged in the retail business of selling food and beverages for immediate consumption within the city shall file with the City Finance Department, on or before the last day of each month following the period to which they apply a report in the form required by the Finance Department and the report shall be accompanied by a check or other form of payment in the amount of the tax due and payable upon such taxable sales made during the preceding month.

(Ord. 3898, passed 9-21-2015) Penalty, see § 35.999

§ 35.088 SALES TAX RETURNS TO STATE.

Every report filed under § 35.087 of this subchapter shall be accompanied by a photocopy or other copy of the sales tax return filed by the person engaged in the business of selling such food and beverages at retail with the State Department of Revenue pursuant to ILCS Ch. 35, Act 120, § 3, as amended, (commonly known as the sales tax return) showing the total retail sales made by such person for the preceding calendar month. If more than one location is reflected on the sales tax return, the multijurisdictional form must also be submitted. The person will authorize release of sales tax information to the city.

(Ord. 3898, passed 9-21-2015) Penalty, see § 35.999

§ 35.089 BOOKS AND RECORDS.

Every person engaged in the business of selling food and beverages prepared for immediate consumption at retail shall keep complete and accurate books and records of all such retail sales according to standards adopted by the State Department of Revenue for retail sales generally. The City Director of Finance or authorized representative may enter the premises of every such person at reasonable times and upon reasonable advance notice to inspect the books and records of such person in order to effectuate the proper administration of the tax imposed by this subchapter, and to ensure compliance with this subchapter. It shall be unlawful and a violation of this subchapter for any person to hinder, interfere with or prevent the City Director of Finance or authorized representative from performing his or her duties hereunder.

(Ord. 3898, passed 9-21-2015) Penalty, see § 35.999

§ 35.090 SUSPENSION OF LICENSES.

In addition to any other penalties provided for in this code of ordinances, if the Mayor, after a hearing

held by him or her or for him or her by his or her designee, shall find that any person has willfully avoided the payment of any tax imposed by this subchapter, he or she shall suspend or revoke all municipal licenses held by such person. The person shall have an opportunity to be heard at such hearing to be held not less than five days after being notified of the hearing by registered or certified mail, at the person's address on record with the city. The notice shall state the date, time and place of the hearing. Any suspension or revocation of any license(s) shall not release or discharge the person from civil liability for payment of the tax nor from prosecution for such offense.

(Ord. 3898, passed 9-21-2015; Ord. 3907, passed 11-2-2015) Penalty, see § 35.999

Cross reference:

Food industry, see Ch. 112

35.041 of this chapter shall, except when otherwise specifically provided, upon conviction thereof be punished by a fine not to exceed \$750 for each offense. A separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof.

(D) (1) If for any reason the tax imposed by § 35.086 of this chapter on the sale of food and beverages for immediate consumption is not paid when due, a penalty at the rate of 10% of the amount of tax owed shall be applied, plus interest at the rate of 1.25% per month from the date of delinquency per month shall be added and collected.

(2) Any person found guilty of violating any provision of §§ 35.085 through 35.089 of this chapter, including the late filing of a return or the late payment of the tax, shall be fined in an amount not to exceed \$500 for each offense. A separate offense is committed upon each day that a violation exists.

(E) Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of §§ 35.100 through 35.106 of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100, nor more than \$200; and, in addition, shall be liable in a civil action for the amount of tax due. (1999 Code, § 35.99) (Ord. 973, passed 2-2-1981; Ord. 1824, passed 4-3-1996; Ord. 3093, passed 2-19-2002; Ord. 3446, passed 5-15-2006; Ord. 3453, passed 6-19-2006)

§ 35.999 PENALTY.

(A) Whoever violates any provision of this chapter for which another penalty is not specifically provided shall be penalized as provided in § 10.99 of this code.

(B) If any corporation, company or association fails to render the report designated in § 35.006 of this chapter by the day required, or if the rates in § 35.006 of this chapter as a tax or license fee remain unpaid after the day designated, every such corporation, company or association shall forfeit and pay to this city the sum of \$750 upon conviction for each offense.

(C) Any person, firm or corporation found wilfully guilty of failing to pay, collect, report and transmit the hotel or motel tax (§§ 35.035 through 35.041 of this chapter) to the City Collector in accordance with the terms of §§ 35.035 through