Food and Food Products Sold by Food Stores and Similar Establishments

Introduction

Generally, food and food products sold by food stores are exempt from sales tax. However, there are exceptions. This bulletin explains what kinds of food are subject to sales tax and which are exempt when sold by food stores and similar establishments, including supermarkets, grocery stores, convenience stores, etc. Additional resources relating to sales of food and beverages in other circumstances (e.g., sales by restaurants, sales from vending machines, or sales of candy or sandwiches) are listed at the end of this bulletin.

Exempt food and food products

The following items are examples of foods and food products that are exempt from sales tax, unless sold under the conditions described in this bulletin that would render them taxable. This list includes some, but not all, of the foods that may be sold without collecting sales tax. See also Tax Bulletin *Listings of Taxable and Exempt Foods and Beverages Sold by Food Stores and Similar Establishments* (TB-ST-525). (**Note:** Any brand name product shown in italics is included as an example and is not to be construed as an endorsement of the product.)

- canned goods
- dairy products
- fruits
- vegetables
- meat, poultry, fish
- bakery products, including bread, rolls, donuts, cakes, and pies
- snack items such as potato chips, pretzels, popcorn, and corn chips (however, if any of these items are sugar-coated, chocolate-coated, or candy-coated, they are taxable)
- frozen foods, including frozen dinners or entrees
- baking ingredients, including baking chocolate
- cookies and snack cakes
- packaged salads sold by the pound
- granola and cereal bars
- dried fruits, including raisins and *Craisins*® (however, if any of these items are sugar-coated, chocolate-coated, or candy-coated, they are taxable)
- nuts, unless honey-roasted, chocolate, or candy-coated
- food coloring, food preservatives, and sweeteners
- *Fruit Gushers*®, *Fruit Roll-Ups*®, and fruit snacks
- baby food

Taxable sales of food

Generally, food sold at food stores is taxable when sold under any of the following conditions:

- it is sold heated;
- it is sold for consumption on the premises; or

- it has been prepared by the seller and is ready to be eaten, whether for on premises or off premises consumption.

Also, the following categories of food are taxable:

- sandwiches (whether heated or unheated),
- carbonated beverages,
- candy and confectionery, and
- pet foods.

Heated foods

All food that is sold in a heated state is taxable. This includes food that is cooked to order and food that is kept warm using heat lamps or other warming devices. Examples of these foods are:

- hot pizza, hot soup, hot rotisserie chicken, warm roasted nuts, and warm pretzels;
- fish cooked to order at the seafood counter; and
- food sold at a hot buffet in the store.

Food sold for consumption on the premises

Food sold that may be eaten at an eating area (i.e., an area with tables and seating) in the store or just outside the store is taxable. This includes food sold at a:

- restaurant or similar establishment,
- convenience store,
- coffee shop within the store,
- food court,
- salad bar or snack bar,
- concession stand, or
- hot or cold buffet.

Food prepared by the seller and ready to be eaten

Food that is prepared and arranged on a plate or platter by the seller, and that is ready to be eaten is taxable. It doesn't matter whether the food is sold to be eaten at the store or another place, or whether it's served hot or cold. *Ready to be eaten* means that the food is placed on an individual plate or container, or on a serving platter, and doesn't require any more preparation. Examples of this include:

- meals served on an individual plate,
- ice cream served on a cone or in a sundae,
- salads from self-serve salad bars, and
- meals prepared by the store at your request.

It also includes platters prepared by the store such as:

- cold cut platters,
- cookie platters,
- relish trays,
- fruit or vegetable platters,
- seafood platters, and
- sushi platters.

Food that is cooked by the store and then packaged and refrigerated, but not otherwise arranged on a plate or platter, is not taxable if sold for off-premises consumption. For example, a chicken roasted by a food store that is then cooled, packaged and sold from a refrigerated case is not taxable. However, any food that is sold in a heated state is taxable.

Sandwiches

Sandwiches are generally taxable, whether they are sold hot or cold. For additional information, see Tax Bulletin *Sandwiches* (TB-ST-835).

Candy and confectionery

Candy and confectionery are generally subject to sales tax. For specific information about candy and candy-coated foods, see Tax Bulletins *Candy and Confectionery* (TB-ST-103) and *Food and Beverages Sold from Vending Machines* (TB-ST-280).

Dietary foods

Most dietary foods are not taxable. For information about what foods are considered dietary, see Tax Bulletin *Dietary Foods and Health Supplements* (TB-ST-160).

Combinations of exempt food with a taxable item

When food that is exempt from tax is sold in combination with a taxable item for a single charge (such as cheese and a cutting board), the entire charge is subject to sales tax. Other examples are trail mix containing chocolate candy, and children's prepackaged lunches containing deli meat, crackers, and a candy bar sold for a single charge. Similarly, when food is sold in combination with heated food on plates or as meals for a single charge, the entire charge is taxable.

How food is sold determines whether sales tax applies to the sale

How food is presented when sold may determine whether the sale is taxable or exempt. The following table provides some examples of foods that are exempt in one form but subject to sales tax in another form.

Food	Exempt if	Taxable if
cold cuts	sliced and sold by weight	arranged on food platter
pizza	frozen, refrigerated, unheated	heated
hot dog	refrigerated (packaged)	served on a bun or heated
fish	sold unheated	heated or served in a sandwich
bread	sold by the loaf (whole or sliced)	served with a bowl of soup
bananas	sold whole, individually or by the bunch	peeled or sliced as part of a fruit platter
bagel	sold by quantity (whole or sliced)	toasted, buttered, or with cream cheese
salad mix	packaged in bag	from a self-serve salad bar or prepared and arranged on a plate
ice cream	sold in a container by weight (including hand-packed pints, quarts, etc.)	made-to-order cone or sundae
macaroni salad	packaged and sold by weight	served with a sandwich, served in a tray as a side dish or on a plate, or from a self-serve salad bar
chicken wings	sold unheated	sold heated

Exempt purchasers

Certain purchasers do not have to pay tax on their purchases, including food that may otherwise be taxable (e.g., purchases by an exempt organization). The purchaser must give the food vendor a properly completed certificate. See Tax Bulletin *Exemption Certificates for Sales Tax* (TB-ST-240).

Food purchased with coupons and food stamps

For information about sales tax on food purchased with coupons or food stamps, see Tax Bulletin *Coupons and Food Stamps* (TB-ST-140).

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Tax Law: Sections 1105(a); 1105(d); 1115(a)(1); and 1132(c)(1)

Regulations: Sections 527.8 and 528.2

Publications:

Publication 750, *A Guide to Sales Tax in New York State*
Publication 840, *A Guide To Sales Tax For Drugstores and Pharmacies*

Memoranda:

TSB-M-06(15)S, *Supplemental Summary of Recently Enacted Legislation Affecting Sales and Use Taxes Effective in 2006*
TSB-M-86(18)S, *Taxable Status of Purchases from Self-Service Salad Bars*

Bulletins:

Beverages Sold by Food Stores, Beverage Centers, and Similar Establishments (TB-ST-65)
Candy and Confectionery (TB-ST-103)
Coupons and Food Stamps (TB-ST-140)
Dietary Foods and Health Supplements (TB-ST-160)
Exemption Certificates for Sales Tax (TB-ST-240)
Food and Beverages Sold from Vending Machines (TB-ST-280)
Listings of Taxable and Exempt Foods and Beverages Sold by Food Stores and Similar Establishments (TB-ST-525)
Purchases by Restaurants, Taverns, and Similar Establishments (TB-ST-695)
Sales by Restaurants, Taverns, and Similar Establishments (TB-ST-806)
Sales Tax Credits (TB-ST-810)
Sandwiches (TB-ST-835)
Recordkeeping Requirements for Sales Tax Vendors (TB-ST-770)