

Revenue Notice # 02-04 was repealed on April 12, 2010 by Revenue Notice # 10-01.)

Minnesota revenue notice number 02-04

Sales and Use Tax - Candy

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 "candy." 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 "candy" 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.

Candy

"Candy," as defined in *Minnesota Statutes*, section 297A.61, subdivision 33, means a preparation of sugar, honey, or other sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include food items containing flour or food items that require refrigeration.

Since candy is not a food or a food ingredient, it is subject to tax.

Candy does not include food items that contain any kind of flour such as whole wheat, rice, corn, or brown flour. Food items where the label lists flour as one of the ingredients are not candy. Flour does not include cornstarch.

Examples of Candy

- caramel-coated popcorn;
- honey roasted and honey coated nuts;
- gum;
- breath mints;
- caramel apples;
- fruit roll-ups;
- glazed apricots;
- marshmallows;
- sweet or semi-sweet cooking bars or chips;
- sugarless candy.

Examples of Food that is Not Candy*

- jam, jelly, honey, preserves, syrup (not in the form of bars, drops, or pieces);
- pretzels, cookies, cereal (contain flour);

- ice cream bars (require refrigeration);
- dried fruit (if it does not contain sugar).

*These items are taxable if prepared by the seller or sold through a vending machine.

Dated: 28 December, 2001

Jennifer Engh
Assistant Commissioner for Tax Policy