

TIP 98A01-08
DATE ISSUED: Jun 19, 1998

**CHANGES IN SALES AND USE TAX EXEMPTION
FOR FOOD PRODUCTS BEGINNING JULY 1, 1998**

The Florida Legislature clarified the statutory exemption for food and beverages. It also made changes in the application of tax when these products are sold in bakeries, restaurants, bars, and similar establishments, or given free of charge to individuals or organizations.

"Food products" are "edible commodities, whether processed, cooked, raw, canned, or in any form, which are generally regarded as food." The exemption is limited to food products intended for human consumption and, generally, does not apply to the types of products that are ordinarily sold for immediate consumption.

General Grocery Items

General grocery items are those food products which are customarily purchased in grocery stores or convenience stores to be taken home, where they may be further processed, prepared, or blended with other food items before consumption.

Some examples of exempt food products provided in the revised statutory subsection are:

cereal and cereal products; baked goods; oleomargarine;
meat and meat products; fish and seafood products; frozen
foods and dinners; poultry; eggs and egg products;
vegetables and vegetable products; fruit and fruit
products; spices; salt; sugar and sugar products; milk and
dairy products; and products intended to be mixed with
milk.

Examples of other food products that are also exempt general grocery items include:

baby food and formulas; butter; honey; jams, jellies, and preserves; liquid food supplements and other foods advertised and generally sold as meal replacements or nutritional supplements; salad dressing and dressing mixes; shortening; syrups; cake mixes and frosting.

Items such as potato chips, pretzels, corn chips, popcorn, peanuts and other packaged nuts, and crackers are exempt when sold at a grocery store, convenience store, or similar place of business for consumption off the seller's premises.

Natural Fruit and Vegetable Juices and Other Beverages

The following are exempt:

Natural fruit or vegetable juices or their concentrates or reconstituted natural concentrated fruit or vegetable juices (whether frozen or unfrozen, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned with salt or spices, or unseasoned); and

coffee or coffee substitutes; cocoa; and tea (except when tea is sold in a liquid form).

Fruit or vegetable juices which may be called "juice," without the words "drink," "ade," or "beverage" preceding or following the word "juice," will be considered to be natural fruit or vegetable juices.

Ice Cream and Other Frozen Desserts

The following are exempt:

Ice cream, frozen yogurt, and similar frozen dairy or nondairy products sold in units larger than one pint for consumption off the premises.

The following are taxable:

Ice cream, frozen yogurt, and similar frozen dairy or nondairy products in cones, small cups, or pints; popsicles, frozen fruit bars, or other novelty items, whether sold separately as units or in multiples.

Food Coupons and the W.I.C. Program

Food purchased with food coupons or Special Supplemental Food Program for Women, Infants and Children (W.I.C.) vouchers issued under the authority of federal law are exempt from tax.

If a purchase of food is made partly with food coupons or vouchers and partly with cash, the food coupons or vouchers will first be used to defray the cost of purchases that are eligible for purchase with food coupons or vouchers, but which would be subject to sales tax without the food coupons or vouchers.

Complimentary Items

The following are exempt:

Any food or drink, whether or not cooked or prepared on the premises, provided without charge as a sample or for the convenience of customers by a dealer primarily selling food products at retail, or;

Any item given to a customer as part of a price guarantee plan related to point-of-sale errors by a dealer primarily selling food products at retail.

The complimentary items exemption does not apply to businesses with the primary activity of serving meals or alcoholic beverages for immediate consumption.

Donated Foods or Beverages

The following are exempt:

Any food or beverage donated by a dealer that sells food products at retail to a food bank or an organization which holds

a current exemption from federal corporate income tax pursuant to s. 501(c) of the Internal Revenue Code, 1986, as amended.

TAXABLE FOOD PRODUCTS

Soft Drinks

Soft drinks, which are taxable, include but are not limited to, any nonalcoholic beverage, any preparation or beverage commonly referred to as a "soft drink," or any noncarbonated drink made from milk derivatives, or tea (when tea is sold in a liquid form).

Some examples of "soft drinks" are:

milkshakes; malts; soda water; gingerale; colas; lemonade; limeade; orangeade; orange drinks; fruit drinks; fruit punch; root beer; tonic; beverage powders; fizzies; iced tea drinks in bottles or cans; and cocktail mixes.

Candy and Similar Products

Candy and any similar product regarded as candy or confection, based on its normal use, as indicated on the label or advertising thereof, is taxable.

Some common examples of candy are:

candy apples; candy-coated grain-based bars (e.g., breakfast bars, granola bars, cereal bars); candy-coated pretzels or potato chips; chewing gum and breath mints (except those alleged by the manufacturer to have aspirin, laxative, or anti-acidity qualities); chocolate or carob (plain or mixed with other products); chocolate or carob-coated pretzels or potato chips; cotton candy; glazed or sugar-coated fruits, nuts, peanuts, popcorn, or other products; fruit drops, fruit flavored sticks, fruit roll-ups, and similar fruit snacks; halvah; jelly beans; licorice; lollipops; marshmallow candy; marzipan; and preparations of fruits, nuts, or other ingredients in combination with chocolate, carob, sugar, honey, or other

natural or artificial sweeteners.

Candy and similar products do not include:

items advertised and normally sold for use in cooking and baking, such as chocolate morsels, glazed fruits, candied fruits, and marshmallow or marshmallow bits; items primarily intended for decorating baked goods; chocolate, carob, or candy-coated cookies or similar bakery products; or dried fruit.

Food Products Taxable When Sold Under Various Conditions

Food products are taxable as follows:

- * When the food products are sold as meals for consumption on or off the seller's premises;
- * When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware, whether provided by the seller or by a person with whom the seller contracts to furnish, prepare, or serve food products to others;
- * When the food products are ordinarily sold for immediate consumption on the seller's premises or at a nearby location, such as at a parking facility, provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the seller's premises;
- * Sandwiches sold ready for immediate consumption on or off the seller's premises;

(A frozen sandwich, or one with a partially frozen filling, would be considered as sold ready for immediate consumption if the seller provides food-heating facilities for the customer's use, or if the

sandwich is heated by the seller for the customer.)

- * When the food products are sold ready for immediate consumption within a place, the entrance to which is subject to an admission charge;
- * When the food products are sold for immediate consumption, either on or off the premises. This does not apply to food prepared off the premises and sold in the original sealed container, or the slicing of products into smaller portions;
- * When the food products are sold through a vending machine, pushcart, motor vehicle, or any other form of vehicle;
- * Bakery products sold by bakeries, pastry shops, or like establishments which have eating facilities, except when sold for consumption off the seller's premises;
- * When food products are served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business;
- * Food sold as hot prepared food products.

DEFINITIONS

For purposes of the exemption for food products, the following definitions apply.

"For consumption off the seller's premises"

The food or drink is intended by the customer to be consumed at a place away from the seller's premises.

"For consumption on the seller's premises"

The food or drink may be immediately consumed on the premises where the seller conducts his or her business. In determining whether an item of food is sold for immediate consumption, there shall be considered the customary

consumption practices prevailing at the selling facility.

"Premises"

Shall be construed broadly, and means, but is not limited to, the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where such meals or beverages are served.

"Hot prepared food products"

Those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the room temperature of the room or place where they are sold. "Hot prepared food products," for purposes of this subsection, includes a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in such combination, such as a hot meal, a hot specialty dish or serving, or a hot sandwich or hot pizza, including cold components or side items.

FOR MORE INFORMATION

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For more information call Tax Information Services, Monday - Friday, 8:00 a.m. to 5:00 p.m., ET, at 850-488-6800.

Hearing or speech impaired persons should call our TDD at 1-800-367-8331 or 850-922-1115.

For a detailed written response to your questions, write the Florida Department of Revenue, PO Box 7443,

Tallahassee, FL 32314-7443.

**Also, visit our Web site at
<http://sun6.dms.state.fl.us/dor/> for forms and other
information.**

**Get tax forms quickly by FAX ON DEMAND. Call 850-922-3676,
twenty-four hours a day, seven days a week, using your fax
machine handset and follow the instructions.**

References:

s. 212.08(1), F.S.

s. 212.08(7), F.S.