

This notice was repealed and replaced on April 12, 2010 by Revenue Notice # 10-01. Please see Revenue Notice # 10-01.

Minnesota revenue notice number # 01-12

Sales and Use Tax - Prepared Food

Introduction

Minnesota Statutes, section 297A.61, subdivision 3 defines "sale and purchase" to include the preparation of food for consideration. Minnesota Statutes, section 297A.67, subdivision 2, defines "food and food ingredients" to mean substances in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Subdivision 2 provides that food and food ingredients are exempt from the Minnesota sales tax.

Under Minnesota Statutes, section 297A.67, subdivision 2, the following items are not considered food or food ingredients and are thus taxable: candy, soft drinks, food sold through vending machines, prepared foods, alcoholic beverages, dietary supplements, and tobacco. These definitions are effective for sales and purchases made after December 31, 2001.

Following are explanations of the different terms to assist in applying the above statutory provisions. These terms must be read in conjunction with the statute to determine the final taxability of specific food items. Food that is exempt under one of the provisions of the prepared food definition may still be subject to tax if it is covered under another part of the definition.

Prepared Food

"Prepared food" means:

- food that is sold in a heated state or food that is heated by the seller;
- food where two or more ingredients were mixed or combined by the seller for sale as a single item; or
- food sold with eating utensils that are provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. Food is not considered to be prepared food merely because it is sliced, repackaged, or pasteurized by the seller.

"Seller" means the legal entity that sells the product at retail. This means that if the same legal entity prepares and sells the food item, the food is taxable regardless of where the food was prepared. If the seller contracts with another legal entity to prepare the food, the sale is not taxable even if sold under the seller's label.

Heated food

Food that is sold in a heated state or food that is heated by the seller is taxable if it is ready to be eaten at the time of the sale. Heating includes baking, boiling, smoking, and cooking. The heating may occur at premises other than the location at which the sale is made. Prepared food includes food that is served hot even if the food was not otherwise prepared by the seller and food that was heated by the seller at any time before the sale and is ready to eat at the time of sale. It also includes heated food regardless of form, condition, quantities, and packaging.

Examples of prepared food: rotisserie chicken, barbecued spareribs, fish, spaghetti, ready-to-eat pizza, chow mein, french fries, and soup. The sale of these foods is taxable, whether sold by restaurants, caterers, food stores, or vending machines, when sold hot or ready to eat. A sale of heated food in combination with unheated food is taxable in full if sold as a single item even if these items were not combined or mixed by the seller. For example, if an individual purchases a piece of heated chicken, two quarts of potato salad (not otherwise prepared by the seller), and a pint of cold beans, and these items

are sold in combination for a single unit price, the entire combination is taxable food. If a seller bakes or heats a pie purchased from another entity, the sale of the pie, or part of it, is taxable even if not hot at the time of the sale. Heating of the food by the customer, however, does not make an otherwise exempt food item taxable.

Examples of exempt food: partially-baked pizza, frozen soup made by the seller, a casserole that needs to be heated by the consumer, and smoked meats that require heating such as smoked or honey glazed ham. These items do not qualify as prepared food since they are generally not ready to be eaten at the time of sale.

Two or more ingredients

Food, where two or more ingredients were mixed or combined by the seller for sale as a single item, is taxable if it is ready to be eaten at the time of the sale. Prepared food does not include food that contains raw eggs, fish, meat, or poultry products that require cooking after the sale to prevent food borne illnesses and food the customer generally cooks or heats after the sale.

Meat that is provided by the customer and processed by a meat processor is taxable if it is combined with other meats that are provided by the meat processor and then sold to the customer (e.g., ready-to-eat sausage, beef sticks).

Breads or other baked goods that are baked by the seller are taxable because two or more ingredients were mixed or combined by the seller. Baked goods that are sold by an outlet store are taxable if the outlet store is part of the same legal entity as the entity that prepared the baked goods.

Cheese dairies that make their own cheese and sell it to the public are subject to tax since making cheese involves a combination of two or more food ingredients.

Vegetables or fruits, where the seller cuts, combines, and repackages two or more kinds of vegetables (e.g., mixed greens for a salad) or fruits, are subject to tax.

Examples of prepared food: hand-prepared or dispensed ice cream cones, cotton candy and sundaes are taxable because the ice cream is combined with the cones by the seller and the sundae and cotton candy involve a combination of two or more ingredients. Cold salads that are prepared by the seller are subject to tax because two or more ingredients are combined.

Examples of food that is not taxable because it is not ready to eat include frozen or half-baked pizza, uncooked meatloaf mixture and marinated meat.

Eating utensils

Food that is not otherwise prepared by the seller but is sold with eating utensils provided by the seller is prepared food and thus subject to tax. Eating utensils are considered to be provided by the seller if one of the following conditions is met:

(a) Eating Establishments. Food that is sold by an eating establishment is subject to tax. These eating establishments may be mobile or immobile and may or may not provide seating accommodations for their customers. They include restaurants, caterers, pizzerias, bars, taverns, night clubs, yogurt or ice cream stores/stands, coffee or donut shops, diners, refreshment stands, drive-ins, fast food restaurants, bagel shops, lunch counters, cafeterias, private and social clubs, sandwich shops, snack bars, hot dog carts, concession stands at a fair or a mall, sidewalk vendors or like places of business where food is served and is meant to be eaten soon after it is served.

All food served at eating establishments is subject to tax unless the seller maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food such as gallons of milk, loaves of bread, whole pies, and packages of rolls or muffins. The information shown on invoices, cash register receipts, or sales tickets must provide an adequate description of the food items sold to show that the sale was not of food items that are generally served

with eating utensils.

Grocery stores, department stores, and convenience stores that have a separately identifiable eating establishment, are required to collect the tax on food items sold at that establishment unless they maintain adequate records for sale of food items that are generally not sold with eating utensils.

Food sold by grocery stores, convenience stores, and department stores is generally not considered to be sold with eating utensils provided by the seller even though eating utensils may be available to customers, (e.g., napkins on the counter). The food may be taxable if it is traditionally served with eating utensils (see part (b) below). Grocery stores are businesses that are primarily engaged in the retail sale of a wide variety of food products. They generally contain the following departments: dairy, baked goods, canned and dry goods, frozen foods, meats, fresh fruits and vegetables and household supplies.

(b) Food that is traditionally sold with eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins, or straws is subject to tax. For example, salad bars or "make your own sandwich" bars at a grocery store are taxable since salads and sandwiches are eaten with eating utensils. "Make your own ice cream sundae" bars are taxable for the same reason. These items are taxable regardless of where they are sold. Cold cut platters, cheese platters, vegetable and fruit platters are taxable since they are sold with eating utensils.

Box lunches are taxable since they are traditionally sold with eating utensils.

If the eating utensil is provided by the manufacturer rather than by the seller, the food is not considered to be provided with eating utensils. For example, a box of crackers and cheese that includes a spreader, is not subject to tax since the spreader is not provided by the seller.

Sliced, repackaged, or pasteurized food

Sliced, repackaged, or pasteurized food is not subject to tax if the seller did not prepare it other than slice, repackage, or pasteurize it. Thus, for example, a sliced apple is not subject to tax. However, if the seller adds caramel sauce to the apple, it becomes a taxable item. Cheese that is removed by the seller from the storage or display area, sliced as requested by the customer, weighed, wrapped, labeled, and handed to the customer to be taken to the checkout area, is not prepared food since repackaging in itself does not result in the item being subject to tax. Variety packages that include servings of different kinds of meat or muffins are not taxable since the seller only repackages these foods. The sale of bags containing whole fruits (even those that include more than one type of fruit) are not taxable for the same reason.

Dated: December 18, 2001

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