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Forget Amazon & Marketplace Fairness, Pets Don't Want To Be Taxed

No one likes more taxes. Yet it can seem like everywhere you turn, there are more of them. Some people can plan their affairs not to sell assets that trigger tax. Some can wait to send an invoice to get paid *next* year. Pets can't plan ahead.

Besides, taxes on food are especially regressive, hitting modest income taxpayers the hardest. And pets are certainly modest income. Yet Mexico now has a 16% pet food tax. Half of Mexican households have pets, and low income earners are hit especially hard. Food for horses, a pet of the elite, isn't taxed.

Americans have been taxing pet food for years, though in most states, sales tax doesn't apply to human food. In America, pet food is taxed, but not uncooked human food. Restaurant meals and prepared takeout? Usually taxed.



Keeping track of many arcane rules about what's taxed and what isn't can be daunting (one argument against Amazon taxes online) and leads to scary disputes. If you buy produce for your dog, it's supposed to be taxed, since it's pet food. But if you tell a supermarket checker you're buying broccoli for your dog, the store has no way to charge you sales tax.

Plus, if an animal is suitable for human consumption, the food it eats isn't taxable. That means produce eaten by primates is taxable, but not produce eaten by goats and sheep. In many states, food and food products sold by food stores are exempt from sales tax. However, there are exceptions.

There are 45 states with a sales tax, and the law varies from state to state. That's one argument online retailers have used for why they shouldn't have to comply with a bevy of tax laws. And even something as simple as food can be confusing. New York has [Listings of Taxable and Exempt Foods and Beverages Sold by Food Stores and Similar Establishments \(TB-ST-525\)](#).

Generally, food sold at food stores is taxable when sold under any of the following conditions:

- it is sold heated
- it is sold for consumption on the premises; or
- it has been prepared by the seller and is ready to be eaten, whether for on premises or off premises consumption.

Then, there are the food items that are usually taxed, like these:

- sandwiches (whether heated or unheated)
- carbonated beverages
- candy and confectionery, and
- pet foods.

State law rules on heated foods vary, but here are some of the rules from New York. There, all food sold in a *heated* state is taxable. That includes food cooked to order and food kept warm using heat lamps or other warming devices. Think:

- hot pizza, hot soup, hot rotisserie chicken, warm roasted nuts, and warm pretzels;
- fish cooked to order at the seafood counter; and
- food sold at a hot buffet in the store.

In New York (and many other states) food prepared and arranged on a plate or platter by the seller that is ready to be eaten is taxable. It doesn't matter if it is meant to be eaten at the store or whether it's served hot or cold. "Ready to be eaten" means placed on an individual plate or container, or on a serving platter, and doesn't require any more preparation. Examples:

- meals served on an individual plate
- ice cream served on a cone or in a sundae,
- salads from self-serve salad bars, and
- meals prepared by the store at your request.

My guess is that most pets can't keep this straight. My guess is most consumers and a fair number of merchants can't either.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.