

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



Burgers

Just Burgers, operates inside Harmon's

Tax Rate

7.75%



Crown Burgers, operates in its own space

Tax Rate

8.75%



Sandwiches

Great Harvest, classified as a “food” store



Jimmy John's, classified as a restaurant



Sandwiches

Great Harvest, classified as a “food” store



Jimmy John's, classified as a restaurant



Sandwiches

Great Harvest, classified as a “food” store

Tax Rate

7.25%



Jimmy John's, classified as a restaurant

Tax Rate

8.25%



Ice Cream

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



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



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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.