

**Readopt with amendments Rev 701.05, effective 11-7-14 (Document #10714), cited and to read as follows:**

CHAPTER Rev 700 MEALS AND RENTALS TAX

PART Rev 701 DEFINITIONS

Rev 701.05 "Educational purposes" means "educational purposes" as defined in RSA 78-A:6-c, II(d).

**Adopt Rev 701.07 to read as follows:**

Rev 701.07 "Food products" means "food products" as defined in RSA 78-A:3, IV. The term includes, but is not limited to, food or beverages commonly sold by weight, liquid or dry measure, count, or in unopened original containers in a retail food store, unless sold in a manner commonly considered a meal, such as on a plate, platter, or an arrangement, or otherwise packaged as a meal.

**Readopt with amendments Rev 701.10 and Rev 701.12-702.16, effective 11-7-14 (Document #10714), to read as follows:**

Rev 701.10 "Hotel" means "hotel" as defined in RSA 78-A:3, VII, and includes an adult summer or recreational camp which offers sleeping accommodations to the general public.

Rev 701.12 "Meal" means "meal" as defined in RSA 78-A:3, VIII and:

(a) Includes, but is not limited to:

- (1) Sandwiches of all kinds whether or not wholly packaged off the premises;
- (2) Beverages, poured, fountain type, or in unsealed containers, including, but not limited to, alcoholic, malt, or vinous beverages;
- (3) Prepared foods or food products sold in a manner commonly considered a meal, such as on a plate or otherwise packaged as a meal;
- (4) Food items from salad bars and buffets;
- (5) Snacks prepared for immediate consumption that are not wholly packaged off the premises, such as, but not limited to, baked goods sold in units of less than 6, except as provided in Rev 702.13(b), fresh popped popcorn, or ice cream novelties;
- (6) Platters or arrangements, including, but not limited to:
  - a. Vegetable;
  - b. Meat;
  - c. Dessert;
  - d. Bakery;

- e. Fruit; or
- f. Hors d'oeuvres; and

(7) Prepared, ready-to-eat food or beverages whether or not heated or cooled to a preferred temperature; and

(b) Does not include:

(1) Food, except sandwiches, or food products, wholly packaged off the premises and sold in their original unopened containers, including, but not limited to, items such as:

- a. Chips;
- b. Crackers;
- c. Pastries;
- d. Candy;
- e. Gum;
- f. Breath mints;
- g. Cough drops;
- h. Antacid lozenges; or
- i. Energy or granola bars;

(2) Canned, bottled, or otherwise prepackaged, ready-to-drink beverages wholly packaged off the premises and sold in their original unopened containers, including, but not limited to, such items as:

- a. Carbonated beverages;
- b. Fruit drinks;
- c. Fruit juices;
- d. Milks;
- e. Coffee drinks;
- f. Energy drinks; or
- g. Alcoholic beverages;

(3) Food products sold by a store;

(4) Prepackaged, ready-to-eat refrigerated or frozen desserts or novelties wholly packaged off

the premises and sold in their original containers, such as, but not limited to, ice cream or frozen yogurt in:

- a. Cups;
- b. Cones; and
- c. Sticks;

(5) Frozen food or beverages not intended for consumption in a frozen state; or

(6) Baked goods when sold in units of 6 or more for off-premises consumption, including any variety of items totaling 6 or more servings, such as, but not limited to, 2 bagels, 3 muffins, and one danish, or one whole pie, cake, or loaf of bread.

Rev 701.13 "Nonprofit organization" means nonprofit organization" as defined in RSA 78-A:3, X.

Rev 701.14 "Occupant" means "occupant" as defined in RSA 78-A:3, XII and includes a person who pays for sleeping accommodations even though he or she does not use them.

Rev 701.15 "Operator" means "operator" as defined in RSA 78-A:3, XIII and includes a person:

(a) Offering sleeping accommodations for rent to the general public, including owners of private homes who offer sleeping accommodations for rent to the general public;

(b) Charging for a taxable meal;

(c) Offering a motor vehicle to a renter under a rental agreement that is subject to the tax; or

(d) Who acts in the capacity of an agent, whether as lessee, sublessee, mortgagee, licensee or otherwise, for an owner in renting sleeping accommodations, a motor vehicle or providing taxable meals.

Rev 701.16 "Person" means "person" as defined in RSA 78-A:3, XVI.

**Repeal Rev 701.18, effective 11-7-14 (Document #10714), as follows:**

~~Rev 701.18 "Premises", as referenced in RSA 78-A:3, X (a) means, when referring to a convenience store, gas station or supermarket, the portion of such establishment where meals are offered, known industry wide as "retail floor space."~~

**Readopt with amendments and renumber Rev 701.19-701.21, effective 11-7-14 (Document #10714), as Rev 701.18-Rev 701.20, to read as follows:**

Rev 701.18 "Qualified educational organization" means an organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code and operated for educational purposes.

Rev 701.19 "Rent" means "rent" as defined in RSA 78-A:3, XVII and includes:

(a) Any amount for which an occupant is liable as a result of occupancy without any deductions; and

(b) Any and all charges for services or furnishings and accommodations customarily and ordinarily furnished by a hotel to occupants.

Rev 701.20 "Restaurant" means "restaurant" as defined in RSA 78-A:3, XX and:

(a) Includes installations of a permanent or temporary nature which are used for providing meals, such as, but not limited to:

- (1) Tables;
- (2) Counters;
- (3) Bars;
- (4) Concession stands;
- (5) Booths at fairs or festivals, parks, or other locations;
- (6) Food trucks;
- (7) Street carts;
- (8) Fairs and festivals where the price of admission entitles the purchaser to food or beverages, or both, including alcoholic beverages; or
- (9) Other similar facilities where meals are served; and

(b) Does not include any portion of a store that is not a restaurant portion as defined in Rev 701.211.

**Adopt Rev 701.21 to read as follows:**

Rev 701.21 "Restaurant portion" means "restaurant portion" as defined in RSA 78-A:3, XXI.

**Readopt with amendments Rev 701.22 and Rev 701.24, effective 11-7-14 (Document #10714), to read as follows:**

Rev 701.22 "School" means "school" as defined in RSA 78-A:3, XXII and includes any qualified educational organization whether public or private, provided its earnings do not inure to the benefit of any individuals.

Rev 701.24 "Services" as referenced in the definition of "occupancy" in RSA 78-A:3, XI means:

(a) Services customarily and ordinarily related to the occupancy and use of sleeping accommodations and facilities, such as, but not limited to:

- (1) Maid and porter;
- (2) Towel and linen;
- (3) Doorman, bellhop, and concierge;

- (4) Elevator;
- (5) Electrical; or
- (6) Cable; and

(b) Does not include services not customarily and ordinarily related to the occupancy and use of sleeping accommodations and facilities when a separately stated charge is made, including, but not limited to:

- (1) Parking;
- (2) Telephone connection fees and charges;
- (3) Secretarial or commercial assistance;
- (4) Purchase of theater, sports, or amusement tickets; or
- (5) Parcel checking and delivery.

**Readopt with amendment Rev 701.25, effective 5-24-17 (Document #12184), to read as follows:**

Rev 701.25 "Short-term rental" means "short-term rental" as defined in RSA 78-A:3, XXIII. The term does not include the rental of any room in a bed and breakfast, inn, or motel.

**Adopt Rev 701.271 to read as follows:**

Rev 701.271 "Store" means "store" as defined in RSA 78-A:3, XXIV.

**Readopt with amendments Rev 701.28 and Rev 701.31, effective 11-7-14 (Document #10714), to read as follows:**

Rev 701.28 "Taxable meal" means "taxable meal" as defined in RSA 78-A:3, XXV.

Rev 701.31 "Wholly packaged off the premises", as referenced in RSA 78-A:3, VIII, means packaged in a sealed, unopened original container off the restaurant premises.

**Adopt Rev 702.011 and Rev 702.012, cited and to read as follows:**

**PART Rev 702 COMPUTATION OF TAXABLE MEALS**

Rev 702.011 Food Products.

(a) Food products sold by a restaurant, including a restaurant portion within a store, shall not be taxable unless sold in a manner:

- (1) Other than the same manner in which they are commonly sold in a retail food store; or
- (2) Commonly considered a meal, such as on a plate or otherwise packaged as a meal.

(b) Food products sold by a store shall not be taxable.

Rev 702.012 Restaurant and Store Sales.

(a) An establishment that is primarily engaged in the business of providing meals for which a charge is made shall be a restaurant as defined in Rev 701.21, regardless of whether the establishment uses a term such as, but not limited to, store, bakery, delicatessen, convenience store, or market in its name.

(b) An establishment that is not primarily engaged in the business of providing meals shall be a store as defined in Rev 701.271, regardless of whether the establishment sells meals.

(c) A store that sells meals shall be a store with a restaurant portion as defined in Rev 701.211, except as provided in Rev 702.13(c).

(d) Meals sold by a restaurant, including a restaurant portion within a store, shall be taxable.

(e) Food products shall not be taxable unless sold by a restaurant, including a restaurant portion within a store, in a manner provided in Rev 702.011(a).

**Readopt with amendments Rev 702.03-702.05 and Rev 702.08, effective 11-7-14 (Document #10714), to read as follows:**

Rev 702.03 Non-taxable Meals by Nonprofit Organizations Other Than Qualified Educational Organizations.

(a) With the exception of Rev 702.02(a), meals prepared and sold by a nonprofit organization other than a qualified educational organization shall not be subject to tax if:

(1) The meals are prepared and sold in furtherance of any of the nonprofit organization's purposes for which it was organized; and

(2) The net proceeds of the meals sold are used exclusively for the purposes of the nonprofit organization.

(b) Meals provided on the premises of a nonprofit organization operated exclusively for religious or charitable purposes shall not be subject to tax if:

(1) The meals are provided in furtherance of any of the nonprofit organization's purposes for which it was organized; and

(2) The net proceeds of the meals sold are used exclusively for the purposes of the nonprofit organization.

Rev 702.04 Taxable Meals by Qualified Educational Organizations.

(a) Meals provided by a qualified educational organization to students by an operator other than the qualified educational organization, which is not under contract with such organization, shall be subject to tax, including, but not be limited to:

(1) Meals delivered to students on or off school premises; and

(2) Meals served to students for social functions on or off school premises.

(b) Meals provided by a qualified educational organization or an agent under contract with such organization to any individual or group on school premises for a non-educational purpose shall be subject to tax.

(c) Meals provided by a qualified educational organization or an agent under contract with such organization to employees, faculty members, or administrative officers, of such organization shall be subject to tax if the meals are provided at a location where meals are offered to the general public on a regular and continuous basis without regard to an activity which is related to educational purposes.

Rev 702.05 Non-Taxable Meals by Qualified Educational Organizations.

(a) Meals provided on or off premises by a qualified educational organization or an agent under contract with such organization to students regularly attending the organization in conjunction with educational purposes, shall not be subject to tax.

(b) Meals provided by a qualified educational organization or an agent under contract with such organization to employees, faculty members, administrative officers, or to any non-student organization shall not be subject to tax provided the meal is served in a facility not open to the general public.

(c) Meals provided on or off premises by a qualified educational organization or an agent under contract with such organization to volunteers providing service to the organization, sponsored through the organization, or in contract with the organization shall not be subject to tax.

(d) Meals provided by a qualified educational organization or an agent under contract with such organization to any individual or group on school premises shall not be subject to tax provided the activity in relation to the meals:

(1) Is related to educational purposes, such as but not limited to:

- a. Adult education;
- b. Professional continuing education; and
- c. Alumni, student or athletic functions or events; and

(2) Is sponsored by:

- a. An organization exempt from federal income taxation under section 501(c) of the Internal Revenue Code; or
- b. The federal or state government or an instrumentality thereof.

Rev 702.08 Meals at Hospitals and Medical Facilities.

Meals sold on the premises of a hospital licensed under RSA 151, or of a convalescent home, nursing home, or home for the aged, shall be subject to tax unless such meals are:

(a) Provided to patients or employees; or

- (b) Provided by a nonprofit organization as provided in RSA 78-A:6-c, I or VII.

**Amend Rev 702.11(e), effective 11-7-14 (Document #10714), to read as follows:**

(e) When a meal is purchased with nutrition assistance benefits issued under federal law pursuant to a program that prohibits the assessment of a state tax on items purchased, it shall not be taxable to the extent of the part of the meal purchased with nutrition assistance benefits.

**Readopt with amendments Rev 702.13, effective 11-7-14 (Document #10714), to read as follows:**

Rev 702.13 Bakery Sales.

(a) For purposes of this section, a “bakery” means an establishment that is engaged in the business of selling baked goods.

(b) When a bakery sells only baked goods intended for off-premises consumption, the baked goods sold by the bakery shall not be taxable, regardless of the number sold.

(c) When a bakery sells food items commonly sold by restaurants, such as, but not limited to, taxable beverages, sandwiches, or baked goods intended for consumption on the premises, the entire bakery shall be considered a restaurant as defined in RSA 78-A:3, XX.

(d) The sale of baked goods by a bakery that is a restaurant as provided in (c) above shall be taxable except when sold in units of 6 or more for off-premises consumption.

(e) Baked goods in units of 6 or more shall include any variety of items totaling 6 or more servings, such as, but not limited to, 2 donuts, 3 cookies, and one brownie, or a whole pie, cake, or loaf of bread.

(f) The method or location of payment shall not affect the taxability of a product.

**Amend Rev 702.14(b), effective 11-7-14 (Document #10714), so that Rev 702.14 intro and (b) are cited and read as follows:**

Rev 702.14 Sales For Resale. Operators providing meals for resale shall not be responsible for collecting the tax provided that:

- (b) The sale is to a non-profit organization for resale in accordance with RSA 78-A:6-c, I; or

**Amend Rev 702.17(a), effective 11-7-14 (Document #10714), cited and to read as follows:**

Rev 702.17 Admission Charges.

(a) Admission charges collected by an operator shall not be taxable if:

- (1) The charge is paid for admission only;
- (2) The charge does not entitle the purchaser to any food or beverages, including alcoholic beverages, whether or not free or discounted meals; and
- (3) The amount of the admission charge is separately stated on the contract or receipt.



**Amend Rev 703.04(a), effective 8-22-17 (Document #12366), cited and to read as follows:**

PART Rev 703 COMPUTATION OF TAXABLE RENT

Rev 703.04 Computation of Permanent Residency.

(a) In determining whether or not a person is a permanent resident, as defined in RSA 78-A: 3, XV, computation of the period of occupancy shall begin with the first day such person occupies or had the right to occupy any room in a hotel.

**Amend Rev 704.04(a) intro and (b) intro, effective 8-22-17 (Document #12366), cited and to read as follows:**

PART Rev 704 MOTOR VEHICLE RENTALS

Rev 704.04 Non-Taxable Rental Agreements.

(a) When measuring the length of a rental agreement for purposes of determining taxability pursuant to RSA 78-A:3, XVIII, computation of the rental period shall begin with the first day of the rental agreement whether or not possession of the rented motor vehicle has been taken, and:

(b) A request for an exemption for vehicles modified for the transport of individuals with physical disabilities from the collection and payment of the tax imposed by RSA 78-A, shall:

**Amend Rev 705.01, effective 11-7-14 (Document #10714), as amended effective 5-24-17 (Document #12184), by amending (j), cited and to read as follows:**

PART Rev 705 LICENSING AND RESPONSIBILITIES OF OPERATORS

Rev 705.01 License Requirement.

(j) An operator's failure to comply with the requirements specified in (h) or (i) above, after receiving a warning from the department, shall constitute sufficient cause for revocation, suspension, or denial of the operator's license.

**Readopt with amendments Rev 705.12, effective 11-7-14 (Document #10714), to read as follows:**

Rev 705.12 Surety Bonds.

(a) If the department finds it necessary to require an operator to file a bond in order to protect the revenues collected by the operator as provided in RSA 78-A:8-b, the operator shall file such bond within 10 days.

(b) The bond shall be in an amount fixed to secure the payment of any tax, interest, or penalties due, or which is estimated to become due during a 6-month period, whichever is greater.

(c) To estimate the amount of tax, interest, or penalties to become due during a 6-month period, the department may reference:

- (1) The amount of revenues collected by the operator in the prior year;

- (2) The amount of revenues collected by similar operators; and
- (3) Any other information available to assist the department in estimating the amount of taxes to become due in a 6-month period.

## APPENDIX

<b>Rule</b>	<b>Statute</b>
Rev 701.05	RSA 78-A:2, II; RSA 78-A:6-c, II(d)
Rev 701.07	RSA 78-A:2, II; RSA 78-A:3, IV
Rev 701.10	RSA 78-A:2, II; RSA 78-A:3, VII
Rev 701.12	RSA 78-A:2, II; RSA 78-A:3, VIII
Rev 701.13	RSA 78-A:2, II; RSA 78-A:3, X
Rev 701.14	RSA 78-A:2, II; RSA 78-A:3, XII
Rev 701.15	RSA 78-A:2, II; RSA 78-A:3, XIII
Rev 701.16	RSA 78-A:2, II; RSA 78-A:3, XVI
Rev 701.18 (repealed)	RSA 78-A:2, II
Rev 701.19	RSA 78-A:2, II; RSA 78-A:6-c, II
Rev 701.20	RSA 78-A:2, II; RSA 78-A:3, XVII
Rev 701.21	RSA 78-A:2, II; RSA 78-A:3, XX
Rev 701.211	RSA 78-A:2, II; RSA 78-A:3, XXI
Rev 701.22	RSA 78-A:2, II; RSA 78-A:3, XXII
Rev 701.24	RSA 78-A:2, II
Rev 701.25	RSA 78-A:2, II; RSA 78-A:3, XXIII
Rev 701.271	RSA 78-A:2, II; RSA 78-A:3, XXIV
Rev 701.28	RSA 78-A:2, II; RSA 78-A:3, XXV
Rev 701.31	RSA 78-A:2, II; RSA 78-A:3, VIII
Rev 702.011	RSA 78-A:2, II; RSA 78-A:3, VIII
Rev 702.012	RSA 78-A:2, II; RSA 78-A:3, IV and VIII
Rev 702.03	RSA 78-A:2, II; RSA 78-A:6-c, I and VII
Rev 702.04-702.05	RSA 78-A:2, II; RSA 78-A:6-c, II
Rev 702.08	RSA 78-A:2, II; RSA 78-A:6-c, IV
Rev 702.11(e)	RSA 78-A:2, II; RSA 78-A:6-c, X
Rev 702.13	RSA 78-A:2, II; RSA 78-A:3, VIII
Rev 702.14 intro and (b)	RSA 78-A:2, II; RSA 78-A:6-c, I
Rev 702.17(a)	RSA 78-A:2, II; RSA 78-A:6-b, III
Rev 703.04(a)	RSA 78-A:2, II; RSA 78-A:3, XV
Rev 704.04(a) intro and (b) intro	RSA 78-A:2, II; RSA 78-A:3, XVIII
Rev 705.01(j)	RSA 78-A:2, II; RSA 78-A:4, I-a; RSA 78-A:4-a
Rev 705.12	RSA 78-A:2, II; RSA 78-A:8-b