



New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400



Guidance for NYACS Member Retailers on Implementing the New York State Plastic Bag Ban on March 1, 2020

Updated February 25, 2020

PREPARED FOOD EXEMPTION EXPANDED

After revisiting the takeout food exemption at NYACS' request, the state Department of Conservation is now saying **convenience stores with food service WILL be allowed to continue giving plastic bags to customers for takeout food** if they wish after March 1st.

Both the law and the proposed DEC regulations originally said food establishments licensed and inspected by the Health Department (restaurants) would be exempt from the plastic bag ban, while those licensed and inspected by the Department of Agriculture and Markets (convenience stores) would not. Thankfully, DEC staff saw the wisdom of treating all food establishments the same – permitting plastic bags that are “used solely to contain food sliced or prepared to order.”

However, keep in mind that the entire C-store is not exempt from the plastic bag ban just because it sells prepared-to-order food.

OTHER EXEMPTIONS

The other exemptions remain as is:

- Bags used solely to contain or wrap uncooked meat, seafood, poultry, other unwrapped or non-prepackaged food, flower, plant, or other item for the purpose of separating it from other items to avoid contamination, prevent damage from moisture, or for sanitary, public health, or environmental protection purposes;
- Bags used by a customer solely to package bulk items such as produce, grains, candy, nuts and bolts, and live bait
- Newspaper delivery sleeves
- Bags sold in bulk in bulk quantities to a consumer at the point of sale that were specifically prepackaged in a manner to allow for bulk sale (for example, in individual presealed boxes).
- Bags sold as trash bags
- Bags sold as food storage bags
- Garment bags
- Bags provided by a pharmacy to carry prescription drugs

PAPER BAG SHORTAGE

Some paper bag suppliers have placed stores on “allocation,” agreeing to ship only a percentage of the quantity ordered. It is clear that many NYACS members will not have an adequate supply of paper bags on March 1 despite their best efforts.

We have been making DEC and state legislators aware of the paper bag shortage and the difficulties it will pose for retailers. A high-ranking DEC official told a Buffalo TV station that “We have received no evidence or heard evidence that there is a shortage of paper bags in the state” -- oblivious to the market realities that will leave many NYACS members without paper bags come March 1st.

Remember, the law does not *require* your store(s) to stock paper bags in the first place. You have the option of telling customers their only choices are to bring their own bag, buy a reusable bag (which by law you must stock) on site, or carry out their purchases in their arms. But of course, that could make a convenience store an *inconvenience* store.

ULSTER COUNTY DID NOT OPT IN AFTER ALL

For weeks, NYACS was under the impression that Ulster County was one of the localities that will require retailers to collect a 5-cent paper bag tax starting March 1, because their web site indicated they were opting in. However, the state Tax Department recently published a bulletin listing the “opt-in” paper bag tax localities, and Ulster was not included. We contacted Ulster County officials, who confirmed that they are not imposing the 5 cent fee when the state law takes effect March 1.

ALBANY COUNTY PAPER BAG TAX DELAYED

The 5-cent paper bag tax that Albany County was going to require stores to start collecting March 1st is being delayed temporarily. The state Tax Department found technical deficiencies in the wording of the local law Albany County adopted, so the tax will not go into effect as scheduled. The County will have to redraft it, formally introduce it, hold a public hearing, and vote on it, a process that could take at least a couple of months. The new target effective date is not yet known.

WHY SOME RETAILERS ARE CHARGING THEIR OWN PAPER BAG FEE

Retailers are allowed to charge customers their own fee for paper bags if they wish, at an amount determined by the retailer. Some are already doing so. Reasons behind imposing a fee are to recoup some of their higher cost of paper bags and to protect their limited supply of paper bags by diverting customers to reusables.

In opt-in cities and counties, you are permitted to charge your own fee *on top of* the mandatory 5¢ government paper bag tax, although it may get tricky programming your POS system to print all that on a receipt and explaining it to customers at the counter.

SALES TAX ON PAPER IN NON-OPT-IN LOCALITIES

It is definite that in “opt-in” localities – only New York City, Tompkins County, and Suffolk County as of March 1 – the mandatory 5-cent paper bag tax is not subject to sales tax.

However, there has been confusion about the taxability of any paper bag fee retailers may elect to charge their customers in counties that did not opt into the mandatory paper bag tax.

The state Tax Department recently [posted a bulletin](#) saying such fees will be taxable: “Any vendor who charges a customer for a paper carryout bag in a jurisdiction that does not impose a fee (or charges in excess of a locally imposed fee) is selling tangible personal property subject to sales tax.”

However, a different Tax Department bulletin, [TB-ST-107](#), dated August 5, 2014, and still in effect, says bags and other materials used to package a customer's purchase are *not* subject to sales tax.

NYACS asked the Tax Department to reconcile these two conflicting positions for us. They claimed there is no conflict because TB-ST-107 only pertains to business-to-business transactions, which is not the case.

To be on the safe side, NYACS recommends you apply sales tax to any paper bag fee you elect to charge. As a practical matter, an 8 or 8.5 percent sales tax on a 5-cent fee is less than one cent. But it could potentially increase the sales tax by a penny as part of a larger purchase.

MUST I PROVIDE REUSABLE BAGS?

Yes. Under the law, beginning March 1, all stores must "make reusable bags available to customers within the store for purchase or at no charge." If you do charge, you choose the price – 5 cents per bag, \$1.00, \$7.50, whatever. But you need to make sure your reusable bags meet the detailed DEC durability standards shown below.

HOW DO THEY DEFINE 'REUSABLE BAG'?

Under the regulations, a reusable bag offered by a retailer must be a bag made of cloth or other machine washable fabric, or other non-film plastic washable material, that has at least one strap or handle that does not stretch and is fastened to the bag in such a manner that it allows the bag to meet the following strength and durability standards:

- Minimum lifespan of 125 uses, with a use equal to the ability to carry a minimum of 22 pounds over a distance of at least 175 feet; and
- Minimum fabric weight of 80 grams per square meter or equivalent for bags made of any non-film plastic of natural, synthetic, petroleum based, or non-petroleum-based origin, including woven or nonwoven polypropylene, polyethylene-terephthalate, cotton, jute, or canvas.

BAGS BROUGHT IN

If a customer brings their own bag, they're allowed to use it – even if it's an old film plastic bag, or a flimsy reusable bag that doesn't meet the above durability standards. You may not charge customers a fee to use any bag they bring with them.

SNAP AND WIC CUSTOMERS

The law says SNAP and WIC customers are exempt from paying the mandatory 5-cent tax on paper bags imposed by counties and cities that have opted in.

If you voluntarily apply your own paper bag fee, you are not required by law to exempt SNAP and WIC customers from that fee. But you may wish to consider doing anyway so as a matter of company policy.

MORE INFORMATION

DEC has posted "Bag Waste Reduction Law Information for Retailers" on its web site: <https://www.dec.ny.gov/chemical/117781.html>