
Appendix A: Food and Food Ingredients - State Sales & Use Tax Guide

This guide is designed to offer general guidance and information. Depending on the specific circumstances of a particular transaction, the information in this guide may not provide an accurate statement of the taxability of an item(s). Sellers must familiarize themselves with 27 CAR pt. 31 entitled "Special Rules for Sales of Food and Food Ingredients and Prepared Food." Sellers should contact the Department of Finance and Administration for a written legal opinion concerning specific transactions. To request a written legal opinion, please contact the Office of Revenue Legal Counsel, P.O. Box 1272, Room 2380, Little Rock, AR 72203.

Introduction

This guide is intended to help businesses, organizations, and individuals understand how state sales and use tax is applied to food and food ingredients, prepared food, and other non-food items. The information contained in this guide is based on the Arkansas Code and Rules in effect on July 1, 2007. Beginning July 1, 2007, the state sales and use tax rate on food and food ingredients will be reduced to 3.0%. Local city and county sales and use taxes will continue to apply to all sales of food and food ingredients and prepared food.

"Food and food ingredients" is defined as:

"substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value."

"Food and food ingredients" includes most common grocery type food items and foods packaged by a manufacturer for home consumption.

Examples of Common Food Items Purchased at Your Local Grocery and Eligible for the Reduced State Sales and Use Tax Rate

- Baby food (including baby cereal and formula)
- Bakery items (unheated, not made by the seller)
- Bread (unheated, not made by the seller)
- Baking ingredients, whether liquid, powder or solid (e.g., chocolate chips, baking morsels)
- Baking mixes (e.g., cake mixes, muffin mixes)
- Baking soda and leavening agents
- Beans and peas (fresh, dried, canned, or frozen)
- Beverages (prepackaged and sealed - e.g., cans, bottles, cartons, or pouches)
- Birthday cakes (not baked or decorated by seller)
- Bottled water and flavored water
- Breakfast Bars (must have Nutrition Facts Box on product label)
- Broth and bouillon (liquid, instant, freeze dried, or cubes)
- Butter and margarine
- Candy, gum, and breath mints
- Cereal and cereal products
- Coconut (whole, shredded, sweetened, or canned)
- Coffee (beans, ground, freeze dried, bags, or instant)
- Condiments (e.g., ketchup, mayo, mustard, and relishes)
- Cooking oil (e.g., canola, olive, vegetable)
- Cookies (not baked or decorated by the seller)
- Deli meats and cheeses (not heated, combined or served by seller-sliced and repackaged only)
- Eggs and egg substitutes

- Extracts and flavorings used as cooking ingredients
- Fish and Seafood (raw, frozen, cured, canned, or dehydrated)
- Flour and corn meal
- Food coloring
- Frozen Entrees (e.g., frozen dinners, frozen pizza)
- Fruit and fruit juices (fresh, frozen, canned, or dehydrated)
- Gelatin (not prepared by the seller)
- Honey and syrups
- Ice (exclude dry ice)
- Ice cream (packaged, not made or served by the seller, including toppings and novelties)
- Jams, jellies, marmalades, and preserves
- Lard and shortening
- Margarine and butter
- Marshmallows and marshmallow crème
- Meat and meat products (raw, frozen, cured, canned, or dehydrated)
- Milk, yogurt, and cheese products
- Nutritional Meal Replacements (liquids, bars, and powders - must have Nutrition Facts Box on product label)
- Pasta and noodles (not prepared or served by seller)
- Peanut butter
- Peas and beans (fresh, dried, canned, or frozen)
- Powdered drink mixes (e.g., cocoa, lemonade)
- Raisins, nuts, and sunflower seeds
- Rice and other grains
- Salad dressings and mixes
- Salt and pepper (exclude rock salt)
- Sauces and gravy (bottled, canned, or mixes)
- Seasonings and spices (e.g., cinnamon, basil)
- Sherbets and sorbets (not made by the seller)
- Soft Drinks, soda, and powdered drink mixes
- Soup (packaged, canned, dried, or frozen)
- Snack foods (packaged crackers, potato chips, corn chips, pork rinds, and pretzels)
- Sugar and alternative sweeteners
- Syrups (including molasses, sugar-free syrups, flavored syrups, and similar products)
- Tea (bags, leaves, and instant)
- Vegetables and vegetable products (fresh, frozen, canned or dehydrated, exclude items on food and/or salad bars)

Examples of Items Purchased at Your Local Grocery and Subject to the Full State Sales and Use Tax Rate

- Alcoholic beverages
- Foods sold with eating utensils
- Non-food items (e.g., paper goods, detergents, soap, foil, plastic wrap, cosmetics, toothpaste)
- Foods heated, combined or sold with utensils provided by the seller
- Bakery items made by the seller
- Cakes made or decorated by the seller
- Candy made by the seller
- Coffee (ready to drink)
- Decorated pumpkins or other decorated food item

- Dietary supplements (e.g., vitamins, minerals, amino acids, botanicals - will have Supplemental Facts Box on label)
- Deli trays and foods combined by the seller
- Dry ice
- Food baskets
- Food sold at one, non-itemized price which includes one or more items of prepared food
- Fountain drinks and dispensed beverages
- Over-the-Counter Medicinal Products
- Pet foods and products
- Rock salt
- Rotisserie chicken and foods heated by the seller
- Salad bar and salads made by the seller
- Seeds (unless marked for human consumption)
- Tobacco Products and Cigarettes

"Food and food ingredients" does not include:

- Alcoholic beverages
- Tobacco products
- Dietary supplements
- Prepared foods

"Alcoholic beverage" means a beverage that is suitable for human consumption and contains one-half of one percent (0.5%) or more of alcohol by volume.

"Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

"Dietary supplement" means any product, other than tobacco, intended to supplement the diet that contains one (1) or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any ingredient described herein and 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 conventional food and is not represented for use as a sole item of a meal or of the diet.

- A dietary supplement is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label.

"Prepared food" is defined as:

- Food sold in a heated state or is heated by the seller; or
- Food where two or more ingredients are mixed or combined by the seller and sold as a single item; or
- Food sold with eating utensils, plates, bowls, cups, glasses, napkins or straws provided by the seller.

Prepared food does not include:

- Food that is only cut, repackaged, or pasteurized by the seller; or
- Food containing raw animal products which require cooking by the consumer as recommended by the U.S. Food and Drug Administration.

Prepared Food: When is food sold in a heated state or is heated by the seller?

Food is sold in a heated state if it is sold at a temperature higher than the air of the room or place where the item is sold or food that was heated by the seller at any time before the sale.

Prepared food includes food that is served hot even if the food was not otherwise prepared by the seller.

Heating includes, but is not limited to, baking, boiling, smoking, and cooking. The heating of prepared foods may also occur through the use of items such as heat lamps and chaffing dishes. The heating may occur at premises other than the sales location.

Prepared Food: When are two or more ingredients mixed or combined and sold as a single item?

Prepared foods include foods made or combined by the seller. A seller who mixes or combines two (2) or more foods or food ingredients and sells the mixture or combination as a single item, is selling prepared food, e.g., deli trays and popcorn seasoned with salt and butter cooked by the seller.

Foods that contain raw eggs, fish, meat, or poultry products that require cooking after the sale to prevent food borne illnesses are not prepared food, e.g., meats seasoned by the seller.

Prepared Food: When is food sold with eating utensils?

Prepared food includes food sold with eating utensils when provided by the seller. "Utensil" means a plate, bowl, knife, fork, spoon, glass, cup, napkin, or a straw. "Plate" does not include a container or packaging used to transport the food, such as, a paper bag or box. A purchaser's choice not to use a provided utensil does not affect whether an item is prepared food.

Typically, a utensil will be "provided by the seller" if the seller physically hands the utensil to the customer, or provides a utensil that is necessary to receive or consume the item, as part of the sales transaction. Prepared foods sold with eating utensils provided include: salad placed on a plate at a salad bar; a beverage in a cup or glass; and foods purchased to-go with utensils placed in the bag.

In certain circumstances, all food items sold by a seller may be considered prepared food because a utensil is simply made available at a self-service station or central location for the customer to take if they so desire. These special circumstances are described under the section entitled "Prepared Food Sales Percentage" (PFS%) on the following page.

Prepared Food Sales Percentage (PFS %)

The prepared food sales percentage is used to determine when simply making utensils available to customers constitutes selling food with a utensil "provided by the seller."

The prepared food sales percentage is important to sellers that primarily sell prepared food, but also sell items that would generally be considered food and food ingredients. These sellers include sandwich shops, cafes, cafeterias, coffee shops, diners, fast food restaurants, mobile food vendors, food courts, hot dog stands, ice cream shops, pizzerias, restaurants, and concession stands.

How to Calculate the Prepared Food Sales Percentage (PFS %)

1. Calculate total dollar amount of sales of prepared food:

(Do not include alcoholic beverages)

Food sold heated or heated by the seller	\$ _____
Food made or decorated by the seller	\$ _____
Food where plates, bowls, glasses, cups are provided or necessary to receive the food.	\$ _____

Total #1 \$ _____

2. Calculate total dollar amount of sales of all food items:

(Do not include alcoholic beverages)

Prepared food (Total # 1)	\$ _____
Food and food ingredients	\$ _____
Dietary supplements	\$ _____

Total #2 \$ _____

Total #1 ÷ Total #2 = PFS % _____%

What does the percentage mean to my business?

If your prepared-food sales percentage is greater than 75%:

All food items (including items that would otherwise be considered food and food ingredients) are considered prepared food and subject to the full state sales and use tax rate. If your establishment sells items that contain four (4) or more servings, but have not been made or heated by the seller, please refer to 26 CAR pt. 31 for special instructions.

If your prepared-food sales percentage is 75% or less:

All sales of food and food ingredients are subject to the reduced state sales and use tax rate.

All sales of prepared food - food sold in a heated state, food mixed or combined by the seller, or food where the seller physically hands the utensil to the customer or provides a utensil that is necessary to receive or consume the item - are subject to the full state sales and use tax rate.

Sellers must calculate a prepared-food sales percentage each year. Sellers should use data from the prior year to calculate the prepared-food sales percentage for the current year. Sellers will calculate a single prepared-food sales percentage per year for all establishments in the state. (Sellers with multiple locations will only calculate one prepared-food sales percentage.) Sellers must calculate the prepared-food sales percentage within ninety (90) days of the beginning of the year. (Sellers must use either the tax year or business fiscal year for all of the above.)

New businesses must make a good faith estimate of their prepared-food sales percentage for their first year. This estimated prepared-food sales percentage should be adjusted after the first three (3) months of operation if the actual prepared-food sales percentage goes above or below 75%.

Examples of Rates Applied to Common Food Transactions

Grocery Store

- At a grocery store, a customer purchases cereal, a gallon of milk, and a bag of flour. All of these items are considered food and food ingredients. The seller will collect the reduced state sales and use tax rate.
- At a grocery store, a customer purchases hot fried chicken and a pound of deli meat. The chicken is prepared food and will be taxed at the full state sales and use tax rate. The grocer only cuts and repackages the deli meat which qualifies the meat as food and food ingredients subject to the reduced state sales and use tax rate.
- At a grocery store, a customer purchases a burrito dinner (made in the deli) that includes a bottled soft drink for one price. The customer also purchases antacid tablets. The burrito dinner with drink is prepared food and will be taxed at the full state sales and use tax rate. The antacid is a non-food item and will be taxed at the full state sales and use tax rate.
- At a grocery store, a customer purchases a family pack of raw steaks, a bag of ready to eat salad pre-packaged by a third-party manufacturer, a container of potato salad from the deli (made by the deli), and a 2-liter bottle of soda. The family pack of raw steaks, the bag of ready to eat salad, and the 2-liter bottle of soda are food and food ingredients and will be taxed at the reduced state sales and use tax rate. The container of potato salad is prepared food and will be taxed at the full state sales and use tax rate.

Convenience Store

- At a convenience store, a customer purchases a sandwich (not made by the seller) from the cooler, an order of onion rings from the deli, beer and breath mints. The sandwich and breath mints are food and food ingredients and will be taxed at the reduced sales and use tax rate. The onion rings are prepared food and will be taxed at the full state sales and use tax rate. The beer is an alcoholic

beverage and is also taxed at the full state sales and use rate plus any additional excise taxes levied by Arkansas law.

Concession Stand

- At a concession stand, a customer purchases a tub of popcorn, a fountain beverage, and a candy bar. The popcorn and fountain beverage are prepared food and will be taxed at the full state sales and use tax rate. If the seller's prepared-food sales percentage is greater than 75%, and utensils are made available, the candy bar will also be prepared food and will be taxed at the full state sales and use tax rate.

Fast Food Restaurant

- At a fast food restaurant, a customer purchases an 8 oz. container of milk and a 5 oz. container of fruit. Both are pre-packaged by the manufacturer. Since the seller's prepared food sales percentage is over 75% and there is a self-service station with utensils on it in the seller's lobby, utensils are considered provided. Therefore, both items are considered prepared food and both items will be taxed at the full state sales and use tax rate.

Is it "Food" or is it "Prepared Food" ?

