



Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

MAY 29, 2007

“Prepared Food” Tax Changes

In 2004, the Legislature amended the sales tax exemption for food and food ingredients (Chapter 153, Laws of 2004). The new law changed the definition of “prepared food” and became effective retroactive to January 1, 2004. Since publication of the original version of this special notice, the Streamlined Sales and Use Tax Agreement Compliance Review and Interpretations Committee has further clarified the definition of “prepared food.” The significant change is the manner in which sellers must determine if utensils are “provided by the seller.”

This notice primarily affects businesses who sell food and food ingredients at retail, including food manufacturers, delicatessens and similar businesses, and bakeries. The law’s special treatment of bakeries is discussed in greater detail in a separate special notice Sales of Bakery Items.

Retailers should comply with this revised special notice as soon as possible and not later than January 1, 2008. For additional information refer to revised administrative rule WAC 458-20-244 (effective in June of 2007).

What are “prepared foods” and how are they taxed?

“Prepared foods” are subject to retail sales tax. Food and food ingredients are considered prepared foods if any of the following are true:

- 1. The food is sold in a heated state or heated by the seller, *unless*:**
 - The item is a bakery item. The term “bakery item” includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.
- 2. Two or more food ingredients are mixed or combined by the seller for sale as a single item, *unless*:**
 - The food is a bakery item;
 - The food is only cut, repackaged, or pasteurized by the seller;
 - The food is sold as a single item at a price that varies by weight or volume;
 - The food contains eggs, poultry, fish, or meat which are raw and require cooking as recommended by the Food and Drug Administration (FDA) to prevent food borne illness; or
 - The seller is properly classified as primarily a food manufacturer (North American Industry Classification System (NAICS), Sector 311, except for bakeries—subsector 3118).
- 3. The item is sold with utensils “provided by the seller.”**
 - Utensils include plates, knives, forks, spoons, glasses, cups, napkins, or straws. Utensils do not include a container or packaging used to transport the food.
 - Food is sold with utensils “provided by the seller” when **any** of the following are true:
 - ◆ The utensils (a plate, glass, cup, or bowl only) are necessary for the buyer to receive the food, or
 - ◆ The utensils are physically delivered or handed to the buyer by the seller.

Note: A seller does not physically deliver a utensil if the utensil is prepackaged with the food by a manufacturer classified under sector 311 of the NAICS).

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- ◆ The utensils are made available to the buyer, and the seller's gross sales of heated food, mixed/combined food, and food sold in such a way that a plate, glass, cup, or bowl is necessary to receive the food are more than 75 percent of total sales of all food and food ingredients.
*Note: Where this sales total is more than 75 percent, all food and food ingredients are considered to be sold with utensils "provided by the seller" and are subject to sales tax **except**:*
- Items containing four or more servings and packaged by a manufacturer or seller for sale as a single item, unless:
 - ◆ The seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction; **or**
 - ◆ The item is heated or combined by the seller, as under criteria 3 and 4, above.

How do I calculate my percentage sales of prepared foods?

The formula for calculating the total sales percentage is the **sum of** gross sales of heated food, mixed/combined food, and food sold in such a way that a plate, glass, cup, or bowl is necessary to receive the food **divided by** gross sales of all food and food ingredients (including all prepared food, dietary supplements, and soft drinks).

Sellers with multiple locations must calculate a single sales percentage for all of the seller's establishments in the state based on the prior year of sales. A seller may elect to determine its prepared food sales percentage based either on the prior tax calendar year or on the prior fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the seller's records for the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first ninety days of operation materially depart from the seller's estimate.

If I sell both taxable and tax-exempt food and my prepared food sales are less than 75 percent of my total food sales what are my recordkeeping requirements?

You are required to maintain records to support the above calculation of the 75 percent test. Also, your sales receipts must segregate taxable and exempt sales.

Food Stamp Sales and Nutrition Programs

There is no change in the tax exemption for eligible foods purchased with food coupons, meals sold under a state administered nutrition program for the aged, or meals sold to senior citizens, disabled individuals, and low-income individuals by a nonprofit organization.

How do I determine whether to charge sales tax for any particular item?

Retailers should ask themselves the following questions to determine when an item is considered "prepared food" and subject to retail sales tax.

Step 1. Do I make utensils generally available to my customers and is my percentage sales of prepared food greater than 75 percent?

If the answer to **both** parts of this question is "yes," then retail sales tax must be collected on **all** sales of food and food ingredients. The only exception is for items containing four servings or more, packaged for sale as a single item and sold for a single price, in an unheated state, where the seller does not physically give or hand a utensil to the buyer.

If the answer is no to either part of the question, separately evaluate the taxability of each item sold in accordance with Steps 2 through 5, below.

Step 2. Is a plate, glass, cup, or bowl necessary to receive the item or is my customary practice for the item to deliver a utensil to the customer as part of the sales transaction?

If the answer to either part of this question is “yes,” the sale is subject to retail sales tax.

If the answer to both parts of this question is “no,” and the item is a bakery item, the sale is exempt from retail sales tax.

If the answer to both parts of this question is “no,” and the item is not a bakery item, move to Step 3.

Step 3. Am I heating the item or selling it in a heated state?

If the answer is “yes,” the sale is subject to retail sales tax.

If the answer is “no,” move to Step 4.

Step 4. Did I mix or combine two or more ingredients to sell as a single item?

If the answer is “no,” the sale is exempt from retail sales tax.

If the answer is “yes,” move to Step 5.

Step 5. Ask yourself the following four questions:

1. Did I only cut, repackaged, or pasteurized the product?
2. Is the product sold by weight or volume as a single item?
3. Am I a food manufacturer under NAICS, Sector 311, other than a bakery (subsector 3118)?
4. Does the product contain raw eggs, fish, meat, or poultry that requires cooking by the consumer as recommended by the FDA to prevent food borne illness?

If the answer to **any one** of these four questions is “yes,” the sale is exempt from retail sales tax.

If the answer to **all** four of these questions is “no,” the sale is subject to retail sales tax.

For more detailed information, refer to the revised administrative rule WAC-458-20-244, effective June 2007.