



# **Sales and Use Tax Training for Grocers Part 3**

**Wisconsin Department of Revenue  
April 2017**



# Topics of Discussion

- Sales of Prepared Foods
- Prepared Food Flow Chart

# Additional Training for Grocers

- Part 1 – Sales by Grocers
- Part 2 - Sales of Candy, Soft Drinks, and Dietary Supplements
- Part 4 - Preparing for an Audit



# Sales of Prepared Foods

# Exemption for Food and Food Ingredients

- The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, except:
  - Candy (see Part 2)
  - Soft drinks (see Part 2)
  - Dietary supplements (see Part 2)
  - Prepared food

# Food and Food Ingredient

A substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value...does not include alcoholic beverages or tobacco.

# Food and Food Ingredient

- Food and food ingredients include beverages, but not alcoholic beverages (0.5% or more alcohol by volume).
- Alcoholic beverages are taxable.

# Prepared Food

- Most restaurant sales are taxable as prepared food.
- Most grocery store sales are not prepared foods, although some are likely to be prepared food.



# Step 1 - Prepared Food Includes

**Test 1: Food or food ingredient sold in a heated state (above room temp).**

- Hot coffee
- Rotisserie chicken
- Burgers, hot dogs, French fries, pizza

If customer places unheated item in microwave and heats, the item is not sold in a heated state.

# Step 1 - Prepared Food Includes

**Test 2: It is the retailer's customary practice to physically give or hand customer a utensil with the item ("utensil" includes napkins, cups, spoons, straws, forks, knives, plates, bowls, and glasses).**

- Retailer gives customer a straw with a bottle of water
- Retailer gives customer a napkin with a doughnut

Still "prepared food," even if customer doesn't take utensil.

Making utensils available is not the same as physically giving or handing a utensil to customer with food (e.g., napkin dispenser).

# Step 1 - Prepared Food Includes

**Test 3: When plates, bowls, glasses, or cups necessary to receive the item are made available to customer.**

- Customer gets milk from a dispenser and cups are available (cup necessary to receive, even if customer brings his own cup)
- Retailer or customer scoops ice cream into a bowl

# Step 1 - Prepared Food Includes

**Test 4: Package contains a utensil placed in it by someone (nonmanufacturer) other than the retailer.**

- Food wholesaler puts a fork in a container of sliced fruit; wholesaler sells container to retailer; retailer's sale to customer is a sale of "prepared food"

## Step 2 - Prepared Food Includes

**Test 5:** Food and food ingredients that were **previously heated** by the retailer, but sold in unheated state, if the retailer **mixed or combined 2 or more ingredients** and sold as a single item.

**Exception:** Go to the 75% test, if any of the following:

- Retailer's primary NAICS code is manufacturing (but not a bakery or tortilla manufacturer) OR
- Item is sold by weight or volume OR
- Item sold is a bakery item

# What is the 75% Test?

If food or food ingredient meets any of Tests 1-4, it is prepared food (taxable).

If food or food ingredient meets any of Tests 5 - 6, it is prepared food (taxable), unless one of the exceptions apply. If an exception applies, we must use the 75% test.

# What is the 75% Test?

The 75% is calculated as follows:

retailer's sales of certain prepared food  
retailer's sales of all food and food ingredients

## Step 2 - Prepared Food Includes

**Test 5:** Food and food ingredients that were **previously heated** by the retailer, but sold in unheated state, if the retailer **mixed or combined 2 or more ingredients** and sold as a single item.

**Exception:** Go to the 75% test, if any of the following:

- Retailer's primary NAICS code is manufacturing (but not a bakery or tortilla manufacturer) OR
- Item is sold by weight or volume OR
- Item sold is a bakery item



## Step 2 - Prepared Food Includes

Test 6: When the retailer *did not* previously heat the food and food ingredients, but **mixed or combined 2 or more ingredients** and sold as a single item.

**Exception:** Go to the 75% test, if any of the following:

- Retailer's primary NAICS code is manufacturing (but not a bakery or tortilla manufacturer) OR
- Item is sold by weight or volume OR
- Item sold is a bakery item OR
- Retailer only slices, repackages, or pasteurizes item OR
- Item contains meat, fish, egg, or poultry in raw form that requires cooking by the consumer

# What is the 75% Test?

**75% Test:** If the retailer's sales of certain prepared foods is greater than 75% of its sales of all food and food ingredients, all of the retailer's sales of food and food ingredients are sales of prepared food (taxable) if utensils are made available by the retailer to the purchaser.

# What is the 75% Test?

**Exception:** If the item contains 4 or more servings packaged as 1 item and sold for a single price, that item is not prepared food (unless it meets any of Tests 1 – 4).

- Serving sizes are based on the information contained on the label of each item sold, except that if the item does not contain a label, the serving size is based on the retailer's reasonable determination.

# What is the 75% Test?

If utensils are not made available by the retailer to the purchaser, the items listed as exceptions in Tests 5 and 6 are not prepared food (unless they meet one of the tests in Test 1 – 4).

# Prepared Food Example 1

- Grocery's bakery department makes donuts
- The donuts are sold for \$0.75 each
- The donuts are not sold heated
- The grocery store/bakery's customary practice is not to give or hand a utensil to its customers with donuts
- Plates, bowls, glasses, or cups are not necessary to receive the donut
- The grocery store's sales of prepared foods are less than 75%
- The donut is not a prepared food and is not subject to sales tax

# Prepared Food Example 2

- Grocery's deli department prepares and sells cold, ready-to-eat sandwiches
- The sandwiches are sold for \$3.25 each
- The deli mixes or combines 2 or more ingredients for sale as a single item
- The sandwiches are not sold by weight or volume
- The sandwich is not a bakery item
- The deli does more than slice, repackage, or pasteurize the sandwich ingredients
- The sandwich does not contain egg, fish, meat, or poultry or any food containing them in raw form which requires further cooking to prevent food-borne illnesses
- The sandwich is a prepared food and is subject to sales tax

# Additional Training for Grocers

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## Contact DOR if you have questions

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