

Food tax on grocery deliveries? It depends

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SANTA FE – Exactly where New Mexicans purchase their groceries – not where they're delivered – is key to determining whether items are subject to taxation.

With more state residents using online delivery services to buy their groceries because of the pandemic and for other reasons, the state Taxation and Revenue Department released guidance Wednesday about whether deliveries qualify for a food tax deduction.

The short answer? It depends.

In its guidance, the tax department said state law provides a tax deduction for certain grocery items sold at retail food stores, including many online transactions.

But for transactions that do not occur at a store, the tax break cannot be claimed, meaning gross receipts tax is required to be paid by the food distributor and can be passed along to a customer.

In other words, if a transaction is not completed until groceries are delivered to a customer's house, the groceries are taxable.

By releasing the guidance, the agency hopes to alleviate confusion among shoppers and grocers alike, state Taxation and Revenue Secretary Stephanie Schardin Clarke said Wednesday.

"Many New Mexicans have been trying to do the right thing during the health emergency by limiting their outings, and one way to do that is to order groceries online and have them delivered," Schardin Clarke said in a statement.

New Mexico lawmakers repealed the food tax on grocery items in 2004, and proposals in recent years to reinstate it have been fiercely opposed.

Under current state law, most grocery items qualify for the food tax deduction. Hot foods, household supplies, pet food, alcoholic beverages and tobacco are among the items that are taxed.

The state's gross receipts tax system has increasingly come under the scrutiny in recent years as numerous exemptions, deductions and other breaks enacted over the years have led to an increase in tax rates.

Some cities have overall tax rates in excess of 8%, including Farmington, Santa Fe, Taos and Las Cruces. The state's base rate is 5.125%, and local taxes are levied on top of that.

In its Wednesday guidance, the Taxation and Revenue Department also said grocery delivery service charges are, in most cases, subject to the state's gross receipts tax.