

STATEMENT OF IMMINENT PERIL

Act 110 of 2007, which becomes effective July 1, 2007, reduces the state sales and use tax levied on the gross receipts and gross proceeds derived from the sale of food and food ingredients. This Act requires the Department of Finance and Administration to promulgate rules to implement the provisions of the Act.

Rule 2007-3 provides guidance and procedures concerning the reduced state sales and use tax rate on food and food ingredients, which is necessary for the proper administration of the law. Consequently, the Director of the Department of Administration hereby determines that without this rule, there will be significant confusion concerning the reduced state sales and use tax rate on food and food ingredients. Further, it is imperative that such guidance and procedures are set into place and available to the public as soon as possible before the Act becomes effective on July 1, 2007. Therefore, it is determined that a state of imminent peril exists to the public health, safety, or welfare requiring the adoption of this rule on an emergency basis as provided in Ark. Code Ann. § 25-15-204, and that this rule shall be effective on and after July 1, 2007.

Issued this _____ day of May, 2007.

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration and Chief Fiscal Officer



“Food and Food Ingredients”

State Sales & Use Tax Guide

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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 Rule 2007-3 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)	Honey and syrups
Bakery items (unheated, not made by the seller)	Ice (exclude dry ice)
Bread (unheated, not made by the seller)	Ice cream (packaged, not made or served by the seller, including toppings and novelties)
Baking ingredients, whether liquid, powder or solid (e.g., chocolate chips, baking morsels)	Jams, jellies, marmalades, and preserves
Baking mixes (e.g., cake mixes, muffin mixes)	Lard and shortening
Baking soda and leavening agents	Margarine and butter
Beans and peas (fresh, dried, canned, or frozen)	Marshmallows and marshmallow crème
Beverages (prepackaged and sealed – e.g., cans, bottles, cartons, or pouches)	Meat and meat products (raw, frozen, cured, canned, or dehydrated)
Birthday cakes (not baked or decorated by seller)	Milk, yogurt, and cheese products
Bottled water and flavored water	Nutritional Meal Replacements (liquids, bars, and powders - must have Nutrition Facts Box on product label)
Breakfast Bars (must have Nutrition Facts Box on product label)	Pasta and noodles (not prepared or served by seller)
Broth and bouillon (liquid, instant, freeze dried, or cubes)	Peanut butter
Butter and margarine	Peas and beans (fresh, dried, canned, or frozen)
Candy, gum, and breath mints	Powdered drink mixes (e.g., cocoa, lemonade)
Cereal and cereal products	Raisins, nuts, and sunflower seeds
Coconut (whole, shredded, sweetened, or canned)	Rice and other grains
Coffee (beans, ground, freeze dried, bags, or instant)	Salad dressings and mixes
Condiments (e.g., ketchup, mayo, mustard, and relishes)	Salt and pepper (exclude rock salt)
Cooking oil (e.g., canola, olive, vegetable)	Sauces and gravy (bottled, canned, or mixes)
Cookies (not baked or decorated by the seller)	Seasonings and spices (e.g., cinnamon, basil)
Deli meats and cheeses (not heated, combined or served by seller - sliced and repackaged only)	Sherbets and sorbets (not made by the seller)
Eggs and egg substitutes	Soft Drinks, soda, and powdered drink mixes
Extracts and flavorings used as cooking ingredients	Soup (packaged, canned, dried, or frozen)
Fish and Seafood (raw, frozen, cured, canned, or dehydrated)	Snack foods (packaged crackers, potato chips, corn chips, pork rinds, and pretzels)
Flour and corn meal	Sugar and alternative sweeteners
Food coloring	Syrups (including molasses, sugar-free syrups, flavored syrups, and similar products)
Frozen Entrees (e.g., frozen dinners, frozen pizza)	Tea (bags, leaves, and instant)
Fruit and fruit juices (fresh, frozen, canned, or dehydrated)	Vegetables and vegetable products (fresh, frozen, canned or dehydrated, exclude items on food and/or salad bars)
Gelatin (not prepared by the seller)	

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

Alcoholic beverages	Deli trays and foods combined by the seller
Foods sold with eating utensils.	Dry ice
Non-food items (e.g., paper goods, detergents, soap, foil, plastic wrap, cosmetics, toothpaste)	Food baskets
Foods heated, combined or sold with utensils provided by the seller	Food sold at one, non-itemized price which includes one or more items of prepared food.
Bakery items made by the seller	Fountain drinks and dispensed beverages
Cakes made or decorated by the seller	Over-the-Counter Medicinal Products
Candy made by the seller	Pet foods and products
Coffee (ready to drink)	Rock salt
Decorated pumpkins or other decorated food item	Rotisserie chicken and foods heated by the seller
Dietary supplements (e.g., vitamins, minerals, amino acids, botanicals – will have Supplemental Facts Box on label)	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 Rule 2007-3 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

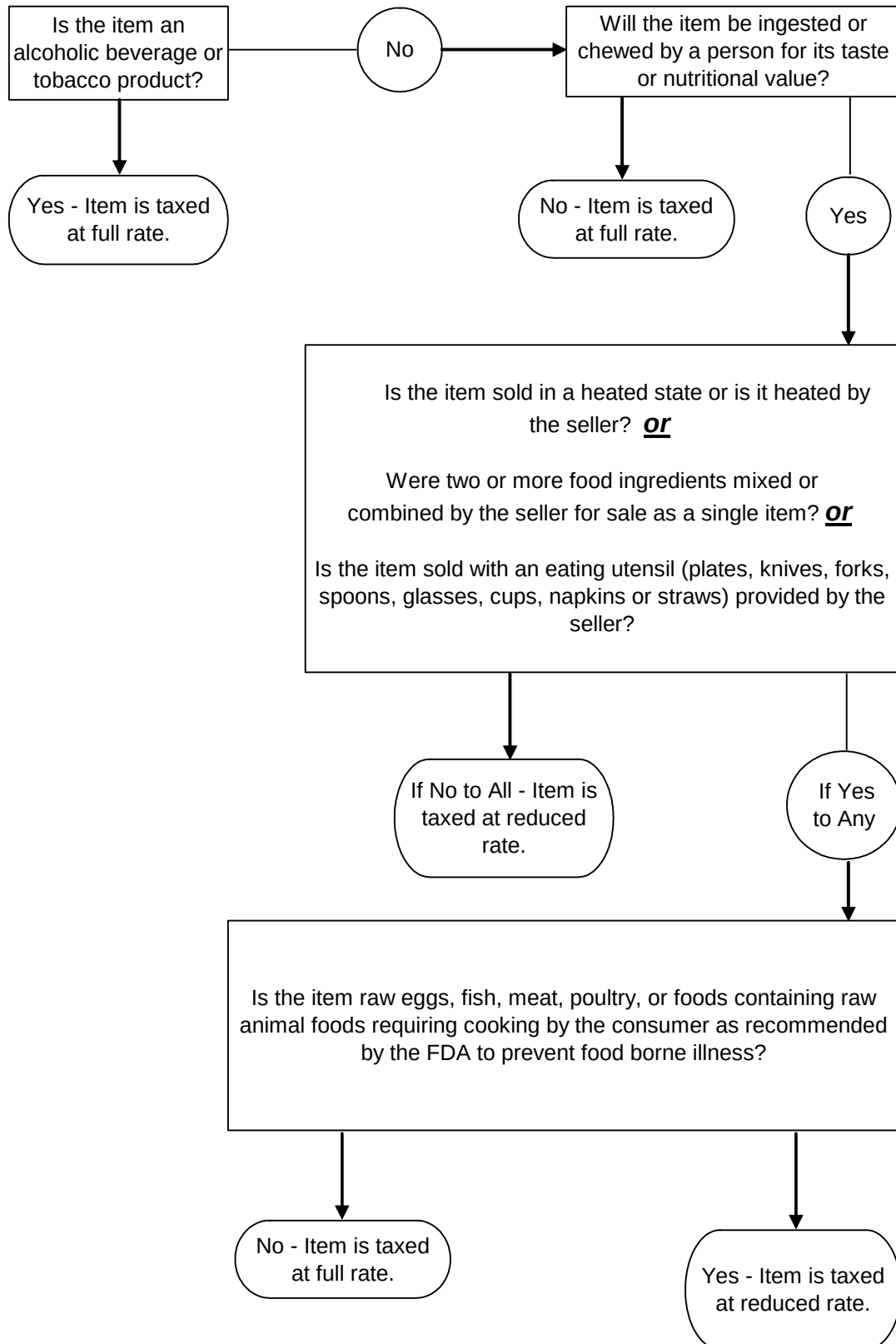
- At a concession stand, a customer purchases a tub of popcorn, a fountain beverage, and a candy bar. The popcorn and fountain beverage are **prepared food** and will be taxed at the full state sales and use tax rate. If the seller's prepared-food sales percentage is greater than 75%, and utensils are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

Examples of Rates Applied to Common Food Transactions (con't.)

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” ?



EMERGENCY RULE 2007-3. SPECIAL RULES FOR SALES OF FOOD AND FOOD INGREDIENTS AND PREPARED FOOD.

A. GENERAL INFORMATION. Effective July 1, 2007, the gross receipts or gross proceeds derived from the sale of food and food ingredients will be taxed at a reduced state sales and use tax rate of 3%. The gross receipts or gross proceeds derived from the sale of prepared food, alcoholic beverages, dietary supplements, and tobacco are subject to the full state sales and use tax rate of 6%.

B. DEFINITIONS.

1. "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.

2. "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.

3. "Food and food ingredients" means 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. Such substances are food and food ingredients and taxed at the reduced state sales and use tax rate unless otherwise excluded. Food and food ingredients does not include an alcoholic beverage, tobacco, a dietary supplement, or prepared food.

4. "Prepared food" means food sold in a heated state or heated by the seller (see Subdivision (C)(1)); food consisting of two (2) or more food ingredients mixed or combined by the seller for sale as a single item (see Subdivision(C)(2)); or food sold with an eating utensil provided by the seller (see Subdivision (C)(3)). Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent food-borne illnesses as recommended by the Food and Drug Administration.

5. "Seller" means every person making a sale. For the purposes of this rule, seller means the legal entity that sells the product at retail.

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

7. “Utensil” means an implement used to serve or consume food or drink including a plate, knife, fork, spoon, glass, cup, napkin, or straw. “Plate” does not include a container or packaging used to transport the food, such as a paper bag or foam used by a grocery store to shrink-wrap meat or cheese. A utensil does not include an item provided for sanitary purposes, such as wax tissue, and not for the purposes of consumption.

C. PREPARED FOOD. Prepared food is meant to encompass items intended for, and which are generally ready for, immediate consumption at the time of sale either on or off the premises of the seller. An item will be considered prepared food and taxed at the full state sales and use tax rate if it meets any of the criteria discussed below in Subdivisions (C)(1), (C)(2), (C)(3), or (G)(1).

1. Prepared food is food sold in a heated state or 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. Food that is heated by the seller at any time prior to sale, even if the item is not warm at the time of sale, is prepared food. Heating includes, but is not limited to, baking, boiling, smoking, and cooking, as well as the use of such items as heat lamps or chaffing dishes. The heating may occur at premises other than the location at which the sale is made.

a. Prepared food includes food that is served hot even if the food was not otherwise prepared by the seller, as well as food that was heated by the seller at any time before the sale and is ready to eat at the time of sale. Prepared food also includes heated food regardless of form, condition, quantities, and packaging.

EXAMPLES: Rotisserie chicken, ready-to-eat pizza, fried potatoes, and ready-to-eat soup are foods that are sold in a heated state or heated by the seller and are taxed at the full state sales and use tax rate as prepared food.

b. Food heated by the customer on the seller’s premises is not prepared food.

EXAMPLE: A convenience store sells frozen burritos. The convenience store also provides a self-service microwave for use by its customers. The customer selects a frozen burrito and heats it in the microwave. In this scenario, the burrito is not prepared food sold in a heated state or heated by the seller. The burrito is food and taxed at the reduced state sales and use tax rate.

2. Prepared food is two (2) or more food ingredients mixed or combined by the seller for sale as a single item. Prepared food is anything made or combined by the seller and is taxable at the full state sales and use tax rate. The item does not have to be prepared and sold at the same location. (But see Subdivision (D)(2).)

EXAMPLES: Salads, birthday cakes, meat and cheese trays, popcorn seasoned with salt and butter, candy, and mixed fruit are prepared food and taxable at the full state sales and use tax rate if the item is made by the seller.

3. Prepared food is food sold with an eating utensil provided by the seller. Food is considered to be sold with an eating utensil provided by the seller when the food is intended for consumption with the utensil provided.

a. Food is sold with an eating utensil provided by the seller in the following scenarios:

(1) The seller physically gives the utensil to the customer.

EXAMPLE 1: The seller serves fried chicken and potato salad on a plate. The seller provided a utensil, a plate, and the sale is taxable at the full state sales and use tax rate as prepared food.

EXAMPLE 2: The seller includes napkins or plastic forks in a to-go bag. The transaction is taxable at the full state sales and use tax rate as prepared food because the food is sold with an eating utensil provided by the seller.

EXAMPLE 3: A food manufacturer sells a product containing crackers, tuna, a mayonnaise packet, and a spreader to supermarkets. The seller, the supermarket, did not provide the utensil to the customer and the product is taxable at the reduced state sales and use tax rate as food. If a manufacturer, and not the seller, provides a utensil in a package, then the food is not sold with eating utensils provided by the seller.

(2) The seller provides a utensil that is generally necessary for the customer to receive or consume the item. A customer's choice not to use a provided utensil does not affect whether an item is prepared food.

EXAMPLE 1: A cup for a dispensed beverage is a utensil generally necessary for the customer to receive the beverage. The dispensed beverage is prepared food and taxable at the full state sales and use tax rate.

EXAMPLE 2: Plastic forks, spoons, and knives available at a salad bar are utensils that are generally necessary for the customer to consumer the salad. A salad purchased from a salad bar is prepared food and taxable at the full state sales and use tax rate.

EXAMPLE 3: A customer purchases a fountain drink at a convenience store. Instead of using the cups provided by the seller, the customer uses their own plastic cup. The fountain drink is still prepared food and taxable at the full state sales and use tax rate even though the customer did not use the cups provided by the seller.

b. If a seller makes utensils available to its customers by way of a self-service station or other central location, then all of the food items sold by the seller may be considered prepared food and taxable at the full state sales and use tax rate. Providing utensils to customers by way of a self-service station or other central

location will result in all food sales being considered prepared food, if the seller's prepared-food sales percentage exceeds the limits outlined in Subsection G.

D. EXCLUSIONS FROM PREPARED FOOD. Prepared food does not include food that meets the criteria discussed below in Subdivisions (D)(1) and (D)(2).

1. 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.

EXAMPLE: A grocery store seasons raw meat to be cooked by the customer. The seasoned meat is food and taxed at the reduced state sales and use tax rate.

2. Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller and such items are taxable at the reduced state sales and use tax rate.

EXAMPLE 1: Meat from a deli counter that is sliced and wrapped for a customer; deli salad that is purchased in large quantities by a supermarket and repackaged into smaller containers (without further preparation) for sale; or cantaloupe sliced by the seller and packaged into containers for sale.

EXAMPLE 2: A deli tray, cheese platter, mixed fruit, or similar item where the seller has mixed or combined two (2) or more food ingredients for sale as a single item is prepared food and is taxable at the full state sales and use tax rate. (See Subdivision (C)(2).)

E. COMBO MEALS AND GIFT BASKETS. When prepared food or other tangible personal property taxed at the full state sales and use tax rate is sold together with food and food ingredients for a single non-itemized price, the sale will be taxed at the full state sales and use tax rate.

EXAMPLE 1: A movie theater has a combo menu that offers patrons a fountain drink (prepared food), popcorn (prepared food), and box of candy (food and food ingredient) for one price. The transaction is taxable at the full state sales and use tax rate.

EXAMPLE 2: An individual purchases a gift basket that includes a variety of fruit (food and food ingredient) in a wicker basket (tangible personal property). The gift basket is sold as one item by the seller. The transaction is taxable at the full state sales and use tax rate.

F. CATERERS. Individuals or businesses that provide catered foods or beverages are deemed to be selling prepared food.

G. PREPARED-FOOD SALES PERCENTAGE. The prepared-food sales percentage is used to determine when making utensils available to customers at a self-service station or otherwise constitutes selling food with a utensil, and is taxable at the full state sales and use tax rate as a sale of prepared food. 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.

1. If a seller has a prepared-food sales percentage greater than 75% (sales of prepared food are greater than 75% of total sales of food items), and utensils are made available by way of a self-service station or otherwise, then all food items sold by the seller are considered prepared food and taxable at the full state sales and use tax rate, unless the item meets the serving-size exception discussed in Subdivision (G)(3). Establishments that are likely to have a prepared-food sales percentage that is greater than 75% include, but are not limited to, 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.
2. If a seller has a prepared-food sales percentage that is 75% or less (sales of prepared food is less than 75% of total sales of food items), then food is sold with an eating utensil provided by the seller and taxable at the full state sales and use tax rate as prepared food, only if the seller physically gives the utensil to the customer or the utensil is generally necessary for the customer to receive or consume the item (see Subdivision (C)(3)).
3. Items that contain four (4) or more servings packaged as one item sold for a single price are not considered to be sold with utensils unless the seller provides a utensil as detailed in Subdivision (C)(3). Whenever available, serving sizes will be determined based on the label on the item sold. If no label is available, then a seller will reasonably determine the number of servings in an item.

EXAMPLE: A coffee shop sells various bakery items that are made by an unrelated third party. The coffee shop has napkins and straws available on the premises for its customers. The sale of a whole cheesecake will not constitute a sale of prepared food unless the coffee shop physically gives a utensil to the customer with the purchase of the cheesecake.

4. The prepared-food sales percentage will be calculated by the seller for each tax year or business fiscal year, based on the seller's data from the prior tax year or business fiscal year, as soon as possible after accounting records are available, but not later than ninety (90) days after the beginning of a tax or business fiscal year. A seller must be able to provide documentation to support the determination of its prepared-food sales percentage. A single prepared-food sales percentage will be determined annually, for all of a seller's establishments in the state that report under the same permit number.

a. Calculation of the prepared-food sales percentage. The prepared-food sales percentage is calculated by dividing sales of prepared food by the sum of all sales of prepared food, food and food ingredients, and dietary supplements in the following manner:

- (1) Add the dollar amount of all sales of food sold in a heated state or heated by the seller; food that was mixed or combined by the seller; and

food sold where plates, bowls, glasses, or cups are necessary to receive the item. Do not include alcoholic beverages in this total.

(2) Add the dollar amount of all sales of food and food ingredients, prepared food, and dietary supplements. Do not include alcoholic beverages in this total.

(3) Divide the total prepared food sales (amount calculated in Subdivision (G)(4)(a)(1)) by the total sales of prepared food, food and food ingredients and dietary supplements (amount calculated in Subdivision (G)(4)(a)(2)) by the seller. The resulting percentage is the prepared-food sales percentage.

b. A new business will make a good faith estimate of their prepared food sales percentage for their first year. A new business should adjust its good faith estimate prospectively after the first three months of operation if the actual prepared food sales percentages materially affect the estimate.

For further guidance, see Appendix A: “Food and Food Ingredients” – State Sales & Use Tax Guide.

This rule is promulgated as an emergency rule pursuant to the provisions of Ark. Code Ann. § 25-15-204 and shall be effective on and after July 1, 2007.

Date _____

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration