



Robert W. Wood

THE TAX LAWYER

Oct. 16 2012

Why A Hot Sandwich Is Taxable But A Cold One Is Not

Taxes are a worldwide phenomenon, and although every system is different, there are many consistent themes. Take sales taxes, which are present in 45 states. [Online versions](#) are the most controversial these days. Value Added Tax or VAT is a kind of sales tax in much of the world. And wherever you are, there are maddening inconsistencies that can seem downright bizarre.



Photo credit: Simon Shek

Suppose you grab a sandwich. Will you pay sales tax or not? It may depend on where you eat it or if it's hot or cold. In the UK a whopping 20% VAT on many hot snacks means a £5 sandwich costs £6, so it might be worth it to eat it cold.

A tax tribunal recently considered the steamy tax question of whether the 20% VAT had to be charged on Subway's toasted subs and meatball marinara sandwiches. See [Tribunal Gets Taste for Toasted Sandwich Tax](#). Toasted bagels and baguettes were ruled tax exempt so a Subway shop cried foul. This inconsistent treatment sent business elsewhere and wasn't fair.

Subway claims over 130,000 signatures on a [“toast the tax” petition](#). See [Subway Franchisee Loses VAT Hot Food Case](#). The problem is discrimination. The [pasty](#)—a meat pie more beloved than our humble hot dog—no longer faces the 20% tax. Although the British government had long exempted such hot snacks from the [VAT of 20%](#), in March 2012, the Brits moved to make pasties and other hot snacks pay it.

An attack on a British mainstay was tough for Britons to swallow, especially paired with a 50% to 45% tax cut for top income earners. See [Tony Blair is Britain’s Buffett as Top 50% Tax Rate Teeters](#). The wealthy were feted while the lower and middle classes were hit right in their pasties. See [A Tax on Snacks Aggravates Austerity Tensions in Britain](#). Within 60 days the Brits repealed it. You don’t mess with something this basic.

On our side of the Atlantic, most of our sales tax vitriol seems directed at states trying to [tax online sales](#). Yet the hot food v. cold food line is common in many U.S. sales tax laws. Maybe someone should sue, which after all is an American way of life.

You can [read](#) about a man who paid \$8 for a soda and a box of candy in an AMC Theater. His answer was a class action suing AMC Theatres for price gouging allegedly violating Michigan’s Consumer Protection Act.

While line-drawing in taxes is inevitable, sometimes the lines seem silly.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached 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.*