



State of Wyoming

# DEPARTMENT OF REVENUE

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## **BULLETIN #17**

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### **Food Exemption**

House Enrolled Act 88 was passed by the Wyoming Legislature and signed into law by Governor Freudenthal. W.S. 39-15-105(a)(vi)(E) exempts from sales and use tax: “Sales of food for domestic home consumption.” This makes permanent the temporary exemption passed by the legislature in 2006 of the same nature.

*WY Dept of Rev. Rules, Chap 2, Section 3(v)* has several important definitions, “...

(v.)“**Food for domestic home consumption**” means substances, whether 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 for domestic home consumption includes dietary supplements and does not include alcoholic beverages, tobacco, or prepared foods.

(i.)“**Prepared foods**” are foods generally intended for, and which are ready for immediate consumption.

(A.) “**Prepared food**” means food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

(B.) “**Prepared food**” does not include:

- (1.) Food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.
- (2.) Food sold in an unheated state by weight or volume as a single item;
- (3.) Food sold by a seller whose proper primary NAICS classification is food manufacturing; or

- (4.) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies or tortillas which are sold for other than immediate consumption.
- (5.) “Dietary Supplements” including vitamins, minerals, botanicals, amino acids and other substances used to enhance dietary health.” *[emphasis added]*

In addition, the following definitions further clarify what the exemption is intended to include or exclude:

**“Alcoholic Beverages”** means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume. [*WY Dept of Rev Rules, Chap 2, Sec 3(e)*]

**“Dietary Supplement”** means any product, other than “tobacco” intended to supplement the diet that:

- (i.) Contains one or more of the following dietary ingredients:
  - (A.) A vitamin;
  - (B.) A mineral;
  - (C.) An herb or other botanical;
  - (D.) An amino acid;
  - (E.) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
  - (F.) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; 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; and is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label and as required pursuant to 21 C.F.R. § 101.36. [*WY Dept of Rev Rules, Chap 2, Sec 3(p)*]

**“Tobacco”** means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. [*WY Dept of Rev Rules, Chap 2, Sec 3(ww)*]

The purpose of these definitions is to separate food for domestic home consumption from foods designed for immediate consumption such as food sold in restaurants or other similar establishments. This is why prepared food is specifically defined and is excluded from the definition of food for domestic home consumption.

The passage of the exemption on food for domestic home consumption has created many questions relating to the taxability of specific items or sales made by different types of establishments. The following is a list of the most commonly asked questions received by the department with our response:

- **Is food sold in restaurants taxable?**

*Yes. Food sold in restaurants is prepared food, typically sold with utensils and is designed for immediate consumption.*

- **Is candy taxable or is it food?**

*Candy is food and is generally exempt.*

- **Are soft drinks exempt as food?**

*Yes, unless they are sold in a cup provided by the seller or sold from a vending machine. The soft drink is then considered prepared food to be sold for immediate consumption.*

- **Is takeout food, food sold at a drive-through, or delivery food exempt?**

*No. In these cases, the food is considered prepared food and is taxable.*

- **Is food at the movie theatre or sporting events such as UW sporting events taxable?**

*Yes. Typically food sold by concessionaires is intended for immediate consumption.*

- **Are cough drops considered food?**

*No. They are not consumed for taste or nutrition. They are a medicine designed to treat a condition. This answer applies to all over-the-counter medications and remedies.*

- **Are alcoholic beverages taxable?**

*Yes. These products are excluded from the definition of food.*

- **Are non-alcoholic beverages such as non-alcoholic beers and wines exempt?**

*If the beverages contain less than ½ % of alcohol by volume then they are not considered an alcoholic beverage and are considered food and thus tax exempt.*

- **Are bakery products exempt?**

*Generally yes, unless the bakery good is sold with utensils or is combined with other food products by the seller. An example of this would be a bagel and cream cheese or a sandwich. These would then become prepared foods and taxable. However a loaf of bread or a bag of bagels or donuts made in a bakery would be exempt.*

- **Are foods sold in a deli section of the grocery store exempt?**

*Generally yes, with the notable exception of heated foods and foods sold with utensils provided by the seller. Deli meats, sliced and packaged by the seller and sold by weight are exempt as are deli salads sold by weight. Heated deli chicken and other products heated by the seller are taxable. A salad sold in a package with a fork and dressing would be taxable as prepared food.*

- **Are products which require preparation by the seller but which will require additional preparation by the consumer exempt from the tax?**

*Yes. A good example of this would be a fresh pizza offered for sale by a vendor. A notable example of this is Papa Murphy's Pizza. The pizza is prepared by the vendor however is sold without being cooked. The pizza must be cooked by the purchaser.*

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by telephone at (307)777-2459 or by e-mail directed to [DOR\\_taxability@wyo.gov](mailto:DOR_taxability@wyo.gov)