

701—287.5(422,423) Meals and prepared food. Meals and prepared food are subject to tax using different criteria before July 1, 1985, and on or after July 1, 1985.

287.5(1) Before July 1, 1985. Meals prepared for immediate consumption on or off the premises of the retailer are not eligible for the sales tax exemption. A meal shall consist of a diversified selection of foods, which would not be able to be consumed without at least some articles of tableware being present and which could not be conveniently consumed while one is standing or walking about. A meal would usually consist of a larger quantity of food than that which ordinarily comprises a single sandwich. *Treasure Island Catering Company, Inc. v. State Board of Equalization*, 1941, 19 Cal.2d 181.

a. Retailers who are considered serving meals shall include those who serve meals off the premises of the retailers such as caterers.

b. Meals that may be eligible for purchase with food coupons shall not be exempt from sales tax. This shall include carryout plate lunches that are served with articles of tableware. Tableware shall include dishes, glasses, and silverware and includes paper or plastic tableware.

287.5(2) On or after July 1, 1985. Sales of prepared food are taxable in three situations: All food, food products, and drinks prepared for consumption on the premises of the retailer; all foods and drinks sold by caterers; all food, food products, and drinks prepared by the retailer for immediate consumption off the premises of the retailer. Sales of prepared foods may be taxed under any of the three situations. Examples given in this subrule are meant to illustrate the application of the subrules to the facts described.

a. *On-premises consumption.* Sales of food products and food and drinks prepared by the retailer or others on or off the premises of the retailer for consumption on the premises of the retailer are taxable. If the food is sold for consumption on the premises of the retailer, the food is presumed to have been consumed on the premises of the retailer.

“Premises of the retailer” means the total space and facilities under control of the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer.

Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax unless sales of prepared food are clearly identifiable as being for consumption off of the premises of the retailer in which case the sale may be taxable under 20.5(2)“c.”

Types of retailers that are generally considered to be offering food for consumption on the premises include restaurants, coffee shops, cafeterias, snack shops, and concession stands including those at recreation and entertainment facilities. Other retailers that often offer food for on-premises consumption include vending machines and mobile vendors.

Separate eating facilities need not be provided for the sale of prepared food and drink to be for consumption on the premises of the retailer if the retailer operates vending machines, mobile vendors, snack shops, or concessions and on the same premises operates facilities for such activities as recreation, entertainment, education, office work, or manufacturing.

The following examples are intended to show some of the situations in which sales are taxable as food and drink prepared for consumption on the premises of the retailer.

EXAMPLE A. A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable as sales for consumption on the premises of the retailer.

EXAMPLE B. As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable as sales for consumption on the premises of the retailer.

EXAMPLE C. Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable as sales for consumption on the premises of the retailer.

EXAMPLE D. A bakery with seating provided for eating offers baked goods prepared by the bakery for consumption on the premises and for take-out. Baked goods are neither hot nor cold. Baked goods as well as other prepared food and drink sold for consumption on the premises are taxable. However, the baked goods sold by this bakery on a take-out basis are not taxable because they are sold neither hot nor cold.

EXAMPLE E. A separate area in an office building is set aside for vending machines with seating facilities for eating provided. The seating area and the vending machines are maintained and operated under contract by a vending company. In this case, sales of prepared food and drink through the vending machines are taxable as sales for consumption on the premises of the retailer.

b. Catered food. All sales of food, food products, and drinks on a catered basis are subject to tax.

c. Off-premises consumption. When a sale of prepared food is clearly identifiable as being for consumption off of the premises, the sale is taxable if the food is:

- (1) Hot or cold,
- (2) Prepared by the retailer, and
- (3) For immediate consumption.

“Hot or cold” means that the food is intentionally sold in a heated or cooled state. Food that is not heated or cooled is taxable if sold in combination with other heated or cooled food on a nonitemized basis. Availability of self-service heating facilities indicates intent to sell food in a heated state whether or not the food is actually heated at the time of sale.

Preparation by the retailer for immediate consumption includes, but is not limited to: cooking, mixing, sandwich making, blending, heating, or pouring. Preparation by the retailer includes customer utilization of on-premises facilities for the purpose of preparing food for immediate consumption. The division of food and drink into smaller portions is not by itself preparation by the retailer for immediate consumption off of the premises of the retailer. Food prepared for immediate consumption is food prepared to a point generally accepted as ready to be eaten without further preparation and that is sold in a manner that suggests readiness for immediate consumption. Actual immediate consumption of the food is not necessary for the sale to be taxable if the food has been prepared for immediate consumption.

Sales of foods that are often for immediate consumption off of the premises of the retailer include: delicatessen, ice cream, popcorn, and vending machine.

If a vendor does not provide seating or other eating facilities, sales of prepared food and drink by the vendor by such means as vendor-owned vending machines or mobile vendors or from snack shops or concession stands are usually for consumption off of the premises of the retailer. However, if a vendor sells prepared food at retail food establishments without separate seating or eating facilities and on the same premises operates facilities for such activities as recreation, entertainment, education, office work, or manufacturing, then the sales of prepared food can be taxable under 20.5(2) “a” depending on the type of the item sold.

The following examples are intended to show some of the situations in which sales are taxable as hot or cold food and drink prepared by the retailer for immediate consumption off of the premises of the retailer.

EXAMPLE A. The owner of a sports stadium leases concession stands at the stadium to a company that operates the stands during events at the stadium. The concession operator prepares and heats sandwiches and sells other food and drink prepared and packaged by others. No separate eating facilities are provided. All sales by the concessionaire are for immediate consumption off of the premises of the retailer. Therefore, only the sales of candy, candy-coated items, taxable beverages, as well as sandwiches and other food prepared by the retailer that are sold hot or cold are taxable.

EXAMPLE B. A convenience store without separate eating facilities sells sandwiches prepared and packaged by a wholesale distributor. Microwave ovens are available for heating the sandwiches. No separate eating facilities are available. Sales of these sandwiches are not taxable because the sandwiches are not for consumption on the premises of the retailer and because the sandwiches were not prepared by the retailer.

EXAMPLE C. An area in an office building is set aside by the owner of the building for food and drink vending machines. Separate eating facilities are provided by the owner of the building. Vending

machines and accompanying microwave ovens located in the area are owned and operated by a vending service under contract with the owner of the building. The retailer prepares none of the food placed in the machines. The vending service is the retailer. Sales of food and drink through the vending machines are for immediate consumption off of the premises of the retailer. Thus, sales of food and drink through the vending machines are not taxable unless the sales involve candy, candy-coated items, or taxable beverages.

d. Sales of food and beverages for human consumption by certain nonprofit organizations. Sales of food and beverages made by certain organizations are exempt. Retroactively to July 1, 1988, the gross receipts from sales of food and beverages for human consumption by organizations are exempt from sales tax if the organization is nonprofit, principally promotes a food or beverage product for human consumption that is produced, grown, or raised in Iowa, and is exempt from federal income tax under Section 501(c) of the Internal Revenue Code. Refunds are allowed for tax, penalty, and interest paid by such organizations on sales made between July 1, 1988, and June 30, 1998. For details, examples, and requirements on claiming a refund, see 701—17.32(422).

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 1998 Iowa Acts, chapter 1091.

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