

Punching the Meal Ticket: Local Option Meals Taxes in the States

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Key Findings

- Meals taxes are special taxes that apply to purchases of prepared foods for immediate consumption, and not just to meals eaten in a restaurant. They do not, however, apply to groceries or other non-prepared foods.
- Twenty states and the District of Columbia authorize meals taxes. Of these, 17 exclusively authorize local option meals taxes, one imposes a state meals tax and provides for local option meals taxes, and three only collect meals taxes at the state or District-wide level.
- Three states require voter approval to adopt meals taxes, while sixteen states and the District of Columbia levy meals taxes statutorily or permit localities to adopt them by ordinance. Rates are typically, but not always, capped.
- Meals taxes introduce complexity, place local restaurants at a competitive disadvantage, and fail the “benefit test” of public finance, where the cost of a tax is incurred by those receiving the services funded by that tax.
- Voters frequently reject meals taxes when they are placed on the ballot.

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Introduction

When it comes to special taxes, twenty states and the District of Columbia put (prepared) food on the table. Local governments tend to favor meals taxes as a way to raise additional revenue outside of traditional sources of local tax collections, like the property tax, and one that can be exported, to some extent, to non-residents. Enthusiasm for meals taxes may be particularly strong in tourist destinations, college towns, and other localities where a substantial portion of the tax burden can be exported to out-of-town visitors.

Voters, however, have sometimes been less sanguine about taxing restaurant meals, frequently rejecting them in the three states which require their assent. In Virginia, where county food and beverages taxes must be adopted by referendum, voters have rejected the imposition of a meals tax 47 of the last 60 times a proposal gone to a vote, with 57.4 percent of all votes on these ballot issues cast against adopting a meals tax.¹ In Oregon, where voter input is also required, only two meals tax proposals—both in tourist communities—have succeeded.² Some Vermont communities have adopted meals taxes at town meetings, but many have turned them down—including, decades ago, Burlington’s rejection of a meals tax proposed by then-mayor Bernie Sanders.³

Meals taxes generally apply to purchases of prepared foods for immediate consumption, either in a restaurant or similar eating establishment or as a carryout meal. A typical meals tax would apply equally to a dine-in restaurant meal, an order at a fast food establishment, and the hot food bar at a grocery delicatessen. Such taxes do not, however, apply to the sale of groceries or other non-prepared foods not intended for immediate consumption. In fact, whereas prepared foods are frequently subject to both a meals tax and the general sales tax, groceries are often exempt from both.

Meals taxes are often rationalized as a “luxury tax” even though prepared foods are popular with individuals across the income spectrum, and sometimes justified as a tax that will fall disproportionately on tourists and other visitors. Consequently, meals taxes are popular with local governments, but they increase tax complexity and have the potential to place local restaurants at a competitive disadvantage.

1 See Virginia Department of Elections, Elections Database, County/City Questions, 2000-2016, http://historical.elections.virginia.gov/ballot_questions/search/year_from:2000/year_to:2016/text:food. Although Virginia’s counties are generally required to put meals taxes to a referendum, cities and towns are not under similar constraints.

2 Lily Raff, “Sales Tax Islands,” *[Central Oregon] Bulletin*, May 25, 2008, <http://www.bendbulletin.com/entertainment/restaurants/1457291-151/sales-tax-islands>.

3 “Nobody Wins on Tax Votes,” *The Vermont Vanguard*, June 11, 1982.

State Meals Tax Laws

Twenty states and the District of Columbia authorize meals taxes.⁴ Of these, 17 exclusively authorize local option meals taxes, one (Vermont) imposes a state meals tax and provides for local option meals taxes, and two (Maine and New Hampshire) only collect meals taxes at the state level. The District of Columbia also has a district-wide meals tax. Whereas meals taxes in Oregon, Vermont, and Virginia must be approved by the voters, local option taxes on food and beverages can be adopted by ordinance or are provided for statutorily in fifteen other states. And where ten states allow localities to set their own rates, typically subject to a cap, eight establish the local option rate by statute.

The states' distinctive approaches are even more pronounced in the scope of their meals tax authorizations. Some, like Massachusetts and South Carolina, permit all local governments to adopt a tax on prepared foods, while others, like Utah, limit the authority to one kind of jurisdiction (e.g., counties). Several states restrict meals tax authority to select localities or municipalities, either through an explicit enumeration of qualifying tax authorities or by setting conditions on local government eligibility. A few, like Illinois and New Jersey, limit meals tax authority to a single locality or even a specific tax authority.

Table 1.

Meals Tax Authorities by State, with Rate and Method of Adoption

State	Taxing Authorities	Method	Rate
Arkansas	Select cities and counties, incorporated towns	Ordinance	Up to 3%*
Florida	Counties, select resort cities and town	Ordinance	1%
Illinois	Metropolitan Pier and Exposition Authority	State Statute	1%
Indiana	Select counties and municipalities	Ordinance	1%
Kentucky	Select cities	Ordinance	Up to 3%
Louisiana	Two specified taxing districts	State Statute	0.5 – 0.75%
Maine	Statewide tax	State Statute	2.5%
Maryland	Select resort areas	Ordinance	Up to 1%
Massachusetts	All localities	Ordinance	Up to 0.75%
Michigan	Select localities	Ordinance	Up to 1%
New Hampshire	Statewide tax	State Statute	9%
New Jersey	Cape May County only	Ordinance	2%
Oregon	Select local governments	Referendum	No cap
Rhode Island	Uniform local meals tax	State Statute	1%
South Carolina	All counties and municipalities	Ordinance	Up to 2%
Utah	All counties	Ordinance	Up to 1%
Vermont	Statewide tax + option for all municipalities	Town Meeting	Up to 10%
Virginia	All counties	Referendum [†]	Up to 4%
	Cities and towns with general tax authority	Ordinance	No cap
Washington	King County	Ordinance	0.5%
Wisconsin	Exposition districts and resort areas	Ordinance	Up to 0.5%
District of Columbia	District-wide	Ordinance	4.25%

* Four percent in the city of Little Rock, Ark.

† Five counties are statutorily authorized to adopt meals taxes by ordinance.

4 Although nothing prohibits localities in states which can set the base of their local option sales taxes from establishing a base that consists solely of prepared foods, there are no examples of localities adopting this approach, and such possibilities are neglected in considering states which vest local governments with the authority to levy meals taxes.

Arkansas: In Arkansas, first and second class cities and incorporated towns may adopt hospitalities taxes on, among other things, restaurant gross receipts, at rates up to three percent. Counties containing cities and towns levying such taxes may impose their own hospitality taxes on the same base, at up to the same rates as their municipalities.⁵ The city of Little Rock is granted an additional one percent rate as a city possessing a city park of at least 1,000 acres.⁶

Florida: Counties are permitted to adopt local option food and beverage taxes by ordinance. They may be imposed, separately, on meals served at hotels and motels at a rate of 2 percent, or on meals served at restaurants and other establishments licensed to serve alcohol at a rate of 1 percent (either or both).⁷ A separate municipal resort tax is available to select cities and towns, allowing them to tax meals at any rate up to 2 percent.⁸

Illinois: In Illinois, only the Metropolitan Pier and Exposition Authority, a municipal corporation created by the Illinois General Assembly which owns a section of Chicago lakefront featuring a convention center, a luxury hotel, and the historic Navy Pier, imposes a meals tax, statutorily provided for at a rate of 1 percent.⁹

Indiana: Select Indiana counties and municipalities possess statutory authorization to impose food and beverages taxes at a rate of 1 percent. Twelve counties are currently authorized to levy meals taxes, along with select municipalities.¹⁰ Each county levying the tax has its own specific statutory authority, although some municipalities are authorized on the basis of population.¹¹

Kentucky: Cities that were classified as cities of the fourth or fifth class as of January 1, 2014, may adopt a restaurant tax at a rate not to exceed 3 percent.¹² These designations apply to 222 cities in the Commonwealth.¹³

Louisiana: Meals taxes are levied in New Orleans and East Baton Rouge under specific statutory authority for the Bluebonnet Convention Hotel Taxing District,¹⁴ a tax increment financing district in East Baton Rouge,¹⁵ and the New Orleans Exhibition Hall Authority. The tax on prepared foods is 0.5 percent on restaurants with sales between \$200,000 and \$499,999 and 0.75 percent on sales of \$500,000 or more.¹⁶

5 A.C.A. § 26-75-602.

6 *Id.*

7 West's F.S.A. § 212.0306.

8 The Florida Legislature, "Florida Tourism Taxes – Description," Report on Florida's Tourism Related Taxes, 2001, <http://www.leg.state.fl.us/publications/2001/house/reports/tourism/pdfs/descrip.pdf>, 1.

9 70 ILCS 210/13.

10 IC 6-9-1-0 *et seq.*

11 IC 6-9-27-1.

12 KRS § 91A.400.

13 Kentucky Department for Local Government, "DLG Historical City Classes," 2015, <https://kydlgweb.ky.gov/Documents/Cities/Kentucky%20City%20Name.pdf>.

14 LSA-R.S. 33:9038.63.

15 City of Baton Rouge and Parish of East Baton Rouge, "2016 Annual Operating Budget," <https://www.brgov.com/dept/finance/pdf/2016%20Budget/16%20-%20Understanding%20the%20City-Parish%20Budget.pdf>, 50.

16 Louisiana Department of Revenue, "NOEHA – New Orleans Exhibition Hall Authority," <http://revenue.louisiana.gov/SalesTax/NewOrleansExhibitionHallAuthority>.

Maine: Although Maine does not impose a separate meals tax, its state sales tax is imposed at higher rates on select transactions, including the sale of liquor and meals at licensed establishments. The tax is imposed on meals at a rate of 8 percent, whereas the general sales tax rate is 5.5 percent, yielding what can be understood as a 2.5 percent meals tax.¹⁷

Maryland: The six counties that have chosen to adopt home rule government, known as “code counties,”¹⁸ are permitted to impose a tax of up to 1 percent on the sale of prepared foods and beverages within resort areas.¹⁹ State statutes define resort areas as places designated by the county commissioners as having “an unusual influx of visitors” due to natural, scenic, or manmade attractions or development, and thus requiring municipal services in “unusual number or magnitude.”²⁰

Massachusetts: All cities and towns in Massachusetts are authorized to adopt a local sales tax upon restaurant meals at a rate of 0.75 percent. The tax is collected along with the state sales tax, with revenues disbursed to cities and towns on a quarterly basis or more frequently.²¹

Michigan: In Michigan, local governing bodies are empowered to levy excise taxes on the privilege of operating various businesses, including restaurants and other sellers of prepared foods and beverages. State statutes authorize a tax of up to 1 percent on gross receipts from the sale of food and beverages for immediate consumption.²²

New Hampshire: While the Granite State foregoes a general sales tax, it does impose a statewide meals tax of 9 percent.²³ The revenue is maintained by the state and is not distributed to localities.

New Jersey: State law provides for a tax on “predominantly tourism related retail receipts,” including restaurant meals, exclusively in municipalities within Cape May County. The tax is authorized at a rate not to exceed 2 percent.²⁴

Oregon: State law is silent on meals taxes *per se* and the state has no general sales tax, but select local governments possess broad authority to adopt taxes by appeal to the voters. Two municipalities—the tourist communities of Ashland and Yachuts—have adopted meals taxes by referendum.²⁵

17 36 M.R.S.A. § 1811.

18 Maryland State Archives, “Maryland at a Glance,” Maryland Manual On-Line, <http://msa.maryland.gov/msa/mdmanual/01glance/html/govern.html>.

19 MD Code, Local Government, § 20-602.

20 *Id.*

21 M.G.L.A. 64L § 2.

22 M.C.L.A. 207.752.

23 N.H. Rev. Stat. § 78-A:6. Meals valued at less than \$0.36 are untaxed, and meals valued between \$0.36 and \$1.00 inclusive are taxed according to a schedule, with all charges of \$1 or more taxed at a rate of 9 percent on the entire transaction.

24 N.J.S.A. 40:54D-4. Technically, the tax is authorized for contiguous municipalities adopting substantially similar ordinances in any county of the sixth class, but Cape May County is the state's only county of the sixth class.

25 Lily Raff, “Sales Tax Islands.”

Rhode Island: A uniform local meals tax of 1 percent is imposed on every meal and beverage sold in an eating or drinking establishment in Rhode Island. The tax is collected by state government, with revenues remitted back to the originating locality at least quarterly.²⁶

South Carolina: All local governing bodies are authorized to adopt, by ordinance, a local hospitality tax on food and beverages at a rate of up to 2 percent. Counties may not impose the tax at a rate in excess of 1 percent within the boundaries of any municipality without the consent of the municipality's governing body.²⁷

Utah: Counties are permitted to impose a tax at a rate not to exceed 1 percent on food and alcoholic beverages sold at restaurants.²⁸

Vermont: The state of Vermont imposes a 9 percent state tax on meals and a 10 percent state tax on alcohol sold at restaurants.²⁹ Additionally, municipalities are permitted to impose local option taxes, at a rate of 1 percent, on any combination of general sales, meals and alcoholic beverages, and rooms, bringing the total rate to 10 percent on meals and 11 percent on alcoholic beverages in localities which elect, by town meeting, to impose the tax on meals and beverages.³⁰ Nineteen municipalities currently tax meals and alcoholic beverages.³¹

Virginia: Counties in Virginia are authorized to levy a food and beverage tax at a rate of up to 4 percent with the approval of the voters by referendum. The referendum may be certified for the ballot by resolution of a county board of supervisors or by a petition signed by at least 10 percent of registered voters.³² Five counties, however, have been statutorily exempted from the referendum requirement and can adopt meals taxes by ordinance,³³ as can cities and towns with general taxing powers. Cities and towns are not subject to the rate cap.³⁴ County meals taxes only apply within the boundaries of towns contingent upon the approval of the town's governing body, and are not levied within the boundaries of any town which imposes its own meals tax.³⁵

Washington: State statutes permit a special stadium sales and use tax on food and beverages sold by eating establishments in counties with a population of at least one million, a distinction which currently belongs exclusively to King County, of which Seattle is the county seat. A rate of up to 0.5 percent is authorized, with proceeds dedicated to the retirement of stadium bonds.³⁶

26 R.I. Gen.Laws 1956, § 44-18-18.1.

27 S.C. Code 1976 § 6-1-720.

28 U.C.A. 1953 § 59-12-603.

29 32 V.S.A. § 9241.

30 24 V.S.A. § 138.

31 Vermont Department of Taxes, "Local Option Tax: What Is It and When Does It Apply?," http://tax.vermont.gov/sites/tax/files/documents/LocalOptionTax-FS_Rev2015.pdf; and *Id.*, "Participating Localities: Local Option Sales Tax," <http://tax.vermont.gov/business-and-corp/sales-and-use-tax/local-option-tax/municipalities>.

32 VA Code Ann. § 58.1-3833.

33 *Id.*

34 VA Code Ann. § 58.1-3840.

35 Fairfax County Government, "Meals Tax in Fairfax County," May 2014, <http://www.fairfaxcounty.gov/mealstax/meals-tax-white-paper-may-2014.pdf>, 3.

36 West's RCWA 82.14.360.

Wisconsin: Local exposition districts are authorized to levy local food and beverage taxes.³⁷ The standard rate is 0.25 percent, but by a vote of the district's board, the rate can be set at 0.5 percent.³⁸ Premier resort areas are also permitted to impose a meals tax at a rate of 0.5 percent.³⁹

District of Columbia: The District of Columbia imposes two separate sales taxes on prepared food and beverages sold in the District, at 9 and 1 percent respectively, in lieu of the District's general sales tax rate of 5.75 percent. This yields a 4.25 percent sales tax, above and beyond the general sales tax rate, exclusively on prepared food and beverages for immediate consumption.⁴⁰

Considerations in Local Meals Taxation

Although local governments sometimes see meals taxes as an attractive additional revenue stream, they tend to be frowned upon by economists and public finance experts. This is primarily because meals taxes do not accord well with the "benefit test" for taxation, which asks whether those paying a tax also receive the benefits which flow from the resulting governmental expenditures. Out-of-town visitors dining at local restaurants do not stand to benefit from the funding of most local projects and priorities.

Similarly, there is nothing inherent in the concept of eating prepared foods that intuitively merits a higher level of taxation. The consumption of prepared foods does not impose increased costs on society or necessitate government programs which might require a dedicated funding stream.

Such taxes also contribute to tax complexity, as it is not always readily apparent what constitutes a prepared meal for purposes of taxation. While restaurant meals are usually (though not always) straightforwardly taxable, the applicability of the tax to other prepared foods is not always so clear. Whereas a cooked rotisserie chicken sold in a grocery store would be subject to meals taxes in most states as prepared food for immediate consumption, in select states, meals taxes can apply to a broader category of foods, including snacks and candies.⁴¹ Food prepared in a locality without a meals tax and delivered into one which imposes a meals tax may also be subject to a meals tax. In some cases, non-prepared food purchases sold along with prepared foods, or purchased from an establishment that prepares or delivers food for immediate consumption, may also be subject to the tax.⁴²

³⁷ W.S.A. 77.98.

³⁸ W.S.A. 77.981.

³⁹ W.S.A. 77.994.

⁴⁰ DC ST § 47-2002 *et seq.*

⁴¹ See, e.g., Wisconsin Department of Revenue, "Local Exposition Taxes," Dec. 16, 2015, <https://www.revenue.wi.gov/faqs/pcs/expo.html>.

⁴² See, e.g., M.C.L.A. 207.752.



Conclusion

When put to the voters, local meals taxes are frequently rejected. They do, however, enjoy broad utilization in the fifteen states where localities may adopt meals taxes by ordinance. Given the absence of a clear public finance rationale for meals taxes, policymakers in states with local initiative and referenda processes should consider requiring voter approval to adopt such taxes.