



## Panic Shopping? – Sales Tax on Essentials

By Sharon Shore – Published on Thursday, April 9, 2020

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### **Sales Tax on Food**

If you, like me, are one of the few people who actually read through those grocery store cash register receipts, you might have noticed that sales tax is charged on some but not all of the things you buy. In this time of social distancing and stocking up on supplies, I thought it might be helpful to give a short explanation of what is or isn't taxable.

The general rule is that food that you need to cook or otherwise prepare before eating will be exempt from sales tax, while ready-to-eat food, such as a slice of pizza or a salad you put together at the salad bar, will be taxable. Here's another tip: if it's junk food or something unhealthy, it's probably – although not always - taxable as well. For example, real fruit juice (healthy!) is exempt, but if it contains less than 70% natural fruit juice (unhealthy!) then it is taxable. Trail mix (healthy!) is exempt, but trail mix with chocolate (unhealthy!) will be taxable.

Candy, including candy bars, chocolates, gum, and mints are taxable, but chocolate chips for baking are exempt because they are not ready-to-eat (although some of us might disagree with that!).

Which gets us to another point: it's not only what you buy, it's where you buy it. Potato chips and cookies are exempt from tax (exceptions to the healthy/unhealthy guideline) as long as you buy them at a grocery or convenience store. Anything you buy from a restaurant, deli, or snack bar will be taxable, even if it's the identical product, because those places are in the business of selling ready-to-eat food.

### **Sales Tax on Other Coronavirus Supplies**

Are hand sanitizers and antiseptic wipes taxable? Before Covid-19 they were just another item commonly found in women's purses alongside breath mints, chewing gum, and tissues. The short answer is: it depends.

In general, things that are medicated or medicinal are exempt, while things that are cosmetic in nature are taxable. So lip balm for chapped lips is exempt, but lip gloss is taxable. Sunscreen is exempt, but tanning lotion is taxable. The state not only looks at the product to determine whether it should be taxed, but also considers factors like its packaging, labeling, and how it is advertised.

The New York publication on the taxability of drugstore products doesn't mention hand sanitizers. There have been several advisory opinions issued on related products, which say the following:

- Antiseptic Gel, an opinion from 2002: A product was used for treatments of minor burns, scratches, etc., to help protect against infection. This qualified as exempt medicine under

section 1115(a)3 of the Tax Law. However, the opinion did not provide an explanation or analysis.<sup>1</sup>

- Antiseptic Towelettes, a 2006 opinion: Taxable, because they were used not only to disinfect hands but also to sterilize or disinfect other surfaces and equipment.<sup>2</sup>
- Antibacterial sanitizers, 2010: Taxable. An unnamed business that sold anti-bacterial gels, soaps, and sanitizers asked the state whether its products were exempt since its customers bought its products to avoid illness. The state looked at the labels on the products, which included things like leaving hands “lightly scented, deeply cleansed and feeling smooth and soft, while effectively fighting germs” and “feeling moisturized and looking younger, while effectively fighting germs.” These products were deemed to be primarily cosmetic and toilet articles, which are taxable. Having an added medicinal ingredient such as alcohol was not sufficient to change the essential nature of the product. Remember that trail mix that became taxable because it had chocolate in it? This is the reverse – a taxable toiletry that happens to have an added exempt antiseptic ingredient is still, according to New York State, a taxable toiletry.<sup>3</sup>

Bottom line: if the hand sanitizer is just hand sanitizer, without fancy labeling, and primarily for use by people, then it is probably exempt from tax. If it is scented, has lotion, or anything else that makes it more than just a hand sanitizer, it is probably taxable. If it has multiple uses, such as those disinfectant wipes which we use these days to clean the handle of our shopping carts, then it is taxable.

And in case you were wondering, toilet paper is always taxable!

Further references:

- Food: [www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/st/listings\\_of\\_taxable\\_and\\_exempt\\_food.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/listings_of_taxable_and_exempt_food.htm)
- Drinks: [www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/st/beverages\\_sold\\_by\\_food\\_stores.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/beverages_sold_by_food_stores.htm)
- Candy: [www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/st/candy\\_and\\_confectionery.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/candy_and_confectionery.htm)
- Drugstores and pharmacies: [www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/st/drugstores.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/drugstores.htm)

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<sup>1</sup> *Mannatech Incorporated*, July 25, 2002, TSB-A-02(36)S [www.tax.ny.gov/pdf/advisory\\_opinions/sales/a02\\_36s.pdf](http://www.tax.ny.gov/pdf/advisory_opinions/sales/a02_36s.pdf)

<sup>2</sup> *Moore Medical LLC*, April 16, 2006, TSB-A-06(13)S, [www.tax.ny.gov/pdf/advisory\\_opinions/sales/a06\\_13s.pdf](http://www.tax.ny.gov/pdf/advisory_opinions/sales/a06_13s.pdf)

<sup>3</sup> TSB-A-10(58)S, [www.tax.ny.gov/pdf/advisory\\_opinions/sales/a10\\_58s.pdf](http://www.tax.ny.gov/pdf/advisory_opinions/sales/a10_58s.pdf)