

Don't Lose Your  
Restaurant Because  
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## Don't Lose Your Restaurant Because of Unpaid Taxes: *Three Things You Need to Know*

A recent [article](#) in the Albany Times Union noted the high number of restaurants that shut down every year for nonpayment of sales or withholding taxes. Based on an analysis of media coverage, restaurants seem to be seized more often than other types of businesses. This may be, in part, a result of the unique challenges of operating a restaurant. Many restaurateurs fall behind on their taxes due to the constant cash flow issues and low profit margins characteristic of the industry. However, if they fail to address their tax issues promptly, restaurant owners risk losing their businesses.

Here are a few key points restaurant owners must know:

### **1. Food and food products are subject to complex tax rules.**

Generally, food and food products are exempt from sales tax under New York law (NY Tax Law §1115). However, the sales of food and food products prepared by restaurants and similar establishments are subject to sales tax in certain circumstances. In addition, issues can arise when restaurants offer patrons or employees food or drink "on the house." Even when consumers or employees are not charged for food or drink, New York still subjects the provision of same is still subject to a "use tax." The use tax is "imposed on the use of taxable items and services in New York when sales tax has not been paid." As a result, a New York restaurant is responsible for the payment of tax even on food or drink provided gratis, by virtue of the fact that same is used or consumed within the state.

For more information, see the New York State Department of Taxation and Finance's [guidance](#) on when sales by Restaurants, Taverns and similar establishments are taxable.

### **2. Keeping accurate and detailed records of sales is a must.**

Recordkeeping is critically important for a restaurant. Poor records can make it difficult to challenge an audit and the combination of a sales tax audit and inadequate



recordkeeping could result in serious financial consequences to both a restaurant and its owner.

New York State Tax Law sets forth a number of requirements relating to business records. The law provides that business records should be sequentially numbered and dated, that checks and cash register tapes must be kept for at least three years after the due date of the related return or the date the return is filed, whichever is later, and that records must have be sufficiently detailed and document the taxable (or non-taxable) nature of each item sold. It is also important to keep any and all records proving that the business has collected and paid the correct taxes due.

### **3. Consequences for failing to collect and/or remit sales tax are severe.**

Penalties and interest as high as 14.5 percent may be imposed for failing to pay sales tax. A business may also have its Certificate of Authority revoked or face criminal prosecution for failure to pay. In some cases, business owners or other [responsible persons](#) can be held personally liable for the sales tax owed. The State may use any combination of enforcement methods, such as warrants, levies, income execution and seizures, to collect what is owed. New York also can [suspend](#) a taxpayer's New York State Driver's License if (1) a taxpayer owes \$10,000 or more in taxes, penalties, or interest, and (2) no collection resolution is in place (such as an installment payment agreement, income execution or offer in compromise).

If you haven't collected or paid sales tax, New York State does offer a relief in the form of the [Voluntary Disclosure and Compliance Program](#). The State will not impose penalties or bring criminal charges against eligible taxpayers with a history of noncompliance who come forward and pay their outstanding tax liabilities. As an added incentive, qualified taxpayers are also eligible for a limited look-back period.

Restaurant owners should contact a tax professional to discuss compliance with sales tax rules and how to resolve a tax dispute.

**Tenenbaum Law, P.C.** in Melville, focuses on the resolution of IRS and NYS tax controversies. Visit our website at [www.litaxattorney.com](http://www.litaxattorney.com) or contact us at [info@litaxattorney.com](mailto:info@litaxattorney.com) or (631) 465-5000.

*Tenenbaum Law, P.C. is an allied member of the New York State Restaurant Association.*