

## **117-305 Meals**

**117-305.1. Educational Institutions**

**117-305.2. Medical Institutions**

**117-305.3. Educational and Medical Institutions and Food Service Companies Making Both Retail Sales and Withdrawing for Use from the Same Stock of Goods**

**117-305.4. Suppliers Selling Unprepared Food Products to Educational and Medical Institutions and to Food Service Companies**

**117-305.5. Exemption Meals Sold to School Children**

**117-305.6. Meals Furnished Employees, Restaurants**

**117-305.7. Meals Served by Railroads, Airlines, Etc.**

**117-305.8. Meals Served by Boarding Houses**

### **117-305 Meals.**

Depending on the institution, meals to students, patients, guests, visitors, passengers, and other customers may be handled in a variety of ways. The following will address the application of the sales and use tax to these various transactions and institutions.

#### **117-305.1. Educational Institutions.**

Colleges and universities sell or provide meals and other foods in a variety of ways.

Meals are provided to students in a cafeteria under a board plan. Under such plans, students will purchase all their meals (breakfast, lunch and dinner) for an entire semester or year at the beginning of the school year. This is usually done at the same time students pay their tuition and other fees. Typically, the student who signs up for one of the board plans is given a card that is used by the student to obtain the meals.

In addition, students who participate in a limited board plan may purchase individual meals sold by the college or university in the cafeteria. For example, one board plan may furnish meals to students Monday through Friday. A student under this limited plan may from time to time choose to purchase an individual meal in the cafeteria on Saturday or Sunday.

Employees, visitors and students who do not participate in a board plan may also purchase meals sold by the college or university in the cafeteria. Generally, these meals are purchased on an individual basis; however, some colleges and universities sell tickets that entitles the purchaser to several meals.

Also, colleges and universities may sell meals and food to students and others at canteens, snack bars, and other places around the campus. In addition, food may be sold at concession stands at sporting and theatrical events.

Finally, colleges and universities may contract with food service companies to sell or furnish meals on campus. Under such contracts, the food service company will either be an agent of the institution or will sell the meals to the institution, who has sold the meals to the students via a board plan.

#### Meals Served Under Board Plan

1. Sales to an educational institution of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax.

2. Sales to a food service company of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the educational institution.

3. Sales by food service companies of meals to an educational institution or directly to the students, as part of a board plan, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the educational institution and is not the agent of the educational institution.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

#### Cash or Other Food Sales, Not Under a Board Plan

1. Sales by an educational institutions of meals and other foods (including the purchase of tickets that entitles the purchaser to several meals), other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.

2. Sales of meals and other foods by a food service company as the agent of an educational institution, other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.

3. Sales of meals and other foods by a food service company, other than those furnished under a board plan, are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

#### **117-305.2. Medical Institutions.**

Medical institutions, such as hospitals, infirmaries, and nursing homes, may sell or provide meals and other foods in a variety of ways.

As part of the professional medical services provided, patients are furnished meals during their stay at the institution.

Meals and other foods are also sold to employees, visitors and others in cafeterias, canteens, and snack bars.

As with colleges and universities, medical institutions may contract with food service companies to sell or furnish meals at the hospital, infirmary, etc., either as agents or on some other basis.

#### Meals and Other Food Served to Patients as part of Medical Care

1. Sales to a medical institution of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax.

2. Sales to a food service company of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the medical institution.

3. Sales by food service companies of meals to a medical institution, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the medical institution and is not the agent of the medical institution.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

#### Meals and Other Food Served or Sold to Employees, Visitors and Others (Cafeterias, Canteens, Snack Bars, Etc.)

1. Sales by a medical institution of meals and other foods, other than those furnished to patients as part of their medical care, are retail sales subject to the sales or the use tax.

2. Sales of meals and other foods by a food service company as the agent of a medical institution, other than those furnished to patients as part of their medical care, are retail sales of the medical institution subject to the sales tax or the use tax.

3. Sales of meals and other foods by a food service company, other than those furnished to patients as part of their medical care, are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

**117-305.3. Educational and Medical Institutions and Food Service Companies Making Both Retail Sales and Withdrawing for Use from the Same Stock of Goods.**

Educational and medical institutions and food service companies that are making both retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used. They will then report retail sales based on gross proceeds of sales and withdrawals for use based on the property's fair market value. In order for this provision to apply, the educational or medical institution must have a substantial number of retail sales. To comply with this provision, educational and medical institutions should present to their suppliers a Form ST-8A - Resale Certificate. This will allow the suppliers to sell these goods at wholesale to the educational or medical institution.

**117-305.4. Suppliers Selling Unprepared Food Products to Educational and Medical Institutions and to Food Service Companies.**

Educational and medical institutions and food service companies are purchasing unprepared food products at retail for use in preparing meals under a board plan. Therefore, businesses selling unprepared food products to these institutions and companies should sell such products at retail, unless the purchaser provides them a Form ST-8A - Resale Certificate. Receipt of the resale certificate will allow suppliers to sell these goods at wholesale, free of the tax, to these educational and medical institutions and food service companies.

Educational and medical institutions and food service companies should not provide their suppliers a resale certificate, Form ST-8A, unless they will be re-selling the product or are doing so to comply with the provisions of SC Regulation 117-324.

**117-305.5. Exemption Meals Sold to School Children.**

Meals sold within school buildings, not for profit, to school children are exempted from the sales tax by Section 12-36-2120(10). Further, foodstuffs sold to schools which are used in furnishing meals to school children are also exempted from the sales and use tax by Section 12-36-2120(10). This exemption is construed to include only sales of meals to pupils of kindergartens, grammar and high schools, either public or private, and sales of foodstuffs to schools which are used in furnishing meals for pupils of kindergartens, grammar and high schools, either public or private, where it can be shown that the sale or use of the meals or foodstuffs occurs within the school building and there is not a profit from such sale or use. Schools operating school lunch programs are required to obtain a retail license and remit the tax on all sales of meals to persons other than school children.

Meals sold by any public or private educational institution or their agent, other than those exempted by Section 12-36-2120(10), described above, are subject to the sales tax when a separate charge per meal is made to the consumer. This includes cash sales, sales at special events and meals sold by commissaries at such institutions. Tax on these sales must be remitted by the institution to the department based on gross proceeds.

Educational institutions operating boarding facilities where meals and beverages are furnished without a separate charge being made or where a lump sum charge is made by the month or by the term are deemed to be the users or consumers of the prepared meals if same are purchased or acquired, or the users or consumers of the unprepared food products if such educational institutions or their agents purchase such products and prepare the meal. The seller of such prepared meals shall be required to report and remit the tax due on the gross proceeds of such prepared meals to the educational institution. The seller of unprepared food products to an educational institution or its agent purchasing such products and preparing the meals shall be required to report and remit the tax due on the gross proceeds of such raw foodstuffs.

Sales to consumers of prepared meals, foodstuffs or beverages on educational institution premises by an entity other than the educational institution or its agent, are sales at retail and the seller is required to obtain a retail license for each location, and report and remit the tax due on the gross proceeds of such sales.

#### **117-305.6. Meals Furnished Employees, Restaurants.**

Meals served by employers to their employees as part of the latter's compensation are not taxable sales. Where, however, a separate charge is made for the same by the employer and either paid for by the employee or deducted from his wages, the transaction is a sale subject to tax.

#### **117-305.7. Meals Served by Railroads, Airlines, Etc.**

Sales of meals, drinks, etc., by railroads, airlines, pullman, steamships, or other transportation companies within this state are subject to the sales tax.

Meals, etc., served by such transportation companies as a part of the transportation service, for which no separate charge is made, are not required to be reported as retail sales by the companies. In such instances the companies are considered to be the consumers of the foods, etc., served and will be required to pay tax thereon to the suppliers.

#### **117-305.8. Meals Served by Boarding Houses.**

Food furnished by operators of boarding houses is not considered to be sold at retail when the charge for such food is a lump sum covering meals for a week or for a month when such food is not offered for sale to the general public. The supplier of foodstuffs is liable for the sales tax on sales to the operator at the time of the sale to him. The boarding house operator is considered to be the user of the materials he purchases.

Note, however, in instances where the boarding house operator is liable for the license and the tax under Section 12-36-920 he is liable for the tax measured by his gross proceeds of sales of meals plus gross proceeds derived from the rental or charges for rooms, lodgings, or

accommodations furnished to transients. In this instance the properties which become a component of the meals prepared for sale are purchased at wholesale, tax-free. All other items of tangible personal property, such as heating and cooking fuels, furniture, linens, appliances, radios, and television sets are subject to the tax at the time of purchase by the boarding house operator.

**HISTORY: Added by State Register Volume 26, Issue No. 6, Part 2, eff June 28, 2002.**