



# Grocers

## How Do Wisconsin Sales and Use Taxes Affect Your Operations?

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**IMPORTANT CHANGES SINCE LAST REVISION**

**Marketplace providers.** Information about marketplace providers has been added to Parts 1.F. and 2.D.

**Definition of candy.** The definition of candy has been updated in Part 2.A.

**Prepared foods sold by volume or weight.** See Part 2.D.(2)(c) for clarification on prepared foods that are sold by volume or weight, including additional examples.

See the [Sales Tax Rate Chart](#) for current sales tax rates in Wisconsin. Recent rate changes include:

- Racine County imposes 0.5% county sales and use tax, effective April 1, 2025.
- Manitowoc County imposes 0.5% county sales and use tax, effective January 1, 2025.
- Milwaukee County tax rate increased from 0.5% to 0.9%, effective January 1, 2024.
- City of Milwaukee imposed a 2% city tax, effective January 1, 2024.

**Applicable Laws and Rules**

This document provides statements or interpretations of the following laws and regulations in effect as of January 31, 2025: ch. 77, Wis. Stats., and ch. Tax 11, Wis. Adm. Code.

Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date, that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

**1. INTRODUCTION****A. General**

This publication explains how Wisconsin sales and use taxes affect grocers.

Certain sales and purchases by grocery stores subject to the 5% state sales and use tax may also be subject to the: (a) 0.5% or 0.9% county sales and use tax, (b) 2% city of Milwaukee sales and use tax, (c) 0.5% food and beverage local exposition tax, and (d) 0.5% premier resort area tax in the cities of Bayfield, Eagle River, Rhinelander, and the villages of Ephraim, Sister Bay, Stockholm, or the 1.25% premier resort area tax in the city of Wisconsin Dells and the village of Lake Delton. Additional information about these taxes is contained in the following:

- [Publication 201](#), *Wisconsin Sales and Use Tax Information*
- [Sales Tax Rate Chart](#) – Lists the total state, county, and city sales and use tax rates.
- [Publication 410](#), *Local Exposition Taxes*, applies to sales and purchases of certain lodging, food and beverages, and car rentals in municipalities wholly or partially within Milwaukee County.
- [Publication 403](#), *Premier Resort Area Tax*, applies to sales by certain types of retailers of taxable products and services in the premier resort areas.

**B. Seller's Permit**

(1) Who needs a seller's permit?

Every person engaged in the business of selling, licensing, leasing, or renting taxable products and services in Wisconsin must have a seller's permit for each location, unless all sales by the seller are exempt from sales and use tax. The seller's permit shows that a person is properly registered with the Department of Revenue, as required by law. See [Publication 201](#), *Wisconsin Sales and Use Tax Information*, for additional information about obtaining a seller's permit.

## (2) Applying for a permit

Application for a seller's permit may be made using any of the following methods:

- Use the Department of Revenue's online [Business Tax Registration Process](#) to submit the application electronically.
- Register through the [Streamlined Sales Tax Governing Board's website](#).
- Complete [Form BTR 101](#), *Application for Wisconsin Business Tax Registration*, and mail it to the Department of Revenue. Keep a copy of the completed application for your records.

**Note:** It is important that you fill in all the requested information in the online application on the Streamlined Governing Board's website or on Form BTR 101.

If two or more activities are conducted by you at the same business location, only one permit is required. For example, if you have a service station and a grocery store at the same location, only one seller's permit is required for both activities.

If you have more than one business location where you make retail sales, a separate seller's permit is needed for each location. You should, however, file only one application for all locations.

Location is determined by the address. A different street address means a separate location.

A seller's permit is not transferable and is not valid at any other location.

## C. Filing Tax Returns and Payment of Tax

### (1) How often must returns be filed?

Every seller's permit holder must file a sales and use tax return (Form ST 12) for each reporting period, even if they have no tax due for that period. A reporting period may be monthly, quarterly, or annually, depending on the tax liability. The department notifies permit holders of their reporting period and the due date for filing the returns.

Wisconsin sales and use tax returns must be filed using one of the electronic filing methods listed in Part 1.C.(2). A seller that is unable to file electronically may request a waiver from the Department of Revenue. A waiver will be granted if the requirement to file electronically causes an undue hardship. An example of an undue hardship is the onset of a disabling illness or injury. Your request for a waiver must be in writing. The request should indicate the business name, tax account number, and the reason why your sales and use tax returns cannot be electronically filed. Requests can be:

- Emailed to: [DORWaiverRequest@revenue.wi.gov](mailto:DORWaiverRequest@revenue.wi.gov);
- Faxed to: (608) 224-5761; or
- Mailed to: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902

Additional information is available in the [Sales and Use Tax Electronic Filing Options](#) common questions or you may contact the department by email at [DORSalesandUse@wisconsin.gov](mailto:DORSalesandUse@wisconsin.gov); or by telephone at (608) 266-2776.

If you have been granted a waiver, a return will be mailed to you shortly before the end of each reporting period. If you do not receive your return within 15 days after the end of the reporting period, contact the Department of Revenue at (608) 266-2776 to request a return for that reporting period.

(2) Electronic filing and payment options available for sales and use tax returns

(a) My Tax Account

[My Tax Account](#) is a free Internet-based taxpayer service that allows you to file and pay your sales and use taxes electronically. It performs the necessary computations of tax based on information that you enter and allows you to make your tax payment via electronic funds transfer, credit card, or paper check. [My Tax Account](#) also allows you to:

- View business tax filing and payment history and identify any tax periods that need attention.
- Change your address, obtain an extension to file a return or inactivate your account.
- File a buyer's claim for refund of sales tax paid to a seller in error.
- Appeal adjustment notices.

To use [My Tax Account](#), you must obtain a logon ID and password from the Department of Revenue. Go to the [My Tax Account Common Questions](#) for more information, including how to obtain your logon ID and password.

(b) Sales telefile

You can file your sales and use tax return with any touch-tone telephone. This program accepts four payment types: Direct withdrawal (only available during the call when you file your return), credit card, check, or money order. To use TeleFile, obtain a Sales TeleFile [Worksheet & Payment Voucher](#). When you have completed the worksheet, call (608) 261-5340 to file your return.

(c) E-file transmission

This program is a service for taxpayers using approved private vendors' software or who have the technical expertise to create a file in XML format. E-File transmission places return data into a file format that can be directly processed into the Department of Revenue system. Using secure transmission over the Internet you can submit a payment when you file your return using ACH debit or ACH credit. You will receive an email acknowledgement to confirm receipt of a successful file transmission. Information about file transmission can be found on the [Sales & Use Tax e-File Transmission](#) page.

(d) Questions?

More information on all of the above services can be found under the [Businesses](#) or [Online Services](#) sections of the Department of Revenue website. If you have questions about electronic filing or payments, contact the department by writing to MS 5-77 Wisconsin Department of Revenue, Customer Service Bureau, P.O. Box 8949, Madison, WI 53708-8949; calling (608) 266-2776; or emailing to [DORBusinessTax@wisconsin.gov](mailto:DORBusinessTax@wisconsin.gov).

## D. Tax Rate

The tax rate of 5% is the same for both the Wisconsin sales and use tax. Sales tax is based upon the sales price from retail sales, licenses, leases, or rentals of tangible personal property, certain coins and stamps, certain leased property affixed to realty, certain digital goods, and certain services that are taxable in Wisconsin.

For further information about these taxable products and services, see [Publication 201](#), *Wisconsin Sales and Use Tax Information*.

**Note:** Additional local taxes may apply to your sales and purchases as explained in Part 1.A.

## E. Difference Between the Wisconsin Sales and Use Tax

### (1) Sales tax

The Wisconsin sales tax is a 5% tax imposed on a retailer's sales price from selling, licensing, leasing, or renting taxable products and services at retail in Wisconsin, unless a specific exemption applies. All sales are considered taxable retail sales, unless the seller receives an exemption certificate claiming a valid exemption ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)) prior to or within 90 days after the date of the sale.

**Example:** Sales of canned soft drinks to a customer by a grocery store are taxable in Wisconsin. However, sales of soft drinks by the bottler to the grocery store are not taxable because the grocery store is going to resell the soft drinks. To purchase the soft drinks from the bottler without tax, the grocery store must provide an exemption certificate claiming resale to the bottler.

### (2) Use tax

The Wisconsin use tax is a 5% tax imposed on the purchase price of products and taxable services that are used, stored, or consumed in Wisconsin and upon which a Wisconsin sales or use tax has not previously been paid.

**Note:** When an inventory item that was purchased without tax, for resale, no longer has value and is disposed of rather than used by the purchaser, no use tax liability is incurred. The disposal of a product that has no value is not a taxable use.

However, if an item purchased without tax for resale is used by the seller rather than sold or held for sale, the purchase price of the item is subject to use tax and is reportable on the sales and use tax return in the use tax section.

**Example 1:** A grocery store purchases floor cleaner for \$5, as an inventory item for resale, and does not pay sales or use tax at the time of purchase. Rather than reselling the floor cleaner, the grocery store uses the floor cleaner to clean its own floors. Since the grocery store did not resell the floor cleaner, the grocery store is required to remit use tax to the department on its purchase price of the floor cleaner (\$5). The use tax of \$0.25 ( $\$5 \times 5\%$  state tax rate = \$0.25) is due with the sales and use tax return the grocery store files with the department that covers the date the floor cleaner is first used in Wisconsin.

**Example 2:** A grocery store purchases a cash register for \$500 from a seller located outside of Wisconsin. The seller does not charge the grocery store sales or use tax. The grocery store is required to remit use tax to the department on its purchase price of the cash register (\$500). The use tax of \$25 ( $\$500 \times 5\%$  state tax rate = \$25) is due with the sales and use tax return the grocery store files with the department that covers the date the cash register is first stored, used, or consumed in Wisconsin.

**Example 3:** A grocery store purchases a cash register for \$1,000 from a seller located outside of Wisconsin. The seller does not charge the grocery store sales or use tax. The cash register is stored in Wisconsin by the grocery store. The store later decides to use the cash register at one of its locations outside of Wisconsin. Since the cash register was first stored in Wisconsin (even though it was subsequently used outside of Wisconsin), the grocery store is required to remit use tax to the department on its purchase price of the cash register (\$1,000). The use tax of \$50 ( $\$1,000 \times 5\%$  state tax rate = \$50) is due with the sales and use tax



return the grocery store files with the department that covers the date the cash register is first stored, used, or consumed in Wisconsin.

## F. Marketplace Providers

A marketplace provider is required to collect and remit Wisconsin sales and use tax on all sales of taxable products and services that the marketplace provider facilitates on behalf of a marketplace seller, unless a waiver has been granted by the department. A marketplace provider is required to notify the marketplace seller that it is collecting and remitting tax on all taxable sales in Wisconsin.

A marketplace provider is any person who facilitates a retail sale on behalf of another seller by listing or advertising for sale, in any manner, the seller's taxable products or services, and who directly or indirectly processes the payment for the purchaser regardless of whether the person receives compensation or other consideration in exchange for their services.

A marketplace provider includes a person or entity that facilitates a sale on behalf of a seller at a storefront or other physical location.

**Example:** A grocery store sells admission tickets to a concert for another organization. Customers of the grocery store purchase the tickets at the register in the grocery store. The grocery store forwards all money received from ticket sales to the other organization. The grocery store is a marketplace provider that is required to collect and remit sales tax on the admission tickets.

Note: When a nonprofit organization engages the services of a marketplace provider, the sales are made by the marketplace provider and are taxable. The nonprofit occasional sales exemption that may apply to sales by a nonprofit organization, do not apply to the marketplace provider's sales.

See the [Marketplace Provider](#) common questions and sec. [Tax 11.555](#), Wis. Adm. Code for additional information.

## 2. DEFINITIONS RELATING TO FOOD AND FOOD INGREDIENTS

In this publication, the following definitions apply, unless stated otherwise.

### A. Candy

Candy is defined in sec. [77.51\(1fm\)](#), Wis. Stats., to mean "...a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. 'Candy' does not include any of the following:

- (a) A preparation that contains flour or that requires refrigeration.
- (b) A preparation that has as its predominant ingredient dried or partially dried fruit along with one or more sweeteners, and which may also contain additives including oils, natural flavorings, fibers, or preservatives. This paragraph does not apply to a preparation that includes chocolate, nuts, yogurt, or a preparation that has a confectionary coating or glazing on the dried or partially dried fruit. For purposes of this paragraph, "dried or partially dried fruit" does not include fruit that has been ground, crushed, grated, flaked, pureed, or jellied."

To be candy, an item must be sold in the form of a bar, drop, or piece. Products that are not sold in the form of bars, drops, or pieces are not candy. Common examples of items that are not candy because they are not sold

in the form of bars, drops, or pieces include cotton candy, pixie sticks, spray candy, frosting in containers, and cake icing in tubes.

Natural and artificial sweeteners include corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, and agave.

If the ingredient label on the product specifically lists the word flour, the product is not candy. Flour substitutes are not flour for purposes of determining whether a product meets the definition of candy.

Items that require refrigeration are not candy. However, items that meet the definition of candy but are sold frozen or refrigerated for the preference of the customer or retailer are still candy.

**Example:** A grocery store sells candy bars at room temperature or from a refrigerated display case. The candy bars are not required to be refrigerated. Since the candy bars are not required to be refrigerated, the sales of both types of candy bars (candy bars sold at room temperature and candy bars sold from the refrigerated display case) meet the definition of candy.

Items that do not require refrigeration before they are opened, but require refrigeration after they are opened, are not candy.

**Example:** A grocery store sells cans of sliced peaches in heavy syrup. The cans of sliced peaches do not require refrigeration before they are opened. However, once opened, the sliced peaches are required to be refrigerated. Therefore, the cans of sliced peaches do not meet the definition of candy.

## B. Dietary Supplement

Dietary supplement is defined in sec. [77.51\(3n\)](#), Wis. Stats., to mean a product other than tobacco, that is intended to supplement a person's diet, if all of the following apply:

- The product contains a vitamin, mineral, herb or other botanical, amino acid, dietary substance that is intended for human consumption to supplement the diet by increasing total dietary intake, concentrate, metabolite, constituent, or extract, or any combination thereof.
- The product is intended for ingestion in tablet, capsule, powder, soft-gel, gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not represented as conventional food and is not represented for use as the sole item of a meal or diet.
- The product is required to be labeled as a dietary supplement as required under [21 CFR 101.36](#).

Dietary supplements can be identified by the "Supplement (al) Facts" box found on the label as required by [21 CFR 101.36](#), as opposed to a "Nutrition (al) Facts" box found on the labels of other foods and food ingredients.

Dietary supplements include antioxidants, bee pollen, enzymes, garlic capsules, ginseng tablets, herbal supplements, immune supports, lecithin capsules, metabolic supplements, vitamins and minerals, and zinc lozenges.

## C. Food and Food Ingredients

Food and food ingredient is defined in sec. [77.51\(3t\)](#), Wis. Stats., to mean "...a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested

or chewed for its taste or nutritional value. 'Food and food ingredient' does not include alcoholic beverages or tobacco."

Items such as cough drops, breath sprays, and throat lozenges, although they are ingested or chewed, are not food and food ingredients. Generally, these types of products will not have a Nutrition (al) Facts box on the label and are taxable since they are tangible personal property.

**Note:** The terms candy, dietary supplement, prepared food, and soft drink, as defined in Part 2., each represent a specific type of food or food ingredient, as defined in Part 2.C.

#### D. Prepared Food

Prepared food is defined in sec. [77.51\(10m\)](#), Wis. Stats., to mean any of the following:

(1) Food and food ingredients sold in a heated state.

Food and food ingredients are sold in a heated state if they are sold at a temperature that is higher than the air temperature of the room or place where the item is sold. Food and food ingredients that are sold unheated by the retailer and heated by the customer are not sold in a heated state.

**Example 1:** A retailer cooks chicken using a rotisserie. The retailer then sells these chickens in a heated state. The sale of the heated rotisserie chicken is the sale of prepared food.

**Example 2:** Customer purchases a donut from Grocer in an unheated state. Grocer has a microwave that customers can use to heat the food and food ingredients they purchase if they so desire. Customer uses the microwave to heat the donut and then takes the heated donut to the register and pays for it. The donut sold by Grocer is not sold in a heated state since the donut was not heated by Grocer.

(2) Food and food ingredients heated by the retailer, except for the following:

(a) Two or more food ingredients that are mixed or combined by a retailer for sale as a single item, if the retailer's primary classification in the North American Industry Classification System (NAICS), 2002 edition, published by the Federal Office of Management and Budget, is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.

**Example:** A food manufacturer classified under industry code 31161 of the North American Industry Classification System NAICS, 2002 edition, makes hot dogs by mixing and combining two or more food ingredients, heating the hot dogs so that they are fully cooked and then packaging the hot dogs for sale once they have cooled. Although the hot dogs were previously heated by the retailer while they were being manufactured, they are not prepared food because the retailer's primary classification in the 2002 NAICS is manufacturing under subsector 311, assuming the hot dogs do not meet any of the other definitions of prepared food.

(b) Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

**Example 1:** A bakery mixes ingredients together to make a cake. The cake mix is then heated (baked). Once the cake cools, it is decorated and sold to a customer. Although the cake was heated by a retailer, it is not prepared food because it meets the exception for bakery items. This also assumes the cake does not meet any of the other definitions of prepared food.

**Example 2:** A bakery mixes two or more ingredients together to make a bagel. The bagel is then heated and placed in a heated display case for sale to a customer. The bagel is prepared food since it is sold

heated. Although the bagel meets the exception for bakery items, it is prepared food since it is sold heated.

- (c) Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated, and sold by volume or weight.

Food sold by volume means that the price varies based on the volume of product a purchaser selects and is determined by the price per measurement of volume.

Food sold by weight means that the price varies based on the weight of the product a purchaser selects and is determined by multiplying the weight of the food by the price per measured weight.

**Note:** Examples 1-6, below, assume that the food is sold unheated; it is not the retailer's customary practice to physically give or hand napkins or other utensils to the customer with the food product; plates, bowls, glasses, or cups are not necessary to receive the food product; and the retailer's primary NAICS code is not subsector 311 or 3118.

**Example 1 – Weight:** Retailer prepares potato salad. Customer asks Retailer to fill a container. Retailer fills the container, weighs the filled container, and prints a label that shows the weight, price per pound, and total price of the potato salad.

The food is sold by weight and is not a prepared food.

**Example 2 – Volume:** Same as Example 1, except Retailer charges the following:

- \$1.79 for a ½ pint size container of potato salad
- \$2.89 for a pint size container of potato salad
- \$5.49 for a quart size container of potato salad

The food is sold by volume and is not a prepared food.

**Example 3 – Other:** Same as Example 1, except Retailer charges the following:

- \$1.79 for a small container of potato salad
- \$2.89 for a medium container of potato salad
- \$5.49 for a large container of potato salad

The food is not sold by volume or weight and is a prepared food. Small, medium, and large are not measurements of volume or weight.

**Example 4 – Other:** Retailer prepares ice cream cakes, which are not primarily bakery items. Retailer charges the following:

- \$6.99 for a 4-inch ice cream cake
- \$12.99 for a 9-inch ice cream cake
- \$16.99 for a 12-inch ice cream cake.

The food is not sold by volume or weight and is a prepared food. Inches are not a measurement of volume or weight.

**Example 5 – Weight:** Retailer prepares turkey, gravy, and mashed potatoes and pre-packages the items for sale in a single container in a cold display case. Retailer weighs the filled container and determines the price by multiplying the weight by the price per ounce.

The food is sold by weight and is not a taxable prepared food.

**Example 6 – Other:** Retailer prepares various dips, salads, sandwiches, shrimp, and fried chicken and pre-packages the items for sale in a single container in a cold display case. The packages are assembled and labeled as follows. The retailer does not weigh the pre-packaged item to verify the actual weight.

- \$5.00 – 3-piece – small 8 oz.
- \$10.00 – 4-piece – medium 12 oz.
- \$18.00 – family size 24 oz.

The food is not sold by volume or weight and is a prepared food. The price is not determined by multiplying the actual weight of the food by the price per weight; nor is the price determined by a measurement of volume.

(3) Two or more food ingredients mixed or combined by a retailer for sale as a single item, except if any of the following apply:

(a) The retailer's primary classification in the North American Industry Classification System, 2002 edition, published by the Federal Office of Management and Budget, is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.

See Example in (2)(a) above.

(b) The item is sold unheated and sold by volume or weight.

See Examples in (2)(c) above.

(c) The item is a bakery item made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

See Examples in (2)(b) above.

(d) The food and food ingredients are only sliced, repackaged, or pasteurized by a retailer.

**Example 1:** Grocer sells meat at its deli counter. A customer selects the type of meat he wants to purchase. The employee at the deli counter slices the amount the customer wants and wraps it after it is sliced. This meat is not prepared food since the meat is only sliced and repackaged, assuming the meat does not otherwise meet the definition of prepared food.

**Example 2:** Grocer sells cheese trays. The cheese trays are put together by the grocer selecting the various types of cheeses it wants to include on the tray, slicing the amount of each type of cheese it wants to include, placing each type of sliced cheese on the tray, and then wrapping the cheese tray. The cheese tray is not prepared food since the cheese on the tray was only sliced and re-packaged, assuming the cheese tray does not otherwise meet the definition of prepared food.

(e) The item contains eggs, fish, meat, or poultry in raw form that requires cooking by the consumer, as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its food code to prevent food-borne illnesses.

**Example:** Grocer seasons and marinates various types of meat. The meat is required to be cooked by the customer, as recommended by the Food and Drug Administration. This meat is not prepared food since it is a meat that requires cooking by the consumer. This assumes the meat does not otherwise meet the definition of prepared food.

(4) Food and food ingredients sold with eating utensils that are provided by the retailer of the food and food ingredients, including plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws. However, a plate does not include a container or packaging used to transport the food and food ingredients.

(a) Eating utensils are provided by the retailer if any of the following apply:

- The retailer's customary practice is to physically give or hand the utensils to the purchaser, except that plates, glasses, bowls, or cups that are necessary for the purchaser to receive the food and food ingredients need only be made available to the purchaser.

**Example 1:** Grocer sells milk from a dispenser. Grocer has cups available for the purchaser to use to purchase the milk from the dispenser, Grocer has cups available for the purchaser to use. The sale of the milk from the dispenser is the sale of prepared food since a cup is necessary for the purchaser to receive the milk and the cups are made available to the purchaser.

**Example 2:** Grocer has a self-service salad bar. Customers go to the salad bar, pick up a clam shell container at the salad bar, and place the items they would like in the clam shell container. The clam shell container is a plate or bowl necessary for the customer to receive the food. Therefore, sales from the self-service salad bar are sales of prepared food.

- The retailer's sales of prepared foods described in Parts 2.D.(1), (2), and (3), and food for which plates, bowls, glasses, or cups are necessary to receive the food or food ingredients, are more than 75% of the retailer's total sales of all food and food ingredients and eating utensils are made available to the purchaser. (**Note:** See Part 2.D.(4)(b) to determine how to compute the percentage of prepared food sold by the retailer.)
- The retailer sells food items that have a utensil placed in a package by a person other than the retailer, unless the primary classification in the North American Industrial Classification System (NAICS), 2002 edition, published by the federal office of management and budget, of the person who placed the utensil in the package is manufacturing under subsector 311.

**Example 1:** Retailer sells a food item that contains a spoon that was placed in the package by the manufacturer of the food item. The manufacturer's primary NAICS Code is under subsector 311. Retailer A is not selling prepared food, since the spoon was placed in the package with the food by the manufacturer whose primary NAICS Code is under subsector 311.

**Example 2:** Same as Example 1 except that the person who placed the spoon in the package with the food is not a manufacturer under subsector 311. Retailer's sale of this food item is a sale of prepared food, as the spoon was placed in the package by a person other than a manufacturer under subsector 311.

- (b) All of the following apply in computing the percentage of prepared food sold by the retailer described in Part 2.D.(4)(a) above:

- The numerator of the percentage only includes the retailer's sales of prepared food as defined in Parts 2.D.(1), (2), and (3), and food for which plates, bowls, glasses, or cups necessary to receive the food are made available.
- The denominator of the percentage is all of the retailer's sales of food and food ingredients, including the retailer's sales of prepared food, candy, dietary supplements, and soft drinks.
- Alcoholic beverages are not included in the numerator or denominator.
- A retailer must compute the percentage for the retailer's current tax or business fiscal year based on the retailer's data from the retailer's prior tax or business fiscal year, as soon as practical after the retailer's accounting records are available, but no later than 90 days after the day the retailer's tax or business fiscal year begins. If a retailer has no prior tax or business fiscal year in Wisconsin, the retailer shall make a good faith estimate of its percentage for the retailer's first tax or business fiscal year and shall adjust the estimate prospectively after the first 3 months of the retailer's operations if the actual percentage is materially different from the estimated percentage.

- For retailers with more than one establishment in Wisconsin, a single percentage that combines the sales for all of the retailer's establishments in Wisconsin shall be made annually and will apply to all of the retailer's establishments in Wisconsin.
- (c) If the percentage determined under Part 2.D.(4)(a) is 75% or less, utensils are only considered to be provided by the retailer if the retailer's customary practice is to physically give or hand the utensils to the purchaser, except that in the case of plates, bowls, glasses, or cups that are necessary to receive the food, such items need only be made available to the purchaser.
- (d) If the percentage determined under Part 2.D.(4)(a) is greater than 75% and utensils are made available to the purchaser, all the retailer's sales of food and food ingredients are considered sales of prepared food. **Exception:** An item sold by the retailer that contains 4 or more servings packaged as one item and sold for a single price is only prepared food if (1) the retailer physically gives or hands utensils to the purchaser, (2) the retailer makes plates, bowls, glasses, or cups that are necessary for the purchaser to receive the food available to the purchaser, (3) the item is sold heated, or (4) the package contains a utensil placed in it by a person other than the retailer or manufacturer.

Serving sizes are based on the information contained on the label of each item sold, except that, if the item sold has no label, the serving size is based on the retailer's reasonable determination.

**Example:** Restaurant operates a restaurant and a small convenience store within the restaurant. Its sales of prepared food are greater than 75% of its total sales of food and food ingredients. Restaurant makes various eating utensils available in its convenience store. Customer enters the convenience store and purchases a single serving container of chocolate milk and a gallon container of 2% milk. The gallon container of 2% milk contains 4 or more servings. Restaurant's customary practice for sales in its convenience store is to not physically give utensils to a customer who purchases containers of milk. Since the milk products purchased are prepackaged, plates, bowls, glasses, or cups are not necessary for the purchaser to receive them. Restaurant's sale of the chocolate milk is a sale of prepared food, since (a) more than 75% of its total sales of food and food ingredients are sales of prepared food, (b) eating utensils are made available to customers, and (c) the container of chocolate milk contains fewer than 4 servings. Restaurant's sale of the gallon of 2% milk is not the sale of prepared food, even though more than 75% of its total sales of food and food ingredients are sales of prepared food and the convenience store makes eating utensils available to customers, because the gallon size container of 2% milk contains 4 or more servings, and plates, bowls, glasses, or cups are not necessary for the purchaser to receive the milk.

The flowchart and related notes in [Appendix I](#) of this publication can be used to help determine if the product being sold is prepared food and subject to sales or use tax.

Grocery stores often contract with vendors to allow the vendor to advertise and sell prepared food on the grocery store's premises. If the grocery store processes the payment from the customer (e.g., through the grocery store's cash register or point-of-sale (POS) system) for the sale of the prepared food, the grocery store is a marketplace provider and is required to collect and remit sales tax on such sales. See Part 1.F for information about marketplace providers and their tax obligations.

**Example:** Grocery Store has an agreement with Sushi Vendor to allow Vendor to advertise and sell prepared food in the store. Grocery Store uses its POS system to facilitate the sale of Sushi Vendor's prepared food. Grocery Store is required to collect and remit sales and use tax on the sale of the prepared food.

## E. Soft Drink

Soft drink is defined in sec. [77.51\(17w\)](#), Wis. Stats., to mean "...a beverage that contains less than 0.5 percent of alcohol and that contains natural or artificial sweeteners. 'Soft drink' does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50 percent vegetable or fruit juice by volume."

Natural and artificial sweeteners include corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, and agave.

Soft drinks are beverages that are in liquid form and do not include items that are not in liquid form such as powdered fruit drinks, powdered teas, and frozen drink concentrates.

Water and tea that contain sweeteners are soft drinks, unless they contain more than 50% fruit or vegetable juice by volume.

Water and tea that are unsweetened are not soft drinks, even if carbonated or flavored.

## 3. SALES AND PURCHASES BY GROCERY STORES

### A. Sales and Purchases of Inventory Items

Grocers purchase and resell many different types of products. Certain products sold are not subject to sales tax, while other products are taxable. In addition, sales of products which are usually not subject to sales tax (e.g., donuts), are taxable if the product meets the definition of prepared food as described in Part 2.D.(4).

The following sections explain the sales and use tax treatment of the sales and purchases of inventory items.

#### (1) Sales of inventory items by grocers

Sales of taxable products and services are subject to sales tax, except when a specific exemption applies. There are three common reasons that sales made by grocers may not be taxable. The reasons are:

- The grocer is selling products which qualify for the exemption for food and food ingredients that are for human consumption.
- The grocer is selling products to organizations which are exempt from Wisconsin sales tax (e.g., churches, federal governmental agencies, any federally recognized American Indian tribe or band in Wisconsin, Wisconsin state and local governmental agencies) and the organization provides the grocer with either:
  - A sales and use tax exemption certificate (e.g., Form S-211 or S-211-E), indicating the organization's certificate of exempt status (CES) number (**Note:** In lieu of obtaining an exemption certificate, the grocer may record the CES number on its copy of the bill of sale), or
  - For federal and Wisconsin (state and local) governmental agencies, including public school districts, an exemption certificate indicating the governmental entity's CES number or a purchase order or similar written document from the governmental agency.
- The grocer is selling products to customers who provide the grocer with an exemption certificate claiming an exemption from sales and use tax (e.g., resale).



## (a) Exempt food and food ingredients and beverages for human consumption:

An exemption from Wisconsin sales and use tax is provided for all food and food ingredients except candy, dietary supplements, prepared food, and soft drinks. The following examples of food and food ingredients are exempt from Wisconsin sales tax, unless they meet the definition of candy, dietary supplements, soft drinks, or prepared foods.

<ul style="list-style-type: none"> <li>• Apple cider, sweet</li> <li>• Baby food</li> <li>• Bakery goods</li> <li>• Baking powder and soda</li> <li>• Barbecue sauces</li> <li>• Berries</li> <li>• Beverage powders</li> <li>• Beverages that contain milk</li> <li>• Biscuit mix</li> <li>• Bottled water, unsweetened</li> <li>• Bouillon cubes</li> <li>• Bread and rolls</li> <li>• Breakfast pastries</li> <li>• Brownies</li> <li>• Butter</li> <li>• Cake mixes</li> <li>• Cakes, prepared, mixes, and snack-type</li> <li>• Canned foods</li> <li>• Catsup</li> <li>• Cereal and cereal products</li> <li>• Cheese</li> <li>• Chicken</li> <li>• Chip dip</li> <li>• Chips, potato, corn, and similar items</li> <li>• Chocolate, unsweetened or not sold in form of bars, drops, or pieces</li> <li>• Frozen fruit juices</li> <li>• Frozen fruits and vegetables</li> <li>• Frozen pizza</li> <li>• Frozen TV dinners</li> <li>• Fruit</li> <li>• Fruit juices that contain more than 50% fruit juice by volume</li> <li>• Garlic</li> <li>• Gelatin</li> <li>• Granola bars that contain flour</li> <li>• Gravy extracts and mixes</li> <li>• Grits</li> <li>• Hash</li> <li>• Honey</li> <li>• Ice cream bars and similar products</li> </ul>	<ul style="list-style-type: none"> <li>• Citrus fruits</li> <li>• Cocoa</li> <li>• Coffee beans, grounds, freeze dried, and coffee substitutes</li> <li>• Coffee drinks that contain no sweeteners or that contain a milk or milk product</li> <li>• Condiments</li> <li>• Cones and ice cream cups</li> <li>• Cookies and crackers</li> <li>• Cooking oils</li> <li>• Cream</li> <li>• Dairy products</li> <li>• Deli items</li> <li>• Desserts and toppings</li> <li>• Dinners, frozen</li> <li>• Donuts</li> <li>• Dressings</li> <li>• Dried fruits, unsweetened</li> <li>• Dried milk products</li> <li>• Eggs</li> <li>• Fish and fish products</li> <li>• Flavoring extracts</li> <li>• Flour</li> <li>• Food coloring</li> <li>• Frosting</li> <li>• Frozen desserts</li> <li>• Pickles</li> <li>• Pie and pie fillings</li> <li>• Pie crust and mixes</li> <li>• Popcorn, popped or unpopped</li> <li>• Popsicles</li> <li>• Potato chips</li> <li>• Potato salad</li> <li>• Poultry and poultry products</li> <li>• Powdered drink mixes</li> <li>• Preserves</li> <li>• Pretzels</li> <li>• Puddings</li> <li>• Raisins</li> <li>• Ravioli</li> <li>• Relishes</li> </ul>
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<ul style="list-style-type: none"> <li>• Ice cream in cones</li> <li>• Ice cubes</li> <li>• Jams</li> <li>• Jellies</li> <li>• Juices that contain more than 50% fruit or vegetable juice by volume</li> <li>• Ketchup</li> <li>• Lobster</li> <li>• Luncheon meats</li> <li>• Macaroni</li> <li>• Malted milk powder</li> <li>• Maraschino cherries not including chocolate covered cherries</li> <li>• Margarine</li> <li>• Marshmallow creme</li> <li>• Marshmallows that contain flour</li> <li>• Mayonnaise</li> <li>• Meal</li> <li>• Meat and meat products</li> <li>• Meat extracts and tenderizers</li> <li>• Melons</li> <li>• Milk and milk products</li> <li>• Mustard</li> <li>• Noodles</li> <li>• Nuts that are not candy</li> <li>• Oil, cooking, salad</li> <li>• Oleomargarine</li> <li>• Olives</li> <li>• Pancake mix</li> <li>• Pasta</li> <li>• Peanuts that are not candy</li> <li>• Peanut butter</li> <li>• Pectins</li> <li>• Pepper</li> </ul>	<ul style="list-style-type: none"> <li>• Rice</li> <li>• Rolls and biscuits</li> <li>• Salad dressing</li> <li>• Salt and salt substitutes</li> <li>• Salted nuts</li> <li>• Sardines</li> <li>• Seafood</li> <li>• Seasonings</li> <li>• Sherbet</li> <li>• Shortening</li> <li>• Soup</li> <li>• Spaghetti products</li> <li>• Spices</li> <li>• Spreads</li> <li>• Sugar</li> <li>• Sweeteners</li> <li>• Syrup</li> <li>• Tea bags, leaves or instant</li> <li>• Tea and ice tea beverages that are not sweetened</li> <li>• Trail mix with candy</li> <li>• Turkey</li> <li>• Vanilla and vanilla extract</li> <li>• Vegetable juices that contain more than 50% juice by volume</li> <li>• Vegetables</li> <li>• Vinegar</li> <li>• Waffle mix</li> <li>• Water, carbonated, unsweetened</li> <li>• Water, flavored, unsweetened</li> <li>• Water, unsweetened</li> <li>• Yeast</li> <li>• Yogurt and yogurt bars, cones, and sundaes</li> </ul>
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(b) Taxable food and food ingredients and beverages for human consumption:

There are many foods, food ingredients, and beverages sold in grocery stores that are subject to Wisconsin sales tax.

The following examples of products (including sales from vending machines) are subject to Wisconsin sales tax:

<ul style="list-style-type: none"> <li>• Alcoholic beverages</li> <li>• Anti-acid products</li> <li>• Aspirin</li> <li>• Baking chips, sweetened</li> </ul>	<ul style="list-style-type: none"> <li>• Ginseng sold as a dietary supplement</li> <li>• Granola bars that are sweetened, unless they contain flour</li> <li>• Gum</li> <li>• Heated foods and beverages</li> </ul>
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<ul style="list-style-type: none"> <li>• Baking chocolate in the form of a bar, drop, or piece that contains a sweetener</li> <li>• Beer</li> <li>• Beverage powders that are dietary supplements</li> <li>• Bottled water, sweetened</li> <li>• Breath mints</li> <li>• Cake decorations that are candy</li> <li>• Candied fruits</li> <li>• Candy</li> <li>• Candy apples</li> <li>• Caramel apples</li> <li>• Caramel corn</li> <li>• Chewing gum</li> <li>• Chocolate chips and other flavored chips, if sweetened</li> <li>• Chocolate covered raisins and nuts</li> <li>• Cocktail mixes containing 50% or less fruit or vegetable juice</li> <li>• Cod liver oil</li> <li>• Coffee drinks that contain sweeteners, unless it also contains milk or a milk product</li> <li>• Confections that are candy</li> <li>• Cough drops</li> <li>• Deli items that are prepared food</li> <li>• Dietary supplements</li> <li>• Distilled spirits</li> <li>• Dried fruit with sweeteners</li> <li>• Fermented malt beverages</li> <li>• Flowers</li> <li>• Fruit drinks that contain a sweetener and have 50% or less fruit juice by volume</li> <li>• Fruit snacks that contain a sweetener</li> </ul>	<ul style="list-style-type: none"> <li>• Honey roasted and honey coated nuts</li> <li>• Ice blocks</li> <li>• Intoxicating liquor</li> <li>• Juices that contain sweeteners and 50% or less fruit or vegetable juice by volume</li> <li>• Lozenges</li> <li>• Marshmallows</li> <li>• Nuts that are candy, such as honey roasted cashews</li> <li>• Peanuts that are candy, such as honey roasted</li> <li>• peanuts</li> <li>• Popcorn that is candy, such as caramel corn</li> <li>• Potato salad that is prepared food</li> <li>• Powdered drink mixes that are dietary supplements</li> <li>• Prepared foods</li> <li>• Pretzels that are prepared food</li> <li>• Raisins that are candy, such as</li> <li>• Yogurt coated raisins</li> <li>• Root beer</li> <li>• Salted nuts that are candy</li> <li>• Sandwiches that are prepared food</li> <li>• Seeds for planting</li> <li>• Soft drinks</li> <li>• Taffy apples</li> <li>• Tea drinks that contain sweeteners</li> <li>• Tonics</li> <li>• Vegetable juice that contains a sweetener and 50% or less juice by volume</li> <li>• Vitamins</li> <li>• Water, sweetened</li> <li>• Yogurt covered raisins and nuts</li> </ul>
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## (c) Prepackaged food combinations

If a combination of taxable and nontaxable products that are distinct and identifiable, one or more of which is a food or food ingredient, are packaged together and:

- More than 50% of the retailer's purchase price or sales price as determined by the retailer (but not a combination of both) of the products in the package are attributable to products that are subject to sales or use tax, the total sales price of the package is taxable.
- 50% or less of the retailer's purchase price or sales price as determined by the retailer (but not a combination of both) is attributable to products that are subject to sales or use tax, the total sales price of the package is exempt from sales or use tax.

**Example:** A grocery store sells a package that contains crackers, meat, cheese, candy, and a soft drink. The grocery store purchased the package from Company. Of the grocery store's purchase

price and selling price, 75% is attributable to the meat, cheese, and crackers (exempt products) and 25% is attributable to the candy and soft drink (taxable products). Since neither the retailer's purchase price nor selling price of the taxable products is greater than 50% of the retailer's purchase price or sales price of products that are subject to sales or use tax, the entire sales price of the package is exempt from Wisconsin sales or use tax.

(d) Fruit and vegetable juices and drinks, soft drinks, beer, wine, and liquor sales

**Fruit and Vegetable Juices and Drinks Exempt From Sales Tax:** Sales of fruit and vegetable juices and drinks that contain more than 50% fruit or vegetable juice by volume, are exempt from sales tax. In addition, powders and frozen concentrates used to make fruit and vegetable juices or drinks are exempt from sales or use tax since they are not in liquid form and therefore do not meet the definition of soft drink.

**Fruit and Vegetable Juices and Drinks Subject to Wisconsin Sales Tax:** Sales of fruit and vegetable juices and drinks not containing more than 50% fruit or vegetable juice by volume are taxable, unless they contain milk or milk products or soy, rice, or similar milk substitutes.

**Soft Drinks:** Sales of beverages that contain less than 0.5% alcohol by volume and contain a natural or artificial sweetener are subject to sales or use tax. To be considered a beverage, the product must be sold in liquid form. However, if the beverage contains milk or milk products, soy, rice, or similar milk substitutes, or more than 50% vegetable or fruit juice by volume, it is not taxable as a soft drink. It may, however, be subject to sales or use tax if it meets the definition of prepared food or dietary supplement.

**Beer, Wine, and Liquor Sales:** Sales of beer, wine, and liquor are subject to sales and use tax as sales of alcoholic beverages if they are suitable for human consumption and contain 0.5% or more alcohol by volume. However, cooking wines are exempt from Wisconsin sales or use tax.

**Note:** Non-alcoholic beers may be taxable as soft drinks if they contain a sweetener.

What about sales of other food items?

For specific information about sales of other foods and food ingredients, and beverages sold by grocery stores, see the following sections of this publication:

- Bakery Sales and Purchases in Part 3.B.,
- Catering Sales and Purchases in Part 3.C.,
- Deli Sales and Purchases in Part 3.D.,
- Meat Department Sales and Purchases in Part 3.G., and
- Vending Machine Sales and Purchases in Part 3.J.

(e) Taxable sales of non-food items

A grocer's sales of non-food items (except as provided in part (f) below), are taxable, unless the customer can claim an exemption (e.g., nonprofit, government, resale). Examples of non-food items sold by grocers that are taxable include, but are not limited to:

- Appliances, bakeware, and utensils, such as can openers, clocks, pots and pans, spoons, forks, and knives

- Auto supplies, such as oil, anti-freeze, cleaners, lubricants, and light bulbs
  - Baby care supplies, such as diapers, wipes, pacifiers, bottles, and rattles
  - Beauty supplies, such as make-up, hair spray, nails, nail polish, perfume, bobby pins, rollers, and jewelry
  - Cameras, film, and other photography supplies
  - Canning and freezing supplies, such as jars, lids, wrapping paper, and tape
  - Cigars, cigarettes, tobacco, and lighters
  - Cleaning supplies, such as wax, polishes, mops, brooms, pails, sponges, gloves, soap, laundry detergent, bleach, ammonia, bowl and drain cleaners, and air fresheners
  - Electrical supplies, such as flashlights, bulbs, batteries, and fuses
  - Garbage cans, bags, and wastebaskets
  - Greeting cards, gifts, and wrapping paper
  - Grilling supplies, such as charcoal, charcoal starter, rotisseries, and matches
  - Grocery bags (disposable or reusable)
  - Hardware supplies, such as nails, screws, nuts, bolts, paint and paint supplies, steel wool, and sandpaper
  - Hygiene products, such as soap, shampoo, combs, deodorant, shaving cream, and razors
  - Lawn and garden supplies, such as tools, hoses, fertilizers, flowers, seeds, and insect and pest control products
  - Medical supplies and first aid products, such as aspirin, band-aids, cough drops, rubbing alcohol, ointments, and suntan lotion
  - Music and video supplies, such as records, tapes, CD's, and head cleaners
  - Office and school supplies, such as pens, pencils, crayons, note pads, binders, stationery, tape, glue, rubber bands, scissors, paper clips, staples, and staplers
  - Paper and plastic products, such as napkins, paper towels, paper plates, and plastic utensils
  - Pet food and supplies, such as collars, flea and tick spray, dog biscuits, and pet toys
  - Reading materials such as books, magazines, and periodicals (newspapers are exempt from sales tax)
  - Toiletries such as toilet paper, facial tissue, bubble bath, toothbrushes, and feminine hygiene products
  - Toys and games, such as balls, board games, and dolls
  - Water softener salt and conditioners
  - Wearing apparel, linens, clothing, gloves, washcloths, hosiery, zippers, sewing supplies, thread, shoelaces and polish, sunglasses, stockings, and watches
- (f) Exempt sales of non-food items

A grocer's sales of non-food items which are exempt from sales tax and an exemption certificate is not needed include, but are not limited to:

- Newspapers
- Fuel for motor vehicles subject to tax under Chapter 78, Wis. Stats.
- Prescription drugs
- Durable medical equipment for home use
- Mobility-enhancing equipment
- Prosthetic devices
- United States and Wisconsin flags

(2) Purchases of inventory items by grocers

A grocer's purchases of items that are going to be resold may be made without sales and use tax. The grocer may be required to provide its supplier with an exemption certificate claiming resale.

**Exemption Certificate Not Required:** Items that qualify for the exemption for food and food ingredients for human consumption may be purchased by the grocer without sales and use tax and without issuing an exemption certificate. The list in Part 3.A.(1)(a) above shows examples of these items.

**Exemption Certificate Required:** Certain foods and food ingredients, and non-food items which a grocer purchases and resells, may be purchased without sales and use tax if the grocer provides the supplier with an exemption certificate claiming resale. The list in Part 3.A.(1)(b) above shows examples of these items.

## B. Bakery Sales and Purchases

See [Publication 223](#), *Bakeries*, for more detailed information about bakery sales and purchases.

(1) Sales by bakeries

The tax treatment of bread, cakes, cookies, donuts, rolls, and other foods commonly made by bakeries and sold by the bakery or in grocery stores depends on whether the items are sold heated or otherwise meet the definition of prepared food or candy as defined in Part 2. See Table 1 below. Table 1 applies to sales of bakery items by a bakery or a grocery store regardless of whether the bakery or grocery store made the bakery items or purchased the bakery items already made from a third party.

**Note:** To determine the proper sales and use tax treatment of the sale of bakery items using Table 1, you must start at Question 1 in the table and stop at the first description that accurately describes the transaction in question and indicates Taxable or Not Taxable.

Table 1 assumes the following:

- The item being sold is a food or food ingredient that does **not** meet the definition of candy, dietary supplement, or soft drink as explained in Parts 2.A., B., and E.
- The retailer's primary North American Industry Classification System (NAICS) code is not manufacturing under subsector 311, except for bakeries and tortilla manufacturing under industry group 3118.
- The package does not contain a utensil placed in it by a person other than the retailer.
- The item is not a product that is only sliced, repackaged, or pasteurized by the grocery store.
- The product does not contain meat, fish, poultry, or any food containing them in raw form that requires further cooking by the consumer to prevent food-borne illnesses.

For sales of food and food ingredients that are not covered by Table 1, see Appendix 1.

<b>Table 1</b>		
<b>Retail Sales of Bakery Products by Grocery Stores</b>		
Instructions: Start at question 1 and work your way down this table. Stop when you get to the first "taxable" or "not taxable" answer that applies. See assumptions above.		
<b>1. Is the bakery product sold heated?<sup>1</sup></b>	<b>Yes→</b>	Taxable
No ↓		
<b>2. Is the grocer's customary practice to physically give or hand a utensil to the customer?<sup>2, 3</sup></b>	<b>Yes→</b>	Taxable
No ↓		
<b>3. Are plates, bowls, glasses, or cups necessary to receive the bakery product made available to the customer?</b>	<b>Yes→</b>	Taxable
No ↓		
<b>4. Are utensils made available by the retailer to the purchaser?<sup>2, 4</sup></b>	<b>No→</b>	Not Taxable
Yes ↓		
<b>5. Are there 4 or more servings packaged as one item and sold for a single price?<sup>5</sup></b>	<b>Yes→</b>	Not Taxable
No ↓		
<b>6. Are the grocer's sales of prepared food 75% or less?<sup>6</sup></b>	<b>Yes→</b>	Not Taxable
	<b>No→</b>	Taxable

Notes to Table 1:

- Sold heated, as used in Table 1, means sold at a temperature higher than the air temperature of the room or place where the products are sold.
- Utensils includes plates, bowls, knives, forks, spoons, glasses, cups, napkins, and straws.
- If the grocer's customary practice is to physically give or hand the utensil to the customer, the sale by the grocer is a sale of prepared food even if the customer does not receive the utensil.
- Utensils are made available to the customer if the customer can select a utensil at their own discretion, rather than having the retailer physically hand or give the customer a utensil.
- For purposes of determining if 4 or more servings are packaged together for sale as a single item, the serving size is based on the label of each of the items sold and if there is no label, the serving size is based on the retailer's reasonable determination.
- To determine if the retailer's sales of certain prepared foods are more than 75% of its total sales of foods and food ingredients, see Part 2.D.(4)(b).

See Part 2. of Publication 223, *Bakeries*, for more details and examples of sales by bakeries.

(2) Purchases by bakeries

- (a) Machinery and Equipment and Items Consumed in Manufacturing: Bakeries are considered to be manufacturers for Wisconsin sales and use tax purposes and, therefore, may purchase certain machinery and equipment and consumable items without sales and use tax. The items must be used exclusively and directly in the manufacturing process to qualify for the exemption from sales and use tax. For such exempt items, the bakery should provide the supplier with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)) claiming the appropriate manufacturing-related exemption.

The manufacturing process of a bakery begins with the removal of the ingredients from storage and generally ends with the removal of the baked products from the pans or receptacles. However, the manufacturing process also includes the packaging of the baked goods in bags, boxes, etc., if the baked goods have not been stored or displayed prior to packaging them.

Examples of items that may be purchased by a bakery without sales and use tax if used exclusively and directly in manufacturing include:

- Bread pans, pie pans, and other pans for baking
- Bread slicers, cookie cutters, and glazing screens
- Scales used to weigh dough
- Rolling pins, scoops, measuring cups, and can openers
- Ovens, mixers, gas fryers, and donut machines
- Thermometers used to check the temperature of dough
- Wearing apparel used by employees to prevent contamination of the manufactured product (e.g., gloves worn by an employee making donuts to prevent the donuts from being contaminated during the manufacturing process qualify for this exemption)
- Cleansers and solvents used for cleaning manufacturing machinery

Examples of items that are not used directly in the manufacturing process and are taxable include:

- Pot and pan washers and sinks
- Display equipment, including display pans
- Delivery carts and racks used in delivering bakery products to customers if the carts and racks are not transferred to customers
- Wearing apparel for the comfort or welfare of employees or for the protection of employees clothing (e.g., an apron worn by an employee to prevent the employee's clothing from being damaged does not qualify for this exemption)
- Cleansers, chemicals, and cleaning agents used to clean the walls, ceilings, floors, drains, windows, and doors where the manufacturing takes place

- (b) Food and Food Ingredients: Ingredients used to produce baked goods which are sold, may be purchased without paying sales and use tax. If the ingredients qualify for the exemption for food and food ingredients for human consumption, the bakery does not need to provide the supplier with an exemption certificate. See the list in Part 3.A.(1)(a) for additional information on items that qualify for



the exemption for food and food ingredients for human consumption. If the ingredients do not qualify for the exemption for food and food ingredients for human consumption, the grocer must provide the supplier with an exemption certificate claiming resale to purchase them without sales and use tax.

- (c) Containers and Packaging Materials: A bakery's purchases of containers and other packaging materials used to transfer bakery goods to customers are not taxable. The containers may or may not be returnable. To claim this exemption, the bakery must provide the supplier with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)).

Examples of items that qualify for this exemption when used to transfer the baked goods to customers include:

- Boxes or cartons used to package donuts
- Bags used to package bread
- Dividers used to separate food sections within a container
- Paper used to line containers
- Tape and rubber bands used to keep containers closed
- Disposable cups used to transfer beverages sold to customers

Examples of items that do not qualify for the exemption for containers and packaging and shipping materials include:

- Wrapping equipment such as tape dispensers, paper holders, and staplers (assuming these items are not used directly and exclusively in the manufacturing process as discussed previously)
- Price tags
- Bakery delivery carts used to deliver bakery goods to customers if the bakery delivery carts are not physically transferred to customers

- (d) Other Items Being Resold: If the item being purchased does not qualify as a food or food ingredient for human consumption (e.g., non-food cake decorations), but is being resold by the bakery, the bakery must provide the supplier with an exemption certificate claiming resale to purchase these types of items without sales and use tax. See the list in Part 3.A.(1)(b) for additional information on these types of purchases.

- (e) Items Not Being Resold: If a bakery purchases reusable items, other than containers used to transfer merchandise to customers, which are not being resold to and kept by customers, but instead are returned to the bakery and reused, the bakery is the consumer of these types of items. Purchases by the bakery of these types of items are taxable.

See Part 3. of Publication 223, *Bakeries*, for more details and examples of purchases by bakeries.

## C. Catering Sales and Purchases

### (1) Sales by caterers

Food and food ingredients that are sold as prepared food, candy, soft drinks, or dietary supplements by caterers are subject to Wisconsin sales tax. A caterer's sales of alcoholic beverages are also taxable.

Caterer, as used in this publication, means a business engaged in the selling and serving of prepared food, candy, soft drinks, dietary supplements, and alcoholic beverages on premises designated by a purchaser.

Charges by a caterer for preparing, serving, and delivering prepared foods, candy, soft drinks, dietary supplements, and alcoholic beverages are taxable.

The method a caterer uses to bill a customer for the meals does not affect the tax treatment of the charge (e.g., price per plate, price per meal, lump sum, price per type of service).

**Example 1 – Price Per Service:** Caterer agrees to prepare, deliver, and serve prepared food for Customer at a wedding dinner and reception. Caterer bills Customer \$200 for preparing the food, \$50 for transporting the food to the location of the dinner and reception, and \$300 for serving the food to the guests. The entire \$550 charge is subject to sales tax.

**Example 2 – Price Per Meal:** The catering department of Grocer is hired to provide a meal for 200 people at Company. The meal consists of prepared foods and soft drinks. Grocer charges Company \$15 per meal plus a \$3 per meal gratuity. The entire \$3,600 charged by Grocer to Company is subject to sales tax.

**Example 3 – Lump Sum:** Caterer agrees to provide, prepare, and serve enough prepared food and beverages, including soft drinks and alcoholic beverages for 200 people for a fee of \$5,000. The entire \$5,000 charge is subject to sales tax.

**Example 4 – Chef and Bartender Services:** Customer hires a chef to prepare food for an event. Customer also hires a bartender to prepare and serve alcoholic beverages and soft drinks at the event. Customer purchases the exempt food and food ingredients needed by the chef. Customer also purchases the alcoholic beverages and soft drinks. The chef's charges to Customer for the service of preparing the food and food ingredients are not taxable since the services are performed on exempt food and food ingredients. The charges by the bartender for preparing and serving the alcoholic beverages and soft drinks are taxable.

## (2) Purchases by caterers

### (a) Food and Food Ingredients

**Items Which May Be Purchased Without Sales and Use Tax and Without Issuing an Exemption Certificate** - Certain food and food ingredients a caterer purchases and resells may be purchased without sales and use tax because the items qualify for the exemption for food and food ingredients for human consumption. Examples of such items are cake mixes, meats, vegetables, and milk. See the list in Part 3.A.(1)(a) for additional information on these types of items.

A caterer is not required to provide the supplier of these types of items with an exemption certificate to purchase them without sales and use tax.

**Items For Which an Exemption Certificate Must Be Issued To Purchase Them Without Sales and Use Tax** - Certain food and food ingredients a caterer purchases and resells may only be purchased without sales and use tax if the caterer provides the supplier with an exemption certificate claiming resale. Examples of such items are beer, soft drinks, and candy. See the list in Part 3.A.(1)(b) for additional information on these types of items.

### (b) Preparation and Serving Equipment

**Non-Disposable Items** - Purchases of items used by caterers to prepare, transport, and serve food and food ingredients and beverages to their customers are subject to sales and use tax. Examples of such items include dishes, glasses, silverware, tablecloths, linen napkins, and pots and pans. However, if the customer is given the option of whether or not to have the caterer provide the dishes, glasses, silverware, tablecloths, linen napkins, etc., and a separate and optional charge is made by the caterer for those customers who choose to have the caterer provide these items (i.e., the caterer is leasing or

renting the items to the customer), the caterer may purchase these items without tax for resale if the caterer is using them solely for lease or rental purposes.

**Note:** Packaging and shipping materials for use in packing, packaging, or shipping meat or meat products are exempt from Wisconsin sales and use taxes.

Disposable Serving Items - Purchases of disposable items transferred to customers in conjunction with the sale of food, food ingredients, and beverages may be made without sales and use tax as purchases for resale. Examples include plastic and paper cups and plates, plastic eating utensils, paper napkins, straws, disposable place mats, and toothpicks. The caterer must provide the supplier of these items an exemption certificate claiming resale to purchase them without sales and use tax.

**D. Deli Sales and Purchases**

(1) Sales by delis

The tax treatment of sales of food and food ingredients and beverages for human consumption by a deli depends on whether the items are sold heated, or otherwise meet the definition of prepared food, candy, soft drink, or dietary supplement, as explained in Part 2. Table 2 below may be used to determine if an item being sold by the deli is subject to sales tax.

**Note:** To determine the proper sales and use tax treatment of the sale of deli items using Table 2, you must start at Question 1 in the table and stop at the first description that accurately describes the transaction in question and indicates Taxable or Not Taxable.

Table 2 assumes the following:

- The item being sold is not a bakery item. See Table 1 in Part 3.B.(1) titled Retail Sales of Bakery Products by Grocery Stores for the proper sales and use tax treatment of bakery items.
- The item being sold is a food or food ingredient that does not meet the definition of candy, dietary supplement, or soft drink as explained in Parts 2.A., B., and E.
- The retailer's primary North American Industry Classification System (NAICS) code is not manufacturing under subsector 311, except for bakeries and tortilla manufacturing under industry group 3118.
- The package does not contain a utensil placed in it by a person other than the retailer.

<b>Table 2</b>		
<b>Retail Sales of Deli Products by Grocery Stores</b>		
Instructions: Start at question 1 and work your way down this table. Stop when you get to the first "taxable" or "not taxable" answer that applies. See assumptions above.		
<b>1. Is the product sold heated?<sup>1</sup></b>	<b>Yes→</b>	Taxable
No ↓		
<b>2. Is the grocer's customary practice to physically give or hand a utensil to the customer?<sup>2, 3</sup></b>	<b>Yes→</b>	Taxable
No ↓		
<b>3. Are plates, bowls, glasses, or cups necessary to receive the product made available to the customer?</b>	<b>Yes→</b>	Taxable

No ↓		
4. Were the food or food ingredients previously heated by the retailer but sold in an unheated state?	Yes→	Go to Question 9
No ↓		
5. Were 2 or more ingredients mixed or combined by a retailer for sale as a single item?	No→	Go to Question 10
Yes ↓		
6. Is the product sold by volume or weight? <sup>4</sup>	Yes→	Go to Question 10
No ↓		
7. Is the product only sliced, repackaged, or pasteurized by a retailer?	Yes→	Go to Question 10
No ↓		
8. Is the product meat, fish, egg, or poultry or any food containing them in raw form that requires cooking by the consumer?	Yes→	Go to Question 10
	No→	Taxable
9. Were 2 or more ingredients mixed or combined by a retailer for sale as a single item and sold by volume or weight? <sup>4</sup>	No→	Taxable
Yes ↓		
10. Are the grocer's sales of prepared food greater than 75%? <sup>5</sup>	No→	Not Taxable
Yes ↓		
11. Does the product contain 4 or more servings packaged as one item and sold for a single price? <sup>6</sup>	Yes→	Not Taxable
No ↓		
12. Are utensils made available by the retailer to the purchaser? <sup>7</sup>	Yes→	Taxable
	No→	Not Taxable

Notes to Table 2:

1. Sold heated, as used in Table 2, means those foods sold at a temperature higher than the air temperature of the room or place where they are sold.
2. Utensils includes plates, bowls, knives, forks, spoons, glasses, cups, napkins, and straws.

3. If the grocer's customary practice is to physically give or hand the utensil to the customer, the sale by the grocer is taxable even though the customer may not receive the utensil.
4. Sold by volume or weight is explained in Part 2.D.(2)(c). Examples are provided.
5. To determine if the retailer's sales of prepared foods are more than 75% of its sales of foods and food ingredients, see Part 2.D.(4)(b).
6. For purposes of determining if 4 or more servings are packaged together for sale as a single item, the serving size is based on the label of each of the items sold and if there is no label, the serving size is based on the retailer's reasonable determination.
7. Utensils are made available to the customer if the customer can select a utensil at their own discretion, rather than having the retailer physically hand or give them the utensil.

#### Examples of Deli Sales

The following examples illustrate when an item sold by a deli is or is not prepared food and the answers presume that the item is not subject to tax as candy, dietary supplements, or soft drinks.

For each of the following examples, the following assumptions apply, unless explicitly stated otherwise:

- The package that contains the food does not contain a utensil placed in it by a person other than the retailer.
- The retailer's sales of prepared foods are 75% or less of its sales of all food and food ingredients as explained in Part 2.D.(4)(b).
- The meat, fish, egg, or poultry included does not require any further cooking by the consumer.

**Example 1 – Potato Salad, Unheated Ham, Cheese, and Fruit Salad Sold by Weight:** Deli sells potato salad (\$1.29/lb.), unheated ham (\$2.29/lb.), cheese (\$1.89/lb.), and fruit salad (\$1.19/lb.). Customer purchases one pound of each of these items. Each item is placed on a scale and the retailer prints a label containing the weight, price per pound, and total price of each package. Deli's customary practice when it sells these items by the pound is to not physically give or hand a napkin or other utensil to its customer. The sale of these items is not subject to sales tax because the items are sold unheated by weight, the retailer does not hand utensils to the customer, and plates, glasses, bowls, or cups are not necessary to receive the items.

**Example 2 – Potato Salad, Unheated Ham, Cheese, and Fruit Salad Sold as a Single Item:** Deli prepares and sells a serving of potato salad, unheated ham, cheese, and fruit salad as a single serving size meal for \$3.29. The unheated ham does not require further cooking by the consumer. Deli places each of the items in a clam shell container for Customer. The sale of the single serving size meal is taxable since it is prepared food. The single serving size meal is prepared food since it is made up of two or more ingredients that are mixed or combined by a retailer for sale as a single item and it is not: (a) sold unheated by volume or weight, (b) a bakery item, or (c) only sliced, repackaged, or pasteurized by a retailer. In addition, it does not require further cooking by the consumer to prevent food-borne illnesses.

**Example 3 – Heated Chicken:** Deli sells chickens roasted on a rotisserie. Customers purchase the roasted chickens while the chickens are still heated. The sale of a heated chicken is taxable since food sold heated is a prepared food.

**Example 4 – Sales from Self-Service Salad Bar:** Customer makes selections from Deli's salad bar and puts them into a clam shell container made available by Deli to its customers. The clam shell container is necessary for Customer to receive the foods and food ingredients. The sale of the salad is taxable since it is the sale of prepared food. It meets the definition of prepared food because plates, glasses, bowls, or cups

are necessary for Customer to receive the food and the plates, glasses, bowls, or cups are made available by Deli.

**Example 5 – Sales from Food Bar:** Customer makes selections from Deli's food bar and puts them into a container supplied by Deli. Deli's customary practice when it sells these items is to not physically give or hand a napkin or other utensil to its customer. The items selected by Customer include heated meats, potatoes, vegetables, and soup. Customer also selects a sealed carton of cold milk. The sale of the heated items to Customer is taxable as the sale of prepared food. These items are prepared food because they are sold heated and also because a plate, bowl, or cup is necessary for Customer to receive them. The sale of the sealed carton of milk to Customer is not taxable since the milk is not prepared food. The sealed carton of cold milk is not prepared food because (a) the carton of milk is not sold heated, (b) Deli's customary practice is not to hand a napkin, straw or other utensil to the purchaser of the carton of milk, and (c) cups are not necessary to receive the milk. **Note:** If the milk is sold from a dispenser and a cup is necessary for Customer to receive the milk, the sale of the milk is taxable as a sale of prepared food.

**Example 6 – Sales of Sandwiches Made by Deli:** Deli prepares and sells cold sandwiches. The sandwiches are ready to eat when packaged and are sold for \$3 each. The sandwiches prepared by Deli are prepared food because they are made up of two or more ingredients mixed or combined by a retailer (i.e., Deli) for sale as a single item and are not: (a) sold unheated by volume or weight, (b) a bakery item, and (c) only sliced, repackaged, or pasteurized by a retailer. In addition, the sandwiches do not contain eggs, fish, meat, or poultry or any food containing any of them in raw form that requires further cooking by the consumer to prevent food-borne illnesses.

**Example 7 – Sales of Sandwiches Made by Deli and Sold by the Pound:** Deli prepares and sells cold sandwiches. The sandwiches are made up of 2 or more ingredients mixed or combined by a retailer and sold as a single item. The cold sandwiches are also ready to eat when they are packaged and sold for \$4 per pound. The label shows the weight, price per pound, and the calculated price of the sandwich. Deli's customary practice when selling the cold sandwiches is to not physically give or hand napkins or other utensils to customers that purchase the sandwiches. In addition, plates or bowls are not necessary for the customers to receive the sandwiches. Although the cold sandwiches are made up of 2 or more ingredients mixed or combined by a retailer for sale as a single item, the cold sandwiches sold by Deli are not prepared food since they are sold unheated by weight.

**Example 8 – Sales of Cheese and Meat Trays:** Deli sells meat and cheese trays. Deli prepares the meat and cheese trays by slicing various types of meats and cheeses and placing them on a platter. The meat and cheese trays are not sold heated, and Deli's customary practice when selling meat and cheese trays is to not physically give or hand napkins or other utensils to the customer. The meat and cheese trays are not prepared food since the meat and cheese are only sliced and repackaged and (a) are not sold heated, (b) Deli's customary practice is to not physically give or hand a napkin or other utensil to the customer with the purchase of a meat and cheese tray, and (c) plates, glasses, bowls, or cups are not necessary to receive the food.

**Example 9 – Sales of Fresh Fruit Trays:** Deli sells fresh fruit trays. Deli prepares the fresh fruit trays by selecting various fruits, washing them, slicing them into bite size pieces, and placing them on a platter. The fresh fruit trays are not sold heated and Deli's customary practice when selling fresh fruit trays is to not physically give or hand napkins or other utensils to the customer. The fresh fruit trays are not prepared food since the fruit is only sliced and repackaged and (a) they are not sold heated, (b) Deli's customary practice is to not physically give or hand a napkin or other utensil to the customer with the purchase of a fresh fruit tray, and (c) plates, glasses, bowls, or cups are not necessary to receive the food.

## (2) Purchases by delis

### (a) Food, Food Ingredients, and Beverages

**Exemption Certificate Not Required** - Items that qualify for the exemption for food and food ingredients for human consumption that a deli purchases and resells may be purchased by the deli without issuing an exemption certificate. Examples of such items are meat, cheese, fruits, and vegetables. The list in Part 3.A.(1)(a) provides examples of these items.

A deli is not required to provide the supplier of these types of items with an exemption certificate to purchase them without Wisconsin sales and use tax.

**Exemption Certificate Required** - Certain food and food ingredients a deli purchases and resells may only be purchased without sales and use tax if the deli provides the supplier with an exemption certificate claiming resale. Examples of such items are candy and soft drinks. See the list in Part 3.A.(1)(b) for examples of items that may be purchased by a deli without sales and use tax if an exemption certificate claiming resale is provided to the supplier.

### (b) Preparation, Storage, and Serving Equipment

**Non-Disposable Items** - Purchases of items used by delis to prepare, store, and serve food, food ingredients, and beverages to their customers are subject to sales and use tax. Examples of such items include dishes, pots and pans, utensils, scales, and display cases.

**Disposable Serving Items** - Purchases of disposable items transferred to customers in conjunction with the sale of food, food ingredients, and beverages, may be made without sales and use tax as purchases for resale. Examples include plastic and paper cups and plates, plastic eating utensils, paper napkins, straws, disposable place mats, and toothpicks. The deli must provide the supplier of these items an exemption certificate claiming resale to purchase them without sales and use tax.

**Example – Disposable Serving Items:** Deli provides paper plates and plastic cups, forks, and knives to its customers who purchase meals. Deli must provide the supplier of these items with an exemption certificate claiming resale to purchase them without sales and use tax.

### (c) Containers and Packaging Materials - A deli's purchases of containers and other packaging materials used to transfer deli items sold to customers are not taxable. The containers may or may not be returnable. To claim this exemption, the deli must provide its supplier with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)).

**Note:** Packaging and shipping materials for use in packing, packaging, or shipping meat or meat products are exempt from Wisconsin sales and use taxes.

Examples of items purchased by delis that qualify for the container exemption include:

- Bags used to package meat and cheese
- Containers used to transfer potato salad and fruit salad to customers
- Dividers used to separate the food sections within a container
- Styrofoam trays used to transfer meals to customers
- Tape and rubber bands used to keep containers closed
- Cups used to transfer beverages sold to customers

Examples of items that do not qualify for the exemption for containers and packaging and shipping materials include:

- Wrapping equipment such as tape dispensers, paper holders, and staplers
- Price tags

## E. Flower Shop Sales and Purchases

### (1) Sales by flower shops

Flowers, plants, floral arrangements, and similar items sold by a florist are subject to sales and use tax.

Florist, as used in this publication, means a business that prepares and sells cut flowers, potted plants, and floral arrangements. This includes a flower or garden shop in a grocery store. A florist as used in this publication does not include a person who sells cut flowers, floral arrangements, and potted plants primarily by mail or via the Internet.

**Example:** A florist sells a customer one dozen roses arranged in a vase for \$50. The \$50 charge by the florist is taxable.

If a florist sells and delivers flowers, plants, floral arrangements, etc., the florist's entire charge, including the delivery fee, is subject to sales tax.

**Example:** A Wisconsin florist receives an order from a customer to deliver a floral arrangement to another person located in Wisconsin. The florist charges the customer \$30 for the floral arrangement plus a delivery charge of \$5. The entire \$35 charge is taxable.

#### Wire Delivery Services

A Wisconsin florist taking an order from a customer and transmitting the delivery instructions for that order to a second florist, should charge Wisconsin sales tax on its total sales, including any additional charge for the wire service, based on the location where the Wisconsin florist took the order. This is true whether the Wisconsin florist transmits the order to a second florist located in or outside of Wisconsin.

**Example 1:** A florist, located in Madison, WI, receives an order from a customer to direct a second florist, located in LaCrosse, WI, to deliver a floral arrangement, which sells for \$30, to a person located in LaCrosse. The Madison florist is liable for the Wisconsin sales tax on the \$30 it receives from the sale of the floral arrangement. The LaCrosse florist should not collect sales tax on this transaction.

**Example 2:** A florist, located in DeForest, WI, receives an order from a customer to direct a second florist, located in Phoenix, AZ, to deliver a floral arrangement, which sells for \$50, to a person located in Phoenix. The DeForest florist is liable for the Wisconsin sales tax on the \$50 received for this order.

A Wisconsin florist receiving delivery instructions for the delivery of flowers, plants, floral arrangements, etc. from a second florist, regardless if the second florist is located in Wisconsin, should not collect Wisconsin sales tax on these transactions.

**Example 1:** A Madison, WI florist receives delivery instructions from a second florist, located in Superior, WI, to deliver a floral arrangement, which sells for \$30, to a person located in Madison. Since the Madison florist received its instructions from the Superior florist, the Madison florist should not collect sales tax on this transaction. The Superior florist is liable for Wisconsin sales tax on the \$30 charge.

**Example 2:** A Milwaukee, WI florist receives delivery instructions from a second florist, located in Iowa, directing the Milwaukee florist to deliver a Christmas wreath, which sells for \$50, to a business located in



Milwaukee. Since the Milwaukee florist received its instructions from a second florist, the Milwaukee florist should not collect sales tax on this transaction. No Wisconsin sales tax is due on this transaction.

(2) Purchases by flower shops

A florist may purchase the following items without Wisconsin sales and use tax:

- Flowers, vases, balloons, ribbons, and other items that it is going to resell to its customers
- Packaging materials and supplies such as wrapping paper, plastic bags, string, tape, etc., used to transfer flowers, plants, floral arrangements, and other items sold to its customers

The florist must provide the supplier of these items with an exemption certificate claiming resale.

A florist must pay Wisconsin sales and use tax on purchases of items such as:

- Equipment, including cash registers, coolers, display racks, scissors, tape dispensers, staplers, and similar items the florist stores, uses, or consumes in Wisconsin
- Price tags
- Advertising materials, except catalogs, distributed in Wisconsin
- Other taxable products not being resold and transferred to customers

## F. Lottery Tickets

Sales of lottery tickets and the fee the grocer receives from the lottery commission are not taxable.

Purchases of equipment and supplies used to store and dispense lottery tickets are taxable.

## G. Meat Department Sales and Purchases

(1) Sales by meat departments

Meat and meat products, fish and fish products, seafood and seafood products, and poultry and poultry products, sold for human consumption, are not subject to sales tax. However, if any of these items are sold in a heated condition or otherwise meet the definition of prepared food contained in Part 2.D., they are taxable.

**Example 1 – Sale of Uncooked Chicken:** Grocer sells uncooked chicken to Customer. The sale of the chicken is not taxable.

**Example 2 – Sale of Heated Chicken:** Grocer prepares heated chicken. Customer purchases eight pieces of the chicken while it is still hot. The sale is taxable as the sale of a prepared food.

**Note:** For additional information on sales of prepared food see Parts 2.D. and 3.D.

(2) Purchases by meat departments

Some meat departments in grocery stores are manufacturers while other meat departments are not considered to be manufacturers. The determination of whether or not a meat department qualifies as a manufacturer and is entitled to certain sales and use tax exemptions depends on the specific facts and circumstances surrounding each meat department's activities.

For additional information for meat processors, see the tax release titled "[Meat Processors May Qualify as Manufacturers](#)," published in *Wisconsin Tax Bulletin* 112 (January 1999), on pages 36 to 38.

(a) Meat department NOT engaged in manufacturing

Purchases of equipment and supplies used in meat departments not engaged in manufacturing are taxable. Examples include:

- Meat cutters and saws
- Mixers and slicers
- Vacuum pack machines
- Scales
- Label printers and scale printers
- Grinders
- Wrapping equipment
- Cooling units
- Display cases
- Cleaning compounds and solvents used to clean equipment, walls, and floors
- Gloves and other wearing apparel used in the meat department

(b) Meat department engaged in manufacturing

Certain processes performed by meat departments are manufacturing. Listed below are examples of three products produced by meat departments and the steps involved in making these products. The processes followed in producing the products in these examples are manufacturing processes. Processes similar to those described in these examples may or may not be considered to be manufacturing.

The manufacturing process for each of the products in the examples below, begins with the removal of the raw materials from the raw materials storage area and generally ends at the point the finished product is first stored or displayed for sale. The manufacturing process also includes the packaging of the product if the product has not been stored or displayed for sale prior to it being packaged.

**Machinery and Equipment:** If machinery and equipment used by the meat department is used exclusively and directly in any of the three manufacturing processes described below, the machinery and equipment will qualify for exemption from sales and use tax. The grocer should provide the vendor of this machinery and equipment with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)).

**Supplies:** Supplies becoming an ingredient or component part of the meat products or that are used exclusively and directly by a manufacturer in manufacturing and consumed, destroyed, or lose their identity in the manufacture of the meat products destined for sale, also qualify for exemption from sales and use tax. The grocer should provide the vendor of these supplies with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)).

## Examples of Manufacturing Processes in Meat Departments

### **Example 1 - Bratwurst (Fresh) (No smoking required)**

Step 1 – Raw meat is delivered in boxes. The meat is frozen when it arrives and is put into a holding cooler to maintain the proper temperature to prevent spoiling.

Each box of meat contains a large chunk of beef. Various beef products can be made depending on the cut of beef in the box. For example, a box may contain a chuck cut. The chuck cut is then cut into various products such as chuck eye roasts, top blade steaks, arm pot roast, etc.

Step 2 – The meat is transported from the holding cooler, where it was placed upon arrival, to the grinder. The grinder is used to grind the meat into the desired texture.

Step 3 – After the meat is ground, it is weighed. Weighing is necessary to determine the proper amount of spices to be added to obtain the desired flavor.

Step 4 – After being weighed, the meat is placed in a mixer. Spices are added and the mixer mixes the meat and spices together.

Step 5 – After the product is mixed, it is moved to the stuffer. The stuffer is used to force the meat into the desired casings.

Step 6 – Once the stuffing process is completed, the product is placed into the package for which it is offered for sale to the customer. The product is vacuum packed assuring the product is in an airtight container.

Step 7 – The product is placed in a cooler until it is needed in the display case.

### **Example 2 – Smoked wieners**

Steps 1 through 5 are the same as for the Bratwurst (Fresh), explained above.

Step 6 – After the product is stuffed into the desired casings, it is placed on a rack. When the rack is full, the rack is placed in the smoker. The smoker adds the desired smoked flavor to the product.

Step 7 – After the product is smoked, it is placed in a cooler until the temperature of the product reaches the desired level.

Step 8 – Once the temperature of the product reaches the desired level, it is taken out of the cooler and packaged into the package it is offered for sale to the customer. The product is vacuum packed assuring the product is in an air-tight container.

Step 9 – The finished product is placed in a cooler until it is sold to customers.

### **Example 3 – Steaks and roasts**

Step 1 – Large chunks of raw meat are delivered in boxes. The meat is frozen when it arrives and is put into a cooler to maintain the proper temperature to prevent spoiling.

Each box of meat contains a large chunk of beef. Various beef products can be made depending on the cut of beef in the box. For example, a box may contain a short loin cut. The short loin cut is then cut into various products such as top sirloin, T bone, porterhouse and tenderloin steaks. If the box contains a chuck cut, the chuck cut is then cut into various products such as chuck eye roasts, top blade steaks, pot roasts, etc.

Step 2 – The appropriate box of meat (depending on the end product desired), is transported from the holding cooler where it was placed upon arrival to the store, to the saw. The saw is used to cut the large chunks of meat that arrived at the store, into the smaller individual products.

Step 3 – After being cut, the smaller cuts of meat are placed on trim tables. At the trim tables, excess fat and unwanted portions of the meat are removed to get the product into the condition for sale to the customer.

Step 4 – Once the product has been trimmed, it is placed onto a packaging tray.

Step 5 – After the product is on the packaging tray, it is sent through the auto wrapper, which is a machine that wraps the plastic around the product to seal it.

Step 6 – Once the product is wrapped, it is placed on a metal tray. Once the metal tray is full, the product is transported to the cooler where it is held until needed for retail or wholesale sale to customers.

(c) Meat and meat products

Purchases of meat and meat products, fish and fish products, seafood and seafood products, poultry and poultry products, and other items the meat department resells, may be purchased without sales and use tax. The list in Part 3.A.(1)(a) contains additional information on types of items which qualify for the exemption for food and food ingredients for human consumption.

If the items being purchased qualify for the exemption for food and food ingredients for human consumption, the meat department does not need to provide the supplier with an exemption certificate to purchase them without sales and use tax.

However, if the items being purchased by the meat department do not qualify for the exemption for food and food ingredients for human consumption, the meat department must provide the supplier with an exemption certificate claiming resale (or other appropriate exemption), to purchase these types of items without sales and use tax.

(d) Packaging and shipping materials:

Containers, bags, boxes, and other packaging and shipping materials used to transfer merchandise to customers are not subject to sales and use tax. A meat department must provide its supplier with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)) to purchase these types of items without paying sales and use tax.

In addition, a meat department may also purchase meat casings, wrapping paper, tape, containers, bags, and boxes used in packaging meat and meat products without paying sales and use tax, regardless of whether such items are used to transfer merchandise to customers. The meat department must provide its supplier of these items with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)).

## H. Money Orders and Check Cashing

Sales of money orders and fees received from check cashing services are not subject to sales tax.

**Example:** Customer purchases a \$100 money order from Grocer for \$101. The \$1 service fee Grocer receives is not taxable.

Purchases of blank money order forms by a grocer which are used or transferred to customers in conjunction with the selling, performing, or furnishing of a service are taxable.

**Example:** Grocer purchases 200 blank money order checks for \$40. The checks are transferred to customers in conjunction with the customer's purchase of a money order. Grocer's purchases of blank money orders are taxable.

## I. Photography Sales and Purchases

### (1) Sales of photography-related items

Taxable sales include:

- Sales of undeveloped film, camera batteries, flash bulbs, and other photographic supplies and accessories
- Developing, processing, printing, and enlarging film, photographs, and slides
- Sales of CDs that contain the customer's pictures
- Sales of specified digital goods (See [Publication 240](#), *Digital Goods*, for additional information)

### (2) Purchases of photography-related items

Purchases which may be made without sales and use tax include:

- Undeveloped film, camera batteries, flash bulbs, and other photographic supplies and accessories resold to customers
- Developing, processing, printing, and enlarging services resold to customers
- Machinery and equipment used exclusively and directly in developing exposed film into negatives and printing the completed photographs
- Chemicals and other supplies consumed, destroyed or losing its identity in the developing of the exposed film into negatives and printing the completed photographs

The grocer must provide the supplier of these items and services with an exemption certificate to purchase them without sales and use tax.

**Example 1 – Film Developing (Purchase and Sale):** Grocer receives two rolls of film from a customer to be developed into photographs. Grocer charges \$10 for the service. Grocer sends the film received from its customer to Developer. Grocer is charged \$5 by Developer for the developing services. Grocer provides the photographs to its customer. The \$10 charge by Grocer to its customer is subject to sales tax. The \$5 charge by Developer to Grocer is not taxable because Grocer is reselling the service. Grocer must provide Developer with an exemption certificate claiming resale to purchase the developing service without sales and use tax.

**Example 2 – Film Developing Equipment:** Grocer operates a grocery store. Included in the grocery store is a photo department. The photo department provides photofinishing services (i.e., develops exposed film into color photographs). Grocer's purchases of the machines and equipment from Supplier used exclusively and directly in developing the exposed film and printing the photographs are exempt from sales and use tax. Grocer must provide Supplier with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [Form S-211-SST](#)) to purchase the machinery and equipment without paying sales and use tax.

## J. Vending Machine Sales and Purchases

### (1) Sales through vending machines

#### (a) Exempt vending machine sales

Sales of food, food ingredients, and beverages from vending machines are subject to sales or use tax if the item being sold meets the definition of candy, dietary supplement, soft drink, or prepared food.

Examples of exempt sales from vending machines, assuming the items do not meet the definition of candy, dietary supplement, soft drink, or prepared food, include:

- Beverages that contain milk or milk products
- Cookies
- Donuts
- Fruit
- Granola bars that contain flour
- Ice tea that is not sweetened
- Juices that are more than 50% fruit or vegetable juice by volume
- Milk
- Peanuts that are plain or just salted
- Potato chips and corn chips
- Pretzels
- Raisins that are not sweetened
- Water that is not sweetened
- Yogurt

See Part 3.A.(1)(a) for more examples.

**Example:** Grocer sells fruit, milk, and potato chips through vending machines located in the employee break room. Such sales are exempt from sales tax.

#### (b) Taxable vending machine sales

Sales of the following items from vending machines are taxable:

- Soft drinks
- Candy and chewing gum
- Cigarettes and other tobacco products
- Heated foods, heated beverages, and other prepared foods
- Dietary supplements
- Fermented malt beverages and intoxicating liquors

- Photocopies
- Non-food items, except newspapers

See Part 3.A.(1)(b) for examples of non-food items.

(c) Who is responsible for tax?

If the grocer controls or is the operator of the machine, the grocer is responsible for reporting the sales tax on taxable sales from the vending machines. A grocer is considered to have control over the vending machine or be the operator of the vending machine if the grocer has the right to access the machine for stocking, restocking, or removing the money or if the grocer owns the items being sold through the vending machine.

If a grocer receives commissions based on the vending machine sales from a third-party who controls the vending machine, the commissions received by the grocer are not subject to sales tax. The third-party is responsible for reporting the Wisconsin sales tax on the sales from the vending machine.

**Example 1 – Grocer Controls Machine:** Grocer owns a vending machine which dispenses candy. The grocer has the right to access the machine, stock the machine, and remove the money from the machine. The total sales by Grocer through the vending machine are taxable.

**Example 2 – Grocer Receives Commission:** Grocer receives a commission from Vending Company equal to 50% of the total sales from a soft drink vending machine in return for allowing Vending Company's vending machine to be placed in his store. Grocer is not responsible for stocking, restocking, or removing the money from the vending machine. The total sales from the vending machine are \$1,000. Grocer receives a commission of \$500. The \$500 commission received by Grocer is not subject to sales or use tax. However, Vending Company's total sales from the vending machine of \$1,000 are taxable and must be reported on Vending Company's sales and use tax return.

(2) Computing taxable sales price from vending machines

The method of computing taxable sales price from a vending machine depends on whether or not the operator conspicuously posts a sign indicating that the prices of the items in the machine include sales tax.

**Sign Conspicuously Posted** - The operator must report the total sales from the vending machine, including sales tax, on line 1 of his or her sales and use tax return. If the operator conspicuously posts a sign informing customers that the prices include sales tax, the operator may claim a deduction on its sales and use tax return for the sales tax included in line 1.

**Sign Not Conspicuously Posted** - The operator must report the total sales from the vending machine on line 1 of his or her sales and use tax return. If the operator does not conspicuously post a sign indicating that the prices include sales tax, the operator **may not** claim a deduction on its sales and use tax return for any sales tax on these sales.

**Example:** Grocer operates two soft drink vending machines and conspicuously posts a sign indicating the prices of the items in the vending machines include the 5% Wisconsin sales tax. The total sales from the machines are \$1,000. The grocer must report the \$1,000 on line 1 of his or her sales and use tax return. Since the grocer conspicuously posted a sign indicating that the prices included sales tax, the grocer may also claim a deduction of \$47.62 on its sales and use tax return for sales tax included in the prices of the items sold through the vending machines. The \$47.62 is computed as follows: \$1,000 (total sales) divided

by  $1.05$  (1 plus tax rate) =  $\$952.38$  (taxable sales price);  $\$1,000 - \$952.38 = \$47.62$  (tax included in total sales).

**Note:** If the grocer in the example above had not conspicuously posted a sign indicating the prices included sales tax, the grocer would still report the  $\$1,000$  on line 1 of the sales and use tax return, but the grocer **may not** claim a deduction on its sales and use tax return for any sales tax included and would report taxable sales of  $\$1,000$  instead of  $\$952.38$ .

### (3) Purchases for vending machines

A grocer's purchases of items resold through vending machines may be purchased without sales and use tax. Depending on the type of item being purchased, the grocer may need to provide the supplier with an exemption certificate claiming resale to purchase these items without sales and use tax. See the list in Part 3.A.(1)(b) for information on when an exemption certificate claiming resale must be issued to purchase items without Wisconsin sales and use tax.

A grocer's purchase of vending machines and repairs and parts for the machines are subject to sales and use tax.

## K. Video Department Rentals, Sales, and Purchases

### (1) Rentals and sales by video departments

Taxable sales include:

- Rentals and sales of DVDs, video games, DVD players, video game machines, and related accessories.
- Late fees, and other service charges related to the sale or rental of DVDs and video games.

### (2) Purchases by video departments

**Property Rented** - Purchases of video games, video game machines, DVDs, DVD players, lubricants, and repair parts and services for DVD players and video game machines used solely for rental purposes are not subject to sales or use tax. Items used solely for rental purposes and the repairs of those items may be purchased without sales and use tax as purchases for resale. The video department must provide the supplier with a properly completed exemption certificate claiming resale to purchase these items without paying Wisconsin sales or use tax.

**Example:** Video Department has a DVD player that is used solely for rental purposes. Video Department pays a repair company  $\$100$  to repair the DVD player. The DVD player repair service is not taxable because it is a purchase for resale. Video Department must provide the repair company with an exemption certificate claiming resale to purchase the repair service without Wisconsin sales and use tax.

**Products Used in Video Department** - Purchases of any taxable products used in the video department (e.g., television sets, VCRs, DVD players, shelving, etc.) are taxable.

**Example:** Video Department uses a television and DVD player to play DVDs in the store. The television and DVD player are not rented out to customers. Video Department owes sales or use tax on the purchase price of the DVD player and television.

**Products Used Personally** - If videos, DVDs, and DVD players are purchased by a video department and are used part of the time in the business and rented out part of the time, the purchases of the videos, DVDs,



and DVD players, are subject to sales and use tax. The video department's rental receipts for the DVDs and DVD players are also taxable.

Containers for DVDs, DVD players, video games, and video game machines – A video department's purchases of containers, boxes, bags, labels, and other packaging and shipping materials used to transfer DVDs, games, DVD players, and video game machines to the video department's customers are exempt from sales and use tax.

**Example:** Grocer purchases 200 plastic DVD containers used to protect the DVDs rented to Grocer's customers. Grocer may purchase the containers without paying sales and use tax. Grocer must provide the supplier of the DVD containers with a properly completed exemption certificate claiming resale to purchase the containers without paying Wisconsin sales and use tax.

**Note:** If the containers are used to transfer items **not** sold or rented to customers, the containers may not be purchased without sales and use tax.

## L. Video Games and Amusement Devices

### (1) Total sales from video games and amusement devices

Total sales from video games and amusement devices, such as pinball machines and mechanical rides, are subject to sales tax.

If the grocer controls or is the operator of the machine, the grocer is responsible for reporting the sales tax on its total sales from the video games and amusement devices. A grocer is considered to have control over or be the operator of the video games and amusement devices if the grocer has the right to remove the money or if the grocer owns the video games and amusement devices.

If a grocer receives commissions based on the video game and amusement device sales from a third party who controls the video game or amusement device machine, the commissions received by the grocer are not subject to sales tax. The third party is responsible for reporting the Wisconsin sales tax on the **total sales** from the video games and amusement devices.

### (2) Computing taxable sales price from video games and amusement devices

The method of computing taxable sales price from video machines and amusement devices depends on whether or not the grocer conspicuously posts a sign indicating that the price to play the machine or device includes sales tax.

**Sign Conspicuously Posted** - The operator must report the total sales from the video games and amusement devices, including the sales tax, on line 1 of his or her sales and use tax return. If the operator conspicuously posts a sign informing customers that the price includes sales tax, the operator may also claim a deduction on his or her sales and use tax return for the sales tax included in line 1.

**Sign Not Conspicuously Posted** - The operator must report the total sales from the video games and amusement devices on line 1 of his or her sales and use tax return. If the operator does not conspicuously post a sign indicating that the price includes sales tax, the operator **may not** claim a deduction on his or her sales and use tax return for any sales tax on these sales.

**Example:** Grocer operates a video game and conspicuously posts a sign indicating that the price includes the 5% Wisconsin sales tax. The total sales from the game are \$500. Grocer must report the \$500 on line 1 of his sales and use tax return. Since Grocer conspicuously posted a sign indicating that the price included

sales tax, Grocer may also claim a deduction of \$23.81 on his sales and use tax return for sales tax included in the price to play the video game. The \$23.81 is computed as follows: \$500 (total sales) divided by 1.05 (1 plus tax rate) = \$476.19 (taxable sales price); \$500 - \$476.19 = \$23.81 (tax included in total sales).

**Note:** If the grocer in the above example had not conspicuously posted a sign indicating the prices included sales tax, the grocer would still report the \$500 on line 1 of his or her sales and use tax return, but the grocer may not claim a deduction on its sales and use tax return for any sales tax included and would report taxable sales of \$500 instead of \$476.19.

(3) Purchases of video games and amusement devices

A grocer's purchases of video games and amusement devices and the repairs and parts for the machines are taxable.

## 4. OTHER RELATED ITEMS

### A. Discounts, Coupons, Rebates, and SNAP (Food Stamps)

Are discounts, coupons, and rebates subject to Wisconsin sales tax? The answer depends on whether the grocer or the manufacturer offers the discount, coupon, or rebate and whether the item being sold is taxable.

(1) Manufacturer's discounts, coupons, and rebates

(a) Manufacturer's Discounts, Coupons, and Rebates - Taxable Items:

Payments received by a grocer from a manufacturer for coupons issued by the manufacturer, redeemed by the grocer, and which entitle the customer to a free or reduced price for a taxable item, are part of the sales price of the taxable item and are subject to sales tax. A grocer may charge the customer the sales tax due. However, coupon handling fees paid by the manufacturer to the grocer are not taxable.

**Example 1 – Manufacturer's Coupon for Free Candy Bar:** Customer receives a manufacturer's coupon for a free candy bar, which normally sells for 75¢. Customer gives Grocer the coupon and receives a candy bar. Grocer then provides the coupon to Manufacturer, who pays Grocer 75¢ plus a 10¢ handling fee for the coupon. Since the candy bar is a taxable item, Grocer reports the 75¢ as taxable sales. Grocer may charge Customer the sales tax due on the 75¢. The 10¢ handling fee is not taxable.

**Example 2 – Manufacturer's Coupon for Reduced Price Laundry Soap:** Customer purchases a box of laundry detergent which Grocer sells for \$4. Customer presents to Grocer, a coupon from Manufacturer which entitles Customer to 50¢ off the \$4 selling price of the detergent. Grocer provides the coupon to Manufacturer who pays Grocer 50¢ plus a 10¢ handling fee for each coupon redeemed. The amount subject to sales tax is \$4, which is the \$3.50 received from Customer plus the 50¢ received from Manufacturer. Grocer may charge Customer sales tax on the entire \$4. However, the 10¢ handling fee is not taxable.

(b) Manufacturer's Coupons and Rebates - Nontaxable Items:

Payments received by a grocer from a manufacturer for coupons issued by the manufacturer, redeemed by the grocer and which entitle the customer to a free or reduced price for a nontaxable item, are not taxable. In addition, the coupon handling fees paid by the manufacturer to the grocer for these items are also not taxable.

**Example 1 – Manufacturer's Coupon for Free Orange Juice:** Customer receives a manufacturer's coupon which entitles Customer to a free gallon of 100% pure orange juice. Customer gives Grocer the coupon and receives the orange juice, which usually sells for \$2.75. Grocer provides the coupon to Manufacturer who pays Grocer \$2.75 plus a 50¢ handling fee. Since orange juice is a nontaxable item, the \$2.75 received from Manufacturer is not taxable. The 50¢ handling fee is also not subject to sales tax.

**Example 2 – Manufacturer's Coupon for Reduced Price Coffee:** Customer purchases a can of coffee beans which Grocer usually sells for \$10. Customer presents a coupon from Manufacturer which entitles Customer to \$1 off the selling price of the coffee beans. Grocer provides the coupon to Manufacturer who pays Grocer \$1 plus a 25¢ handling fee for each coupon redeemed. The \$9 received from Customer is not subject to sales tax because coffee beans are not taxable. The \$1 received from Manufacturer is not taxable because the amount relates to a nontaxable item (coffee beans). The 25¢ handling fee is also not taxable.

## (2) Grocer's discounts and coupons

Discounts and coupons offered by grocers and that are not reimbursed by a third party, are not subject to sales tax. This includes discounts offered by grocers where the grocer matches a discount offered by a manufacturer (e.g., double coupon days). No sales tax should be charged on the discounts and coupons offered by grocers. See Part 4.A.(1) for the treatment of manufacturer's coupons.

### (a) Grocer's Discounts and Coupons - Taxable Items:

The following examples describe the tax treatment of discounts and coupons offered by grocers on taxable items.

**Example 1 – Grocer's Coupon Offered for Reduced Price Item:** Grocer offers a coupon which entitles customers to 50¢ off the purchase price of a 12 pack of soft drinks. The 12 pack usually sells for \$4.50. Customer provides Grocer with the coupon when purchasing the soft drinks along with \$4. Grocer's total sales subject to sales tax from the soft drinks are \$4 (\$4.50 - 50¢ coupon = \$4). Grocer should charge Customer sales tax on the \$4.

**Example 2 – Grocer's Coupon Offered for Free Items - No Purchase Required:** Grocer offers a coupon which entitles a customer to a free package of napkins. Customer presents the coupon to Grocer. Since Grocer did not have any receipts with respect to the napkins, no sales tax is due on the transfer of the napkins to Customer. However, Grocer is liable for Wisconsin sales and use tax on Grocer's purchase price (cost) of the napkins. Grocer should not charge Customer any tax on these napkins.

**Example 3 – Grocer's Coupon Offered for Free Taxable Item - Purchase of Taxable Item Also Required:** Grocer offers a coupon which entitles a customer to free napkins with the purchase of paper plates (a taxable item). Customer purchases the paper plates and receives the free napkins. Since the napkins are being provided free of charge to Customer, Grocer is required to pay Wisconsin sales or use tax on its purchase price of the napkins.

**Example 4 – Grocer's Coupon Offered for Free Taxable Item - Purchase of Nontaxable Item Required:** Grocer offers a coupon which entitles a customer to a free package of napkins with the purchase of frozen chicken (a nontaxable item). The napkins cost the grocer 60¢ per package. Customer purchases the frozen chicken and receives the free napkins. Since the napkins are being provided free of charge to Customer, Grocer is required to pay Wisconsin sales or use tax on its purchase price of the napkins.

**Example 5 – Grocer's Coupon Offered for Free Taxable Item - Purchase of Both Taxable and Nontaxable Items Also Required:** Grocer offers a coupon which entitles a customer to free napkins with the purchase of \$20 or more of other items in the grocery store. The napkins cost the grocer 60¢ and normally sell for \$1. The \$20 or more worth of items being purchased by a customer is made up of different taxable and nontaxable items. Customer purchases \$15 of taxable items and \$10 of nontaxable items and receives the free napkins. Since the napkins are being provided free of charge to Customer, Grocer is required to pay Wisconsin sales or use tax on its purchase of the napkins.

(b) Grocer's Discounts and Coupons - Nontaxable Items:

Discounts and coupons offered by grocers on nontaxable items do not affect the amount of sales subject to sales tax.

**Example 1 – Grocer's Coupon for Free Potato Chips:** Grocer offers a coupon for a free bag of potato chips. Customer presents the coupon to Grocer and receives the potato chips. Grocer does not report any sales subject to sales tax on this transaction. In addition, since potato chips are an exempt food or food ingredient, Grocer is not liable for sales or use tax on its purchase price of the potato chips.

**Example 2 – Grocer's Coupon for Reduced Price Soup:** Grocer offers a coupon which entitles customers to 25¢ off the purchase price of a can of soup that usually sells for \$1. Customer presents the coupon to Grocer and pays 75¢ for a can of soup. Since cans of soup are not taxable, the 75¢ received from Customer is not subject to sales tax.

(3) SNAP (EBT, Food Stamps)

A grocer's receipts from SNAP, formerly known as the federal food stamp program, are not subject to sales tax even if the items purchased by the consumer are not exempt food or food ingredients. The recipient is provided with an EBT card which they can use to make purchases from an EBT SNAP account. A sale using an EBT card is considered to be made to the federal government.

**Example 1 – Purchase With EBT:** Customer purchases a 12 pack of soft drinks for \$4.00. Customer pays for the 12 pack using his EBT card. The sale is exempt from tax since it is considered to be a sale to the federal government.

**Example 2 – Purchase With Manufacturer's Coupon, No EBT:** Customer purchases a 12 pack of soft drinks for \$4.00. Customer presents a manufacturer's coupon for \$1.00 off the \$4.00 purchase price. Customer pays for the 12 pack using \$3.00 cash along with the \$1.00 off manufacturer's coupon. The entire \$4.00 is subject to sales or use tax. The \$3.00 received from the customer and the \$1.00 received from the manufacturer are all part of the sales price of the 12 pack of the soft drinks.

**Example 3 – Purchase With Manufacturer's Coupon and EBT:** Customer purchases a 12 pack of soft drinks for \$4.00. Customer presents a manufacturer's coupon for \$1.00 off the \$4.00 purchase price. Customer pays for the 12 pack using her EBT card for \$3.00 along with the \$1.00 off manufacturer's coupon. Only the \$1.00 reimbursement the retailer receives from the manufacturer is subject to sales or use tax. The \$3.00 from the customer uses from the EBT SNAP account to purchase the soft drinks is exempt from sales or use tax since this is considered to be a sale to the federal government.

## B. Returns and Allowances

If an item is sold and Wisconsin sales tax is collected on the sale of the item, and that item is later returned, a credit may be claimed on the sales and use tax return covering the period in which the return or allowance is provided to the customer.

**Example – Taxable Item Returned:** In June 2010, Customer purchases paper towels from Grocer. Grocer charges Customer \$2.10 (\$2 plus \$.10 of sales tax) for the paper towels and reports the \$2 of taxable sales on its June 2010 sales and use tax return. Customer returns the paper towels to Grocer in July 2010 and receives a \$2.10 refund. Grocer may claim a credit of \$2 on its July 2010 sales and use tax return for the refund provided to Customer with respect to the paper towels Customer returned.

If an item is sold and Wisconsin sales tax is not collected on the sale of the item and that item is later returned, no credit may be claimed on the sales and use tax return covering the period in which the return or allowance is provided to the customer.

**Example – Exempt Item Returned:** Customer purchases bread (exempt item) from Grocer. Grocer charges Customer \$1 for the bread. Customer later returns the bread to Grocer and receives a \$1 refund. Since the \$1 sale of the bread was not taxable, Grocer may not claim a credit of \$1 on its sales and use tax return for the refund provided to Customer with respect to the bread Customer returned.

### C. Products Given to Customers for Free

**Exempt Products:** When a grocer gives products to its customers for free and the free product is exempt from sales and use tax (e.g., crackers), no tax is due from the grocer or the customer on the product.

**Example – Exempt Product Given Away:** Grocer provides free crackers for its customers. Since crackers are an exempt food item, neither Grocer nor the customers are liable for sales or use tax on the crackers.

**Taxable Products:** If a taxable product is given away free (e.g., samples of laundry detergent), a grocer is liable for Wisconsin sales and use tax when purchasing such product. If the taxable product given to customers was acquired by the grocer without tax for resale, the grocer must report use tax based on the grocer's purchase price of the product.

**Example – Taxable Products Given Away:** Grocer purchases 2,000 plastic mugs for \$1,000 from Supplier. Grocer provides Supplier with an exemption certificate claiming resale since Grocer does not know whether the mugs will be sold or given away. Grocer decides to give the mugs to the first 2,000 customers. Grocer is liable for use tax based on its purchase price of the mugs (i.e., \$1,000).

### D. Containers and Other Packaging and Shipping Materials

#### (1) General

A grocer's purchases of returnable and non-returnable containers, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials are not taxable if the items (e.g., grocery bags) are used to transfer merchandise to the grocer's customers. (See the section below titled "Meat and Meat Product Containers, Packaging, and Shipping Materials" for information on meat and meat product containers and packaging and shipping materials.)

**Example – Grocery Bags for Transferring Groceries to Customers:** Grocer purchases bags used to pack customer's groceries. Customers use the bags to carry their groceries from the grocery store to their homes. Since the bags are being used to transfer groceries sold to their customers, Grocer's purchases of the grocery bags are not taxable. Grocer must provide the supplier of these bags with a properly completed exemption certificate to purchase them without Wisconsin sales and use tax.

When a grocer sells (rather than gives away) a disposable or reusable grocery bag to its customer, the tax treatment is as follows:

- The grocery may purchase the grocery bag without tax for resale.
- The grocer's sale of the grocery bag is taxable.

Examples of items which qualify for the exemption for containers and other packaging and shipping materials include:

- Containers such as barrels, bottles, cartons, and kegs
- Items used inside a package to shape, form, preserve, stabilize, or protect the contents, including batting, cardboard fillers, cotton, dry ice, excelsior, ice, separators, and shredded paper
- Packaging and shipping materials, including crates, crating material, gummed tape, mailing tubes, pallets, rope, rubber bands, skids, twine, and wrapping paper

Examples of items which *do not* qualify for this exemption include:

- Shopping carts, baskets, and similar items
- Wrapping equipment, such as paper holders, tape dispensers, staplers, and string holders
- Counter display cards used for advertising and display purposes
- Computer-produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer merchandise to customers are exempt
- Containers or other packaging and shipping materials used for storage or to transfer merchandise owned by the same person from one location to another (**Note:** Containers and other packaging and shipping materials used to transfer meat and meat products are exempt even if used for transferring meat and meat products owned by the same person from one location to another.)
- Advertising matter used in Wisconsin in connection with the sale of merchandise, except catalogs used to advertise and promote the sale of merchandise

## (2) Meat and meat product containers, packaging, and shipping materials

Meat casings, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials used in packing, packaging, or shipping meat or meat products are not subject to sales and use tax, even if these items are not used to transfer meat or meat products sold to customers.

**Example – Meat Wrapping Paper Not Used to Transfer Merchandise to Customers:** Grocer operates a store that is equipped to process meat. Once processed and packaged, the meat is placed on metal racks that are lined with wrapping paper and placed in the freezer until there is room for the meat in the display cases. Even though the wrapping paper used to line the metal trays is not used to transfer the meat to customers, the wrapping paper is exempt from Wisconsin sales and use tax because it is used in packaging and shipping meat from the freezer to the display cases. Grocer must provide the supplier of the wrapping paper with a properly completed exemption certificate to purchase it without Wisconsin sales and use tax.

## (3) Deposits on Returnable Containers

Grocers have a choice of whether or not to charge Wisconsin sales tax on deposits for returnable containers. The net amount of tax charged and remitted to the Department of Revenue is the same under either method of reporting.

**Grocer Charges Wisconsin Sales Tax on Deposits:**

If a grocer chooses to charge customers sales tax on deposits of returnable containers, then the grocer must also refund the sales tax charged on the deposit when the deposit is refunded to the customer.

Grocers using this method must include on line 1 of their sales and use tax return, the selling price of the item, the deposit on the container, and the sales tax charged. The grocer may claim a deduction on its sales and use tax return for the sales tax included on line 1.

When the deposit is returned to the customer, the grocer must refund the amount of the deposit plus the sales tax charged on the deposit. The grocer may claim a deduction on its sales and use tax return which covers the date the refund is given to the customer, for the amount of the deposit refunded to the customer.

**Grocer Does Not Charge Wisconsin Sales Tax on Deposits:**

If a grocer chooses not to charge sales tax on deposits, then the grocer should not refund any sales tax to the customer when the deposit is refunded.

Grocers using this method must include on line 1 of their sales and use tax return, the selling price of the item, the deposit on the container and the sales tax charged. The grocer may claim a deduction on its sales and use tax return for the sales tax and deposits included on line 1.

When the deposit is returned to the customer, the grocer should refund only the deposit (no sales tax) to the customer. The grocer must not claim a deduction on its sales and use tax return for the deposit returned to the customer because the grocer did not previously report the deposit as a taxable sale.

**Note:** If no sales tax is charged on deposits and the deposits are not refunded to customers (i.e., customer does not return container), the grocer is liable for Wisconsin sales tax on the deposit at the time the deposits are recognized as income for income tax purposes if the container is used to transfer property in a taxable sale.

**Example – Deposits on Containers:** The following example shows what amounts a grocer should report on its sales and use tax return relating to the sales of taxable property, items, or goods and deposits on containers.

Assume the following facts apply:

- Customer purchases 2 barrels of beer (1 from Grocer A and 1 from Grocer B). Grocer A and Grocer B each charge Customer \$50 for the barrel of beer and a deposit of \$10 on each of the barrels. The deposits are refunded to Customer when the barrel is returned.
- **Tax Charged on Deposit: Grocer A** charges Customer the following: \$50 for the beer, \$10 for the deposit on the barrel and \$3.00 sales tax ( $\$60 \times .05 = \$3.00$ ). Grocer A gives Customer \$10.50 (\$10 plus tax) when he returns the barrel for his deposit.
- **No Tax Charged on Deposit: Grocer B** charges Customer the following: \$50 for the beer, \$10 for the deposit on the barrel and \$2.50 sales tax ( $\$50 \times .05 = \$2.50$ ). Grocer B gives Customer \$10 when he returns the barrel for his deposit.

The following tables indicate the amounts Grocer A and Grocer B should report on their Wisconsin sales and use tax returns to report the sale (Table 3) and refund of the deposit (Table 4) to Customer. The amounts in the center and right columns of Tables 3 and 4 are the amounts Grocers A and B, respectively, should report on their Wisconsin sales and use tax return.

**Table 3 – Amounts to Report at Time of Sale**

	Grocer A - Tax Charged on Deposit	Grocer B - Tax Not Charged on Deposit
Total Sales Price	\$63.00	\$62.50
Deductions Allowed	\$3.00	\$12.50
Taxable Sales	\$60.00	\$50.00

**Table 4 – Amounts to Report When Deposit Refunded**

	Grocer A - Tax Charged on Deposit	Grocer B - Tax Not Charged on Deposit
Total Sales Price	\$0	\$0
Deductions Allowed	\$10	\$0
Taxable Sales	(\$10)	\$0

## E. Equipment and Business Asset Sales and Purchases

### (1) Sales of equipment and business assets

Sales of equipment and business assets (e.g., equipment, furniture, and fixtures) are subject to sales tax if a grocer holds or is required to hold a seller's permit at the time of sale. However, sales of equipment and business assets are not taxable if both of the following are met:

- The sale is of equipment or a business asset (other than inventory held for sale) that was previously used by the seller to conduct a trade or business at a particular location, and
- The sale occurs after the seller ceases operating as a seller of taxable products and services at that location.

A sale meeting the above two conditions is not subject to sales and use tax, even though the seller holds a seller's permit for one or more other locations at the time of the sale. **Exception:** A grocer that holds or is required to hold a seller's permit for one or more other locations at the time of the sale of a motor vehicle, boat, snowmobile, recreational vehicle as defined in sec. [340.01\(48r\)](#), Wis. Stats., semitrailer, all-terrain vehicle, utility terrain vehicle, off-highway motorcycle as defined in sec. [23.335\(1\)\(g\)](#), Wis. Stats., or aircraft is required to collect and remit the Wisconsin sales or use tax on its sales of these items. In addition, if the grocer does not collect the tax, the purchaser is still required to pay the applicable sales or use tax prior to registering or titling the item in Wisconsin.

**Example – Sale of Assets by a Business Which Has Ceased to Operate:** Grocer ceases actively operating as a seller of taxable products and services on June 1, 2024. Grocer sells its business assets (other than inventory) on July 1, 2024. Since the items Grocer is selling are personal property previously used in its business and Grocer has ceased operating at that location, the sale of the business assets by Grocer is exempt from Wisconsin sales and use tax as an occasional sale.

**Example – Sale of Assets by a Continuing Business:** Grocer holds a Wisconsin seller's permit and sells used shelving to Customer for \$1,000. Since Grocer holds a seller's permit at the time of the sale and is continuing to operate at the location where the shelving was located, the \$1,000 is subject to sales tax.



## (2) Purchases of equipment and business assets

Purchases of equipment and business assets stored, used, or consumed in Wisconsin are subject to sales and use tax. See Part 1.E. for the difference between Wisconsin sales and use tax.

**Exception:** If the seller of the equipment and business assets qualifies for the occasional sale exemption on its sale of such items, the purchaser does not owe sales or use tax on its purchase of the items. For information about the occasional sale exemption for sales of business assets, see [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Part 15.

Examples of purchases of equipment and business assets subject to sales and use tax include the following:

- Refrigerated display cases, condensing units, and shelving systems
- Check-out counters, cash registers, and computer scanning systems
- Moveable display racks, office furniture, and material handling equipment
- Walk-in cold storage units that are not a component part of a building

**Example:** Grocer purchases a rack used to display various products offered for sale. The purchase of the rack by Grocer is taxable.

## F. Purchases of Supplies and Repairs

A grocer's purchases of supplies and repairs to any equipment and other business property used in conducting its business are subject to sales and use tax. If the grocer does not pay sales or use tax to the supplier of the repairs and supplies at the time they are purchased, the grocer is liable for Wisconsin use tax on such purchases.

Examples of items a grocer may purchase and use in their business that are subject to sales and use tax include:

- Office and store supplies used by the grocer, including pens, pencils, paper, and cash register tapes
- Employee uniforms, including smocks, aprons, hair nets, and name tags
- Training materials, including tapes and manuals
- Cleaning supplies, including brooms, chemicals, and mops
- Advertising and display racks and signs
- Repairs to equipment and other business property unless the equipment is exempt from tax (e.g., equipment used exclusively and directly in manufacturing)

## 5. COUNTY & CITY SALES AND USE TAX

Sales and purchases of taxable products and services subject to Wisconsin sales and use tax may also be subject to the county sales and use tax and city of Milwaukee sales and use tax.

- For additional information on the county tax, see [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Part 18.
- For additional information on the city tax, see [Fact Sheet 2414](#), *Milwaukee Sales and Use Taxes*.
- See the [sales tax rate chart](#) on our website for current sales and use tax rates in Wisconsin.

Every person registered or required to be registered to collect and remit Wisconsin sales or use tax is also required to collect and remit the appropriate county and city sales or use tax, regardless of whether the person is engaged in business in those counties or city.

## 6. LOCAL EXPOSITION TAX

Sales of food and beverages subject to the 5% Wisconsin state sales tax may also be subject to the 0.5% food and beverage local exposition tax if the sale takes place in a municipality located wholly or partially in Milwaukee County. For additional information about the 0.5% food and beverage local exposition tax, see [Publication 410](#), *Local Exposition Taxes*.

Every person registered or required to be registered to collect and remit Wisconsin sales or use tax is also required to collect and remit the appropriate local exposition taxes, regardless of whether the person is engaged in business in the local exposition district.

## 7. PREMIER RESORT AREA TAX

Sales of taxable products and services subject to Wisconsin sales tax may also be subject to the 0.5% premier resort area tax in the cities of Bayfield, Eagle River, Rhinelander and the villages of Ephraim, Sister Bay, and Stockholm, or the 1.25% premier resort area tax in for the city of Wisconsin Dells and the village of Lake Delton if: (1) the sale, lease, license, or rental of taxable products and services is sourced to (i.e., takes place in) a premier resort area, and (2) the retailer is classified in the Standard Industrial Classification (SIC) Manual, 1987 Edition, under certain SIC codes. For additional information on the premier resort area tax, including a listing of the applicable SIC codes, see [Publication 403](#), *Premier Resort Area Tax*.

Every person registered or required to be registered to collect and remit Wisconsin sales or use tax is also required to collect and remit the appropriate premier resort area taxes, regardless of whether the person is engaged in business in the premier resort area if the sale meets items (1) and (2) in the paragraph above.

## 8. RECORDKEEPING

### A. General

If you are required to have a seller's permit, consumer's use tax certificate, or use tax certificate, you must keep adequate records so that you, as well as the Department of Revenue, can determine the correct amount of tax due.

### B. Records to Keep — Exempt Sales

If you claim that part or all of your retail sales of taxable products and services are not subject to sales and use tax, you must keep records to support the exemptions claimed.

The reason for keeping such records is because all sales are taxable until the contrary is established. The grocer has the burden of proving that a sale of any taxable product or service is not subject to Wisconsin sales tax, unless: (a) the grocer receives an exemption certificate from the purchaser, or (b) the grocer has the other records and information as described in Parts 8.C.(1) through (3) below.

### C. Common Exemptions and Records Needed to Support the Exemptions Claimed

Common reasons that sales of taxable products and services by a grocer may not be taxable and the records needed to support the exemptions are as follows:

- (1) Exempt food items - Sales of certain foods and food ingredients and beverages for human consumption are not subject to sales tax. Although the grocer is not required to obtain any information from the purchaser for these types of sales, the grocer must maintain records that support the amount of exemption claimed for sales of these types of items.

Records to support that a certain food product is exempt include a detailed description of the product sold, and in many instances, includes a listing of the ingredients in the food product.

- (2) Items being resold by the purchaser - Sales of items are not subject to sales tax if the purchaser furnishes the grocer an exemption certificate claiming resale or some other valid Wisconsin exemption. The grocer must keep the exemption certificate provided by the purchaser to support the exemption from sales tax.

**Example:** Grocer sells soda to Caterer. Caterer is going to resell the soda to its customers. Caterer must provide Grocer with an exemption certificate claiming resale to purchase the soda without sales tax.

- (3) Sales to governmental agencies and exempt entities - Sales to a Wisconsin or federal governmental agency, any federally recognized American Indian Tribe or Band in this state, or to a nonprofit organization that holds a certificate of exempt status (CES) number issued by the Wisconsin Department of Revenue are exempt from Wisconsin sales tax.

Sales to Wisconsin and federal governmental agencies, municipalities, and public schools may be supported by either: (a) a copy of the purchase order or similar written document identifying the governmental unit as the purchaser, (b) an exemption certificate, or (c) by recording the CES number on the copy of the invoice kept by the grocer.

Sales to nonprofit organizations (e.g., churches) must be supported by either: (a) an exemption certificate from the organization, or (b) by recording the CES number on the sales invoice kept by the grocer.

**Note:** If exemptions are claimed for any of the above reasons, the seller must keep the completed exemption certificates, purchase orders, invoices, or statements mentioned above to prove that the sales were not subject to sales tax.

#### D. How Long Must the Records be Kept?

Grocers must keep the records and exemption certificates to support the amounts reported and deductions claimed on the sales and use tax returns for a minimum of four years after: (a) the due date of the Wisconsin income or franchise tax return filed, (b) the dissolution of the business, or (c) the date any sales and use tax return required to be filed was filed, whichever is later.

**Caution:** If a grocer is being audited, any written agreement between a grocer and the Department of Revenue that extends the time period for which the department is authorized to determine the correct tax liability of the grocer, also extends the time the records must be kept.

## 9. DO YOU HAVE QUESTIONS OR NEED ASSISTANCE?

If you have a question about Wisconsin sales and use taxes, email, write, or call the department.

**Visit our website . . .**      [revenue.wi.gov](http://revenue.wi.gov)

**Email . . .**      [DORSalesandUse@revenue.wi.gov](mailto:DORSalesandUse@revenue.wi.gov)

**Write . . .**      Mail Stop 5-77  
Wisconsin Department of Revenue  
PO Box 8949  
Madison, WI 53708-8949

**Telephone...**      (608) 266-2776

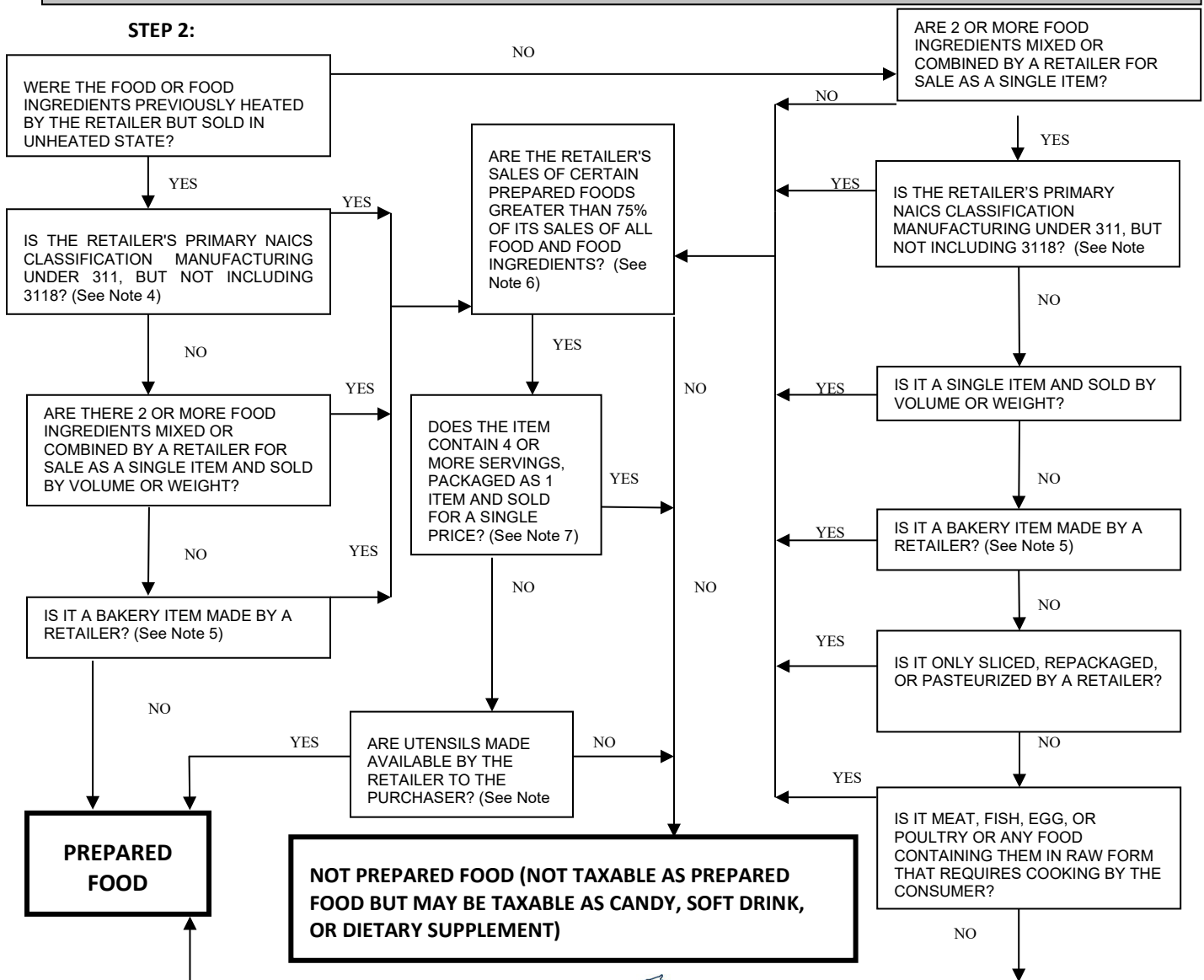
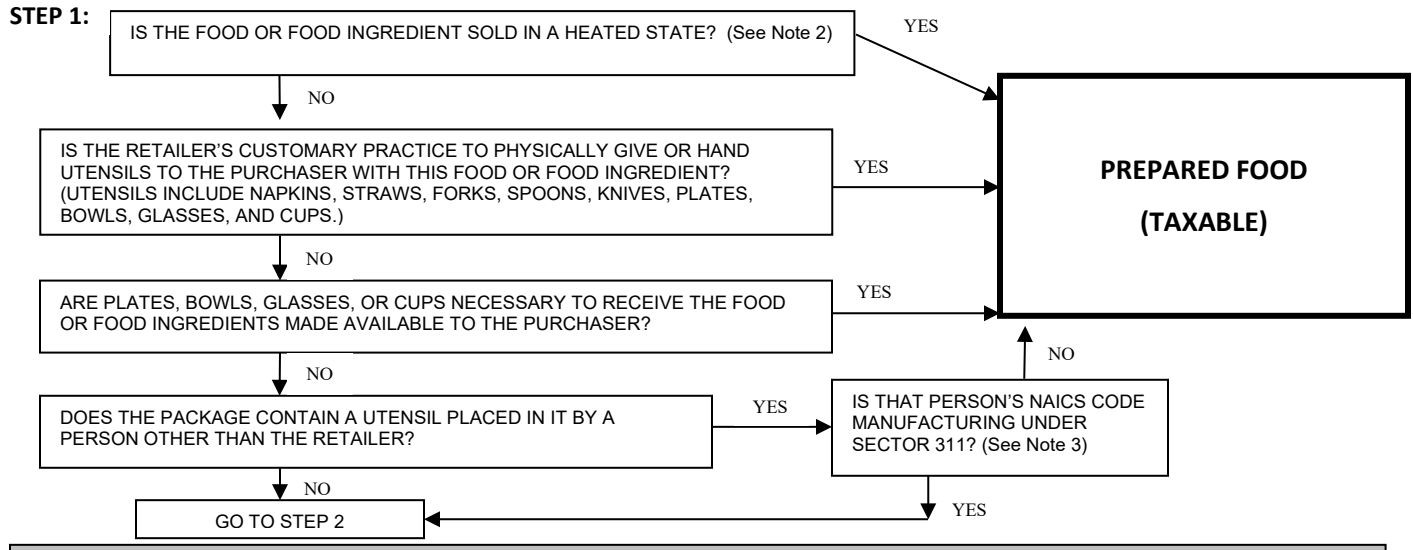
**Fax . . .**      (608) 267-1030

You may also contact any of the Department of Revenue offices. See the department's website for a [list of offices](#) and their current hours.

**APPENDIX 1**

**ARE YOU SELLING PREPARED FOOD?**

(This flowchart only helps you determine if the food and food ingredient (See Note 1) being sold meets the definition of prepared food provided in sec. 77.51(10m), Wis. Stats.)



### Notes To Prepared Food Flowchart

1. Food and food ingredient means a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. Food and food ingredient includes beverages, but not alcoholic beverages. Food and food ingredient does not include tobacco.
2. Food and food ingredients are sold in a heated state if they are sold at a temperature higher than the room temperature.
3. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses.
4. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses and industry group number 3118 covers bakeries and tortilla manufacturing.
5. Bakery items include breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
6. For purposes of computing the 75%, the **numerator** is made up of the retailer's sales of food and food ingredients:
  - (a) That are sold heated;
  - (b) That were heated by the retailer but sold unheated, but not including:
    - A retailer's sales of bakery items,
    - Two or more food ingredients mixed or combined by a retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118, and
    - Two or more food ingredients mixed or combined by a retailer for sale as a single item and sold unheated by volume or weight
  - (c) Two or more food ingredients mixed or combined by a retailer for sale as a single item, but not including:
    - A retailer's sales of bakery items,
    - Two or more food ingredients mixed or combined by a retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118,
    - Two or more food ingredients mixed or combined by a retailer for sale as a single item and sold unheated by volume or weight,
    - Items that are only sliced, repackaged, or pasteurized by a retailer, or
    - Eggs, meat, fish, poultry or any food item containing them in raw form that requires cooking by the consumer.
  - (d) Food and food ingredients for which plates, bowls, glasses, or cups are necessary to receive the food and food ingredients.

The **denominator** is made up of all of the retailer's sales of food and food ingredients.

7. Serving sizes are based on the information contained on the label of each item sold, except that if the item does not contain a label, the serving size is based on the retailer's reasonable determination.
8. Utensils are not considered to be made available by the retailer to the purchaser solely by virtue of a utensil being placed in the package along with the food item by a person other than the retailer. Utensils include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.