

# Prepared Food

Subcategory of Food—See Fact Sheet 102A

**102D**

Fact Sheet

## Sales Tax Fact Sheet 102

Legislation was passed adopting the Uniform Sales and Use Tax Administration Act proposed by the multistate Streamlined Sales Tax Project. The Act allows Minnesota to enter into the Streamlined Sales and Use Tax Agreement that sets out uniform definitions for administration of the sales and use tax law. Minnesota has adopted those definitions necessary to bring our law into conformance with the agreement.

The new streamlined definition of *prepared food* is explained in this fact sheet. The law change is effective January 1, 2002.

**Prepared food.** Any food that is prepared by the seller is taxable beginning January 1, 2002. “*Prepared food*” means:

- *food that is sold in a heated state or food that is heated by the seller;*
- *food where two or more food ingredients are mixed*

- *or combined by the seller for sale as a single item; or*
- *food sold with eating utensils provided by the seller such as plates, knives, forks, spoons, glasses, cups, napkins, or straws.*

The preparation may occur where the food is sold or at another location.

Food that is only sliced, repackaged, or pasteurized by the seller is not considered to be prepared food. Serving size or quantity does not affect the taxability of a food item.

“Seller” is defined as the legal entity that sells the product at retail. This means that if the same legal entity prepares and sells the food item, the food is taxed regardless of where the food was prepared. If the seller contracts with another legal entity to prepare the food, the food is not taxable even if sold under the seller’s label.

### Heated and combined food

Food heated by the seller is taxable. This includes

- food that is sold in a heated condition, and
- food that was heated by the seller at any time before the sale even if it’s not warm at the time of sale, that the customer would generally eat without reheating.

Food where two or more ingredients are combined by the seller and is ready to eat at the time of sale is taxable.

Prepared food does not include food that contains raw eggs, fish, meat, or poultry products that require cooking after the sale to prevent food borne illnesses, and food the customer generally cooks or heats after the sale.

Heated food sold in combination with unheated food is taxable. For instance, if a customer buys a hot whole chicken with a pint of potato salad that was not prepared by the seller and the combination is sold for a single price, the sale is taxable.

### Examples of taxable food prepared by the seller

- any food items sold in a heated state
- bakery goods made by the seller on location or at another location
- cheese if made by the seller
- drinks prepared by the seller (e.g., coffee or tea)
- fruits cut and combined by the seller
- ice cream novelties, cakes or pies
- ice cream or ice milk dispensed as cones, sundaes, etc.
- party trays
- ready to eat meats, poultry, or fish (cooked, smoked or dried such as summer sausage, beef or venison sticks, and smoked fish)
- rotisserie chicken
- salad greens mixed by the seller
- salads and other deli dishes
- sandwiches
- soups, casseroles or meals sold warm or ready to eat
- warmed nuts

**Examples of exempt foods** (even though the seller may have done some preparation, the food is not ready to eat at the time of sale)

- brown and serve rolls
- cold or frozen meals - ready to heat and eat
- cold or frozen soups, casseroles, beans, potatoes, etc.
- combined raw meats
- cookie dough
- food that is only sliced, repackaged, or pasteurized by the seller such as meat from a deli counter, sliced and wrapped for a customer
- half baked or uncooked pizza
- marinated raw meats
- marinated raw seafood
- meatloaf - uncooked
- pasteurized eggs
- salads purchased for resale and repackaged in smaller containers by the seller
- smoked meats and poultry - ready to heat and eat, such as smoked or honey glazed ham or smoked turkey
- stir fry vegetables

**Holiday baskets and other combination packages** are taxable when taxable items such as baskets, glass jars, decorative canisters, or taxable food products are included in the price.

#### Examples

- Seller combines a loaf of bread prepared by someone else with spinach dip prepared by the seller in a package and sells it for a single price. The whole price is taxable because the dip was prepared by the seller.
- Seller takes fresh fruit from the produce department and puts it in a holiday basket to sell for a single price. The sale is taxable because the basket is taxable.

Normal or minimal packaging (such as plastic or paper bags or boxes) does not make a nontaxable item taxable.

#### Examples

- Seller takes fresh fruit from the produce department and cans of nuts and puts them in a cardboard box for sale at a single price. The sale is exempt. The fruit and nuts have simply been repackaged by the seller (the box is considered to be normal packaging).
- Seller places an order for potatoes from a supplier. The potatoes come packaged along with a potato peeler for sale at a single price. The seller intends to sell potatoes, the fact that the supplier included a taxable incentive with the product does not make the potatoes taxable.

## Eating utensils

Food that is not otherwise prepared by the seller, but is sold with eating utensils provided by the seller, is prepared food and is taxable. Eating utensils include but are not limited to plates, knives, forks, spoons, glasses, cups, napkins, or straws.

Food sold by an eating establishment that sells meals, sandwiches or other food for immediate consumption on or off the premises is taxable. These eating establishments may be mobile or immobile and may or may not provide seating accommodations for their customers. They include: restaurants, caterers, pizzerias, bars, taverns, night clubs, yogurt or ice cream stores/stands, coffee or donut shops, diners, refreshment stands, drive-ins, fast food restaurants, bagel shops, lunch counters, cafeterias, private and social clubs, sandwich shops, snack bars, hot dog carts, concession stands, sidewalk vendors or like places of business where the seller provides some sort of eating utensils with the food sold.

Grocery, convenience and department stores often have separate identifiable eating establishments within the store. All food sold at the eating establishment is taxable. Eating establishments commonly found in grocery stores are restaurants, yogurt or ice cream counters, salad or sandwich bars, fast food restaurants, and cafeterias. Request Fact Sheet 137, Restaurants and Bars.

Party trays and fruit trays, cookie platters and other foods arranged on plates or trays by the seller are taxable. (Plates are included in the definition of *eating utensils*.)

Box lunches with napkins, straws, plastic forks or other utensils included are taxable.

If the eating utensil is provided by the manufacturer rather than by the seller, the food is not considered to be provided with eating utensils. For example, a box of crackers and cheese that includes a spreader, is not subject to tax since the spreader is not provided by the seller.

*Brand names are shown for illustration purposes only and do not imply sole representation in any category.*

**Be sure to see the main Food Fact Sheet, #102A, and the other subcategories:**

- Candy, #102B
- Soft Drinks and Other Beverages, #102C
- Dietary Supplements, #102E

Also see Fact Sheet 158, Vending Machines and Other Coin-Operated Devices