

Florida Department of Revenue



Retail Grocery Stores Standard Industry Guide



PURPOSE

This guide provides an auditor with information on the subject industry. This information will assist an auditor in recognizing areas to test for compliance with Florida sales and use tax laws.

After reviewing this guide, an auditor will be better able to understand issues involving:

- Tax implications affecting the subject industry;
- Sales tax issues likely to surface relating to the subject industry; and
- Relevant statutes, rules, court cases and other technical documents

Helpful tax publications provided by the Department of Revenue available online:

General:

[Sales and Use Tax Guide for Business Owners](#)

[Audit Information](#)

[Florida Sales and Use Tax](#)

[Discretionary Sales Surtax](#)

These reference materials and the technical documents cited herein have been provided as informational guidelines for performing tax audits and are intended to be used as internal management memoranda. They are not rules, orders, or policy statements of general applicability, and as such, do not represent the formal position of the Florida Department of Revenue. No representation is made regarding the Department's opinion of the precedential value of the court cases cited herein. They are provided for informational purposes only. Statutes, rules, court cases, or other technical documents subject to change are current as of the publication date of this document. Refer to the Tax Law Library for an updated listing of such documents. The Tax Law Library can be accessed through the Department of Revenue web site:

<http://www.myflorida.com/dor/>

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OVERVIEW OF METHODS OF OPERATION

Retail grocery stores range in size from the very small (Ma and Pa) corner store to the independent supermarket; from convenience store chains to national supermarkets .

Although they may differ in size, all grocery stores have common areas of interest to an auditor :

- The inventory is composed of many different items, some are taxable and some are exempt.
- Sales are fairly predictable because customers tend to return to the same store and purchase the same items.
- Profitability is based on sales of many items at a low gross margin, which results in a rapid turnover in inventory (complete inventory turnover can occur within one week to three months).

The volume of records maintained by grocery stores varies with the size of the store. Most grocery stores maintain purchase and sales records, along with cash register tapes or computer printouts of the store's operation. Some major supermarkets have an excellent inventory system, including computer-connected cash registers that reorder merchandise automatically as it is sold. The chain grocery and drug store classification includes businesses engaged in selling a wide variety of products to the general public. A selection of items include: general grocery items, meat, poultry, seafood, bakery items, frozen foods, picnic supplies, books, cards, lotions, auto supplies, prescriptions, and other miscellaneous items.

In today's environment, virtually all large grocery and drug stores operate with very complex computer systems using scanners to track sales and adjust inventory on a perpetual basis. While these stores may stock thousands of items, with thousands of new items being added each week, the tax treatment of each can usually be determined by a review of the taxpayer's database. For example, in most cases, the larger chain and drug stores should be able to supply the auditor with a list of their taxable and exempt items, usually categorized by department. These types of operations usually maintain very sophisticated records.

Typically, the large grocery store of today can contain a meat and seafood market, a florist, a delicatessen, a bakery, and numerous specialty departments such as a photo lab, toys, and automotive products. Due to the diversity of the items sold, numerous statutes and rules apply to the typical audit of this industry. Comprehensive pre-audit planning is imperative for a working knowledge of the taxpayer's operation. The auditor should also tour the business to determine the exact nature of the operation of each department.

ACCOUNTING SYSTEMS

The accounting system used by a chain grocery/drug store is usually a very large and complex computerized system. During the pre-audit review, the auditor will be presented with a large variety of the following records:

- journals
- ledgers
- financial statements
- depreciation schedules
- internal documents analyzing sales and purchases
- various documents used in the preparation of required federal and state tax forms

The auditor must obtain a working knowledge of the taxpayer's accounting system, regardless of its size or complexity. In general, chain grocery and/or drug stores are able to track sales, purchases, and inventory at a very sophisticated level beginning at the cash register. Sales usually begin at the cash register/computer with scanners being used to enter the transaction, determine the appropriate tax due, and compute the total sales price. Most systems even have the capability to automatically adjust inventory amounts. This aspect is especially useful since inventory cycles and turnover may be important in determining taxable ratios. Once the sale is completed, sales figures are usually posted to some type of daily reporting document. This document is computerized and usually breaks down the sales by category (grocery, meat, bakery, coupons, food stamps, etc.). Most systems then use the daily information to generate weekly/monthly summaries detailing sales activity for the entire periods. Ideally, these summaries flow into the taxpayers' general ledger. Sales journals, cash disbursement journals, and accounts receivable journals may be useful in conducting the audit. In most instances, the sales tax returns are generated using some or all of the previously mentioned documents.

OTHER ASPECTS OF THE BUSINESS

In recent years, chain grocery/drug stores have sought to expand their market beyond the sale of general grocery items and general merchandise. In an effort to attract customers, grocery stores may feature specialty departments such as delicatessens with eat-in or take-out facilities, floral departments, bakery departments, and seafood markets. Additionally, there may be lottery ticket sales, purchases made with food stamps, manufacturers coupons, retailers coupons, and rentals of tangible personal property such as rug shampooing equipment and video tapes, all of which have tax implications. The auditor should thoroughly review the accounting methods used and should conduct a physical examination or walk-through of the store(s) prior to commencement of the audit to ensure that all issues are identified and addressed.

SPECIAL CONSIDERATIONS

As noted previously, numerous individual departments, each with its own tax implications can exist within the framework of the chain grocery/drug store classification. In 1998, the Florida Legislature changed a large number of the Florida Statutes that concern the tax impact on the sale of food. For a comprehensive review of these law changes, see [TIP 98\(A\)1-08](#), dated June 19, 1998. Also, see [TIP 00A01-05](#), dated April

07, 2000. The following are just some of the circumstances the auditor may encounter during an audit of these stores.

Items to Be Prepared at Home

Food and drink are considered general grocery items when sold in a grocery store to be taken home and prepared. Such food and drink is generally exempt from sales tax. Some examples of exempt general groceries are bakery items, cereal, jellies, condiments, cocoa, milk, butter, fruit juices, and frozen and canned goods. Complimentary items, such as hot coffee for the customers or cookies for the children, are not taxable. Some examples of taxable items are bleach, soap, diapers, paper goods, charcoal, and cleaning products, among other items. Refer to [DR46NT](#). Also, see [Section 212.08, F.S.](#) and [Rule 12A1.011, F.A.C.](#)

Deli Items

The delicatessen, in a grocery store, typically sells a variety of food items. Food may be prepared on premises (at the store) or off premises (at a separate commissary) and brought to the store. Food items prepared at a commissary (off premises) then delivered to the store and sold in the original sealed containers are exempt from sales tax as general grocery items. Food prepared at the store (on premises) whether by actually preparing the food or by only adding ingredients, such as brown sugar, onions, etc., to food already prepared at the commissary, becomes prepared food and is subject to sales tax. Foods sold “hot” such as rotisserie, seasoned, fried, or barbecued chicken and hot side dishes are taxable as prepared foods ready for immediate consumption. Grocery stores frequently prepare lunch or dinner plates, usually sold with utensils. These meals are taxable as prepared food ready for immediate consumption. Items used for one-time packaging that accompany the meal to the final consumer, without which delivery is impractical based on the character of the item and no separate charge is made, is exempt from sales tax. Such items include napkins, plates, take-out boxes, etc. Deli sales of precooked meat or cheese, in bulk by the pound and sliced to order, are not taxable. If the meat is arranged decoratively with garnishments on a tray, this makes the purchase taxable as prepared food. Deli sandwiches made to order and ready for immediate consumption are taxable as prepared food. Some stores may have an area set aside where customers may sit and eat what they have purchased. See [Rule 12A1.011\(4\), F.A.C.](#), and [Section 212.08\(1\), F.S.](#) and [Declaratory Statement, Albertson’s, Inc., DOR79-02](#).

Steamed Seafood

Seafood departments usually offer free seasoning and steaming of shrimp or other seafood. When the seafood is steamed, it becomes taxable as prepared food, ready for immediate consumption. If the customer pays for a seafood purchase and then decides to return to the seafood counter and have the purchase steamed, the seafood will not become taxable since it was not ready for immediate consumption when sold. See [TAA-95A-002](#).

Bakery Items

Bakery departments in the grocery store prepare fresh baked donuts, bread, pies, pastries, wedding cakes, and many other confections. A frequent misconception is that donuts are taxable whether chocolate coated or otherwise. Donuts sold in a grocery store are not taxable when sold individually, or by the half dozen, dozen, or whatever amount. Donuts sold in a grocery are specifically exempt as general groceries in [Chapter 212, F.S.](#) The only instance when a donut would be taxable is when sold as part of a prepared meal or intended to be consumed in a store that has dine-in facilities. Cookies in the bakery department given free to children are *not* taxable either as a sales tax to the customer or a use tax to the store. See [Section 212.08\(1\)\(c\)12., F.S.](#), and [Rule 12A1.011\(3\), F.A.C.](#)

Candy

Candy is subject to sales tax when the price is 10 cents or more. Candy and any similar product regarded as candy or confection, based on its normal use, as indicated on the label or advertising. Other food items similar to candy that are also taxable are candy apples; chewing gum and breath mints (except those containing aspirin, laxative, or anti-acidity qualities; chocolate or carob (plain or mixed with other products); cotton candy; glazed or sugar-coated fruits, or other products; fruit drops, fruit flavored sticks; halvah; jelly beans; licorice; lollipops; marshmallow candy; among other items. See [Section 212.12\(9\), F.S.](#) and [Rule 12A-1.011\(4\)\(a\), F.A.C.](#)

Rentals

The rental of tangible personal property (TPP) such as videos, carpet cleaning machines, and other items of TPP are subject to sales tax. The auditor should review [Rule 12A1.071, F.A.C.](#), and other applicable rules and statutes regarding the rental of TPP. Rental items returned late are usually assessed late fees in the amount of the daily rental charge. This charge is also subject to sales tax. These activities are usually accounted for separately and an adequate trail should exist to isolate these transactions for review. Additional special considerations may be encountered based upon the individual circumstances of the business under audit. Careful observations made during the initial taxpayer contact should help the auditor identify these issues.

Food Stamps

Food products purchased with food stamps issued by the United States Department of Agriculture, or with Special Supplemental Food Program for Women, Infants and Children (WIC) vouchers issued under the authority of federal law are exempt from tax. [Section 212.08\(1\)\(e\)1., F.S.](#), exempts all food and drinks for human consumption purchased with these food stamps or vouchers.

[Rule 12A-1.011\(9\)\(b\), F.A.C.](#) provides that when a purchase of food products is made partly with food stamps or vouchers and partly with cash, the food stamps or vouchers will first be used to defray the cost of the taxable food and drinks, less the value of any manufacturer's coupons, that can be purchased with the food stamps or vouchers. When the food stamps or vouchers are insufficient to purchaser the taxable items, tax is due on the remaining sales price of taxable food and drinks.

Lottery Sales

Dealers whose establishments make lottery ticket sales should not report such sales in on their Sales and Use Tax Returns (DR-15 or DR-15EZ). Lottery ticket sales are not required to be reported to the Department. However, the proceeds from the sale of lottery merchandise such as T-Shirts, caps, mugs, etc., must be reported as part of an establishment's gross sales on the Sales and Use Tax Return.

Promotional Samples

Samples of food or demonstration food prepared and given free to the customer are exempt from sales and use tax. Items such as coffee, cookies, and samples of soft drinks are just a few examples. Many stores also donate food and/or drinks to exempt organizations, churches or food banks. These items are also exempt from tax. Some examples may be paper goods, fruit drinks, or sodas for a school or church youth group.

Items given to customers free, on a price guarantee plan for a point-of-sale error such as an overcharge on their purchase, are exempt from tax. For example, if a bottle of cola is priced on the shelf as \$.99 but at checkout it rings up as \$1.29, some stores will give the cola to the customer "free" because the posted shelf price is different from the checkout price. See [Rule 12A-1.011\(8\), F.A.C.](#), [Section 212.08\(7\)\(oo\), F.S.](#), and [TIP 03A01-20](#), dated December 17, 2003.

Inventory Used by the Store

Use tax is due on any taxable products removed from the shelf and consumed by the grocery/drug business in their daily activities. Examples include cleaning supplies used at the store or toilet products for the restrooms. Use tax is also due on items consumed in the deli such as any serving utensils, cleaning products, or other items used in the preparation and serving of the food that do not become a part of the sales price of the food.

Medical Items

Drug stores sell a variety of nonprescription minerals and vitamins such as ginkgo biloba, calcium, primrose oil, dong quai, and others such as vitamin E, or B12. These minerals and vitamins are exempt from sales tax by statute. Dietary foods such as SlimFast, Metracal, or Ensure are all exempt from sales tax as special dietary food. The [DR46NT](#) lists the common household remedies recommended and generally sold for use, in the cure or treatment of illness or disease in human beings. These remedies are exempt by statute. Antiseptics are exempt from sales tax as a common household remedy. The Department of Revenue has taken the position that Listerine, marketed as an antiseptic, is taxable because its primary purpose is as a mouthwash. See [Rule 12A1.020](#) and [Rule 12A1.021, F.A.C.](#) Baby diapers and adult diapers are taxable as are cosmetics and toiletries.

Transferee Liability

In addition to a fast turnover in inventory, grocery stores (generally the independent dealers) seem to have a fast turnover in ownership. The auditor must determine whether the current owner is the same person that owned the business throughout the audit period. [Section 212.10, F.S.](#), makes the current owner of a business liable for the tax liability of the previous owner if a certificate of clearance (issued by the Department) was not obtained from the previous owner. Few individuals observe this requirement, believing that the Department will hold the previous owner liable for any tax deficiency incurred during the time they owned the business.

Effective July 1, 1991, [Section 31, Chapter 91-112, L.O.F.](#), amended [Section 212.10\(1\), F.S.](#) Based on that amendment, the following provisions apply to the sale of a business.

When a business or stock of goods is sold, any receipt or certificate the owner receives from the Department of Revenue indicating that taxes have been paid or that no tax is due is valid only after the Department has audited the seller's books and records. To protect the purchasing dealer from transferee liability, the seller or purchaser may request an audit of the seller's books and records. The Department of Revenue is authorized to use private auditors to perform the audit and charge the cost of the audit to the person requesting it.

GLOSSARY OF TERMS

- Business:** Any activity engaged in by any person, or caused to be engaged in by him or her, with the object of private or public gain, benefit, or advantage, either direct or indirect.
- Coupons:** Manufacturers coupons are issued by a product manufacturer and serve to reduce the sales price of a particular item. However, this type of coupon does not reduce the taxable base on which sales tax is charged since the face value of the coupon will be redeemed by the manufacturer.
- A store coupon is issued by the store and reduces the taxable base of the selling price of a particular item. Since no redemption is forth coming, coupons of this type are actually a reduction in the selling price by the dealer.
- Gross Sales:** Total of all sales at invoice prices, not reduced by discounts, allowances, returns, or other adjustments.
- Inventory Cycle:** A measure of the approximate time necessary for a complete set of inventory items to move through a system, i.e., from placement in inventory to sale. The following formula is used to determine an inventory cycle: $\text{cost of goods sold/average inventory} = \text{number of times turned over}$.
- Lease, Let, Rental:** Any agreement which gives rise to the relationship of landlord and tenant (real property) or lessor or lessee (real or personal property).
- License:** With respect to real property, the granting of a privilege to use or occupy a building or a parcel of real property for any purpose.
- Retail Sale:** A sale for final consumption in contrast to a sale for further sale or processing (i.e., wholesale); a sale to the ultimate consumer.
- Retailer:** A person engaged in making sales to ultimate consumers; one who sells personal or household goods for use or consumption.
- Sales:** A contract between two parties, called, respectively, the “seller” (or vendor) and the “buyer” (or purchaser), by which the former, in consideration of payment or promise of payment of a certain price in money or other consideration transfers to the latter the title and the possession of property.
- Wholesale:** The sale of items other than at retail; a sale to wholesalers or jobbers rather than the ultimate consumers.
- Wholesaler:** One who buys in comparatively large quantities, and then resells to retailers, usually in smaller quantities, but never to the ultimate consumer. The wholesaler sells either to a “jobber,” a sort of middle man, or to a “retailer,” who in turn sells to the consumer.
- “Z” Tapes:** A summary cash register document which details sales and returns for a specified period (a shift, daily, etc.). Usually, the “Z” will detail taxable sales, exempt sales, tax collected, and total sales.

TAX STATUTES AND ADMINISTRATIVE RULES

Topic	Statutes (F.S.)	Rules (F.A.C.)
Definitions	212.02	
General imposition of sales and use	212.05	
Sales of food and drink		12A-1.011
Sale of water		12A-1.019
Trade cash discounts		12A-1.018
Sales of drugs, medicine and medical supplies		12A-1.020
Sales of prosthetic and orthopedic appliances		12A-1.021
Sales of containers, wrapping and packing		12A-1.040
Sales of photographs		12A-1.041
Sales by florists		12A-1.047
Sales of food for animals		12A-1.050
Alcohol sales		12A-1.057
Sales made from vending machines	212.0515	
Exempt from sales tax	212.08	12A-1.001

COURT CASES IMPACTING THE INDUSTRY**Green v. Stuckey's of Fanning Springs***99 So.2d 867, 1957 (Fla.S Ct 147)*

Issue: Courts ruled that eating places licensed by the Hotel and Restaurant Commission selling food and drink for immediate consumption cannot be considered exempt from sales tax as sales of "general groceries".

State ex. el. Szabo Food Serv., Inc. of N.C. v. Dickinson*286 So.2d 529, 1973 (Fla.S Ct 4876)*

Issue: Courts ruled that foods and drink sold for immediate consumption from vending machines were not exempt from sales tax.

Albertson's, Inc. Declaratory Statement

Issue: The Department held that food and drinks served, prepared or sold from a store's delicatessen, which is licensed by the Division of Hotels and Restaurants of the Department of Business Regulations are subject to sales tax.

TAX INFORMATION PUBLICATIONS

- TIP 98A1 – 08 Changes in Sales and Use Tax Exemption for Food Products
- TIP 97A01 – 06 Complimentary Food and Drinks; Public Lodging Establishments
- TIP 96A – 24 Food and Beverage Vending Machine Rate Change, Beginning July 1, 1996
- TIP 00A01-05 More Information on Sales Tax Exemption for the Retail Sale of Snack Foods
- TIP 03A01-20 Coupons, Discounts, Rebates, Free Merchandise, and Other Promotional Gifts

TECHNICAL ASSISTANCE ADVISEMENTS

- TAA 82(A)1 – 033 Prepared Foods
- TAA 89A – 041 Sales of Bakery Products
- TAA 95A – 002 Steamed Seafood; Deli Items; Meat Items; Produce Items
- TAA 95A – 019 Sale of Food Products