

Revenue Notice #02-02 was repealed on April 12, 2010 by Revenue Notice #10-01.

Minnesota Revenue Notice # 02-02

Sales and Use Tax - Soft Drinks

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 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 is an explanation of "soft drinks." This explanation must be read in conjunction with the statute to determine the final taxability of specific food items. Items that are not taxable under the term "soft drinks" may still be subject to tax if they do not otherwise qualify as food or food ingredients. For further information on prepared food, please refer to Revenue Notice # 01-12.

Soft Drinks

"Soft drinks," as defined in Minnesota Statutes, section 297A.61, subdivision 32, means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes. Soft drinks do not include beverages that contain more than 50 percent vegetable or fruit juice.

Since soft drinks are not food or a food ingredient, they are subject to tax.

Beverages that are labeled fruit juice are subject to tax when the percentage of fruit juice content is not specified. Soft drinks are taxable regardless of the serving size, or the type of seller (i.e., they are taxable whether they are sold by a grocery store, restaurant, or vending machine).

Examples of Soft Drinks

- bottled or canned water that contains sweeteners;
- coffee and tea drinks that contain sweeteners;
- fruit ades, drinks, or nectars (containing 50% or less fruit juice);
- root beer.

Examples of Non-Taxable Beverages*

- apple cider;
- beverage powders or concentrates such as ground coffee, tea bags, and juice concentrate;
- carbonated or non-carbonated bottled or canned water that does not contain sweeteners;
- coffee drinks that contain milk;
- nonalcoholic beer that contains no sweeteners.

*These items are taxable if prepared by the seller, qualify as an alcoholic beverage, or sold through a vending machine.

Dated: 28 December, 2001

Jennifer Engh
Assistant Commissioner for Tax Policy