



## Tax Department Policy on the Application of Sales Tax to Food and Beverages Served in Funeral Establishments

This memorandum:

- explains recently enacted legislation that permits a funeral establishment to serve food and nonalcoholic beverages in connection with a funeral service, and
- describes how New York State sales and use taxes apply to purchases and sales of those items by funeral directors.

Chapter 101 of the Laws of 2016 amended the Public Health Law to permit a funeral establishment (funeral home) to allow incidental food and nonalcoholic beverages to be served in the funeral home in connection with a funeral, wake, calling hours, or other type of memorial service (funeral service). The new law takes effect **January 17, 2017**.

The new law permits a funeral home to provide space, facilities, equipment, or supplies for the preparation, sale, service, distribution, or consumption of the following items in the funeral home in connection with a funeral service:

- nonalcoholic beverages,
- incidental refreshments (such as baked goods, sandwiches, snacks, and platters), or
- items required by the religious practice of the deceased person or the deceased person's family.

The new law also allows funeral homes to permit catered food service in connection with a funeral service as long as the caterer is not owned by or affiliated with the funeral home. The activities of funeral home employees or catering employees are specifically limited to preparing the beverages and serving the incidental refreshments and beverages.

### Purchases and sales by funeral directors

The charge by a funeral director for a funeral service is not subject to sales tax. This includes any charge for tangible personal property (such as a casket) used in performing such service. Accordingly, any charge for food and drink that is included in the charge for a funeral service is also not subject to sales tax.

However, any tangible personal property (such as soda, bottled water, or cups, plates, and napkins) purchased by a funeral director for use in the performance of a funeral service may not be purchased for resale and is subject to sales tax. In addition, purchases by a funeral director of taxable food items such as cold cut platters, dessert trays, or sandwiches are subject to sales tax.

Purchases of catering services by a funeral director are also subject to sales tax, unless the caterer merely delivers the items purchased, without any other services after delivery. In that case, the items are considered to be food and beverages sold for off-premises consumption and

are taxed depending on the nature of each item. See Tax Bulletin [Sales by Restaurants, Taverns, and Similar Establishments \(TB-ST-806\)](#).

**Example:** *A funeral director purchases bottled water, soda, cups, napkins, plates, and a tray of cookies from a local supermarket. These items will be available during a wake at the funeral home. The funeral director must pay sales tax on these items at the time of purchase. Any charge to the customer to cover the funeral director's expense for providing food and beverages as part of the funeral service is not subject to sales tax, even if the charge is listed on the invoice as a separate line item.*

**Example:** *A funeral director purchases catering services from XYZ Catering Company. The caterer will prepare and serve sandwich platters, fruit and vegetable trays, hot coffee, and bottled water during a memorial service at the funeral home. The funeral director must pay sales tax on the charge for the catering services. Any charge to the customer to cover the funeral director's expense for the catering services is not subject to sales tax, even if the charge is listed on the invoice as a separate line item.*

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