

SPECIAL NOTICE

April 7, 2004

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Sales of Bakery Items

SB 6515 (Chapter 153, Laws of 2004)

Retroactive to January 1, 2004, the sales tax exemption for food products has been amended. The changes clarify and expand the exemption for bakery products. Under the new law, bakery items are exempt from retail sales tax *unless the item is sold with eating utensils provided by the seller (see below)*.

The quantity of goods sold, the fact that the goods may be sold “hot from the oven,” and the fact that seating facilities may be available have no bearing on the exemption.

However, the charge for the nontaxable bakery items must be properly segregated from the charge for any taxable items, such as a cup of coffee. Otherwise, the entire un-segregated charge is subject to sales tax.

Definitions

“**Bakery items**” include bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

“**Eating utensils**” include plates, knives, forks, spoons, glasses, cups, napkins, and straws. Utensils *do not* include bags, boxes, and other containers or packaging used to transport bakery items.

“**Sold with eating utensils**” - Bakery items are considered to be sold with eating utensils when the seller physically includes the utensils with the bakery item. For example, the seller may serve the bakery item on a plate or place napkins in a bag with the bakery item.

However, merely making utensils available for the customer to take at the customer’s discretion does not constitute “sold with eating utensils.” For example, bakery items are not “sold with eating utensils” when the seller has merely placed a napkin dispenser on the counter or has set up a utensil “island” for customers in the store. Similarly, when a grocery store sets out a stack of small plates in its bakery section, it is not considered to be selling the bakery items with eating utensils.

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