

ARTICLE IX

FOOD AND BEVERAGE TAX

SECTION:

8.901: Definitions

8.902: Imposition Of Tax

8.903: Collection Of Tax By Retailer

8.904: Books And Records

8.905: Transmittal Of Tax Collection

8.906: Penalties And Interest

8.907: Transmittal Of Excess Tax Collection

8.908: Enforcement; License Suspension, Revocation

8.909: Penalty

8.910: Effective Date

8.901: DEFINITIONS:

For the purposes of this article, unless the context otherwise requires, the following words or terms shall have the meanings respectively applied to them:

ALCOHOLIC LIQUOR: Alcoholic beverage or liquor as defined in chapter 13 of this code.

ALCOHOLIC LIQUOR FACILITY: Any establishment licensed under the provisions of chapter 13 of this code.

PERSON: Any individual, firm or corporation, representative or entity.

PREPARED FOOD:

A. Means and includes any solid, liquid (including both alcoholic and nonalcoholic liquid), powder or item used or intended to be used for human internal consumption, whether simple, compound or mixed and which has been prepared for immediate consumption.

B. "Prepared food" may be purchased for consumption within or upon the premises where it is sold or it may be purchased for consumption off the premises. However, with respect to food purchased for consumption off the premises where it is sold, "prepared food" does not mean or include any food which is sold in a closed or sealed bottle, can, carton or container of the manufacturer or wholesaler or which has not been prepared for immediate consumption.

PREPARED FOOD FACILITY:

A. Any person or establishment subject to licensing pursuant to chapter 11 of this code which sells at retail food which has been prepared for immediate consumption and whether or not such prepared food facility use is conducted along with any other use(s) in a common premises or business establishment.

B. A "prepared food facility" includes, but is not limited to, those establishments commonly called an inn, restaurant, eating place, drive-in restaurant, buffet, bakery, cafeteria, cafe, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, tavern, bar, cocktail lounge, soft drink parlor, ice cream parlor, tearoom, delicatessen, movie theater, mobile food or beverage or ice cream vehicle, hotel, motel, or club, or any other establishment which sells at retail food which has been prepared for immediate consumption.

C. A "prepared food facility" does not include churches, public or private schools, boarding houses, daycare centers, nursing homes, retirement centers or similar residential care facilities, or programs for the central preparation of meals to be delivered and consumed at private residences of invalids or the elderly, or other facilities of not for profit associations or corporations.

PURCHASE AT RETAIL: To obtain for use or consumption in exchange for consideration, whether in the form of money, credits, barter or any other nature, and not for resale.

RETAILER: A person who sells or offers for sale, for use or consumption and not for resale. (Ord. 3837, 9-15-1987; amd. Ord. 5732, 4-8-2009)

8.902: IMPOSITION OF TAX:

A tax, in addition to any and all other taxes, is hereby imposed upon the purchase of prepared foods and alcoholic liquor at retail at any prepared food facility or alcoholic liquor facility within the village, at the rate set forth in appendix A, division II of this code. The ultimate incidence of and liability for payment shall be borne by the purchaser. (Ord. 5346, 7-15-2003)

8.903: COLLECTION OF TAX BY RETAILER:

The owner and the operator of each prepared food facility and each alcoholic liquor facility within the village shall jointly and severally, have the duty to collect and account for said tax from each purchaser at the time that the consideration for such purchase

is paid.

If the owner or the operator is delivering prepared food through marketplace facilitators, at such an instance or instances, the marketplace facilitators along with the owner and operator, jointly and severally, have the duty to collect and account for said tax from each purchaser at the time that the consideration for such purchase is paid. The owner and operator may not have to pay the tax on the sale of prepared food occurring through the marketplace facilitators if the marketplace facilitator is collecting and remitting the food and beverage tax to the Village of Mount Prospect. (Ord. 3837, 9-15-1987; amd. Ord. 6585, 11-16-2021)

8.904: BOOKS AND RECORDS:

The owner, operator and marketplace facilitators of each prepared food facility and each alcoholic liquor facility within the village shall jointly and severally, have the duty to maintain complete and accurate books, records and accounts, showing the gross receipts for sales of prepared food and alcoholic liquor and the taxes collected each day, which shall be made available to the village for examination and for audit by the village upon reasonable notice and during customary business hours. (Ord. 3837, 9-15-1987; amd. Ord. 6585, 11-16-2021)

8.905: TRANSMITTAL OF TAX COLLECTION:

The owner, operator and marketplace facilitators of each prepared food facility and each alcoholic liquor facility within the village shall jointly and severally, have the duty to cause to be filed a sworn return with the finance director for each such facility and for each such licensed premises located in the village. Said return shall be prepared and submitted on forms prescribed by the village. Said return shall be filed with the village by the filing date and at the same time intervals or frequencies as the retailers occupation tax return, form RR-1-A., is due to be filed with the Illinois department of revenue. Said return shall also be accompanied by payment to the village of all taxes imposed by this article which are due and owing for the period covered by said return. Said return shall also be accompanied with a copy of the return filed with the Illinois department of revenue for sales within the village of Mount Prospect covering the same reporting period. (Ord. 3837, 9-15-1987; amd. Ord. 6585, 11-16-2021)

8.906: PENALTIES AND INTEREST:

If any tax imposed by this article is not paid when due, or any return is not filed when due, the interest and penalty provisions of sections 8.2009 and 8.2010 of this chapter shall be applied. (Ord. 5156-A, 12-19-2000)

8.907: TRANSMITTAL OF EXCESS TAX COLLECTION:

If any person collects an amount upon a sale not subject to the tax imposed hereby but which amount is purported to be the collection of said tax, or if a person collects an amount upon a sale greater than the amount of the tax so imposed herein and does not for any reason return the same to the purchaser who paid the same before filing the return for the period in which such occurred, said person shall account for and pay over those amounts to the village along with the tax properly collected. (Ord. 3837, 9-15-1987)

8.908: ENFORCEMENT; LICENSE SUSPENSION, REVOCATION:

Payment and collection of said tax and any payment penalty may be enforced by action in any court of competent jurisdiction and failure to collect, account for and pay over said tax and any payment penalty shall be cause for suspension or revocation of any village license issued for such prepared food facility or alcoholic liquor facility applicable to the premises thereof, all in addition to any other penalties in this article. Such suspension and revocation shall take place as follows:

The village manager or his designee shall notify the licensee in writing that if all violations of these provisions are not cured within seventy two (72) hours, that such license shall be suspended for a period of thirty (30) days or until all violations are cured, whichever comes first. If all violations are not cured within the thirty (30) day time period, the license shall be automatically revoked and may be reinstated only upon all violations being cured and upon the applicant proceeding as if a new license were being sought. The licensee shall have seventy two (72) hours from the time of the receipt of the aforesaid notice to appeal this suspension. In the case of a licensee possessing a business license for prepared food only, said appeal shall be to the village manager. In the case of a licensee holding a liquor license, said appeal shall be to the local liquor control commissioner. A hearing shall be had on the appeal within ten (10) days of the filing of the request for appeal. The only issue to be determined by the official hearing the appeal is whether or not violations of these provisions have occurred. If the official hearing the appeal is convinced by a preponderance of the evidence that a violation has occurred, then the suspension and revocation portions of this enforcement section shall be mandatory. No stays may be issued pending an appeal and no extensions of time may be granted as a result on an appeal. (Ord. 3837, 9-15-1987; amd. Ord. 3905, 3-1-1988)

8.909: PENALTY:

Any person found guilty of operating a prepared food facility or an alcoholic liquor facility within the village after being given notice of an order of suspension or revocation, shall pay a mandatory fine set forth in appendix A, division III of this code. (Ord. 5189, 5-15-2001)

8.910: EFFECTIVE DATE:

These provisions shall be in full force and effect as of November 1, 1987. (Ord. 3837, 9-15-1987)