

**TAX TIPS FOR
RESTAURANT RETAILERS
CONDUCTING BUSINESS IN DELAWARE**

Things You Should Know

Definitions 30 Del.C., Ch. 29

Every person engaged in the business of operating a restaurant, snack bar, soda fountain, take-out food service, catering service, private eating or drinking club, or other eating establishment is required to obtain an annual business license and pay a gross receipts tax on gross receipts. The service of food in hospitals, nursing and convalescent facilities, schools, child or elder care facilities and camps is not considered operating the business of a restaurant. Meals provided by an employer to its employees at no cost to the employee or food served in a cafeteria (which is operated by the employer) for which there is a charge is not considered operating a restaurant, provided access to such facility is limited to employees or contractors of the employer. Food served at Bed and Breakfast facilities, the charge for which is included in the cost of the room, is not considered operating a restaurant. Persons engaged in the business of providing meals and entertainment for a fixed price (Dinner Theatre) may allocate the amount received between their restaurant retailer and general service licenses based on the cost of the food and the cost of the entertainment

Gross Receipts

Gross receipts include total consideration received by a restaurant retailer for all food and beverages, including alcohol, sold or services rendered within the State. Consideration for goods sold or services rendered includes cash, checks, credit cards, gift certificates, travelers checks, money orders, barter, manufacturer's coupons and rebates and any other consideration of any kind. Gross receipts include amounts received from the sale of food and beverages including alcoholic beverages and mandatory gratuities.

Gross Receipts Do Not Include:

- "In store" coupons
- Buy one, get one free specials

Gross Receipts May Not be Reduced By:

- Cost of property sold
- Cost of material and/or labor
- Interest, discount or delivery costs
- State or Federal taxes

License and Gross Receipts Requirements

A restaurant retailer is required to obtain a business license -- \$75 for the first location and \$25 for each additional location -- which must be renewed annually on or before December 31st of each year. Additionally, every restaurant retailer must pay a gross receipts tax at the rate of .6537% (.006537) for taxable gross receipts received from selling tangible personal property. The first \$100,000 of gross receipts received per month (\$300,000 quarterly) are exempt from the gross receipts tax. Gross Receipt taxes should be filed on-line or with a paper form. Both can be accessed from our website at www.revenue.delaware.gov To register with the Division of Revenue and obtain a business license, complete a Combined Registration Application, available on the Internet and mail to the Division of Revenue with the appropriate fee or you can file on-line at our OneStop site using the link above.

Tax Rates , Exclusions and Due Dates

	Tax Rate	Monthly	Exclusion
Restaurant Retailer	.006537		\$100,000
Sample Calculation			
	Total Gross Receipts		\$ 173,000
	Less Exclusion		<u>100,000</u>
	Taxable Gross Receipts		\$73,000
	Tax Rate		<u>x.006537</u>
	Tax Due		\$ 477

(Note: Delaware requires that tax due be rounded-off to the nearest dollar amount.)

Due Dates of Returns

New licensees will file on a quarterly basis through their first calendar year. The Division of Revenue will then perform a "lookback" procedure and determine if the filing frequency should be changed.

Monthly Filers 20th day of the following month
Quarterly Filers last day of the first month after the end of the calendar quarter.

Gross Receipts Tax Exemption

Gross receipts (and for purposes of the tax imposed by Chapter 43, Title 30 of the Delaware Code “rent” and “lease rental payments”) from transactions between related entities are not subject to gross receipts tax. For this purpose, entities are “related” only if (i) the same five or fewer natural individuals own, directly, indirectly or beneficially, 80% or more of each entity, or (ii) 100% of each entity is owned by member or members of a single family. See Section 2120(b) of Title 30 of the Delaware Code for further details, including the definition of family member for purposes of this exclusion.

Common Ownership/Direction

A business that operates through more than one branch or legal entity is only entitled to one monthly or quarterly exclusion from gross receipts, if the branches or entities making up the enterprise have common ownership or common direction and control.

Caution Concerning Multiple Exclusions

Nearly all licensees are permitted to reduce their monthly or quarterly gross receipts by certain specific exclusions in determining their taxable gross receipts. The Delaware Code limits the number of allowable exclusions for each general business activity. A taxpayer conducting a business activity for which an exclusion is provided is entitled to **ONLY ONE** monthly or quarterly exclusion regardless of the number of locations at which such activity is conducted. For example, a taxpayer who operates multiple convenience stores at which gasoline is also sold should aggregate the receipts from all goods sold at all locations and subtract only one monthly exclusion. Separate retail licenses are not required for the sale of food and petroleum products. While the Division of Revenue may assign a unique business code which reflects the primary product sold, retailers, wholesalers and manufacturers may sell or manufacture multiple product lines without obtaining a separate license for each product line. However, separate licenses are required and separate exclusions are permitted if a taxpayer conducts more than one **ACTIVITY**, such as retailing and wholesaling.

Regulatory and Local Requirements

The Business License Issued by the Division of Revenue is not a regulatory license and the issuance of such license does not attest to the qualifications of the applicant to perform the activity described on such license. Many local jurisdictions have requirements for a business license and may have restrictions concerning the locations of conducting the referenced business activity. Please check with the local government office in the town, city or county in which you will conduct your business.

The State of Delaware also has a Division of Professional Regulations. Many occupations and some types of equipment have regulatory requirements. Please contact the Division of Professional Regulation for more information.

General

If you have any questions, please contact one of the following offices

<i>Wilmington</i>	<i>Dover</i>	<i>Georgetown</i>
Division of Revenue Carvel State Office Building 820 North French Street Wilmington DE 19801 (302) 577-8205	Division of Revenue Thomas Collins Building 540 South DuPont Highway Suite 2 Dover DE 19901 (302) 744-1085	Division of Revenue 20653 Dupont Blvd Suite 2 Georgetown DE 19947 (302) 856-5358

Or by e-mail at: william.kirby@state.de.us or 302-856-5358 ext.137.

File Gross Receipts On-line:
www.grossreceiptsfiling.delaware.gov

or

Print an Interactive Gross Receipts Coupon:
http://www.revenue.delaware.gov/services/Business_Tax/Forms_New.shtml#gr