



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 the Maine Revised Statutes Annotated in Title 36. Both Title 36 and all MRS rules may be viewed by clicking on “Laws and Rules” at the left side of the MRS website: www.maine.gov/revenue/.

This bulletin does not apply to retail locations that primarily sell prepared food. The Maine Sales and Use Tax Law provides at Title 36, section 1811 that sales of prepared foods are taxable at a separate rate that is higher than the generally applicable sales tax rate. 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. Examples of prepared food are doughnuts, muffins and other bakery items, sandwiches, pizza, steamed hot dogs, rotisserie chicken, and convenience meals. For more information, see Instructional Bulletin No. 27 (“Sales of Prepared Food”).

1. TAXABLE SALES

A. Food Products. Generally, the sale of food products is subject to sales tax unless the item qualifies for an exemption. The primary exemption is for sales of “grocery staples,” described later in this bulletin. By definition, the following product categories 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 of candy and confections: 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 Gummie Bears® and jelly beans; chocolate, yogurt, caramel, or carob coated chips, popcorn, nuts, raisins, or pretzels; marshmallows; cotton candy; Pixy Stix®; Marshmallow Creme® and 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 drinks listed below unless they require 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 that are not pure 100% coffee or tea; iced tea and lemonade mix; Kool-Aid®; instant coffee mix such as General Foods International Coffee®; instant breakfast drink mixes including such items as Tang®, Nestle’s Quick®, Postum®, 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 the “Prepared Food” bulletin 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, popped 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® granola bars, FiberOne® 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, macadamias, and nuts found in the baking section such as walnuts, pecans, and almonds.

g. Desserts and bakery items not prepared by the retailer. For products that are prepared by the retailer and are ready for consumption without further preparation, please refer to the “Prepared Food” bulletin.

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.

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 Kraft Lunchables®, cheese and cracker trays, and veggie/fruit and dip trays not prepared by the retailer. (For platters prepared by the retailer, see the “Prepared Food” bulletin.) Bundled products are subject to sales tax unless the taxable products are a de minimis component of the product being sold.

B. Other Taxable Sales. Retailers of food products also frequently sell non-food products. The following table is a non-exclusive list of non-food products that are subject to sales tax when sold at retail, including when a retailer of food products sells these items at retail.

<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>
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¹ For exempt sales to a Commercial Farmer, see Bulletin 14.

Bathroom & Paper Products Bathroom and facial tissue Diapers Paper napkins & towels Sanitary napkins & tampons Toothpaste & toothbrushes	Packaging Food wrap products Aluminum foil Baggies Plastic wrap Waxed paper & bags
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 Gourds	Video media sales & rentals ² Clothing Safety supplies Seasonal products (such as bug spray, holiday decorations)

2. EXEMPT SALES

A. 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 further examples of food products that are considered exempt “grocery staples.”

- Baking cocoa, including unsweetened baking chocolate.
- Bagels
- Baguettes
- Bread rolls and bowls
- Cheese, including cheese sticks and cream cheese
- 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
- Peanut butter and other nut butters

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

- 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
- Yogurt

B. 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 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.

C. 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 Maine Revenue Services. 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 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.

D. Government Sales. Sales made directly to the Federal government, to the State of Maine or any political subdivision of this 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 and Instructional Bulletin No. 36 (“Exempt Organizations and Government Agencies”).

E. 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 should 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.

F. 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. Items eligible for purchase with EBT cards that are not otherwise exempt under current law 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 taxed in exactly the same way as purchases paid for with cash.

3. 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 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 an Exemption Certificate for Packaging Materials. See Rule 301 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.

4. 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.

5. 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. **Contact Maine Revenue Services with any questions as to the proper tax treatment of a particular item.** Requests for information on specific situations should be in writing, contain full information as to the transaction in question, and be directed to:

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Or visit our website at www.maine.gov/revenue

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Issued: July 12, 1951

Last Revised: December 3, 2015 (effective January 1, 2016)

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