

Prepared Food

102D

Sales Tax Fact Sheet 102D

Fact Sheet

Prepared food

Prepared food is taxable. “*Prepared food*” means food that meets any of the following conditions:

- Food that is sold in a **heated** state or heated by the seller (see article on page 1)
- Food where **two or more food ingredients are mixed or combined** by the seller for sale as a single item (see article on page 1)
- Food **sold with eating utensils** provided by the seller such as plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws (see article on page 2)

The following items are not “prepared food,” unless sold with eating utensils provided by the seller:

- **Bakery items**, such as bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas (see article on page 3)
- **Ready-to-eat meat and seafood** in an unheated state sold by weight (see article on page 4)
- **Raw eggs, fish, meat, poultry**, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illnesses (see article on page 5)
- Food that is only **sliced, repackaged, or pasteurized** by the seller (see article on page 4)

Serving size or quantity does not affect the taxability of a food item except for food that is taxable as prepared food only because eating utensils are provided by the seller. See details in the article titled “Food sold with eating utensils” on page 2.

“Seller” is the legal entity that sells the food item at retail. If the seller contracts with another legal entity to prepare the food, the food is not taxable even if sold

under the seller’s label, unless sold in a heated state or sold with eating utensils provided by the seller.

Taxable prepared food

Heated food

Any food or drink that is sold in a heated state or is heated by the seller is taxable regardless of the form, condition, quantity or packaging of the food. Heating includes baking, braising, boiling, broiling, dehydrating, frying, microwaving, roasting, simmering, smoking, steaming, and any other form of cooking.

Food sold either warm or hot is taxable prepared food even if it was not otherwise prepared by the seller. The heating may occur at premises other than where the food is sold, and by someone other than the seller of the food. For example, sandwiches prepared by someone other than the seller are prepared food when heated by the seller.

Food that was heated by the seller at any time before the sale is taxable as prepared food even if it is in an unheated state at the time of the sale, except that the food must be ready-to-eat at the time of the sale. See the article titled “Ready-to-eat food” on page 3 for details.

Mixed or combined food

Food where two or more ingredients were *mixed or combined* by the seller for sale as a single item that is ready to eat at the time of sale is taxable as prepared food. See the article titled “Ready-to-eat food” on page 3 for details.

The combining or mixing may occur at premises other than the location where the sale is made. However, if the seller contracts with another legal entity to mix or combine the food ingredients, the sale is not taxable as prepared food, even if sold under the seller’s label, unless the food is sold in a heated state or is sold with eating utensils provided by the seller.

Examples of foods which are taxable prepared food because the seller mixed or combined two or more food

ingredients to make a single item for sale:

- Cheese made by dairies that sell the cheese directly to the public
- Mixed green salads, mixed fruit salad, a mixture of cut raw vegetables or cubed fruits that are cut and combined by the seller
- Hand-prepared or dispensed ice cream cones, sundaes, novelties, ice cream cakes and ice cream pies are prepared food because the ice cream is combined with cones or other ingredients
- Jam or salsa prepared by the seller
- Sandwiches prepared by the seller
- Sushi, since it is a combination of food ingredients

Food sold with eating utensils

Food that is sold with eating utensils provided by the seller is prepared food and is taxable even if the seller does not heat or mix or combine the food.

Eating utensils include but are not limited to plates, bowls, knives, forks, spoons, glasses, cups, napkins, straws, chop-sticks, and skewers inserted into food and handed to the customer. In addition, platters and trays that are designed for serving and displaying the food are eating utensils. For example, party trays on which slices of ready-to-eat meats, cheeses, raw vegetables, fruit, etc. are displayed or served are eating utensils.

Material that is used solely for packaging and transporting the food is not an eating utensil. For example, a cardboard round or a plastic or polystyrene foam tray that is designed for packaging and transporting the food, and not for displaying or serving the food, does not make the food taxable prepared food.

Eating utensils are provided by the seller when they are physically given to the customer by the seller, or if the seller makes the eating utensils available to the customer as described below.

Physically give utensils. Eating utensils are provided by the seller if the seller's customary practice is to physically give utensils to the customer along with the sale of the food. If eating utensils are physically given to the customer, the food is taxable regardless of container size or the number of servings.

Examples:

1. Seller places utensils on a table, counter, or other surface where a customer sits or stands to eat

2. Seller normally hands utensils to the customer along with the food
3. Seller places utensils in the package with the food being sold. This includes utensils that are prepackaged by a person other than the seller, unless the utensils are included in the package by a manufacturer.

“Manufacturer” is defined as a person that has a North American Industry Classification System (NAICS) code of a manufacturer, sector 311. For example: A caterer sells boxed lunches to a grocery store with utensils packaged inside. The caterer is not a manufacturer so the boxed lunches are prepared food and sales by the grocery store are taxable. Examples of utensils provided by the manufacturer include snack package combinations of cheese and crackers with a plastic spreader, ice cream cups packed with a spoon, and juice boxes packaged with a straw. These items are not taxable as prepared food because the utensil is provided by a manufacturer.

Eating utensils made available. If the seller makes eating utensils available to customers, such as on a counter or in a service area, food sold *is taxable* prepared food when:

- a plate, glass, cup, or bowl is necessary for the customer to receive the food and the seller makes the utensils available. For example, milk sold from a milk dispenser is taxable because the customer must use a glass or cup to receive the milk.
- sales of prepared food are more than 75 percent of the seller's total sales of all food and food ingredients. See the article titled “**75 percent calculation**” on page 5 for details. The only exception is the sale of food items that contain four or more servings.

When a food item contains four or more servings packaged as one item and sold for a single price, the following rules apply:

- If the seller's practice is to physically give eating utensils to the customer, then the sale of the food item is taxable, regardless of container or serving size. See the section titled “Physically give utensils.”
- When eating utensils are made available to the customer, the sale of the food item containing at least four servings is not taxable. See the section title “Eating utensils made available.”

Use the information on the product label to determine the number of servings in the food item. If there is no label on the product, the seller can make a reasonable determination as to the number of servings in the food item.

The food can be placed in a package by either the purchaser or the seller. The food is sold for a single price if there is one price for the entire contents of the packaged food. If the seller charges for each individual serving in the package, then the sale is not “one item sold for a single price.”

Examples:

- A restaurant with a prepared food percentage of 80 percent sells fruit pies for \$2 a slice. Each slice equals one serving. Five slices are packaged and sold for \$9.40. The sales receipt simply shows the price of the pie as \$9.40. Since the item contains four or more servings and is sold for a single price, the item is not prepared food unless utensils are physically given to the customer.
- However, if the sales receipt shows that the slices are sold five at \$2 each, the item is not sold for a single price. Therefore, if the seller has utensils available to the customer and the seller’s percentage of prepared food sold is greater than 75 percent, the pie slices are taxable prepared food.
- A seller’s percentage of prepared food sold is greater than 75 percent. The seller owns a convenience store which has a food island where eating utensils are made available (for use by customers purchasing food from the food island). A customer buys a small can of tuna fish; he does not take any eating utensils. The customer’s food is taxable because the seller makes eating utensils available; the seller’s percentage of prepared food sold is greater than 75 percent; and the serving size is less than four servings.
- A seller’s percentage of prepared food sold is 75 percent or less. The seller owns a convenience store with a food island that has eating utensils. In this example, the canned food is not subject to sales tax, even though the seller makes eating utensils available, because the seller’s percentage of prepared food sold is 75 percent or less.

Exempt food

Bakery items

Bakery items are not prepared food unless sold with eating utensils provided by the seller (see list of bakery items on page 1). Ice cream cakes and ice cream pies

are not bakery items. Sales of ice cream cakes and ice cream pies that are prepared by the seller as described above are taxable.

Examples:

- A restaurant has a “to go” bakery counter. It is not the seller’s practice to give the customer utensils (including napkins) with their purchase and there are no utensils on the counter. Sales of “to-go” bakery items (e.g. muffins) are not taxable (even though the seller’s percentage of prepared food sold is greater than 75 percent).
- A bakery sells a cookie. Napkins (utensils) are available, but the napkins are not:
 - physically handed to the customer;
 - placed inside the container with the food; or
 - placed on a surface where the customer sits or stands to eat.

The sale is not taxable unless the bakery’s sales of prepared food are more than 75 percent of their total sales of all food.

Ready-to-eat food

“Ready-to-eat” means that the food is customarily eaten by the customer at the temperature at which it is sold. Unless sold with eating utensils provided by the seller, the following foods are not taxable as prepared food:

- Ready-to-eat meat and seafood sold by weight in an unheated state
- Food sold in an unheated state that the customer customarily heats before eating, even if the food was prepared by the seller

Ready-to-eat meat and seafood sold by weight in an unheated state are not prepared food even though the seller may have prepared the food, unless sold with eating utensils provided by the seller.

Meat and seafood includes any part of an animal used for food. Examples include beef, pork, lamb, buffalo, venison, ostrich, game birds, turkey, chicken and other poultry, fish and shellfish from the sea (such as caviar, clams, lobsters, oysters, shark, and shrimp) and freshwater fish.

Examples of ready-to-eat meat and seafood include cooked sliced turkey, honey-baked or honey-glazed ham, smoked fish, or cooked shrimp. Raw fish such as

caviar and salmon sashimi that does not require cooking to prevent food borne illness is also exempt if sold by weight.

Adding a sauce or glaze, that is in an unheated state, to ready-to-eat meat or seafood before it is weighed for sale does not make it prepared food. For example, a cold sauce is added to ready-to-eat shrimp and weighed together for sale as a single item. The sale is exempt. However, if ingredients that are not part of the ready-to-eat meat and seafood are added to make a different food item, the resulting item is taxable prepared food even if it is sold unheated and by weight.

Examples:

- Ready-to-eat shrimp is mixed with celery, pasta and a sauce to make a cold salad which is sold by the pound. The sale is taxable as prepared food.
- Sushi is made with rice and raw fish with a sea vegetable wrap. The sale of the sushi is taxable even though the food item contains raw fish because the seller combined two or more food ingredients and sushi does not require cooking.

Meat processing. When meat provided by a customer to a meat processor is combined with meats or ingredients, the resulting meat is exempt if it is sold raw. Items such as beef sticks, venison sausage, buffalo or turkey jerky are also exempt if sold by weight in an unheated state.

Examples of foods prepared by the seller, sold in an unheated state, that are taxable as prepared food because they are ready to eat at the time of sale:

- Hard-boiled eggs prepared by the seller and sold cold
- Peanuts roasted by the seller, but sold cold
- Seller cooks onions, leeks, potatoes and other ingredients and then refrigerates it to make a soup that is meant to be eaten cold

Examples of foods that are not prepared food because they are not ready-to-eat at the time of sale:

- Vegetable soup or lasagna prepared by the seller which is meant to be eaten hot, but sold frozen
- Spaghetti sauce prepared by the seller and sold in jars from the seller's store shelves
- Unbaked or partially baked pizzas that the customer bakes

Raw eggs, fish, meat and poultry

Eggs, fish, meat and poultry when they are raw, and other foods containing these raw animal food products

requiring cooking by the customer to prevent food borne illnesses are not prepared food, unless sold with eating utensils provided by the seller.

Fish includes fish and shellfish from the sea, such as clams, lobsters, oysters, shark and shrimp, and any freshwater fish.

Examples include uncooked meatloaf, marinated raw chicken, uncooked crab cakes, and cookie dough. However, sushi prepared by the seller, that contains raw fish is taxable since the sushi does not require cooking by the consumer.

Sliced, repackaged, or pasteurized food

Food that the seller does not prepare other than to slice, repackage or pasteurize is exempt, unless sold with eating utensils provided by the seller.

Examples:

- The seller slices celery and packages it for sale. The sliced celery is not prepared food. However, if the seller fills the cut celery with cream cheese, or combines it with other sliced vegetables, it becomes taxable prepared food.
- Cheese that the seller slices, weighs, wraps and labels is not taxable prepared food.
- Variety packages of food items such as different types of ready-to-eat meat, different flavors of muffins, or different varieties of whole fruits are not prepared food when the seller only repackages the foods.
- Potato salad purchased in large quantities and repackaged into smaller containers without further preparation by the seller is not prepared food.
- Food that the seller pasteurizes for sale, such as eggs, milk, fruit juice, soy sauce, or cheese is not prepared food.

Combination packages

When a retailer sells a combination package consisting of taxable and nontaxable food items for a single price, the transaction may be taxable as a "bundled transaction." The total sales price is taxable if eating utensils are provided by the seller as described in this fact sheet. If eating utensils are not provided, the sale is taxable if the taxable food item is more than 50 percent of the total sales price of the combination package, or the purchase price of the taxable food item is more than 50 percent of the total purchase price of the combination package.

For example, a lunch consisting of hot chicken (taxable because it is sold heated) and cold potato salad that was not prepared by the seller is sold for a single price of \$3.95. No eating utensils are provided by the seller. The seller uses their sales price of the items in the combination package to determine whether the sale is taxable. The normal sales price of the taxable chicken is \$3.00 and the sales price of the nontaxable potato salad is \$0.95. Since the sales price of the chicken is more than 50 percent of the total cost of the combination package, the sale is taxable.

For more information, see the section titled “Gift baskets and other combination packages” in Fact Sheet 102A, *Food and Food Ingredients*.

75 percent calculation

The information below is for use in determining whether food is taxable prepared food when a seller makes eating utensils available to customers as described in the section on “Food sold with eating utensils” on page 2.

A seller that makes eating utensils available to their customers must calculate the prepared food sale percentage each year. If the seller has multiple locations, the seller must calculate a single prepared food sales percentage for all of their Minnesota establishments combined. This includes all business operations in Minnesota owned by the same person.

Examples:

- A partnership owns two restaurants in Minnesota. The partnership must combine sales from both restaurants to calculate the prepared food sales percentage.
- A sole proprietor of a grocery store is one of the partners in the restaurants in the example above. The grocery store sales are not combined with sales from the restaurants because it is not owned by the partnership.

The seller has the option of calculating the percentage either for each tax year or for each business fiscal year, based on the seller’s data from the prior tax year or business fiscal year.

How to calculate the percentage. First, determine whether you will be using the previous tax year or the business fiscal year for calculating the percentage. Then, determine the totals for A and B below based on

total sales during the period selected for all Minnesota establishments. Finally, compute the prepared food percentage as described in C below.

- A. Total sales of taxable food which
- the seller prepared by heating, or mixing or combining ingredients, and
 - food where plates, bowls, glasses or cups are necessary to receive the food.
- Do not include sales of alcoholic beverages in the calculation.
- B. Total sales of all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Do not include alcoholic beverages.
- C. The prepared food ratio is computed by dividing the total prepared food sales determined in A, by the total sales of all food and food ingredients determined in B ($A \div B = C$).

For example, in a particular tax year the seller’s sales of prepared food in A are \$150,000 and sales of all food and food ingredients in B are \$172,000. The prepared food percentage is 87 percent ($\$150,000 \div \$172,000 = 87\%$).

If the seller’s sales of prepared food in A are \$97,000 and sales of all food and food ingredients in B are \$178,000, the prepared food percentage is 54 percent ($\$97,000 \div \$178,000 = 54\%$).

Applying the prepared food percentage. Sellers must apply the percentage to their food sales no later than 90 days after the beginning of the tax or business fiscal year.

A seller opening a new business in Minnesota must make a good faith estimate of the prepared food sales percentage for the first year. If a seller has both new and existing businesses, combine the good faith estimate for the new business and the data from the prior tax year or business fiscal year for the established businesses to arrive at a single percentage.

After the first three months of operation of the new business, the seller must calculate their prepared food sales percentage based on actual sales. If the result is different than the estimated percentage, the seller must apply the new result to future sales.

Legal References

Minnesota Statutes 297A.61

subd. 3(d), Definitions

subd. 31, Prepared Food

Minnesota Rule 8130.4700, Prepared Food, Candy,
and Soft Drinks

Minnesota Rule 8130.4705, Food Sold with Eating
Utensils

Revenue Notice

10-01, Prepared Food

Other Fact Sheets

102A, *Food and Food Ingredients*

102B, *Candy*

102C, *Soft Drinks and Other Beverages*

102E, *Dietary Supplements*

137, *Restaurants and Bars*

158, *Vending Machines and Other Coin-Operated
Devices*