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Supplemental Information “Changes in Taxable Food Products effective January 1, 2016

Maine Revenue Services

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Maine Revenue Services – Sales, Fuel and Special Tax Division
Supplemental Information “Changes in Taxable Food Products effective January 1, 2016”
Issued: December 3, 2015

Listed below are responses to a number of questions posed during recent webinars regarding the January 1, 2016 changes to taxable food products. Please also refer to our PowerPoint presentation at <http://www.maine.gov/revenue/salesuse/salestax/salestax.html> and Bulletins 12 and 27 at <http://www.maine.gov/revenue/salesuse/salestax/bulletinssales.htm> for additional guidance.

Category: Candy

- Edible cake toppings will become taxable.

Category: Soft drinks

- Whey is a milk product. Drinks containing whey are exempt.
- Any percentage of milk content in a drink makes the drink exempt.
- Tea drinks are taxable unless they are pure tea.
- Unsweetened iced tea is taxable.
- Liquid orange juice is exempt if it has more than 50% fruit juice content.
- Coconut water is exempt if it has more than 50% fruit juice content.
- All water is taxable.

Category: Powdered and liquid drink mixes

- Unsweetened iced tea is taxable.
- All frozen juice concentrates, including lemonade, are taxable regardless of fruit content.
- A powdered drink mix that contains powdered milk, such as cocoa, is taxable.
- 100% lemon juice is a concentrate and is taxable as a liquid drink mix.
- Protein drink mixes with a supplement label are taxable as a dietary supplement.

Category: Sandwiches and salads

- A frozen sandwich that only needs to be microwaved will be taxable.
- If frozen sandwich was prepared by the retailer, taxable at 8%; otherwise taxable at 5.5%.
- Burritos, Wraps, and Hot pockets are sandwiches.
- Frozen breakfast burritos are taxable if they are fully cooked or if they do not require being heated to a specific internal temperature.
- A frozen omelet is not a sandwich.
- A sandwich purchased for resale and placed in the cooler is currently and will continue to be taxed at 8%.
- Cooking to a specified internal temperature is the determining factor for whether an item requires cooking rather than heating for palatability.
- Dip or potato salad prepared by the retailer will be taxable at 8%, regardless of the size of the container. Dips or potato salads purchased for resale will be taxable at 5.5%.

Category: Supplemental Meal Items

- Tortilla chips are taxable.
- Tapenade is a spread, not a dip, and is exempt.
- Brushetta sold as a spread is exempt.

Category: Fruit bars, granola bars, etc.

- Fruit leathers are taxable as fruit bars whether sweetened or not.

Category: Nuts and Seeds

- “Processed by other means” includes shelling. Shelled nuts are taxable.
- Nuts in the shell are exempt unless “salted, spiced, smoked, or roasted”.

Category: Desserts and bakery items

- Pop Tarts and Toaster Strudels will be taxable.
- If a retailer purchases a bakery item in bulk and packages the item into smaller quantities for retail sale, the bakery item will be taxed at 5.5%. Cutting and packaging is not “prepared by the retailer.”
- A pie baked by a restaurant or store will be taxed at 8%.
- Pies purchased and resold will be taxed at 5.5%.
- Pies purchased from the maker at the farmers market and resold in a store will be taxed 5.5% but when the maker sells them at the farmers market they are taxed at 8%.
- Pies prepared by the retailer, not ready for immediate consumption, but requires the customer to bake the pie, is exempt.
- Stuffed breads are taxable bakery items – 8% if prepared; 5.5% if not.
- A single loaf of bread is exempt, unless it is a dessert bread. Dessert breads are taxable.
- Frozen donuts that a retailer thaws, heats, and frosts is prepared food and taxable at 8%.
- All ice cream is taxable. The amount of milk content is immaterial.
- Gelato is taxable.
- Ice cream novelties and quarts taxed at 5.5% if not made by the retailer. Ice cream stands are selling prepared food and their products are taxed at 8%.
- Packages of cookies not prepared by the retailer are 5.5% regardless of the number in the container.
- Custard is taxable for a variety of reasons; dessert; dessert sauce; ready-to-eat pudding.

Category: Bundled products

- Tuna and crackers will become taxable at 5.5%.

Category: Prepared Food

- Fountain soda is taxable.
- Tapenade and pesto prepared by the retailer will be taxed at 8% unless sold in bulk (pints or greater).
- All hummus prepared by the retailer will be taxed at 8% regardless of size.
- Sandwiches that are ready for immediate consumption are taxable at 8%.
- Brushetta as an appetizer is taxable at 8% if prepared by the retailer; exempt as a grocery staple if not prepared by the retailer. Brushetta would not be a sandwich.

- A fruit or veggie tray is taxable as prepared food, even if it does not contain dip.
- Sales of hot coffee, cocoa, and cappuccino are taxable at 8%.
- All meals are 8%.
- Maple syrup prepared by the retailer and sold at a farmers market is exempt as a bulk sale of a grocery staple.
- Bagels and rolls prepared by the retailer are taxable at 8% unless sold in quantities of 6 or more.
- All food and drink sold through a restaurant are taxed at 8% unless it is a bulk sale of a grocery staple.
- Small containers of milk sold by a prepared food retailer is taxed at 8% if more than 75% of the food sold by them is prepared food.
- Pies sold at a farmers market will be taxable in January. 5.5% if not prepared by the retailer. 8% if prepared by the retailer.
- Milk, including flavored milk, prepared by the retailer, is subject to tax at 8% unless sold in a bulk quantity (greater than a pint).
- Heating and sugaring a donut is considered prepared food taxable at 8%.
- The 75% rule does not come into play on these new taxable food products. If the 75% rule applies, it would tax otherwise exempt food and drinks.
- The sale of a rotisserie chicken prepared by the retailer and available for sale in a heated state is prepared food and is taxable regardless of cooling that might occur; including such chickens that are wrapped at the end of the day and placed in the cooler for sale.
- Food prepared by the retailer does not qualify as a bulk sale of a grocery staple.
- The sale of a 9 inch chicken pot pie prepared by the retailer but only available for sale in a cold or frozen state is taxable prepared food.

Category: Exempt grocery staples

- Maple syrup
- Honey
- Unpopped popcorn
- Jam, jelly, and preserves regardless if first ingredient is sugar
- Tapenade
- Olives
- All cereal
- Granola, except trail mixes
- Frozen dinners, pizzas, appetizers, etc.
- Yogurt in the dairy case
- Bread and bread products not prepared by the retailer including bagels, soft pretzels, and rolls
- Fruit and vegetables cut and repackaged by the retailer, including fruit cups
- Apple sauce
- Dairy products such as milk and cheese, including flavored milk.
- Coffee in the can
- Coconut milk
- Croutons

- Tortillas
- Oatmeal, including instant oatmeal
- Ramen noodles

Category: Miscellaneous

- Vitamins are currently taxed.
- Purchases with SNAP cards continue to be exempt if the product is eligible.