**Tax Fairness in Food Sales** 

### **Current Status**

Utah taxes food at three levels:

- Food—lower than other sales taxes
- Prepared Food—the same as other sales tax
- Restaurant Food—an additional 1% on top of sales tax

### **Bad definitions lead to tax avoidance**

- History: Grocery and convenience stores exempted based on what other products they sold
  - Legislature wasn't aiming at rotisserie chickens and tubs of potato salad
- Market Evolution: Restaurateurs have found that they can avoid paying the tax by operating inside of an establishment that sells other kinds of food
- Current avoidance: By operating a restaurant *inside* of a store that also sells "food," restaurants gain a legal competitive advantage over other restaurants based only on what the restaurant is located *next to*
- Think of these food stores as the Montana license plates of the food world—just register inside of a different store, and avoid the tax

# Examples

This was a very tasty bill to research

# Burgers

#### Just Burgers, operates inside Harmon's



#### Crown Burgers, operates in its own space



# Burgers

Just Burgers, operates inside Harmon's



#### Crown Burgers, operates in its own space





Just Burgers, operates inside Harmon's

Tax Rate	
7.75%	HARMONS CITY CREEK 135 EAST 100 SOUTH
	SALT LAKE CITY, UTAH 84111 801-428-0366
	Your Cashier Today Is: Jeff
	CHEESEBURGER MEAL 13.50
	JUST A CHEESEBURGE 9.00
	ADD FRIES 3.50
	TAX 2.02
	**** BALANCE 28.02
	CARD NUMBER: *********1038
	American Express 28.02
	CHANGE 0.00
	TOTAL NUMBER OF ITEMS SOLD = 3
	09/11/24 11:59am 24 28 26 45
	****FOR MORE SAVINGS JOIN OUR*** ***FOODIE CLUB TO EARN FREEBIES*** ****FUEL DISCOUNTS AND MORE!***
	ORDER 26

#### Crown Burgers, operates in its own space

Tax Rate 8.75%	CROWN BURGERS NB NORTH 300 WEST SALT LAKE CITY UTAH 801-532-5300
	DATE 10/28/2024 MON TIME 12:15   CHECK # #716   PBAL \$0.00   2X @7.99   BAC CHZ BURGER \$15.98   2X @3.79   FRIES \$7.58   2X @2.69   MEDIUM DRINK \$5.38   SUBTOTAL \$28.94   TAX1 \$2.53   CHECKS PAID \$31.47   TOTAL \$31.47   COUNTER 2 \$79568 00002

### **Sandwiches**

Great Harvest, classified as a "food" store



#### Jimmy John's, classified as a restaurant



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### **Sandwiches**

Great Harvest, classified as a "food" store

Tax Rate 7.25%

Great Hanen Bread Cov	)
BAKERY	
Great Harvest Bread Co. Taylo 6357 S Redwood Rd Murray, UT 84123	rsville
Opened: 09/20/2024 12:27 pm Closed: 09/20/2024 12:27 pm Order: 136245 Order Type: Dine In Name: Quick Sale Server: Kiri	Check: 1
1 Turkey Cobb Wheat As a- Whole	10.50
Subtotal Sales Tax Merchant Service Fee	10.50 0.76 0.32
Total	11.58
Visa 4881 (020741)	11.58
Balance Due	0.00
Customer copy	
Thank You!	
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#### Jimmy John's, classified as a restaurant

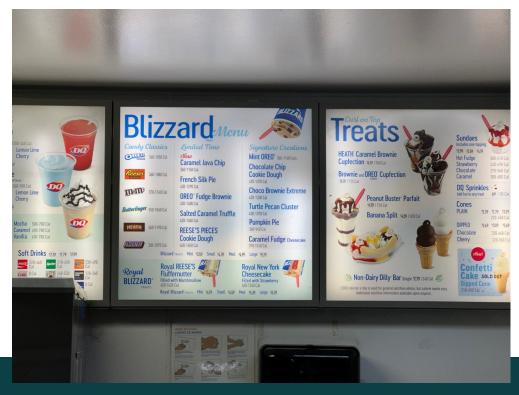
Tax Rate INSHOP 8.25% Jimmy Johns #2424 8989 South Redwood Rd 801-566-3665 )9-26-2024 Chk# 121 Open 2:02 PM kr 2 Reg# 1 2:02 PM 8.49 #16 Club Lulu ...WHEAT E-Z yellow mustard 8.49 Subtotal Sales Tax (8.25%) 0.70 -----Total \$ 9.19 \*\*\* PAID \*\*\* isa XX.4881 Amt: 9.19 Tip: 0.00 INSHOP rder Taker: Paige Chk# 121 Delivery charges are not distributed to employees as tips. Look up your Freaky Fast Rewards at jimmyjohns.com. Not a member? Sign up on the app

### Ice Cream

Macey's, sells custom soft serve cones, sundaes, and shakes next to food that's preprepared

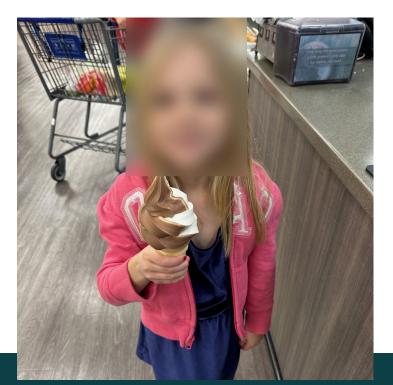


Dairy Queen, sells custom soft serve cones, sundaes, and shakes next to food prepared to order



### Ice Cream

Macey's, sells custom soft serve cones, sundaes, and shakes next to food that's preprepared



Dairy Queen, sells custom soft serve cones, sundaes, and shakes next to food prepared to order



### Ice Cream

Macey's, sells custom soft serve cones, sundaes, and shakes next to food that's pre-prepared

Sales Tax:

7.25%

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W	EST JORDAN			
STORE F PHARMACY	PHONE NUMBER: PHONE NUMBER	(801) 9 R: (801)	984-822 255-75	6 557
OREO SHAKE			4.99	T
194 SMALL CONE 1093			.95	Τ
	SUBTOTAL	2 5.	94	
	Tax 2		43	
	TOTAL	б.	3/	
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	*VISA*	б.	37	
EPS Response De 11/09/2024		14:44:07		
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Hode:				
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	50A000000000010030			
	000000000000000000000000000000000000000			
SI:		0000		
IRC:		00		
C:	1ACD5440	013822997		
ID: 608951	TID: 001 SEQ	318443		
otal:	l	USD\$ 6.37		
C	HANGE DUE		00	

Dairy Queen, sells custom soft serve cones, sundaes, and shakes next to food prepared to order

Sales Tax:

8.25%

1002 2
7:43:43 PM
\$2.39 \$2.39 \$3.59 \$0.00
\$8.37 \$0.69
\$9.06
\$9.06 \$9.06
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## **Fiscal Impact**

- To the state: No impact. Restaurant tax goes to counties
- To counties: Hard to predict because "Restaurants operating inside grocery stores" is not a category of data that the state currently collects. Fiscal note shows *potential* new revenue of \$1 million statewide.
- By comparison, total restaurant tax collections were \$86.8 million in FY24.

# No policy change

This bill respects the distinction between "prepared food" and "restaurants" that the legislature originally put in place. However, actors in the marketplace have been taking advantage of the current definition to avoid collecting the tax on restaurants that operate *in proximity to* "prepared food."

By updating the definition as proposed, we ensure that all restaurants are operating in the same tax environment and that state law doesn't advantage some taxpayers over others.