



DEPARTMENT OF REVENUE

INDIANA GOVERNMENT CENTER NORTH
100 N. SENATE AVE

INFORMATION BULLETIN #29

SALES TAX

APRIL 2016

(Replaces Information Bulletin #29 dated FEBRUARY 2012)

Effective Date: Upon Publication

SUBJECT: Sales of Food

REFERENCES: IC 6-2.5-1-11; IC 6-2.5-1-11.5; IC 6-2.5-1-12; IC 6-2.5-1-16; IC 6-2.5-1-20; IC 6-2.5-1-26; IC 6-2.5-1-28; IC 6-2.5-4-15; IC 6-2.5-5-20; IC 6-2.5-5-21; IC 6-2.5-5-21.5; IC 6-2.5-5-22; IC 6-2.5-5-35; IC 6-2.5-8-1; IC 6-2.5-11-1

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SUMMARY OF CHANGES

Aside from nonsubstantive, technical changes, this bulletin has been changed to reflect guidance issued by Streamlined Sales Tax and to clarify the exemption for food as it applies to restaurants and combination businesses. A formula is provided to determine whether a business is a restaurant or combination business.

INTRODUCTION

Generally, the sale of food and food ingredients for human consumption is exempt from Indiana sales tax. Primarily, the exemption is limited to the sale of food and food ingredients commonly referred to as “grocery” food. The purpose of this bulletin is to assist Indiana retailers in the proper application of this exemption.

I. Non-taxable Food Items

Food is defined as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value. The term does not include tobacco, alcoholic beverages, candy, dietary supplements, or soft drinks.

The Indiana sales tax does not apply to the sale of food and food ingredients if they are sold unheated and without eating utensils provided by the seller. For a list of examples of taxable and non-taxable food items, please refer to “Appendix A.”

II. Taxable Food Items

A. Items Sold in Vending Machines

All food sold through a vending machine is subject to sales tax regardless of the type of food sold. The fact that the item qualifies as exempt food if sold in another manner does not make the purchase exempt if sold through a vending machine.

B. Candy

Candy is defined as preparations of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The fact that these preparations contain ingredients that, if purchased separately, are considered exempt does not exempt these preparations. The term does not include any preparation that contains flour listed on the label or any preparation that requires refrigeration. Based on this definition, many items commonly considered to be candy, including many candy bars, are not classified as “candy” for Indiana sales tax purposes (for examples, please see “Appendix A”).

Baking chocolate and similar products that are intended for use in cooking will be considered exempt food within the meaning of this information bulletin, unless they are in the form of bars, drops, or pieces and are sweetened.

C. Soft Drinks

Soft drinks are defined as nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes or greater than 50 percent vegetable or fruit juice by volume. Additionally, beverages that are advertised as being greater than 50 percent juice but are made from concentrate through a water extraction method, such as prune juice, would be taxable if they contain natural or artificial sweeteners. Further, frozen or powdered drink mixes are not sold in a liquid beverage form, and therefore would not be considered a soft drink even if they contained sweeteners.

D. Dietary Supplements

Sales of dietary supplements are subject to Indiana sales tax. The term *dietary supplements* means any product other than tobacco that:

- (1) Is intended to supplement the diet;
- (2) Contains one or more of the following ingredients:
 - (a) Vitamins
 - (b) Minerals
 - (c) Herbs or other botanicals
 - (d) Amino acids
 - (e) A dietary substance for use by humans to increase the total dietary intake
 - (f) Concentrates, metabolites, constituents, extracts, or a combination of any of the above ingredients;
- (3) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in the above form, is not represented as a conventional food and is not represented for use as a sole item of a meal or of the diet;
- (4) Is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label and as required under 21 CFR 101.36.

Sales of food prescribed as medically necessary by a physician licensed to practice medicine in Indiana are exempt from the sales tax if dispensed by a registered pharmacist or sold by a licensed physician.

E. Prepared Food

Prepared food is taxable. Prepared food means the following:

- (1) All food items sold in a heated state or heated by the seller and ready to eat without further cooking by the purchaser. Providing a microwave or toaster for customer usage to eat frozen or refrigerated items not previously heated by the seller would not make the items taxable.
- (2) All food items sold with eating utensils provided by the seller. Eating utensils includes plates, knives, forks, spoons, glasses, cups, napkins, or straws (a plate does not include a container or packaging used to transport the food). Except as provided below, food shall be considered to be sold with eating utensils provided by the seller when utensils are given to the purchaser or made available for self-service by the purchaser on the seller’s premises. The taxability of food sold by a restaurant or a combination business is determined as follows:

- (a) A restaurant is a business that sells prepared food such as meals, sandwiches, or other food for consumption on or off the premises and which provides utensils. A business is considered a restaurant if seventy five percent (75%) or more of the business's sales are of prepared food, as determined by the formula in "Appendix B."

Because utensils are provided by a restaurant, this subjects all food items ready for immediate consumption on or off the premises sold by the restaurant to tax, regardless of the portion size. This includes self-service food such as salad bars or drink islands, bakery items, and other items normally considered non-taxable, including bottled water, fruit, and potato chips. However, food sold without eating utensils provided by the seller that ordinarily requires cooking (as opposed to just reheating) by the consumer prior to consumption is excluded from prepared food, and is, therefore, exempt (e.g., prepackaged baking mixes).

- (b) A combination business is a business that has both an area that is considered a restaurant and an area that is considered a store, and the business's sales of prepared food are less than seventy five percent (75%) of the business's overall sales (i.e., grocery stores with a deli or cafeteria; convenience stores; farmer's markets; restaurants with a gift store or grocery), as determined by the formula in "Appendix B." Sales of prepared food by a combination business are taxable. However, otherwise exempt food sold by a combination business, including bakery items and items ready for consumption at the time of sale, are only taxable if utensils are handed to the customer. This includes utensils that are placed by the seller in a bag or other container that is handed to the customer.

- (3) All food items where two or more food ingredients are mixed or combined by the seller and then sold as a single food item. However, items in this category are not taxable if:
 - (a) The item is both sold in an unheated state by weight or volume as a single item and is sold without eating utensils (e.g., potato salad);
 - (b) The item sold represents food that is only cut, repackaged, or pasteurized by the seller (e.g., vegetable trays);
 - (c) The item sold contains raw animal foods that require cooking (e.g. breaded or seasoned raw fish or meat); or
 - (d) The item ordinarily requires additional cooking (e.g., take and bake pizza).

Prepared food does not include bakery items (including bagels, bars, biscuits, bread, buns, cakes, cookies, croissants, Danishes, donuts, muffins, pastries, pies, rolls, tarts, tortes, and tortillas) and food items sold by a seller whose proper primary NAICS classification is 311 food manufacturing (except subsector 3118, bakeries), even though they are items in which two or more food ingredients are mixed or combined by the seller and then sold as a single food item. These items are not taxable unless they are:

- (a) Sold through a vending machine;
- (b) Sold with eating utensils provided by the seller; or
- (c) Sold in a heated state.

Therefore, if a bakery provides utensils, the bakery items it sells would be subject to sales tax depending on whether the bakery qualifies as a restaurant or combination business using the test outlined in “Appendix B.”

F. Bundled and Unitary Transactions

When a distinct, identifiable taxable item is sold with a distinct, identifiable non-taxable food item for one non-itemized price, it is a bundled transaction (e.g., a snack product that contains crackers, cheese, and candy, separated in a single container, and sold as one item). If the food item is 50 percent or less of the total purchase price, the entire purchase amount is subject to sales tax. The determination must be made on the basis of either individual item purchase prices or individual item sale prices. In the case of a unitary transaction, if multiple items are purchased under one order, as long as such items are separately priced and charged on the receipt, only the amount charged for the taxable item is subject to sales tax.

III. Coupons, Redemption Certificates, and Bottle Deposits

Coupons or redemption certificates received by the seller as payment or partial payment of merchandise are considered as cash if such coupons are redeemable to the seller and were not extended by the seller.

Charges for bottle deposits are not subject to sales tax and should be removed from the total on which sales tax is computed. The refunds of bottle deposits are not deductible when computing taxable receipts.

IV. Purchases by Retailers

Purchases by the retailer of merchandise for resale and of material for nonreturnable packaging of merchandise sold are exempt from sales tax.

Gifts and premiums given by a retailer are not purchases for resale, and such items are subject to the sales tax when purchased by the retailer. The retailer cannot purchase cash registers, equipment-cleaning supplies, cash register tapes, sales tickets, and other similar items exempt because the retailer is the final consumer of these items. The retail merchant must pay sales tax on all such items. Sales of merchandise to employees are subject to sales tax on the full final sales price.

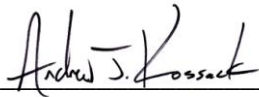
V. Registration and Record Keeping Requirements

All grocers and other general merchandise retailers are required to file an application for a registered retail merchant's certificate for each location. Upon application with the Department of Revenue and the payment of a \$25 fee, a certificate will be issued that must be displayed on the premises at all times.

The certificate is valid for two years from the date of issue and will be renewed automatically if the retail merchant is not delinquent in remitting sales or withholding taxes. If the retail merchant's certificate is automatically renewed, there is no fee for the renewal.

If the retail merchant is delinquent in remitting sales or withholding taxes, the retail merchant will be notified by the department at least 60 days before the expiration of the retail merchant's certificate.

Indiana retail merchants are required to keep adequate books and records for both taxable and nontaxable sales for a period of three years, plus the current year.

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a horizontal line underneath it.

Andrew Kossack
Commissioner

Appendix A - Sales by Grocery Stores

A number of items sold by grocery stores, supermarkets, and similar type businesses are classified as “Non-taxable Food Items” and “Taxable Grocery Items.” These examples of items sold by grocery stores and the like are for illustrative purposes and are not intended to be all-inclusive. The list does not factor in whether the item was sold from a vending machine, sold with utensils, or other circumstance which may make an item taxable.

ITEM	SALES/USE TAX		COMMENTS
	YES	NO	
Alcoholic beverages (as defined in 6-2.5-1-11)	X		Specifically taxable per IC 6-2.5-5-20(c)(2)
Almond bark	X		Almond bark is a candy, as it is a preparation of sweeteners and flavorings in a bar form.
Baby food		X	
Bakery items (including bagels, bars, biscuits, bread, buns, cakes, cookies, croissants, Danishes, donuts, muffins, pastries, pies, rolls, tarts, tortes, and tortillas)		X	Specifically exempt per IC 6-2.5-5-20(b)(3)
Baking chocolate (whether liquid, powder, or solid)		X	
Baking soda or other forms of leavening agents		X	
BBQ potato chips, corn chips, or sunflower seeds		X	BBQ chips or seeds are not a candy, because potato chips are not commonly thought of as candy.
Beer nuts party mix	X		This mix would be considered a candy because it is a preparation of sweeteners, nuts and flavorings in the form of pieces.
Beverages containing at least 50% fruit or vegetable juice or containing milk, milk products, or milk substitutes		X	Specifically excluded from definition of soft drink per IC 6-2.5-1-26
Breath mints	X		Breath mints are a candy because they are a preparation of sweeteners and flavorings in a drop or piece form.
Broths and bouillons (whether liquid, instant, freeze dried, or cubes)		X	
Butterscotch chips	X		These chips are a candy because they are a preparation of sweeteners and flavorings in a drop or piece form.

ITEM	SALES/USE TAX		COMMENTS
	YES	NO	
Cake decorations	X		Cake decorations are candy, as they are a preparation of sweeteners and flavorings in a drop or piece form.
Candy and confections	X		Specifically taxable per IC 6-2.5-5-20(c)(1)
Items commonly thought of as candy, but which contain flour (e.g., Kit-Kat Bar, Nestle Crunch, Twix Bar)		X	IC 6-2.5-1-12 provides that an item is not candy if it contains flour. This means that gluten-free candy is taxable if it does not contain flour. NOTE: licorice containing flour is exempt, while licorice which does not contain flour is taxable as a candy.
Items commonly thought of as candy, but which are not bars, drops, or pieces (e.g., Pixie Stix)		X	
Canned fruits and vegetables		X	
Caramel apples	X		
Cereal and cereal products		X	
Cereal bars w/o flour	X		These bars are a candy because they are a preparation of sweeteners and flavorings in a bar form.
Chewing gum	X		Chewing gum is a candy because it is a preparation of sweeteners and flavorings in a bar or piece form.
Chocolate chips	X		These chips are a candy because they are a preparation of sweeteners and flavorings in a drop or piece form.
Chocolate-covered nuts	X		Chocolate-covered peanuts are considered a candy because they are a preparation of sweeteners and other ingredients in a drop or piece form.
Chocolate-covered potato chips	X		
Cocktail mixes (dry or liquid)	X		
Cocoa		X	
Coconut (whether whole, shredded, processed, or raw)		X	

ITEM	SALES/USE TAX		COMMENTS
	YES	NO	
Coffee and coffee substitutes (beans, grounds, freeze dried, bags, and instant only)		X	
Condiments (such as ketchup, mustard, and mayonnaise)		X	
Cotton candy not prepared by seller		X	
Cracker Jacks	X		This product would be considered a candy because it is a preparation of sweeteners, nuts and flavorings in the form of pieces.
Deli items when sold unheated by weight or volume as a single item		X	
Deli trays that contain only otherwise exempt items		X	
Dietary supplements	X		Specifically taxable per IC 6-2.5-5-20(c)(9)
Dried fruit w/ sweetener	X		Dried fruit with a sweetener are a candy because they are a preparation of sweeteners and fruit in a drop or piece form.
Eggs and egg products or substitutes		X	
Extracts and flavorings intended as cooking ingredients		X	
Fish and fish products (including all other forms of seafood)		X	
Flaked coconut w/sweetener	X		Flaked coconut with a sweetener is a candy because it is a preparation of sweeteners and fruit in a drop or piece form.
Flour (including barley, buckwheat, corn, rice, rye, soy, wheat, whole wheat, or other forms of milled grains or nuts)		X	
Food coloring		X	
Food sold by a seller whose primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries)		X	Specifically exempt per IC 6-2.5-5-20(b)(1)
Food sold by weight or volume as a single item		X	Specifically exempt per IC 6-2.5-5-20(b)(2)
Frosting in containers		X	Frosting is not a candy, because it is not in a bar, drop, or piece

ITEM	SALES/USE TAX		COMMENTS
	YES	NO	
			form.
Frozen juice bars		X	Frozen juice bars are not a candy, because they require refrigeration.
Fruit and fruit products (whether fresh, frozen, canned, or dehydrated)		X	NOTE: this excludes items on salad bars or where sweeteners are added
Fruit Roll-ups	X		Fruit Roll-ups are a candy because they are a preparation of sweeteners, fruit, and flavorings in a drop or piece form.
Gelatins (whether powdered or prepared)		X	
Gluten-free non-candy products		X	
Honey		X	
Honey-roasted peanuts	X		Honey roasted peanuts are considered a candy because they are a preparation of sweeteners and other ingredients in a drop or piece form.
Ice		X	
Ice cream (including toppings and novelties)		X	
Icing in tubes		X	
Jams and jellies (including marmalades and preserves)		X	
Lard		X	
Lightly salted rice cakes		X	
Liver oils	X		
Lozenges	X		
Marshmallow crème		X	
Marshmallows	X		This product would be considered a candy because it is a preparation of sweeteners and flavorings in the form of pieces.
Meat and meat products (whether fresh, frozen, cured, canned, or dehydrated)		X	
Milk and milk products		X	
Nuts (including salted, but not chocolate- or candy-coated nuts)		X	

ITEM	SALES/USE TAX		COMMENTS
	YES	NO	
Oleomargarine		X	
Olive oil		X	
Over-the-counter medicines	X		
Paper products	X		Paper products do not meet the definition of "food and food ingredients" in IC 6-2.5-1-20 because they are not sold for ingestion or chewing by humans.
Peanut butter		X	
Pepper		X	
Pet food	X		Pet food and supplies do not meet the definition of "food and food ingredients" in IC 6-2.5-1-20 because they are not sold for ingestion or chewing by humans.
Pickles		X	
Popped kettle and caramel corns	X		Popped kettle and caramel corn are a candy because they are a preparation of sweeteners, ingredients, and flavorings in a drop or piece form.
Popsicles		X	
Powdered drink mixes (including sweetened)		X	Powdered drink mixes would not be considered a soft drink because it is not a liquid beverage.
Pudding or pudding mix (including Jell-O® pudding)		X	
Relishes		X	
Salad dressings and mixes		X	
Salt		X	
Sandwich spreads		X	
Sauces		X	
Sherbets and sorbets		X	
Shortenings		X	
Snack chips and pieces (including corn chips, pig skins, potato chips, pretzels, and trail mixes)		X	
Soap and soap products	X		Soap and soap products do not meet the definition of "food and food ingredients" in IC 6-2.5-1-20 because they are not sold for

ITEM	SALES/USE TAX		COMMENTS
	YES	NO	
			ingestion or chewing by humans.
Soft drinks (as defined in IC 6-2.5-1-26)	X		Specifically taxable per IC 6-2.5-5-20(c)(3)
Soups		X	
Spices		X	
Sugar, sugar products, and sugar substitutes		X	
Syrups (including molasses and dietetic syrups and similar products)		X	
Tea (bags, leaves, or instant only)		X	
Tobacco and tobacco products (as defined in IC 6-2.5-1-28)	X		Specifically taxable per IC 6-2.5-5-20(c)(8)
Tonics	X		
Toothpaste and mouthwash	X		Toothpaste and mouthwash do not meet the definition of "food and food ingredients" in IC 6-2.5-1-20 because they are not sold for ingestion or chewing by humans.
Trail mix		X	
Unpopped popcorn (regular, caramel, or kettle)		X	
Vegetable oils		X	
Vegetables and vegetable products (whether fresh, frozen, canned, or dehydrated)		X	NOTE: this excludes items on salad bars
Vitamins	X		
Water		X	NOTE: Water mixed with sweeteners would be considered a soft drink, and therefore taxable.

Appendix B - Formula for 75% Calculation

The below calculation is used to determine if the seller is considered a restaurant (75% or more of the business’s sales are of prepared food) or a combination business (less than 75%). An example of a combination business is a grocery store that includes an eating establishment.

A single prepared food sales percentage will be determined annually, for all of the seller's establishments in a state. Seller may choose to base the below calculations on either the most recent tax year or business fiscal year. Calculations should be performed as soon as possible after accounting records are available and implemented not later than 90 days after the beginning of the tax or business fiscal year.

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 actual prepared food sales percentages materially affect the 75% threshold test.

Numerator Calculations

	Sales in Dollars
a. Sales of food sold, other than bakery items ¹ :	
1. In a heated state or heated by the seller, or;	
2. Containing two (2) or more food ingredients mixed or combined by the <u>seller</u> for sale as a single item, or;	
3. Where plates ² , bowls, glasses or cups are necessary to receive the food (e.g., dispensed milk, salad bar).	
b. Sales of bakery items in which plates or bowls are necessary to receive the food.	
c. Sales of alcoholic beverages, if included in (a) or (b) above.	+
Numerator Total	-
	= 0

Denominator Calculations

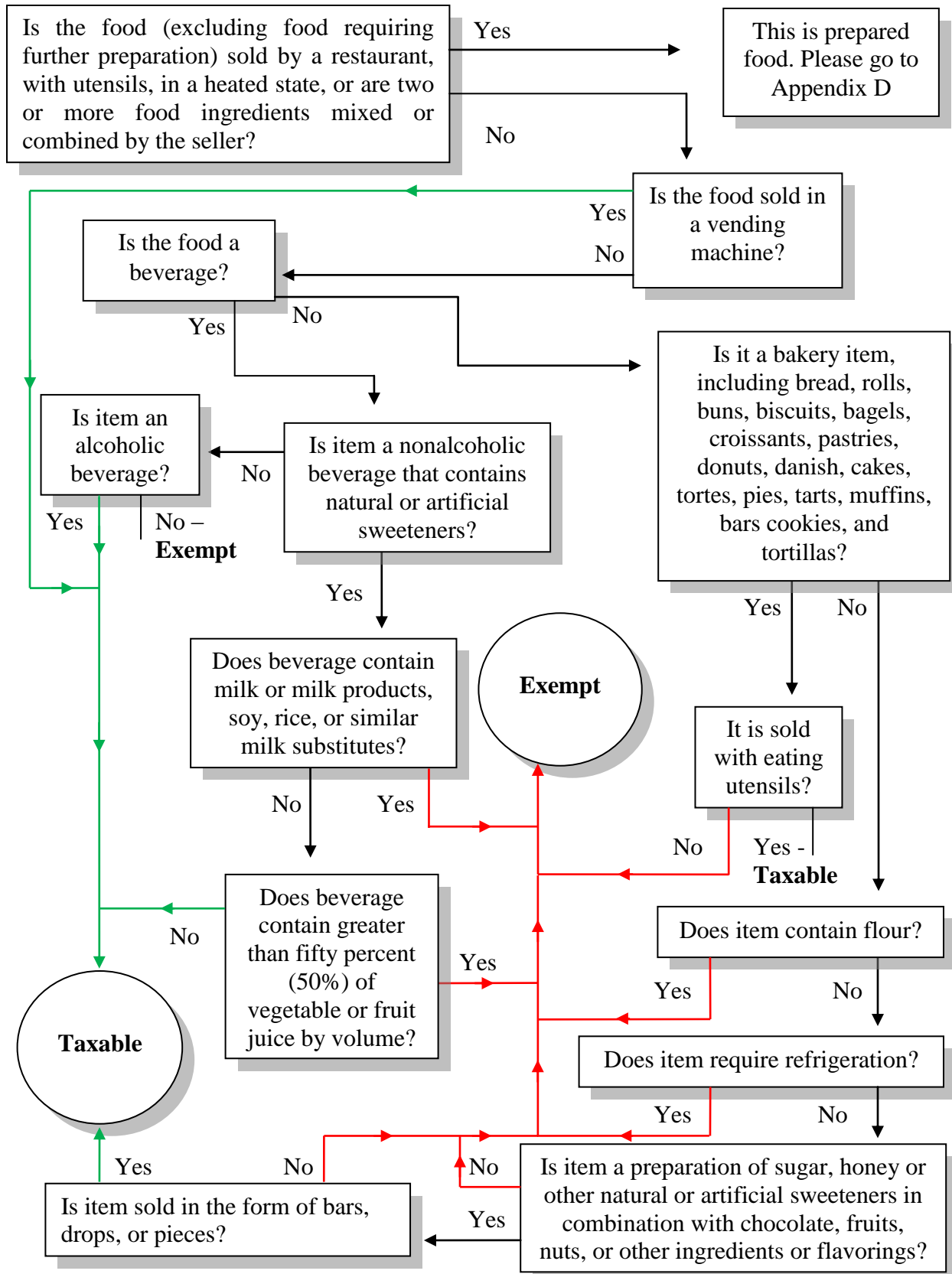
a. Sales of all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks.	
b. Sales of alcoholic beverages, if included in (a) above.	-
Denominator Total	= 0

Percentage of Prepared Food Sales to Total Food Sales (Numerator / Denominator)

¹ Bakery items include bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars cookies, and tortillas.

² A plate does not include a container or packaging used to transport the food.

Appendix C - Taxability of Food and Food Items Decision Tree



Appendix D - Taxability of Prepared Food Decision Tree

