



**Revenue Ruling
No. 09-002
Sales Tax
September 17, 2009**

State Sales Taxability of Cooking Oils and Shortening Purchased by Restaurants

Purpose

The purpose of this Revenue Ruling is to provide guidance concerning the sales taxability of cooking oils and shortening purchased by restaurants. Specifically, for the purposes of including as food ingredients, deep fat frying, and cooking vessel coating. The Ruling will discuss whether these products purchased by restaurants are for the purposes of resale; thus exempt from the state sales and use tax.

Issue

Whether items (i.e. butter and oil) purchased by the restaurants, for the following purposes, are for resale, and therefore excluded from advance sales and use tax:

1. When used as an integral ingredient in the recipe of the finished prepared product (i.e. oils in cake recipes and baked goods).
2. When used as a cooking medium that becomes a component part of the finished product (i.e. frying and grilling).
3. When used to coat pans and skillets to produce a more desirable finished product.

Legal Analysis/Discussion:

As of January 1, 2009, the advance sales tax provisions of Louisiana Revised Statute 47:306(B) were repealed. Retail dealers are no longer required to pay advance state sales and use tax on tangible personal property purchased for resale, either in the same form as purchased or used for “further processing” into tangible personal property produced for sale. Dealers are now required to provide their vendors with a Louisiana Resale Certificate, Form R-1042, to certify the items being purchased are for resale and no sales tax should be charged. However, purchases for use or consumption are still taxable and the dealer is required to pay the sales tax, at the time of purchase or report the purchase on line 2 of the sales tax return to be paid with the sales tax return remittance.

To qualify for and use the Louisiana Resale Certificate, Louisiana restaurants must certify that all materials, goods, merchandise, and services purchased from the seller are for resale as tangible personal property, either in the same form as purchased or for “further processing” to be added as a recognizable, identifiable, and beneficial component of a new product. Although Louisiana statute does not define “sale for resale”, R.S. 47:301(10)(a)(i) defines “retail sale”, for the purposes of sales and use tax, as “a sale to a consumer or to any other person for any purpose

A Revenue Ruling is issued under the authority of LAC 61III.101(C). A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

other than for resale as tangible personal property,..." In addition all sales of materials that are purchased for further processing into articles of tangible personal property, for sale at retail, are excluded from taxation. R. S.47:301(10)(c)(i) provides, the term "sale at retail" does not include sale of materials for further processing into articles of tangible personal property for sale at retail.

The Louisiana Administrative Code 61:I.4301(C) further clarifies, "the exemption does not cover materials which are used in any process by which tangible personal property is produced, but only those materials which themselves are further processed into tangible personal property. Whether materials are further processed or simply used in the processing activity will depend entirely upon an analysis of the end product. The following "three-pronged test" was developed, to determine the taxability of those materials purchased for further processing: *International Paper, Inc. v. Bridges*, 972 So. 2d 1121 (La 2008) ¹

1. The material must be a recognizable and identifiable component part of the end product;
2. The material must be of benefit to the end product; and
3. The purpose for the purchase of the material must be to process it into the end product.

Oils and butter purchased and used as an integral ingredient or as a cooking medium (i.e. frying)

The test for determining whether a material is subject to the exclusion and applicable for the resale certificate, is whether the material was purchased for the purpose of " further processing into" the finished product, such that the material or any of its elements become a "recognizable, integral part" of the finished product. Primarily, what was the intended purpose of the oil or butter purchased?

Integral is defined as "of, relating to, or serving to form the whole: essential to completeness: organically joined or linked."² Oil or butter "further processed" into the recipe of cakes, other baked goods, or other products are subject to this exemption, provided it's a recognizable and identifiable component part of the finished product, a benefit to the end product, and purchased for the purpose of processing it into the end product. Pursuant to R.S. 47:301(10)(a)(i), as an integral ingredient, the oil and butter purchased for the necessary further processing of cakes, baked goods, or other finished products, *purposely* becomes incorporated *into* and serves as a *beneficial* component or ingredient of the finished product, and is therefore exempt for the state sales tax.

This exemption also applies to oil or butter purchased for use as a cooking medium or to fry foods. *Al-Tom Investment Inc. v. Director of Revenue*, where the Court held that cooking oil used by Kentucky Fried Chicken franchises became an ingredient of the fried chicken because a portion of the oil remained as an essential or necessary part of the finished product, thus making the entire purchase exempt. Just as flour, salt or spices become a part of the food item during

¹ *International Paper, Inc. v. Bridges*, 972 So. 2d 1121 (La 2008) Sales and use taxes did not apply to a **paper** manufacturing company's purchases of sodium chlorate, hydrogen peroxide, and elemental oxygen for use in manufacturing white **paper** products. Those chemicals qualified for the tax exclusion under La. Rev. Stat. Ann. § 47:301(10)(c)(i) for materials bought for the further processing of items for resale, also referred to as the reprocessing exclusion. The "three-pronged" test for determining the application of the reprocessing exclusion was met.

² Webster's Third New International Dictionary, (2002)

preparation; the cooking oil and shortening become a part of the food during the cooking portion of the preparation. The Court concluded the cooking oil and shortening were ingredients of the food products sold, and thus such purchases were made at wholesale and nontaxable.³

Further, rulings of other states such as Alabama, Georgia, and Texas, were found to be compatible with the issue involved.⁴ While the cooking oil is primarily used to fry the food, the portion used and that which remains in the product becomes a recognizable and identifiable component, beneficial to its desired result and flavor distinction. The states reasoned that if any part of a material is intended to and does remain as an essential or necessary element of the finished product then the entire purchase is exempt.

Oil and butter used as a cooking medium or to coat pans and skillets (i.e. frying and grilling)

The resale certificate is authorized for use in making tax-free purchases of only items for resale, for which R.S. 47:301(10)(a)(i) interprets as materials purchased for further processing into articles of tangible personal property deemed as purchases for resale and exempt for state sales tax. LAC 61:I.4301 further clarifies, although any particular material may be fully used, consumed, absorbed, dissipated or otherwise completely disappear during processing, if it does not become a recognizable and identifiable component which is of some benefit to the end product, it is not exempt under the provision. The fact that a material remained as a recognizable component of an end product by accident because the cost of removal from the end product was prohibitive or for any other reason, if it does not benefit the property by its presence, it was not material for further processing and the sale is not exempt under this provision.

When oil and butter are purchased for use as a cooking medium to coat pans or similar cooking items, the restaurant becomes the end consumer. Oil or butter purchased, is considered sold at retail when purchased by the restaurant to coat pans for a non-stick purpose, not incorporate it into the product. Although the cooking oil is absorbed into the product, it is merely an aid to the processing.

As a cooking medium for the purposes of coating a pan, the oil or butter becomes incidentally incorporated within the final product. Its inclusion results from an unintended (unavoidable) inefficiency of the cooking process. The court in *Al-Tom Investment*, further found where the inclusion of the waste residue of the substance results from an unintended (although unavoidable) inefficiency of the manufacturing process, it is of no benefit to the product sold, and is of the nature of an impurity rather than of an integral part of the finished product.⁵ Its purpose is that as stated above, for use as a cooking medium to coat a pan, and not for the purpose of resale or for use as an integral part of the finished product. Therefore, oil or butter purchased for this purpose is still taxable and the restaurants are required to pay the sales tax, at the time of purchase or report the purchase on line 2 of the sales tax return to be paid with the sales tax return remittance.

³ *Al-Tom Investment, Inc., d/b/a Kentucky Fried Chicken v. Director of Revenue*, 774 SW2d 131 (1989). Entire cooking oil bought by three restaurants and used in preparing fried foods was entitled to full exemption for ingredients used in producing products for sale. Director of Revenue's policy of considering only 50% of the oil as absorbed into the prepared foods and so allowing only 50% exemption was rejected.

⁴ *-Tom Investment, Inc., d/b/a Kentucky Fried Chicken v. Director of Revenue*, 774 SW2d 131 (1989); *State v. Southern Kraft Corporation*, 8 So.2d 886 (1942); *Bullock v. Lone Star Industries, Inc.*, 584 S.W. 2d 386 (Tex. Civ. App. 1979)

⁵ *Traigle v. PPG Industries, Inc.*, 332 So. 2d 777 (La 1976)

Conclusion

Restaurants are no longer required to pay advance state sales and use tax on tangible personal property purchased for “further processing” into tangible personal property produced for sale. Instead, they are to use the Louisiana Resale Certificate, providing the certificate to the seller to certify the purchase of such items as oil and butter are for resale, and therefore not charged the state sales tax.

All sales that are not supported by resale certificates properly executed shall be deemed retail sales, and the dealer will be held liable for the tax. Certificates of resale may not be used to obtain tangible personal property or taxable services that would be used by the purchaser, not resold.

Pursuant to the rules and regulations, as mentioned above, oil and butter purchased as an integral ingredient or as a cooking medium to fry food is exempt for the state sale and use tax. However, oil and butter purchased as a cooking medium to coat a pan does not qualify as an item purchased for resale or for the “further processing” of a finished product and therefore is not subject to the exempt or applicable for the Louisiana Resale Certificate.

Cynthia Bridges
Secretary

By: Leticia Jackson-Mabry, Attorney
Policy Services Division