

## Bagelgate: When the Going Gets Tough, Get More Dough

By MICHELLE HIRSCH, The Fiscal Times on Sep 29, 2010

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For 27 years, New York deli owner Kenneth Greene has followed this simple rule: Add sales tax to bagels sliced and slathered with cream cheese or other toppings; give topping-free bagels a no-tax free pass. In New York, like many other states, “prepared” food served or consumed outside the home is taxed at about 8 percent. Greene believed that topping-free, sliced or whole bagels served in any of his 33 Bruegger’s bagel shops were exempt from the sales tax — at least until recently, when he was slapped with three years worth of back taxes.

Ouch.

As far as the state is concerned, a bagel is a bagel, whether garnished or plain, and anyone who bites into one while still in the deli must pay the tax. “Whether it’s sliced, diced, chopped or pureed, all food sold to be eaten inside a restaurant is subject to sales tax — that has been the case since New York State adopted a sales tax in 1965,” said New York Department of Taxation and Finance Spokesman Brad Maione. Now the [New York bagel community](#) is abuzz, with business owners wondering when the state tax department will come down on them. Greene is outraged, noting that he has faithfully paid state sales taxes, and never dreamed he was doing anything wrong.

“We’ve always sent New York State about \$100,000 a month in collected sales tax receipts,” Greene said. Most of that comes from taxes on prepared food and drink, including bagels with toppings, which reclassifies the bagel from a “bakery product,” which is not taxable, to a restaurant item, which is. Much like a loaf of bread, bagels bought whole and taken home by the bag are considered bakery items.

Of course this begs the question — what about street vendors? If you sell a bagel or a pretzel on the corner of 50th Street and Fifth Avenue, and the customer eats it right there, do they have to pay tax?

There is nothing specific in the tax code pertaining to bagel store owners or street vendors, but it does specify that “[bakery products](#)” are tax exempt so long as they are sold for off-premises consumption.

### **Desperate for Revenue**

Like others, New York State is dealing with a major budget crunch, and is desperately seeking revenue. Last month, the state legislature [passed a budget](#) including cigarette tax increases and limits on tax deductions, to close a \$9.2 billion budget deficit.

Greene says he has been audited by the state four times over nearly three decades, and until the most recent audit five months ago was never told to collect the additional sales tax. Greene said he began charging the tax once he was made aware of it. “But where I cry foul is after their fourth audit on my business after 27 years, they determine that their interpretation of the law for that entire time was wrong, and I should have to pay them uncollected taxes for the past three years. Greene would not disclose the exact sum the department is asking for but described it as “astronomical.”

Sammy Abbas, store manager of Pick-A-Bagel on the Upper East Side of Manhattan, says he doesn't charge tax on plain bagels with nothing on them, even if they are eaten inside the store. “Once we touch it with the knife, we have to tax it,” he said. “But why should I charge tax if a customer gets a croissant or a bagel with nothing on it, whether they eat it there or not? It's not fair to customers.” The [issue here is much larger](#) than bagels, and shows how fuzzy provisions in the sales tax codes often confuse both tax collectors and retailers, said Matt Gardner, executive director of the Institute on Taxation and Economic Policy. “State tax administrators nationwide spend a lot of time issuing regulations to make sure everyone is clear, but it's almost unavoidable when there has to be a dividing line for each of these things — especially with food.”

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