

ARTICLE 7. FOOD AND BEVERAGE TAX

Sec. 13-7-1. 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:

A. "Prepared Food".

1. "Prepared Food" means and includes any solid, liquor (including both alcoholic and non-alcoholic 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.
2. "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 wholesale or which has not been prepared for immediate consumption.

B. "Alcoholic Liquor" means any spirits, wine, beer, ale or other liquid containing more than one-half of one percent of alcohol by volume, which is fit for beverage purposes.

C. "Person" means any individual, firm or corporation, representative or entity.

D. "Purchase at Retail" means to obtain for use or consumption in exchange for a consideration, whether in the form of money, credits, barter or any other nature, and not for resale.

E. "Retailer" means a person who sells or offers for sale, for use or consumption and not for resale.

F. "Prepared Food Facility".

1. "Prepared Food Facility" means any person or establishment subject to licensing under Chapter 8, Licenses, of the Hoffman Estates Municipal Code, which sells

at retail food prepared for immediate consumption with provided seating for on premise consumption of said food, whether consumed on premises or not, and whether such prepared food facility use is conducted along with any other use(s) in a common premise or business establishment or not.

2. A "Prepared Food Facility" includes but is not limited to those establishments commonly called a restaurant, eating place, drive-in restaurant, buffet, bakery, cafeteria, cafe, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, bar, cocktail lounge, soft drink parlor, ice cream parlor, tea room, delicatessen, hotel, motel, or club, or any other establishment which sells at retail, food which has been prepared for immediate consumption.
3. A "Prepared Food Facility" does not include churches, public or private schools, boardinghouses, day care centers, hospitals, 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 and which are not presently subject to the State Retailers' Occupation Tax. A facility shall be "included" as a facility under sub-section F-2 above if it fails to meet all criteria above.

G. "Alcoholic Liquor Facility" means any establishment licensed under the provisions of Chapter 8, Alcoholic Liquors, of the Hoffman Estates Municipal Code and that sells alcoholic liquor at retail.

Sec. 13-7-2. Imposition of tax.

Effective as of and commencing on the 1st day of January 1, 2006, a tax, in addition to any and all other taxes, is 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 of two

percent of the purchase price of such Prepared Food and Alcoholic Liquor. The liability for payment of the tax shall be borne by the purchaser. (Ord. No. 3780-2005, § 1, 12-5-05)

Sec. 13-7-3. 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.

Sec. 13-7-4. Books and records.

The owner and operator 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.

Sec. 13-7-5. Transmittal of tax collection.

The owner and operator 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 for each such licensed premises located in the Village. Said return shall be prepared and submitted in forms prescribed by the Village. Said returns shall be filed with the Village by the 20th day of each month. 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 the return. The return shall also be accompanied with a copy of the return filed with the Illinois Department of Revenue for sales within the Village of Hoffman Estates covering the same reporting period. The holder of a Class C Alcoholic Retail Dealer's License, issued by the Village, shall file the return and pay the tax, if any, imposed by this Article within 14 days of the expiration of the Class C License.

Sec. 13-7-6. Late payment penalty.

If any tax imposed by this Article is not paid when due, a late payment penalty equal to two percent of the unpaid tax shall be added for each month, or any portion thereof, that such tax remains unpaid, and the total of such late payment penalty shall be paid along with the tax imposed by this Article.

Sec. 13-7-7. Transmittal of excess tax collections.

If any person collects an amount in excess of the tax imposed by this Article, but which amount is purported to be a collection thereof, and does not return the same to the purchaser who paid the tax, the person who collected the tax shall account for and pay over those excess amounts to the Village along with the tax properly collected.

Sec. 13-7-8. Enforcements.

Payment and collection of the tax imposed by this Article and any late payment penalty may be enforced by an action in any court of competent jurisdiction. The failure to collect, account for, and pay over the tax imposed by this Article, including any late payment penalty, shall be cause for suspension or revocation of any Village license issued pursuant to Chapter 8, Licenses, of the Hoffman Estates Municipal Code.

Sec. 13-7-9. Penalty.

A. Any person failing or omitting to pay said tax when due or failing or omitting to collect, account for or pay over said tax, together with any late payment penalty, or failing to maintain or allow the examination of the required records shall, in addition to any other payment penalty or fee provided by law, be fined not less than \$50.00 nor more than \$500.00 for each offense, and each day a violation continues shall be considered a separate and distinct violation.

B. Any person failing or omitting to pay said tax when due or failing or omitting to collect, account for or pay over said tax, together with any late payment penalty, or failing to maintain or allow the examination of the required records shall, in addition to any other payment, penalty

or fee provided by law be required to pay a hearing fee if a hearing is required under Section 8-1-14 of the Hoffman Estates Municipal Code to show cause why the business license should not be revoked. Such fee shall be \$100.00 for each hearing, but \$250.00 if it is the second such hearing in 12 months and \$500.00 if it is the third or more such hearing in 12 months. Such fee shall be required under any circumstance causing such hearing to be scheduled whether or not the person pays said tax or not subsequent to the notice of the hearing.

(Ord. No. 3941-2007, § 1, 8-6-07)

Sec. 13-7-10. Confidentiality.

All information received by the Village from returns filed pursuant to this Article or from any investigations conducted pursuant to this Article, except for official Village purposes, or as required by the Freedom of Information Act, shall be confidential.