

This notice was revoked on April 16, 2007 by Revenue Notice # 07-04.

Minnesota revenue notice number 99-12

Sales and Use Tax - Food, Candy and Soft Drinks

This revenue notice revokes and supersedes Revenue Notice # 92-09, which was published on February 18, 1992. It provides guidance for the application of the sales and use tax to food, candy and soft drinks.

Food Prepared for Immediate Consumption

Minnesota Statutes, § 297A.01, subdivision 3(c)(3)(ii), provides that food or drinks prepared by a retailer for immediate consumption either on or off the retailer's premises are taxable.

"... 'food or drinks prepared for immediate consumption' includes any food product upon which an act of preparation including, but not limited to, cooking, mixing, sandwich making, blending, heating, or pouring has been performed by the retailer so the food product may be immediately consumed by the purchaser."

Slicing is not considered to be preparation for immediate consumption. For example, bulk sales of meat and cheese, sliced, wrapped and sold by the pound, are not taxable.

Single or Individual Servings and Bulk Containers or Bulk Packaging

Minnesota Statutes, § 297A.01, subdivision 3(c)(3)(iii), provides that single or individual servings of ice cream, ice milk, frozen yogurt products, or frozen novelties are taxable. Minnesota Statutes, § 297A.01, subdivision 3(c)(3)(xi), provides that single or individual servings of bakery products sold from concession stands, vehicles, bars, and restaurants are taxable. "Single or individual servings" does not include products when sold in bulk containers or bulk packaging.

"Bulk containers or bulk packaging" means two or more servings that are pre-packaged together for sale. Individual servings selected by the customer and put in a bag or container by the seller are not considered bulk packaging. Bulk containers of ice cream, ice milk, or yogurt (pints, quarts, half gallons, etc.), or bulk packaging of frozen novelties, and ice cream cakes and pies are not taxable.

Bakery Products

Regardless of whether sold as single servings or in bulk packaging, bakery products prepared by the retailer for consumption on the retailer's premises, sold at a place that charges admission, or sold from a vending machine are taxable.

Food Sold from Concession Stands and Vehicles

Minnesota Statutes, § 297A.01, subdivision 3(c)(3)(viii), provides that all food sold for immediate consumption from concession stands and vehicles is taxable. Food sold in bulk from concession stands or vehicles would not be considered sold for immediate consumption and consequently would not be taxable.

Sales of raw food products such as fresh fruit, vegetables and frozen seafood sold from roadside stands, farmers' markets and vehicles are not taxable.

Candy

Minnesota Statutes, § 297A.01, subdivision 3(c)(3)(v), provides that gum, candy, and candy products are taxable, except when sold for fundraising purposes by a nonprofit organization that provides educational and social activities primarily for young people 18 years of age and under.

Products that are commonly packaged and sold as candy, including health and diet food products, are subject to sales tax. Fruit, nuts, or popcorn which are combined with chocolate, carob, sugar, honey,

candy, or other natural or artificial sweeteners are also considered candy and are subject to sales tax. Individually wrapped items ordinarily considered to be candy, such as Twix bars, are taxable whether sold individually or in quantity as candy, or as cookies .

The following are examples of candy subject to sales tax. Brand names are specified only to illustrate types of items considered to be candy. They do not imply that these are the only taxable brands in any category.

- breath mints, including sugarless
- candy bars
- caramel apples
- caramel corn
- chocolate stars
- chocolate- or carob-covered nuts, raisins, etc.
- chocolate-covered insects
- cough drops (taxable as health product)
- Cracker Jack
- Crunch and Munch
- Fiddle Faddle
- honey-covered nuts
- licorice
- nature snacks with 50% or more candy
- peanut brittle
- sugarless candy
- throat lozenges (taxable as health product)
- yogurt-covered raisins, nuts, etc.

Products that are commonly sold as ingredients for cooking or baking purposes or as a meal substitute, e.g., breakfast bars, are not candy products and are exempt from tax. The following are examples of exempt products. Again, brand names are specified for illustrative purposes only.

- baking chocolate
- breakfast bars
- cakes
- candied fruit for baking
- candy cake decorations
- cheese popcorn
- chocolate or carob chips
- chocolate-covered donuts
- confectioners bark
- cookies
- dried fruit snacks
- Frito Lay's peanut butter bars
- fruit or pudding roll-ups, fruit pieces
- granola bars or clusters
- honey-roasted nuts
- marshmallows
- nature snacks with less than 50% candy
- peanuts
- pies
- Pop-tarts
- popcorn (except when prepared by the vendor)
- PowerBars
- sunflower seeds

- sweetened cereals

Food, Diet and Nutritional Products

Appetite suppressants and/or stimulants, or food supplements such as vitamins and minerals, are taxable whether sold in liquid, capsule, tablet or powder form.

Food substitutes eaten in place of a meal, such as powdered drink mixes, diet bars and soup mixes, are exempt.

Soft Drinks

Minnesota Statutes, § 297A.01, subdivision 3 (c)(3)(iv), provides that soft drinks and other beverages including all carbonated and noncarbonated beverages or drinks sold in liquid form are taxable, except beverages or drinks which contain milk or milk products, beverages or drinks containing 15 or more percent fruit juice, and noncarbonated and noneffervescent bottled water sold in individual containers of one-half gallon or more in size. Beverages that are labeled fruit juice when the percentage of fruit juice content is not specified are exempt.

Soft drinks include all carbonated beverages and all nonalcoholic beverages which contain less than 15 percent fruit juice. Diet drinks that meet the definition of soft drinks are taxable. Beverages that are labeled fruit drink, fruit ade, or fruit nectar, when the percentage of fruit juice content is not specified, are taxable soft drinks.

The following are examples of taxable soft drinks and beverages:

- carbonated beverages containing less than 15% fruit juice
- Gatorade containing less than 15% fruit juice
- Hawaiian Punch containing less than 15% fruit juice
- Hi-C containing less than 15% fruit juice
- near beer (nonalcoholic beer)
- sparkling cataba juices containing less than 15% fruit juice
- tea and coffee (bottled or canned)
- water (carbonated)
- water (noncarbonated) when the container size is less than 1/2 gallon

The following packaged items are not taxable unless they are prepared and sold in glasses or cups (eat-in or take-out), or from vending machines:

- apple cider
- nonalcoholic cocktail mixes (powdered, liquid, and frozen) such as daiquiri or Manhattan mixes
- cocoa mix, chocolate flavored beverage containing milk
- coffee beans, ground coffee, coffee substitutes
- cranberry juice cocktail
- frozen juice concentrate
- Hawaiian Punch containing 15% or more fruit juice
- Kool-Aid (powdered)
- drinks made from milk derivatives, powders, and concentrates, either liquid or frozen
- fruit juice drinks containing 15% or more of fruit juices
- ReaLemon
- Roses Lime Juice
- Tang or other powdered fruit drinks
- tea bags and leaves
- vegetable juices
- water (noncarbonated) when the container size is 1/2 gallon or larger

The taxability of new products should be determined using the guidelines in this revenue notice.

Dated: November 15, 1999

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