

**Revenue Ruling  
No. 03-002-A  
August 24, 2005  
Sales Tax**

**State Sales Tax Rate Reduction and Forthcoming Exemption for “Food for Preparation and Consumption in the Home” Explained**

The state sales tax rate on sales of food for home consumption will be two percent from January 1, 2003, through June 30, 2003. Thereafter, food for home consumption will be totally exempt from the state sales and use tax. These changes resulted from voters’ approval of Amendment No. 2 on the November 5, 2002 ballot, which added Article VII, Section 2.2 to the Constitution of Louisiana. The purpose of this Revenue Ruling is to explain how the rate reduction and exemption are applied.

**Standards of Taxability and Exemption**

To determine the reduced rate or exemption eligibility status of a food product, the following standards must be applied:

1. **The products must be food products, as contemplated by the statute.** Food products will include, by way of example and not limitation, meat, fish, milk, butter, eggs, bread, vegetables, fruit and their juices, canned goods, oleo, coffee and its substitutes, soft drinks, tea, cocoa and products of these items, bakery products, candy, condiments, relishes, spreads, as well as food ingredient products such as flour, sugar, salt, spices, shortening, flavoring and cooking oils. Alcoholic beverages, malt beverages and beer, tobacco products, distilled water, carbonated water, ice, “dry ice”, water sold in containers, medicines, and dietary supplements<sup>1</sup> or adjuncts are not considered to be food.
2. **The products must not be prepared foods.** “Prepared food” means:
  - a. Food sold in a heated state or heated by the seller;
  - b. Two or more food ingredients mixed or combined by the seller for sale as a single item, which does not include food that is only cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry, and food containing these raw animal foods requiring cooking by the consumer in order to prevent food borne illnesses; or
  - c. Food sold with eating or drinking utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. Containers, wraps, or other packaging intended solely to transport food are not considered the equivalent of plates

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<sup>1</sup> For this purpose, a “dietary supplement” is a product, other than tobacco, intended to supplement the diet that includes one or more of vitamins; minerals; herbs or other botanicals; amino acids; dietary substances for use by humans to supplement their diets by increasing total dietary intake; or concentrates, metabolites, constituents, extracts, any combination of vitamins, minerals, herbs, other botanicals, or amino acids, and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as a conventional food and is not represented for use as the sole item of a meal or of the diet. Such products are required to be labeled as a “dietary supplements,” and are identifiable by the fact that their package labels contain “Supplemental Facts” boxes.

for the purpose of classifying as “prepared food” products that would not otherwise be so considered.

All sales of food that is prepared by the sellers of the food are taxable, regardless of the establishment from which the sales are made. Examples of taxable products typically prepared by sellers are turkeys or chickens sold either whole or in portions, baked hams, boiled crawfish or shrimp, other cooked meats or seafood, sandwiches, salads, and cooked vegetables.

Individual bakery products, dairy products, packaged, canned, or bottled soft drinks, fresh fruits and vegetables, or packaged foods requiring further preparation by the purchaser are considered “food for home consumption”. However, if the products are sold by restaurants, drive-ins, snack bars, candy and nut counters, private clubs or other establishments providing on-premises facilities for the consumption of the food, they are not eligible for the reduced tax rate or exemption.

3. **The food products must not be sold by restaurants, drive-ins, snack bars, candy and nut counters, private clubs, or other establishments that provide facilities for the on-premises consumption of food.** Sales of food by these establishments are subject to the 4 percent state sales tax rate, even though some of the products sold might not be consumed immediately or on the sellers' premises. For example, restaurants must collect 4 percent state sales tax on the sale of wedding or birthday cakes, even though the cakes are removed from the restaurants for consumption. Facilities for the consumption of the food on the premises include both inside facilities and outside facilities, including drive-in facilities. Grocery stores, convenience stores, and other businesses that sell soft drinks with cups, glasses, or straws will be considered “snack bars” with respect to those sales.
4. **The food products must be sold for home consumption.** Sales of non-prepared food products by grocery stores and similar businesses, where the food products are delivered to the purchasers on the sellers' premises, will be presumed to be sold for home consumption. However, when grocery stores or any other type of sellers sell and deliver to businesses, institutions, or persons other than home consumers, or make recorded institutional sales of food for other than for home consumption, those sellers must collect the 4 percent sales tax rate on those sales.

In cases where grocery stores and other sellers of non-prepared foods have no information at the time of sales to indicate that the food purchased from them is other than for home consumption, but the actual consumption of the food is other than in homes, the purchasers will be required to remit use tax to the department equal to the difference between the 4 percent state sales tax rate that was due on the food purchased, and the state sales tax rate that was actually remitted to their vendors. Purchasers of food products for dispensing through vending machines will likewise be liable for the payment, either to vendors or directly to the Department of Revenue, of 4 percent sales or use tax on their purchases.

#### **Sales by Grocery Stores, Delis, Meat and Seafood Markets, Convenience Stores, etc.**

All sales of non-prepared food by grocery stores, delicatessens, meat and seafood markets, convenience stores, variety stores, department stores, and other retailers for home consumption are eligible for the reduced state sales tax rate or exemption. Food products that do not constitute prepared food, as discussed above, are eligible for the reduced rate or exemption, without regard to package size or

quantity of product that is sold. For example, a one-pound bag of chips, a one-ounce bag of chips, a one-pound box of candy, a one-ounce bar of candy, a two-liter bottle of soft drink, and a 12-ounce can of soft drink are all eligible for the reduced tax rate or exemption.

Prepared foods sold by grocery stores, department stores, variety stores, drug stores, delicatessens, convenience stores, meat markets, seafood markets, and similar businesses are taxable at 4 percent. Prepared foods include items that are sold in a heated state, that are heated by the sellers, that are combinations of ingredients mixed or combined by the sellers for sale as single items, or that are sold with eating or drinking utensils supplied by the sellers. Products taxable at 4 percent include, but are not limited to, seller-prepared sandwiches, iced drinks, cups of hot coffee or cocoa, beverages poured from fountains within these sellers' facilities, lunch or dinner plates, servings of vegetables, whole or sliced hot pizza, crawfish boiled by sellers, and meats or seafood cooked by sellers regardless of the size or quantity sold.

Sellers who sell food products in the identical unheated conditions in which the products were acquired from wholesalers, and who also sell similar products that they themselves have prepared, must apply different state sales tax rates to the two classes of foods, as explained above. For example, a delicatessen that makes sandwiches must tax the sales of the sandwiches made by its personnel, but can exempt or apply the reduced tax rate to all sales of sandwiches sold in the same condition in which the sandwiches were acquired from others.

The presence within a convenience store of tables and chairs for use by the customers of the store would not of itself cause non-prepared food sales that would otherwise be eligible for tax exemption to become taxable, provided that convenience store personnel do not interact with customers seated at those tables in the same or similar ways that the wait staff of a restaurant would interact with dining customers within a restaurant's facilities. For example, a customer who selects non-prepared food items from a convenience store's regular grocery inventory, pays for the items at the store's checkout, carries the items himself to tables within the facility, and consumes the items before leaving the store premises would be entitled to the sales tax exemption on the items, even if the customer himself/herself heats the items in seller-provided equipment. Whether sit-down dining areas associated with meat or seafood markets would cause the combined facilities to be classified as restaurants in their entirety, all sales of which would be taxable, would depend upon the level of physical and organizational separation of the dine-in facilities from the over-the-counter sales of prepared and non-prepared food. Physical separation could include separate entrances and walls or room dividers. Organizational separation could include separate personnel and separate checkouts assigned to each facility.

#### **Sales by Bakeries and Doughnut Shops**

All bakery products, including those prepared by the sellers, are eligible for the reduced tax rate or exemption for food for home consumption, provided that the sellers do not provide facilities for on-premises consumption of their foods. Bakeries and doughnut shops that provide facilities for on-premises consumption must collect the four percent state tax on all of their sales, regardless of the quantity sold or whether the items are consumed on or off of the premises. Bakeries and doughnut shops that do not have eating facilities will as of January 1, 2003, collect the temporary 2 percent rate on the sale of bakery products and other foods for home consumption and will exempt those sales as of July 1, 2003.

#### **Sales of Prepared Foods by Grocery Stores**

Some grocery stores sell prepared foods and provide facilities for the consumption of that food on their

premises in sections of their stores that could be construed as restaurants, snack bars, or candy and nut counters. All of these sales or prepared food are subject to the 4 percent state sales tax. However, the housing within grocery stores of separate facilities that could be construed as restaurants, snack bars, or candy and nut counters does not cause other sales by such grocery stores of foods for home consumption to lose eligibility for the reduced rates or exemptions that are otherwise applicable to those food sales.

#### **Sales of Food to Schools, Hospitals, Nursing Homes, Mental Institutions, and Rooming Houses**

Sales of food to educational institutions, hospitals, mental institutions, rooming houses, and similar institutions are taxable. Although R.S. 47:305(D)(2) would otherwise provide a sales tax exemption, under certain conditions, for sales of meals furnished to the staff and students of educational institutions; the staff and patients of hospitals; the staff, inmates and patients of mental institutions, boarders of rooming houses, and for occasional sales of meals by educational, religious, or medical organizations, the exemption is suspended through June 30, 2004, as provided by Act No. 22 of the 2002 Regular Session of the Louisiana Legislature. All sales of food to these types of institutions that are non-governmental are subject to the 4 percent state sales tax rate. Vendors who sell and deliver to these institutions must collect and remit the state sales tax. In any case when vendors do not collect the tax on sales to these institutions, such as sales in grocery stores where the vendors treat the eligible food purchases as being for home consumption, the purchasers must remit use tax directly to the Louisiana Department of Revenue.

#### **Advance Sales Tax Collection by Wholesale Dealers**

Wholesale dealers must collect advance sales tax at the 4 percent rate on sales of food products to restaurants, drive-ins, snack bars, and other retailers whose food sales are taxable under the law. As of January 1, 2003, the advance tax is collectible at the 2 percent rate on sales of food items to grocery stores and other retailers who certify that the majority of their retail sales of food will be subject to the 2 percent temporary state sales tax rate. The Department of Revenue has published form R-1006 for use in making this certification. Vending machine operators cannot use the form.

Sales by wholesale dealers of food products that are subject to the 2 percent advance sales tax collection rate will not be subject to advance sales tax on or after July 1, 2003, when eligible food products become fully exempt from the state sales tax.

Questions concerning the food-related sales tax reduced rate and exemption can be directed to the Taxpayer Services Division at 225.219.7356 or to any of the department's regional offices.

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