

**8130.4700 PREPARED FOOD, CANDY, AND SOFT DRINKS.**

Subpart 1. [Repealed, 29 SR 1273]

Subp. 1a. **Applicable law.** Minnesota Statutes, section 297A.61, subdivision 3, paragraph (d), defines "sale and purchase" to include the preparation of food for a consideration. Taxable food includes prepared food as defined in Minnesota Statutes, section 297A.61, subdivision 31; soft drinks, as defined in Minnesota Statutes, section 297A.61, subdivision 32; candy, as defined in Minnesota Statutes, section 297A.61, subdivision 33; and all food sold through vending machines as defined in Minnesota Statutes, section 297A.61, subdivision 34. Dietary supplements as defined in Minnesota Statutes, section 297A.67, subdivision 2, are also taxable.

Under Minnesota Statutes, section 297A.67, subdivision 2, food and food ingredients, except for taxable food described in Minnesota Statutes, section 297A.61, subdivision 3, paragraph (d), are exempt from tax. Alcoholic beverages and tobacco are not food and food ingredients and are therefore subject to tax unless another exemption applies.

Subp. 2. **Food and food ingredients.** "Food and food ingredients" as defined in Minnesota Statutes, section 297A.67, subdivision 2, are exempt.

A. Examples of items that qualify as exempt food or food ingredients include, but are not limited to, the following: cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.

Exempt "food and food ingredients" also include the following items: baking powder and soda; beverage powders; chips (potato, corn, etc.); chip dip; cooking oils; cooking wine; flavoring; freezer pop ingredients; food coloring; gelatin; ice cream; malted milk powder; nuts; dry, frozen, or concentrated nonalcoholic cocktail mixes (that is, cocktail mixes intended for consumption in combination with an alcoholic or other beverage); raisins; artificial sweeteners; salad dressing; seasonings; condiments; herbs; relishes; sauces; gravies; sherbet; shortening; vanilla; tonic water; ice cubes; or unsweetened bottled or canned water.

B. Notwithstanding their inclusion in item A, food and food ingredients are subject to tax if they qualify as prepared food, a soft drink, candy, or food sold through vending machines.

C. Examples of items that do not qualify as food or food ingredients include nonedible cake decorations, Easter egg dye, garden seeds, pet food, and softener salt.

Subp. 3. [Repealed, 29 SR 1273]

Subp. 4. [Repealed, 29 SR 1273]

**Subp. 5. Soft drinks.**

A. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners.

B. "Soft drinks" does not include beverages that contain milk or milk products; or soy, rice, or similar milk substitutes.

C. "Soft drinks" does not include beverages that contain more than 50 percent vegetable or fruit juice. Beverages that are labeled fruit juice, fruit drink, fruit ade, or fruit nectar are subject to tax when the percentage of fruit juice content is not specified.

D. Soft drinks are taxable regardless of serving size or the type of seller. For example, they are taxable whether they are sold by a grocery store, restaurant, or vending machine.

E. Examples of sweeteners are corn syrup, dextrose, invert sugar, sucrose, fructose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, and artificial sweeteners. Sweeteners are taxable only when combined with another ingredient. They are not taxable when sold separately.

F. Examples of soft drinks are soda pop, bottled or canned water that contains sweeteners, coffee and tea drinks that contain sweeteners, root beer, nonalcoholic beer, and fruit drinks containing 50 percent or less fruit juice.

G. Examples of nontaxable items are apple cider; beverage powders or concentrates such as ground coffee, tea bags, and juice concentrate; carbonated and noncarbonated bottled or canned water that does not contain sweeteners regardless of container size; vegetable juices containing more than 50 percent vegetable juice, even if these beverages contain sugar; and coffee drinks that contain milk. These items are taxable if they are prepared by the seller, qualify as an alcoholic beverage, or are sold through a vending machine.

**Subp. 6. Candy.**

A. "Candy" means a preparation of sugar, honey, or other sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. All bars, drops, or pieces, not depending on size, are taxable.

B. "Candy" does not include food items that require refrigeration or that contain flour such as white, whole wheat, rice, corn, or brown flour, as long as the label lists "flour" as one of the ingredients.

C. Examples of sweeteners are corn syrup, dextrose, invert sugar, sucrose, fructose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, and artificial sweeteners.

D. Examples of candy are caramel-coated popcorn, honey roasted and honey coated nuts, gum, breath mints, fruit roll-ups, marshmallows, sweet or semisweet cooking bars or chips, artificially sweetened candy, almond bark, glazed apricots, and chocolate-coated potato chips.

E. Examples of food items that are not candy include:

- (1) items that are not in the form of bars, drops, or pieces, including jam, jelly, honey, preserves, or syrup;
- (2) items that contain flour, including pretzels, cookies, or cake mix;
- (3) items that require refrigeration, including ice cream bars; and
- (4) items not combined with a sweetener, including nonsweetened dried fruit.

The foods listed in this item are taxable if prepared by the seller or sold through a vending machine.

**Subp. 7. Prepared food, candy, or soft drinks served at hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities.**

A. Under Minnesota Statutes, section 297A.67, subdivision 4, prepared food, candy, or soft drinks served to patients, inmates, or persons residing at hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities are exempt. This exemption applies when the prepared food, candy, or soft drinks are purchased as well as sold by these facilities. For purposes of this subpart, the definitions in subitems (1) to (5) apply:

(1) "Hospital or sanitarium" means a hospital or sanitarium as defined in Minnesota Statutes, section 144.50, subdivision 2.

(2) "Nursing home" means a nursing home as defined in Minnesota Statutes, section 144A.01, subdivision 5, and a boarding care home as defined in part 4655.0100.

(3) "Senior citizens' home" means an establishment providing housing to adult residents, at least 80 percent of which are 55 years of age or older, and offering supportive services such as health-related services and social services. A senior citizens' home may be operated either for profit or on a nonprofit basis.

(4) "Correctional and detention facilities" means any facility or program under the direct control of the commissioner of corrections in which individuals are incarcerated, or any public or private facility licensed or certified by the Department of Corrections under Minnesota Statutes, section 241.021.

(5) "Detoxification facility" means a facility providing a program operating under Minnesota Statutes, section 254A.08.

B. All prepared food, candy, or soft drinks served to patients and residents by hospitals, sanitariums, nursing homes, senior citizens' homes, and correctional, detention, and detoxification facilities are exempt, including prepared food, candy, or soft drinks that are prepared by separate entities.

C. Food items, including prepared food, candy, or soft drinks sold through vending machines, coffee shops, and cafeterias that operate in these facilities are subject to tax and are not considered to have been served to the patients, inmates, or persons residing at the facilities enumerated in item A.

**Subp. 8. Prepared food, candy, or soft drinks served at schools.**

A. Under Minnesota Statutes, section 297A.67, subdivision 5, prepared food, candy, or soft drinks served at public and private elementary, middle, or secondary schools, as defined in Minnesota Statutes, section 120A.05, are exempt. This exemption applies to prepared food, candy, or soft drinks when purchased as well as sold by the schools.

B. All prepared food, candy, or soft drinks served at public and private elementary, middle, or secondary schools are exempt, including prepared food, candy, or soft drinks that are prepared or served by separate entities and prepared food, candy, or soft drinks that are purchased by employees or the general public.

C. Prepared food, candy, or soft drinks served to students at institutions of higher education are subject to sales tax unless provided to students under a board contract. For purposes of this subpart, "institutions of higher education" means colleges, universities, and private career schools. The exemption for board contracts applies only when a contract that includes the sale of prepared food, candy, or soft drinks exists between a student and an institution of higher education, or between a student and a residential student organization that is recognized by the institution, for an educational activity that takes place on the premises of that institution. The student is not required to be enrolled at the institution at which the activity is conducted. If the food is not provided as part of a board contract, the institution may only purchase the prepared food, candy, or soft drinks exempt for resale from a third party if the food is intended to be resold at retail. The rules in subitems (1) to (4) apply for purposes of the exemption for board contracts.

(1) Prepared food, candy, or soft drinks purchased under a prepaid contract, or where a lump sum charge is made for a set term of time, are considered furnished under a board contract.

(2) A board contract also includes a contract that provides lodging, food, and tuition, separately or in combination, for a single charge.

(3) Prepared food, candy, or soft drinks are exempt when purchased with debit cards, "flex money," or "bonus bucks" issued either by the institution or by the recognized residential student organization, or when purchased by any other method authorized by the institution of higher education under a board contract.

(4) Prepared food, candy, or soft drinks are not provided under a board contract when they are sold to faculty, other employees of the institution of higher education, and sponsors of conferences, sports camps, or other activities held on the premises of the institution. Prepared food, candy, or soft drinks sold to student clubs or other organizations are subject to tax.

D. Food items, including prepared food, candy, or soft drinks sold through vending machines at all schools, including K-12 institutions and institutions of higher education, are taxable.

E. Administrative offices located off the school premises are not considered part of the school and prepared food, candy, or soft drinks served at those offices are taxable.

**Subp. 9. Incidental prepared food, candy, or soft drinks at educational programs.**

A. Prepared food, candy, or soft drinks that are provided as part of an educational service, such as a children's camp or a professional seminar, are generally not taxable. When providing prepared food, candy, or soft drinks is incidental to the total program fee, and charges for the prepared food, candy, or soft drinks are included in the fee to attend the program, the prepared food, candy, or soft drinks are not taxable to the program participants.

B. If the educational program purchases prepared food, candy, or soft drinks to serve to participants in the program, the program must pay sales or use tax on the prepared food, candy, or soft drinks purchased if participants are not billed separately for the prepared food, candy, or soft drinks. If the charges to participants for the prepared food, candy, or soft drinks are separately stated, they may be purchased by the educational program exempt for resale, and tax must be charged on the separately stated fees for the prepared food, candy, or soft drinks charged to participants.

**Subp. 10. Prepared food, candy, or soft drinks provided to employees.**

A. When an employer purchases prepared food, candy, or soft drinks, to provide to employees for no consideration, the prepared food, candy, or soft drinks provided to employees is exempt. The purchase of these items by the employer is taxable. When an employer in the business of selling prepared food, candy, or soft drinks provides these items free to employees, the employer owes use tax on its cost of the prepared food, candy, or soft drinks and all other taxable items, including disposable plates, soft drinks, napkins, cups, and flatware.

B. Notwithstanding this subpart, prepared food, candy, or soft drinks served to employees at K-12 schools, as provided in Minnesota Statutes, section 297A.67, subdivision 5, are exempt even if the employees are required to pay for the items.

Subp. 11. **Purchases of equipment and products by retailers of prepared food, candy, or soft drinks.** Retailers of prepared food, candy, or soft drinks, including but not limited to restaurants and fast food establishments, must pay the tax on all purchases of equipment and products used or consumed in the business, including fixtures and reusable items such as linens, flatware, glassware, and towels. Restaurants are specifically excluded from the class of manufacturers considered to be engaged in industrial production, as defined in Minnesota Statutes, section 297A.68, subdivision 2, paragraph (c). In addition, machinery and equipment used by restaurants in the furnishing, preparing, or serving of prepared food, candy, or soft drinks is not included in the exemption for capital equipment as defined in Minnesota Statutes, section 297A.68, subdivision 5, paragraph (c), clause (7). Consequently, sales of equipment, electricity, gas, and steam and all other items to retailers of prepared food, candy, or soft drinks are taxable, except for the sale of exempt food and food ingredients and nonreusable items to such retailers. Nonreusable items such as souffle cups; straws; ice; swizzle sticks; paper products such as placemats, tablecloths, napkins, and doilies; paper, plastic, or wooden plates; cups; forks; toothpicks; or other items which are used or consumed by the customer as an integral part of the prepared food, candy, soft drinks, or alcoholic drinks are considered sold with the prepared food, candy, or soft drinks. Sales of these nonreusable items to persons engaged in the business of selling prepared food, candy, or soft drinks are, accordingly, sales for resale.

**Statutory Authority:** *MS s 14.388; 270.06; 270C.06; 297A.29*

**History:** *29 SR 1273; L 2005 c 151 art 1 s 114; 34 SR 723*

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