



## **Revenue Ruling**

**No. 05-007**

**December 23, 2005**

### **Louisiana State Sales and Use Tax Advance Sales Tax on Food Purchases by Retailers**

#### **Issue**

The State's recent adoption of a constitutional exemption for food sold for preparation and consumption in the home has brought about questions from distributors of food products and owners of grocery and convenience stores, supermarkets, and food marts regarding the advance sales tax that must be collected on food purchased for resale. This Revenue Ruling provides guidance on the state sales tax that is collected on food products purchased for resale by grocery and convenience stores, supermarkets, and food marts. It explains when retailers can purchase food for resale without paying sales tax and what forms should be used when making these purchases.

This Revenue Ruling also describes the specific tax treatment on purchases of bottled water and ingredients used for food that will be prepared by the seller, packaging materials for food products, food sold by distributors to vending machine operators, and food sold in vending machines operated by food distributors.

#### **Exemption for Food**

Article VII, Section 2.2 of the Louisiana Constitution prohibits the taxation of food for home consumption at more than two percent effective January 1, 2003, and exempts food for home consumption beginning July 1, 2003. The department, on August 20, 2003, adopted a rule in connection with this constitutional provision. Under LAC 61:I.4401.F, an item is eligible for exemption as food for consumption in the home if it meets the following criteria:

1. The item must be a food product as contemplated by the statute. Bakery and dairy products, soft drinks, fresh fruits and vegetables, and packaged foods requiring further preparation by the purchaser are specifically identified under La. R.S. 47:305(D)(1)(n-r) as food products eligible for the exemption. Items that are not eligible for treatment as a food product include alcohol, tobacco, vitamins, chewing gum, and water sold in containers.
2. The food product must be sold by a qualifying establishment. Under La. R.S. 47:305(D)(3), "Food sales by restaurants, drive-ins, snack bars, candy and nut counters, private clubs, and sales made by an establishment not specifically exempted elsewhere who furnish facilities for the consumption of the food on the premises are not exempt from the taxes imposed by this Chapter."
3. The food product is not a prepared food, which is defined as:
  - a. heated foods;

- b. food if two or more ingredients are mixed or combined by the seller for sale as a single item like prepared sandwiches, salads, and snack trays; or
- c. food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A container or packaging used to transport the food is not considered a plate.

### **Advance Sales Tax**

Under La. R.S. 47:306(B), retail dealers are required to pay sales tax on tangible personal property purchased for resale at retail. This tax, commonly known as “advance sales tax,” may be claimed as a credit on Line 12 of the sales tax return. However, food purchased by grocery and convenience stores, supermarkets, food marts, and other food retailers is not subject to the advance sales tax if the final retail sale or consumption of the food is exempt. If a food retailer purchases certain food items for resale as both exempt and taxable ready to eat meals prepared in the store, the food items may be purchased for resale without paying the advance tax if more than half of the retail sales from the food items are exempt. However, if over half of the retail sales from that food item are taxable ready to eat meals prepared on site, all of the purchases of that food item are subject to advance tax. This also applies to food products purchased for resale only in prepared foods, like the carbon dioxide gas and syrup used in fountain drinks. The retailer would pay the advance sales tax on the purchase and recoup the tax by claiming a credit on Line 12 of the sales tax return.

### **Exemption Certificates**

Retailers should provide exemption certificate Form R-1006 covering purchases of food products for preparation and consumption in the home to their distributors when purchasing food without paying the advance sales tax. Remember, items that are purchased specifically for resale as a prepared food cannot be purchased without paying the advance sales tax, although the retailer can claim the tax paid on these items as a credit on Line 12 of the sales tax return.

Distributors should request Form R-1006 from their retailers as evidence of the exemption. Although Louisiana courts have ruled that if a transaction meets the criteria established by a statute to qualify for exemption, the exemption must be allowed if other credible evidence can confirm it, obtaining the R-1006 from your customers provides proof of the exemption. During an audit, the exemption certificate will be honored by the Field Audit Services Division if the distributor exercised due care in accepting it. Distributors that fail to secure exemption certificates from their customers will be required to provide independent verification that the exempt sales are valid.

Of course, wholesale customers may purchase their entire resale inventory without paying the advance sales tax by providing a “W” number exemption certificate (Form R-1028–LGST 9) to vendors. Most grocery stores and supermarkets do not qualify for a “W” number. Also, restaurants and similar establishments who furnish facilities for the consumption of the food on the premises must pay the advance sales tax unless exempt by another section of law.

### **Purchases of Food Products by Retailers**

- 1. Purchases by grocery stores and supermarkets**—The purchase of foods to be sold for home consumption by grocery stores and supermarkets is not subject to advance sales tax beginning July 1, 2003. Items purchased specifically for resale as prepared food are subject to four percent advance sales tax.

Foods purchased to be sold “for home consumption” are exempt because these establishments do not provide facilities for the consumption of the food on the premises. Bakery and dairy products, soft drinks, fresh fruits and vegetables, and packaged foods requiring further preparation by the purchaser are specifically identified under La. R.S. 47:305(D)(1)(n-r) as food for home consumption.

Grocery stores and supermarkets may use Form R-1006 to avoid payment of the advance sales tax on purchases that will be exempt as food for home consumption when sold at retail. Retailers can claim credit on Line 12 of the Louisiana General Sales Tax return for advance state sales tax paid on purchases of items for resale where Form R-1006 cannot be used.

- 2. Purchases by convenience stores, food marts, and other food retailers**—The standards used to determine if food products are exempt for grocery stores and supermarkets also apply to convenience stores, food marts, and other food retailers. Foods sold for home consumption are exempt from sales tax but the ingredients for food prepared by the seller, like fountain drinks, brewed coffee, heated nacho chips and cheese, and hot lunches are not. Foods that are prepared on site by the seller are considered “prepared foods” and do not qualify for the exemption. Restaurants and similar establishments that furnish facilities for the consumption of the food on the premises are required to pay advance sales tax on all food purchases, even packaged food requiring further preparation by the consumer.
- 3. Purchases of bottled water and ingredients used specifically for food that will be prepared by the seller**—Bottled water does not qualify for exemption because it is not considered a food product. La. R.S. 47:305(D)(1)(c) specifically states, “...mineral water or carbonated water or any water put in bottles, jugs, or containers...” are not exempt from the tax. Therefore, advance sales tax must be paid on purchases of bottled water.

Food ingredients purchased specifically for resale as a component of “prepared foods” are always subject to advance tax. For example, the carbon dioxide gas and syrup used in soda fountain machines are individual items purchased only for resale as a prepared food since fountain drinks are prepared on the premises of the seller. Retailers must pay advance sales tax on these items.

- 4. Purchases of plastic and paper containers, plates, cups, lids, forks, straws**—Packaging like plastic and paper containers, wrappers, plates, cups, lids, forks, and straws does not qualify for the tax exemption as food for home consumption and is subject to advance tax when sold separately to the retailer. These items are considered part of the food product when sold with the food.
- 5. Purchases of food products for sale through vending machines**—La. R.S. 47:301(10)(b) defines the sale of tangible personal property to a dealer to be resold through coin-operated

vending machines as a “sale at retail.” Food items purchased by vending machine operators are not considered food for home consumption and operators must pay sales tax when they buy these items from suppliers. Form R-1006 cannot be used to make these purchases tax-free and advance tax credit may not be claimed on Line 12 of the sales tax return.

Distributors that sell food products through their own vending machines must pay use tax on the cost of these items if sales tax was not paid on the purchase. Distributors may not claim a credit on Line 12 of the sales tax return for the tax paid on the purchase of items sold through their vending machines.

### **Summary**

Food for preparation and consumption in the home is exempt from tax under Article VII, Section 2.2 of the Louisiana Constitution and La. R.S. 47:305(D)(1)(n-r). The purchase of these items for resale by supermarkets, grocery stores, convenience stores, food marts, and other retailers that do not provide facilities for the consumption of food is not subject to the advance sales tax imposed under La. R.S. 47:306(B). A retailer may use Form R-1006 for the purchase of these items only. Sales of food products to vending machine operators are retail sales and do not qualify for exemption. Food products sold through a distributor’s own vending machines are subject to use tax on the distributor’s cost of the items sold. The purchase of ingredients specifically for food prepared by the seller and packaging materials sold separately does not qualify for exemption from sales tax regardless of the customer and is subject to the advance sales tax.

For more information regarding this topic, taxpayers should contact the Taxpayer Services Division at 225.219.7356.

Sincerely,

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