Department of Revenue

Sales and Use Notice

Notice #17-21 October 2017

Sales Tax on Prepared Food

7% State Tax Rate Applies to Prepared Food Sales

Prepared food is subject to the general state sales and use tax rate of 7%, plus the applicable local tax rate. The law does not define prepared food as food or food ingredients, which are subject to a reduced state rate of 4%, plus the applicable local tax rate.

Prepared Food Defined

Food is considered prepared food if it meets any of the following qualifications:

- It is sold in a heated state or heated by the seller,
- It contains two or more food ingredients mixed together by the seller for sale as a single item, or
- The vendor who sells it also provides eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws.

The seller may prepare the item where the food is sold or at another location. A more detailed explanation of prepared food definition is provided below.

Sold in a Heated State or Heated by the Seller

Food is sold in a heated state if it is sold at a higher temperature than the air temperature of the place where it is sold (e.g., a rotisserie chicken cooked by the seller and placed in a warmer, or nuts heated and sold warm).

Food is considered heated by the seller if the seller previously heated the item, even if it is not heated at the time of sale (e.g., cookies baked by the seller and sold to the consumer at room temperature). Food is not considered heated by the seller if it was not previously heated by the seller, but the seller provides a means for customers to heat the food themselves. For example, a prepackaged muffin that the customer heats in a microwave on the counter that the seller has available for use by customers is not heated or sold in a heated state by the seller.

Contains Two or More Ingredients Mixed Together by the Seller

This requirement is met if the seller mixes ingredients together to create a new food item to sell (e.g., a bakery mixes two or more ingredients to make a cake). The requirement is also met if the seller combines multiple items and sells them as one item, even if a new distinct food item is not created (e.g., a deli combines several different cheeses and sliced meats along with garnishes to make a party tray for a single sales price).

Sold by a Seller Who Also Provides Eating Utensils

Eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, napkins, cups, and straws.

If the manufacturer, rather than the seller, provides an eating utensil with the food, it is defined as food or food ingredients and it is taxable at the lower rate (e.g., a tuna lunch kit that includes a napkin and spoon).

Disclaimer: The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.

Eating utensils are provided by the seller if the seller's practice is to:

- physically give or hand the utensils to the purchaser, or
- make the utensils available on the premises (self-service), but only if the seller's percentage of food that is otherwise considered prepared food is more than 75% of all food sales.

Examples of Prepared Food

The following are examples of items that are prepared food if prepared by the seller:

- bakery goods
- fruit trays
- coffee or tea
- ice cream served in cones, as sundaes, or other such preparation
- party trays
- ready to eat meats, poultry, or fish (cooked, smoked, or dried), such as summer sausage, beef or venison sticks, rotisserie chicken, and smoked fish
- salad greens mixed by the seller
- sandwiches
- soups, casseroles, or meals sold warm and ready to eat
- warmed nuts

What Isn't Prepared Food

Prepared food **does not** include food that the seller only cuts, repackages, or pasteurizes. For example, deli meats or cheeses that the seller slices and repackages for sale to the customer or potato salad that the seller does not make and only repackages into smaller containers and sells in the deli are not prepared food.

Eggs, fish, meat, poultry, and foods containing these raw animal foods that the consumer is required to cook are not prepared food. For example, marinated raw meats or seafood and cookie dough containing raw eggs are not prepared food.

For More Information

Visit www.tn.gov/revenue. Click on Revenue Help to search for answers or to submit an information request to one of our agents.

References

Tenn. Code Ann. § 67-6-102; Tenn. Code Ann. § 67-6-228

[1] This notice has been updated to reflect law changes regarding products that are mixed by the seller but require cooking before consumption, such as raw marinated meats and mixtures containing raw eggs. These items are defined as food.

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