



REPORTING REQUIREMENTS FOR OPERATORS OF HERBALIFE NUTRITION CLUBS

Beginning January 1, 2023, operators of Herbalife Nutrition Clubs (Herbalife) that maintain physical locations and provide services and products to their customers will be regarded as retailers of the food, drinks, and other merchandise they prepare and sell to customers for sales and use tax purposes. As retailers, nutrition clubs must register with California Department of Tax and Fee Administration (CDTFA) for a seller's permit, file sales and use tax returns, and pay tax on their taxable sales.

Register for a seller's permit online

You can register for a free seller's permit online by visiting our website at www.cdtfa.ca.gov, clicking the *Register Online* button, selecting *Register a New Business Activity*, and following the prompts.

When you register online for a sales and use tax account with us, you will be prompted to sign up for a username and password so you can access your accounts, file returns and reports, and make payments using our online services portal. Using our online portal allows you to perform many account activities online such as:

- Managing multiple accounts,
- Requesting relief of penalty and interest,
- Requesting a filing extension,
- Saving and updating banking and account information,
- Viewing return and payment history, and
- Receiving alerts and correspondence.

Purchases

Once you obtain a seller's permit, you may issue a resale certificate to purchase items for resale. Items that can be purchased for resale include:

- Carbonated beverages,
- Straws, paper napkins, and toothpicks,
- Nonreturnable "to go" containers, cups, and lids,
- Disposable utensils, and
- T-shirts and hats purchased for resale.

Due to your business agreement with them, Herbalife may require you to pay tax on your purchases of certain Herbalife Nutrition Clubs products that you intend to incorporate into food and drinks that you resell, and not accept resale certificates on purchases of such items.

Taxable sales

As an operator of an Herbalife Nutrition Club, you are responsible for reporting and paying tax on some of your taxable sales. How tax applies to your sales depends on what you are selling, and how the items are being consumed.

For example, your sales of Nutrition Club merchandise such as reusable cups, shirts, and towels with the Herbalife Nutrition Club's logo printed on them are always subject to tax. Your sales of food (such as muffins, cookies, donuts, and waffles) and drinks (such as shakes, coffee, and tea) may be subject to tax. Tax applies in the following instances where food or drinks are sold:

- Food and drinks sold for consumption on your business premises, such as where you provide tables, chairs, or a serving bar.
- Hot prepared food, except bakery items sold for a single price, whether sold for consumption on the premise or to go.

- Hot prepared meals, such as a hot tea with a pastry or a cold drink with a hot pastry, sold for a single price, whether for consumption on premises or sold to go.

Nontaxable sales

Cold food, hot bakery items sold for a single price, or drinks individually sold to customers for consumption outside your business premises (on a to-go basis) are generally not subject to tax.

Sales of Herbalife Nutrition Clubs products as a Distributor

You are not responsible for reporting and paying tax on your Distributor sales of Herbalife Nutrition Clubs products when the items are sold in their original unopened container, and you did not purchase the items with a resale certificate.

Combination meals

A combination meal is a meal that consists of food and drink. A hot prepared meal, as discussed herein, is a combination of a hot drink with a cold food or bakery item sold for a single price, or a combination of a cold drink with a hot food or hot bakery item sold for a single price. A cold prepared meal is a combination of a cold drink with any cold food item, including a cold bakery item. For a cold meal with a carbonated drink sold to go, the sale of the carbonated drink is taxable, and the sale of the cold food or bakery item is nontaxable. For more information on sales of combination meals, please refer to publication 22, *Dining and Beverage Industry*, at www.cdtfa.ca.gov/formspubs/pub22.pdf.

Table of Taxable Versus Nontaxable Sales

| | Consumed on Premises | Sold To-Go |
|---|----------------------|---|
| Cold drinks (noncarbonated) | Taxable | Nontaxable |
| Cold drinks (carbonated) | Taxable | Taxable |
| Hot drink | Taxable | Nontaxable |
| Cold food (nonbakery) | Taxable | Nontaxable |
| Hot food (nonbakery) | Taxable | Taxable |
| Bakery items (cold or hot) | Taxable | Nontaxable |
| Hot prepared meal | Taxable | Taxable |
| Cold prepared meal without carbonated drink | Taxable | Nontaxable |
| Cold prepared meal with carbonated drink | Taxable | Partially Taxable (the portion of the selling price representing the sale of the carbonated drink is taxable) |
| Nonfood merchandise | Taxable | Taxable |

Tax-paid purchases resold credit

Again, due to your business agreement with them, Herbalife Nutrition Clubs may require you to pay tax on your purchase of certain Herbalife products that you intend to incorporate into food and drinks that you resell, and not accept resale certificates on your purchase of such items. If you paid tax to Herbalife on the purchase of a particular product and after payment of tax you incorporate such a product into a food or drink that you sell to your customers, you may claim a *tax-paid purchases resold* credit on your sales and use tax return. However, you may not claim the *tax-paid purchases resold* credit for a product that was incorporated into food or drinks where no tax was paid on your original purchase of the item. For more information on sales for resale, resale certificates, and tax-paid purchases resold credit, please refer to publication 103, *Sales for Resale*, at www.cdtfa.ca.gov/formspubs/pub103/#resale.

Example:

You purchased the following items from Herbalife:

- Two canisters of Immunity Essential, tax paid to Herbalife
- One bottle of Multivitamin Complex, tax paid to Herbalife Nutrition Clubs
- Three bottles of Formula 1, a nontaxable food item (Herbalife did not charge tax)

You incorporated all of the Immunity Essential and one bottle of Formula 1 into food and drinks sold at your Club. You sold the bottle of Multivitamin Complex and a bottle of Formula 1 in its original unopened container to a customer as a Distributor sale.

Since you paid tax to Herbalife and used all of the canisters of Immunity Essential to make food and drinks sold at your club, you may claim a tax-paid purchases resold credit for them. You may not claim a tax-paid purchases resold credit for the bottle of Multivitamin Complex since this was a Distributor sale and you sold it in its original unopened container. Also, you may not claim the credit for the bottles of Formula 1 since Herbalife did not charge you tax on the purchase.

Recordkeeping

If you hold a California seller's permit, you are required to maintain business records to verify that you have properly paid tax. You should keep required records for at least four years unless we give you specific, written authorization to destroy them sooner. You should keep all records to determine your correct sales and use tax liability, including:

- Normal books of account that show your business income and expenses;
- Documents of original entry, such as purchase invoices, sales receipts, cash register tapes, and other documents used as the basis for your books and account; and
- All schedules or working papers used in preparing your sales and use tax returns.

Need help?

If you have questions or need assistance with registering for a seller's permit, filing a return, or any other sales and use tax issues, please contact our Customer Service Center at 1-800-400-7115 (CRS:711). Customer service representatives are available Monday through Friday from 7:30 a.m. to 5:00 p.m. (Pacific time), except state holidays. If you prefer to chat online, please visit our website at www.cdtfa.ca.gov.