

---

---

# FACT SHEET: NEW MEXICO'S "FOOD TAX" DEDUCTION

---

---

**What the deduction is:** The law establishing the deduction for food sold in New Mexico says a retailer can deduct qualifying food receipts from the retailer's gross receipts grand total before paying gross receipts tax to New Mexico. The person doing business in New Mexico is the taxable party – not the customer. The law does not stop the retailer from billing the gross receipts tax costs to the customer, just as if the tax were any other overhead cost. The great majority of retailers charge the tax to their customers.

The deduction — meaning the retailer is not taxed on those receipts — also means that the retailer does not need to ask you to reimburse the tax costs for those particular transactions. The customer, then, buys those eligible items "tax free."

**What the deduction is not:** The deduction is not a blanket tax deduction for all foods you buy at any store or other source. It applies only to some foods at some establishments. It does not cover non-food items. It does not apply to some foods you can easily buy at retail stores and elsewhere. Further, not all retail establishments that sell food are retail food stores. Please see the definitions and exceptions listed below. When you buy food, check first to see whether the store qualifies for federal food card purchases. If not, you should expect to pay the retailer's passed-along tax.

**How the deduction works:** The deduction defers to the federal Food Stamp Program. The New Mexico Department of Human Services administers the Food Stamp Program in New Mexico. Although the food stamp issue is a separate issue from the state's gross receipts tax, the state of New Mexico has nevertheless tied both its list of eligible foods qualifying for the tax deduction, and the definition of eligible retailers, to the federal Food Stamp Program. This means that a retailer must meet federal authorization standards as a "retail food store," and the food item itself must be on the list for which the United States government allows payment using the federal food card. *Customers not on the Food Stamp Program do not need to pay for the food with a federal food card.* You pay by normal means: cash, credit card, debit card, traveler's check, etc.

**When the deduction takes effect:** The deduction takes effect January 1, 2005.

**How to know whether you're in a qualifying retail food store:** To qualify for the state's deduction a retail food store must sell food for home preparation and consumption while at the same time meeting authorization standards as a retail food store for federal Food Stamp Program purposes. Even stores that do not participate in the Food Stamp Program must meet these standards if they are to sell eligible foods to you "tax free." Check with your retailer to see if the store qualifies. *If it does not, you will continue to pay state tax on otherwise eligible foods.*

The store must satisfy **one** of two standards that the United States government sets:

- The store must stock and offer a variety of foods on a continuous basis in each of four specific staple food categories (see below). Two categories of those staple foods must be perishable foods, or
- The store must be a specialty store that attributes 50% or more of its gross receipts sales to staple foods. See the discussion of staple foods below.

**If you are not in a qualifying retail food store:** You should expect to pay tax on food that would otherwise qualify. Here are some examples of establishments and vendors who do not meet the state definition. There may be others:

- Convenience stores or other markets where food sales make up less than 50% of gross retail sales. The Food Stamp Program and the state of New Mexico prohibit the store from counting coffee, tea, cocoa, carbonated and non-carbonated drinks, candy, condiments and spices in the 50%;
- Concessions at public or private sporting and social events;
- Sidewalk vendors and other open-air vendors at fairs, festivals, etc.;
- Vending machines, and
- Other vendors who do not meet federal authorization standards for "retail food store" above. The federal government sets the guidelines for retail food stores to qualify.

**How to know if the food qualifies for the deduction:** New Mexico's definition of "food" is any food or food product for home consumption that meets federal eligibility as "food" for food stamp purposes. The list includes most staple grocery food items and cold, prepared foods packaged for you to eat *at home*.

**The *staple foods* are breads and cereals, dairy products, fruit and vegetables, and meat, fish and poultry.** Also on the list are seeds and plants to grow food for your household to eat. See the exceptions below. For a complete list of foods eligible for the Food Stamp Program, go to our web site at [www.state.nm.us.tax](http://www.state.nm.us.tax). Click on "individuals" and look for the listing. The federal government decides on a certain food's eligibility.

**Items that do not qualify for the deduction:** Some items that you buy at a grocery store or supermarket are NOT eligible for the deduction. Be prepared to pay tax on them. Those items include, but are not limited to:

- Nonfoods like soaps, paper products, household supplies, grooming products, cosmetics, toothpaste, hardware, sewing notions, toys and other items commonly sold in supermarkets or general stores;
- Pet foods, pet accessories, medicines;
- Vitamins, minerals, supplements and over-the-counter medicines (prescription drugs for people – not pets – are already untaxed in New Mexico);
- Alcoholic beverages, tobacco and tobacco products;
- Any food, hot or cold, that you eat in the store;
- Hot foods like delicatessen foods and items from in-store snack bars;
- Restaurant food;
- Food you buy at places that do not meet the federal Food Stamp Program authorization standards for "retail food store" (see above)," and
- Food that is already exempt or deductible under another provision of the New Mexico Gross Receipts and Compensating Tax Act.

#### **Questions?**

**The Taxation and Revenue Department does not determine the list of eligible foods, nor does it set the rules for stores eligible for food stamp purposes. If you have a question about a specific food's qualifications for the deduction, please contact the United States Department of Agriculture Food Stamp Program at 1-800-221-5689.**

**You may also contact the New Mexico Human Services Department Food Stamp Information Hotline at 1-888-473-3676. NMHSD administers the Food Stamp Program in this state.**

For more detailed information, please check the web site at [www.state.nm.us/tax](http://www.state.nm.us/tax). Click on "publications" and scroll down to the gross receipts and compensating tax section.

Please also see the CRS-1 form instructions in the January-June 2005 CRS-1 Filer's Kit.