



MAINE REVENUE SERVICES SALES FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 12

RETAILERS OF FOOD PRODUCTS

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by persons such as supermarkets, grocery stores, and convenience stores that primarily make sales of food products other than prepared food.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services ("MRS") do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of Title 36 of the Maine Revised Statutes ("M.R.S."). Title 36, MRS rules, forms, and instructional bulletins referenced in this bulletin may be viewed on the MRS website: www.maine.gov/revenue.

This bulletin is not intended for retail locations that primarily sell prepared food. The Maine Sales and Use Tax Law provides that sales of prepared food are taxable at a separate rate that is higher than the generally applicable sales tax rate. Prepared food includes meals and all food and drinks that are prepared by a retailer and ready for consumption without further preparation. See 36 M.R.S. § 1752(8-A). Examples of prepared food are doughnuts, muffins and other bakery items, sandwiches, pizza, steamed hot dogs, rotisserie chicken, and convenience meals. Every person that makes sales of prepared food, regardless of the type of establishment, must charge sales tax at the higher rate on all sales of prepared food. For more information, see Instructional Bulletin No. 27 ("Sales of Prepared Food").

1. SALES OF FOOD PRODUCTS

Generally, the sale of food products is subject to sales tax unless the sale qualifies for an exemption. For food products, the primary exemption is for sales of "grocery staples."

A. EXEMPT GROCERY STAPLES. The Sales and Use Tax Law defines "grocery staples" as "food products ordinarily consumed for human nourishment." Examples are fruit, vegetables, fish, meat, dairy, bread, breakfast cereal, canned and boxed food products, and condiments. Provided below are additional examples of food products that are considered "grocery staples" and are exempt from sales tax:

- Baking cocoa, including unsweetened baking chocolate.
- Baguettes
- Cheese, including cheese sticks and cream cheese
- Coffee grounds and instant coffee
- English muffins
- Honey
- Infant formula
- Jam, jelly, marmalade, and fruit preserves
- Jello and pudding mixes
- Liquid coffee drinks containing milk or milk products
- Lettuce, including lettuce sold in bags or containers
- Maple syrup
- Milk and milk substitutes like soy milk or rice milk
- Peanut butter and other nut butters
- Powdered dip mixes
- Powdered milk
- Popcorn kernels including microwave popcorn and Jiffy Pop®
- Nuts and seeds in the shell except those that are salted, spiced, smoked, or roasted
- Ready-to-eat bacon or sausage
- Taco shells and taco bowls
- Tea bags, tea leaves, herbal tea
- Unflavored matzah
- Unsweetened raisins, dates, apricots and prunes

B. TAXABLE FOOD PRODUCTS. By definition, the following categories of food products are not "grocery staples" and are therefore subject to tax.

(1) Spirits, beer (including non-alcoholic beer), and wine (including non-alcoholic wine).

(2) Medicines, tonics, vitamins and preparations sold as dietary supplements or adjuncts, except when sold on a physician's prescription. These items are taxable regardless of the form in which they are sold (liquid, powdered, granular, tablet, capsule, lozenge, or pill). "Dietary supplements" are products taken by mouth that contain one or more dietary ingredients intended to supplement the diet, including but not limited to products whose packaging bears a U.S. Food and Drug Administration "Supplement Facts" panel. The "dietary ingredients" in these products may include vitamins, minerals, herbs or other botanicals, amino acids, and substances such as enzymes, organ tissues, glandulars, and metabolites. Dietary supplements can be extracts or concentrates, and may be found in many forms such as tablets, capsules, softgels, gelcaps, liquids, or powders. "Dietary supplements" include energy bars and protein bars.

(3) Water and ice, including bottled mineral water and flavored and carbonated water.

(4) Dietary substitutes, such as meal replacement shakes.

(5) Candy and confections, including but not limited to confectionary spreads.

"Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. "Confections" are sweet preparations that may not otherwise fall under the definition of candy. "Confectionary spreads" are distinguished from other spreads by the first ingredient listed on the label. Other than jams, jellies, and fruit preserves, if the first listed ingredient is sugar, corn syrup, or other sweetener, the item is considered a "confectionary spread".

Examples: Chocolate bars; fudge; chewing gum; mints; candied and glazed fruit; "jelly-like" products primarily containing sugar, corn syrup, or other natural or artificial sweetener, such as gummy bears and jelly beans; chocolate, yogurt, caramel, or carob coated chips, popcorn, nuts, raisins, or pretzels; marshmallows; cotton candy; Pixy Stix®; Marshmallow Fluff®; hazelnut and chocolate spreads; frosting and icing; processed fruit snacks; confectionary cake decorations; dessert toppings such as rainbow sprinkles; sweetened flaked coconut; sweetened baking chocolate; and sweetened baking bits including chocolate, peanut butter, toffee, and butterscotch bits.

(6) Food and drink listed below sold for consumption without further preparation.

Further preparation does not include combining the food product with a liquid, or toasting, microwaving, or otherwise heating or thawing the food product for palatability (rather than for the purpose of cooking the product).

(a) Soft drinks. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products; soy milk, rice milk, or similar milk substitutes; or beverages that contain greater than 50% vegetable or fruit juice by volume.

Examples: Soda, juice cocktails, and juice drinks containing 50% or less vegetable or fruit juice; liquid iced tea, lemonade, and fruit punch; and energy and sports drinks.

(b) Powdered and liquid drink mixes, except powdered milk, infant formula, coffee and tea. "Coffee and tea" means coffee grounds, tea bags, tea leaves, herbal tea, 100% coffee and tea liquid concentrates, and pure instant coffee and tea.

Examples: Bartender mixes; frozen juice mix and liquid juice concentrates, regardless of percentage of fruit juice content; concentrated water enhancers; coffee and tea liquid concentrates or instant coffee mixes that are not pure 100% coffee or tea; iced tea and lemonade mix; Kool-Aid®; instant breakfast drink mixes including such items as Tang®, Nesquik®, and Ovaltine®; and hot cocoa mix.

(c) Sandwiches and salads. This would include sandwiches found in the frozen food section and salads found in the deli case.

Examples: Cole slaw, potato salad, pasta salad, chef salad and tuna, chicken and egg salad. Frozen sandwiches whose packaging indicates "fully cooked" or whose preparation instructions DO NOT require the product to reach a certain temperature.

Note: All sandwiches that are ready for immediate consumption, all salads that are prepared by the retailer, and all products sold at salad bars are considered "prepared food". Please refer to Instructional Bulletin No. 27 ("Sales of Prepared Food") for guidance on these products.

(d) Supplemental meal items such as corn chips, potato chips or sticks, crisped vegetable or fruit chips, pork rinds, pretzels, crackers, popped popcorn, cheese sticks, cheese puffs and dips.

Examples: All chips (potato, corn, veggie, tortilla, etc.), pretzels, popcorn, chickpea snacks, corn nuts, cheese puffs, salsa, hummus, cheese dips, cheese and cracker snack packs, cookies and dip snack packs, and dips for chips, crackers, fruits, or vegetables.

(e) Fruit bars, granola bars, trail mix, breakfast bars, rice cakes, popcorn cakes, bread sticks, and dried sugared fruit.

Examples: Fruit flavored snacks, Quaker® or Nature Valley™ granola bars, Fiber One™ bars, cereal bars, breakfast biscuits, candied orange peels, and sweetened dried fruit.

(f) Nuts and seeds that have been processed or treated by salting, spicing, smoking, roasting, or other means. "Processed" includes shelling. Shelled nuts and seeds are taxable as are nuts and seeds in the shell that have been "salted, spiced, smoked, or roasted".

Examples: Includes peanuts, cashews, pistachios, pumpkin seeds, sunflower seeds, pine nuts, and macadamias, and also includes nuts found in the baking section such as walnuts, pecans, and almonds if they have been processed or treated as described above.

(g) Desserts and bakery items.

Examples: Doughnuts, cookies, muffins, scones, quick breads (such as cranberry, banana, corn and pumpkin), pastries, croissants, crepes, cakes, and pies; frozen "thaw-and-serve" cakes, pies and pastries; toaster pastries; ice cream and ice cream cones, ice milk, frozen confections, frozen yogurt, frozen tofu novelties, frozen coconut milk novelties, and sherbet; ready-to-eat pudding

and gelatin (both on the shelf and refrigerated); and dessert toppings and sauces such as whipped topping, hot fudge, butterscotch, and caramel.

Note: Desserts and bakery items that are prepared by the retailer and which are ready for consumption without further preparation are considered "prepared food." Please refer to Instructional Bulletin No. 27 ("Sales of Prepared Food") for guidance on these products.

(h) Meat sticks, meat jerky, and meat bars.

Examples: Beef jerky, Slim Jim®, pepperoni snack sticks, and ropes.

(7) Bundled products. "Bundled products" are products that contain taxable and exempt items and offered for sale for one non-itemized price. Examples are Lunchables®, cheese and cracker trays, and veggie/fruit and dip trays not prepared by the retailer. For platters prepared by the retailer, see Instructional Bulletin No. 27 ("Sales of Prepared Food"). Bundled products are subject to sales tax unless the taxable products are a de minimis component of the product being sold.

(8) Any food product that contains any amount of marijuana or marijuana product. Any food product containing any amount of marijuana or marijuana product is excluded from the definition of "grocery staples" and is therefore taxable. See 36 M.R.S. § 1752 (3-B)(H). See Instructional Bulletin No. 27 ("Sales of Prepared Food") and No. 60 ("Sales of Medical Marijuana and Related Products") for more information.

2. OTHER TAXABLE SALES

Retailers of food products also frequently sell non-food products. The following table lists examples of non-food products that are subject to sales tax when sold at retail, including when sold by a retailer of food products.

<p>Agricultural Products¹ Fertilizer Pesticides, insecticides, fungicides, etc. Seeds and seedlings Mulch</p>	<p>Medical & Dietary Products Cod liver oil Dressings & bandages Drugs, except prescription Health & beauty aids</p>
<p>Bathroom & Paper Products Bathroom and facial tissue Diapers Paper napkins & towels Sanitary napkins & tampons Toothpaste & toothbrushes</p>	<p>Packaging Food wrap products Aluminum foil Baggies Plastic wrap Waxed paper & bags</p>

¹ For exempt sales to a Commercial Farmer, see Instructional Bulletin No. 14.

Cleaning Supplies Ammonia Bleach Cleansers Detergents Scouring agents (steel wool, etc.) Scouring powder (Comet®, etc.) Soap Waxes & polishes	Household Items Air Fresheners Brooms, brushes, mops, sponges Clothespins & clothesline Dyes Light bulbs Matches Trash bags
Miscellaneous	
Pet supplies, including bird seed Charcoal briquettes Cigarettes & tobacco products	Video media sales & rentals ² Clothing Safety supplies Seasonal products (such as bug spray, holiday decorations)

3. OTHER EXEMPT SALES

A. NONTAXABLE PRODUCTS.

- (1) Returnable containers when sold with the contents.
- (2) Kerosene, dyed special fuel, firewood, wood pellets, 100% compressed wood products, or propane for home cooking or heating, see Instructional Bulletin No. 13 ("Sales of Fuel and Utilities") for more information.
- (3) Sales of dog food and other goods that are essential for the care and maintenance of seeing-eye dogs used to aid any blind person are exempt from tax. Copies of sales slips or invoices should be kept to support the exemption with the name of the blind person who owns the seeing-eye dog noted on the sales slip or invoice.
- (4) Any amount charged for a paper or plastic single-use carry-out bag is excluded from the taxable sale price of other products included in a transaction.

B. SALES TO EXEMPT ORGANIZATIONS. The Maine Sales and Use Tax Law provides exemptions for sales to various organizations, including, but not limited to, hospitals, schools, regularly organized churches or houses of religious worship. Organizations that qualify for exemption must obtain exemption certificates from MRS. Sales may be made tax-free to these organizations only when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does **not** apply to the clergy, staff, or employees of exempt organizations. See Rule 302 ("Sales to Governmental Agencies and Exempt Organizations") and Instructional Bulletin No. 36 ("Exempt Organizations and Government Agencies") for important information on sales to exempt organizations, including information on documentation required for exempt sales.

² Rentals of video media (DVDs) are subject to the Maine Service Provider Tax; see Instructional Bulletin No. 55 ("Service Provider Tax").

C. GOVERNMENT SALES. Sales made directly to the Federal government, to the State of Maine or any political subdivision of the State (including counties, cities, towns, or plantations), to any unincorporated agency of them, or to any incorporated agency or instrumentality wholly owned by them, are exempt from sales tax. For important information on sales to governmental agencies, including the documentation that is required, see Rule 302 ("Sales to Governmental Agencies and Exempt Organizations") and Instructional Bulletin No. 36 ("Exempt Organizations and Government Agencies").

D. SALES FOR RESALE. A retailer may make sales to other registered sellers for resale. Sales for resale to a purchaser holding a valid resale certificate are not taxable. When making sales for resale, the retailer must obtain a copy of the purchaser's current resale certificate.

Sales for resale at casual sale, rather than in the regular course of business of a registered seller, are taxable. For example, the sale of soft drinks to a church group for resale at a bazaar, where the church group is not in the business of selling and is not registered under the Sales and Use Tax Law, is taxable.

E. SALES OF ITEMS PAID WITH FEDERAL FOOD STAMPS OR WIC PURCHASES. Sales of items paid with (1) federal electronic benefit transfer cards ("EBT cards") or Women, Infants and Children ("WIC") cards, or (2) Special Supplemental Nutrition Program ("SNAP") food cards distributed by the Department of Health and Human Services are exempt from sales tax. Examples of items that are not otherwise exempt as grocery staples but that may be purchased exempt with EBT cards include soft drinks, ice, and cold sandwiches. When a retailer receives an EBT card as partial payment toward a purchase, the dollar value from the EBT card must be applied first to otherwise taxable items, eligible to be purchased with the card, in order to determine what portion is exempt from sales tax.

Example 1: A person purchases \$50.00 worth of groceries. Payment is made using \$40.00 from the EBT card and \$10.00 cash. The purchase includes \$40.00 of eligible items broken down as follows:

\$35.00 exempt items
\$5.00 eligible taxable items

In this example the dollar value from the EBT card (\$40.00) is first applied against the purchase of the eligible taxable items (\$5.00). Thus, the \$5.00 of eligible taxable items would be exempt.

Example 2: A person purchases \$10.00 worth of groceries, all eligible to be purchased with an EBT card. However, payment is made using \$3.00 from the EBT card and \$7.00 cash. The purchase is broken down as follows:

\$6.00 exempt items
\$4.00 eligible taxable items

In this example the dollar value from the EBT card (\$3.00) is first applied against the purchase of the eligible taxable items (\$4.00). Thus only \$3.00 of eligible taxable items are exempt. The remaining \$1.00 is taxable.

Purchases paid for with vouchers issued by any other agency, such as municipal public assistance vouchers, are not eligible for this exemption and should be taxed in the same manner as purchases paid for with cash.

4. PURCHASES BY RETAILERS

A. PURCHASES FOR RESALE. A retailer may make tax-free purchases of tangible personal property that it intends to resell only if the retailer holds a current valid resale certificate and presents it to the supplier at the time of the purchase. See Rule 301 ("Sales for Resale and Sales of Packaging Materials") and Instructional Bulletin No. 54 ("Resale Certificates") for details.

B. PACKAGING MATERIALS. Purchases by retailers of containers and packaging materials used to package the goods that they sell are not taxable. This includes items such as paper or plastic bags, polystyrene trays, and plastic wrap that are used by retailers to package their products and are transferred to the customer at the time of the retail sale of the products. The supplier should be furnished with a current valid resale certificate, or if the retailer does not hold a current valid resale certificate, then the retailer should furnish the supplier with Form ST-A-120 ("Resale Certificate for Packaging Materials"). See Rule 301 ("Sales for Resale and Sales of Packaging Materials") for details.

C. WITHDRAWALS FROM INVENTORY. A retailer that takes taxable items from stock for personal or business use becomes liable for use tax based on the cost of the items. Withdrawals from inventory must be reported as taxable purchases on the Sales and Use Tax Return covering the period in which the withdrawal occurred.

5. COUPONS

A. MANUFACTURERS' COUPONS. When a customer presents a coupon issued by the manufacturer or producer of a certain item in full or partial payment of the sale price of that item, the value of the coupon allowed against the price of the item does not reduce the taxable sale price of the item. The seller receives reimbursement for the value of the coupon from the manufacturer and is made whole for the entire transaction. If the item is subject to tax, the tax must be computed based on the entire selling price of that item before deducting the value of the coupon.

Example: A customer purchases a bag of dog food that ordinarily sells for \$3.99. When paying for the dog food, the customer presents a coupon issued by the manufacturer of the dog food, good for fifty cents off the price of a bag of that company's dog food.

The customer is charged \$3.99 less the 50 cent coupon. The tax on this sale is based on the sale price of \$3.99.

B. STORE COUPONS. When a discount is allowed by the seller and actually taken by the purchaser, the amount of the discount reduces the taxable sale price of the item. In contrast to the manufacturer's coupon, the seller will not receive reimbursement for the value of the coupon and is willing to recognize a lesser value for the transaction.

Example: A retail store includes in its newspaper advertisement a coupon good for 10% off the price of a package of light bulbs. The light bulbs are priced at \$2.99 per package. A customer presents the store coupon when buying a package of the light bulbs and is charged \$2.69. The tax due from that customer is based on the sale price of \$2.69. A second customer purchases the same package of light bulbs but does not present the coupon and is charged the regular price of \$2.99. The tax due from that second customer is based on the sale price of \$2.99.

6. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations must be in writing, must contain full information as to the transaction in question, and must be directed to:

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Issued: July 12, 1951
Amended: November 9, 1953
August 20, 1955
July 1, 1957
December 1, 1963
July 1, 1964
November 1, 1967
October 1, 1975
June 1, 1984
July 16, 1986
October 1, 1987

January 10, 1990
September 1, 1991
April 9, 1992
July 1, 2000
January 1, 2001
October 1, 2001
July 30, 2004
April 1 , 2006
January 17, 2012
October 1, 2013
December 3,2015

Last Revised: February 24, 2020

(Published under Appropriation 010-18F-0002-07)