

TAX TIPS FOR GROCERY SUPERMARKET CONDUCTING BUSINESS IN DELAWARE

Things You Should Know

Definitions *30 Del. C., Ch. 3, 5 and 21*

A retailer is every person engaged as owner or agent in the business of selling or exchanging goods for cash or barter or any other consideration on the assumption that the purchaser of such goods has acquired the goods for ultimate consumption and not resale; and includes automatic merchandising machine operators regardless of the product dispensed or vended, retail plant nurserymen and florists, hucksters, peddlers, trading stamp redemption stores, catalog stores and branch stores. The gross receipts of retailers who operate 'grocery supermarkets', defined below, are subject to a reduced gross receipt tax rate on the first \$2.0 million of receipts per month. Grocery supermarkets are permitted to include incidental sales of prepared foods, such as hot dogs, pizza, and salad bar items with their retail gross receipts. A separate restaurant retailer's license is not required. Additionally the receipts received from leasing videos, floor or carpet cleaning equipment may be included with the grocery supermarket retailer's gross receipts provided the retailer is registered as a 'lessor of tangible personal property' and the use/lease tax is collected from the lessor. See Lessors of Tangible Personal Property Tax Tips for additional information.

'Goods' includes merchandise, wares, metals, wood, liquids, gas, alcoholic beverages, motor vehicles, gems, products, produce, trees, shrubs, plants, flowers, crops, livestock, animals or any tangible personal property whether new or used.

A grocery supermarket must meet all of the following requirements:

- 1) The retail store must occupy more than 6,000 square feet. For purposes of meeting the square footage requirement, all areas in which the public may view and select products for sale shall be considered retail space. All common areas, such as, aisles, displays, interior shopping cart storage and areas for paying for purchases shall be considered retail space. All areas in which public access is restricted shall not be considered retail space. Multiple retail stores where the individual square footage is less than 6,000 but whose cumulative square footage is greater than 6,000 square feet do not qualify as a grocery supermarket.
- 2) The primary business is selling food at retail for human consumption. For purposes of this requirement, the word 'primary' shall mean at least 90% of the sales must be at retail.
- 3) The retail store must have at least 12,000 different food stock units (SKU's) available for retail sale.
- 4) At least 90% of the sales of food items must be in a form not immediately consumable. 'Not immediately consumable' means any product purchased at a grocery store that is intended for consumption at home and which requires some preparation or cooking prior to consumption. By statute, the following products shall be considered 'not immediately consumable': frozen ice cream, frozen or refrigerated yogurt, all fresh fruits and vegetables, deli products sold by the pound or packaged on the shelf, cooked shrimp or other seafood sold by the pound, bottled or canned sodas including bottled water, all snack foods such as potato chips, cookies and packaged candies, refrigerated dairy products, bakery goods, dry foods sold by the pound and any other food item that is generally consumed at home. Gross receipts includes total consideration received by a retailer for all goods sold or services rendered within the State. Consideration for goods sold or services rendered includes cash, checks, credit cards, gift certificates, travelers checks, money orders, barter, trade-ins, manufacturer's coupons and rebates and any other consideration of any kind.

Gross Receipts Do Not Include:

- Tobacco products tax or motor fuel taxes paid or payable to the State of Delaware
- Returned merchandise
- Like kind exchanges
- 'In Store' or 'Doubling' of manufacturer's coupons
- Certain sales to the State of Delaware which are administered by the Department of Administrative Services

Gross Receipts May Not be Reduced By:

- Cost of property sold
- Cost of material and/or labor
- Interest, discount or delivery costs
- State or Federal taxes

License and Gross Receipts Requirements

All persons meeting the above qualifications shall be considered a Grocery Supermarket Retailer subject to the following provisions; and shall not be subject to the provisions of §2905 as a general retailer. A grocery supermarket is required to obtain a business license -- \$90 for the first location and \$40 for each additional location -- which must be renewed annually on or before December 31st of each year. Additionally, every grocery supermarket must pay a gross receipts tax at the rate of .33% (.0033) of aggregate gross receipts per month from selling tangible personal property. The first \$100,000 of gross receipts received per month (\$300,000 per quarter) are exempt from the gross receipts tax. Gross Receipts should be filed on-line at www.revenue.delaware.gov or you can obtain a paper form from the same website. To register with the Division of Revenue and obtain a business license, please complete a Combined Registration Application, available on the Internet, and mail to the Division of Revenue with the appropriate fee or you can file on-line at our OneStop site which can also be accessed from the link above.

SPECIAL NOTE: ALL SALES TO THE STATE OF DELAWARE, THE UNITED STATES AND THEIR INSTRUMENTALITIES, AGENCIES AND POLITICAL SUBDIVISIONS ARE CONSIDERED WHOLESALE SALES.

Tax Rates and Exclusions

	Tax Rate	Monthly Exclusion
Grocery Supermarket Retailer	.0033	\$100,000

Sample Calculation

Line 1	Total Gross Receipts	\$7,500,000
Line 2	Less Exclusion	<u>100,000</u>
Line 3	Taxable Gross Receipts	\$7,400,000
Line 4	Line 3 X .0033	24,420
Line 5	Approved Tax Credits	0
Line 6	Tax Due	24,420

(Note: Delaware requires that tax due be rounded-off to the nearest dollar amount.)

Due Dates of Returns

New licensees will file on a quarterly basis through their first calendar year. The Division of Revenue will then perform a 'lookback' procedure and determine if the filing frequency should be changed.

Monthly Filers	20 th day of the following month
Quarterly Filers	last day of the first month after the end of the calendar quarter.

Gross Receipts Tax Exemption

Gross receipts (and for purposes of the tax imposed by Chapter 43, Title 30 of the Delaware Code "rent" and "lease rental payments") from transactions between related entities are not subject to gross receipts tax. For this purpose, entities are "related" only if (i) the same five or fewer natural individuals own, directly, indirectly or beneficially, 80% or more of each entity, or (ii) 100% of each entity is owned by member or members of a single family. See Section 2120(b) of Title 30 of the Delaware Code for further details, including the definition of family member for purposes of this exclusion.

Common Ownership/Direction

A business that operates through more than one branch or legal entity is only entitled to one monthly or quarterly exclusion from gross receipts, if the branches or entities making up the enterprise have common ownership or common direction and control

Caution Concerning Multiple Exclusions

Nearly all licensees are permitted to reduce their monthly or quarterly gross receipts by certain specific exclusions in determining their taxable gross receipts. The Delaware Code limits the number of allowable exclusions for each general business activity. A taxpayer conducting a business activity for which an exclusion is provided is entitled to **ONLY ONE** monthly or quarterly exclusion regardless of the number of locations at which such activity is conducted. For example, a taxpayer who operates multiple convenience stores at which gasoline is also sold should aggregate the receipts from all goods sold at all locations and subtract only one monthly exclusion. Separate retail licenses are not required for the sale of food and petroleum products. While the Division of Revenue may assign a unique business code which reflects the primary product sold, retailers, wholesalers and manufacturers may sell or manufacture multiple product lines without obtaining a separate license for each product line. However, separate licenses are required and separate exclusions are permitted if a taxpayer conducts more than one **ACTIVITY**, such as retailing and wholesaling.

Regulatory and Local Requirements

The Business License Issued by the Division of Revenue is not a regulatory license and the issuance of such license does not attest to the qualifications of the applicant to perform the activity described on such license. Many local jurisdictions have requirements for a business license and may have restrictions concerning the locations of conducting the referenced business activity. Please check with the local government office in the town, city or county in which you will conduct your business.

The State of Delaware also has a Division of Professional Regulations. Many occupations and some types of equipment have regulatory requirements. Please contact the Division of Professional Regulation for more information.

General

If you have any questions, please contact one of the following offices

<i>Wilmington</i>	<i>Dover</i>	<i>Georgetown</i>
Division of Revenue Carvel State Office Building 820 North French Street Wilmington DE 19801 (302) 577-8205	Division of Revenue Thomas Collins Building 540 South DuPont Highway Suite 2 Dover DE 19901 (302) 744-1085	Division of Revenue 20653 Dupont Blvd. Suite 2 Georgetown DE 19947 (302) 856-5358

or by e-mail at: stephen.seidel@state.de.us (302) 577-8455

File Gross Receipts On-line:
www.grossreceiptsfiling.delaware.gov

or

Print an Interactive Gross Receipts Coupon:
http://www.revenue.delaware.gov/services/Business_Tax/Forms_New.shtml#gr