

Wisconsin Department of

**Revenue**

# Bakeries

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

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**IMPORTANT CHANGES**

- **Several counties adopted the 0.5% county tax.** See the [Sales Tax Rate Chart](#).
- **The 0.1% baseball stadium tax ended on March 31, 2020.** Effective April 1, 2020, the 0.1% baseball stadium tax no longer applies to sales and purchases made in Milwaukee, Ozaukee, Racine, Washington, or Waukesha County. See the [Sales Tax Rate Chart](#).
- **Premier resort area tax.** Several municipalities have adopted the premier resort area tax or increased the rate. See Part 1.

**1. INTRODUCTION**

This publication explains the Wisconsin sales and use tax treatment of sales and purchases by bakeries.

Sales and purchases by bakeries that are subject to the 5% state sales or use tax may also be subject to the (a) 0.5% county sales or use tax; (b) local exposition taxes, and (c) 0.5% premier resort area tax (1.25% for the City of Wisconsin Dells and the Village of Lake Delton). Additional information about these taxes is contained in the following:

- [Sales Tax Rate Chart](#) - Lists the total state and county sales and use tax rate for each county.
- [Publication 410, Local Exposition Taxes](#). Applies to sales 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 that take place in a premier resort area.

**2. SALES BY BAKERIES****A. Sales of Bakery Goods**

The taxability of bread, cakes, cookies, donuts, rolls, and other foods made and sold by a bakery depends on whether the items are sold heated or otherwise meet the definition of prepared food. Part 2.D. of [Publication 220, Grocers](#), provides the complete definition of prepared food along with numerous examples.

**Table 1** has been prepared specifically for bakeries to determine if the bakery is selling prepared food. **Table 1** applies to sales of bakery items regardless of whether the bakery made the bakery items or purchased the bakery items already made from a third party and is just reselling them.

[Appendix I](#) contains a flowchart that can also be used to determine if the product being sold is prepared food and 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. Sales of candy, dietary supplements, and soft drinks are taxable. See Part 2 of [Publication 220, Grocers](#).
- The retailer's North American Industry Classification System (NAICS) code is not manufacturing under sub-sector 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 bakery.

- 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.

<b>Table 1</b>		
<b>Retail Sales of Bakery Products by Bakeries</b>		
<i>Instructions:</i> 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>	<b>Taxable</b>
No ↓		
<b>2. Is the bakery's customary practice to physically give or hand a utensil to the customer with this product?<sup>2,3</sup></b>	<b>Yes →</b>	<b>Taxable</b>
No ↓		
<b>3. Are plates, bowls, glasses, or cups necessary to receive the bakery product made available to the customer?</b>	<b>Yes →</b>	<b>Taxable</b>
No ↓		
<b>4. Are utensils made available by the retailer to the purchaser?<sup>2,4</sup></b>	<b>No →</b>	<b>Not Taxable</b>
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>	<b>Not Taxable</b>
No ↓		
<b>6. Are the bakery's sales of certain prepared food more than 75% of its total sales of food and food ingredients?<sup>6</sup></b>	<b>Yes →</b>	<b>Taxable</b>
	<b>No →</b>	<b>Not Taxable</b>

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 bakery's customary practice is to physically give or hand a utensil to the customer, the sale by the bakery is a sale of prepared food even if the customer does not actually 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 food and food ingredients, see Note 6 of [Appendix I](#).

The following examples illustrate how to determine if an item is prepared food. The answers presume that the item is not subject to tax as candy, a dietary supplement, or a soft drink.

**Example 1 – Donut "To Go" – Not Prepared Food:** Bakery sells one donut "to go" for \$0.75 to a customer. Bakery's sales of certain prepared foods are 75% or less of all of its sales of food and food ingredients. Bakery's customary practice is to sell "to go" donuts without physically giving or handing napkins or other utensils to the customer. Plates, bowls, glasses, or cups are not necessary for the customer to receive the donut. Although the donut was made by Bakery, it is not prepared food because (1) it is not sold heated, (2) Bakery's customary practice is not to physically give or hand utensils to its customers with "to go" donuts, (3) plates, bowls, glasses, or cups are not necessary for the customer to receive the donut; and (4) Bakery's sales of certain prepared foods are 75% or less of all of its sales of food and food ingredients. Since the donut is not prepared food, the sale of the donut is not taxable, regardless of whether Bakery makes utensils available to its customers.

**Example 2 – Donut and Coffee "To Go":** Same as Example 1, except that Bakery also sells a hot cup of coffee for \$1.00 to the customer, with the donut. The sale of the donut is not taxable. The sale of the hot coffee is taxable as prepared food because it is sold heated.

**Example 3 – Coffee and Donut Eaten at Bakery – Prepared Food:** Same as Example 2, except that the donut is sold to be eaten at the bakery. Bakery's customary practice when selling donuts to be eaten at its bakery is to physically give or hand its customers a napkin with the donut. The sale of the donut and hot coffee are taxable as prepared food. The coffee is prepared food because it is sold heated. The donut is prepared food because Bakery's customary practice is to physically give or hand its customer a napkin with the donut.

**Example 4 – Donut "To Go" – Prepared Food:** Bakery sells one donut "to go" for \$0.75 to a customer. Bakery's customary practice when it sells donuts "to go" is to physically give or hand napkins to its customers with the donuts. Since Bakery's customary practice when selling donuts "to go" is to hand its customers napkins with the donuts, Bakery's sale of the donut to the customer is the sale of prepared food and taxable. The sale is taxable even if the customer does not receive a napkin with the donut since Bakery's customary practice when selling donuts "to go" is to physically give or hand its customers napkins.

**Example 5 – Coffee and Donut Eaten at Bakery:** Bakery sells one donut for \$0.75 to be eaten at the bakery and a cup of hot coffee for \$1.00. Bakery's customary practice when selling donuts to be eaten at its bakery is to sell the donuts to its customers without physically giving or handing them napkins or other utensils with the donuts. However, napkins and other utensils are made available to customers. Bakery's sales of certain prepared foods are 75% or less of all of its sales of food and food ingredients. The hot coffee is taxable as prepared food. The sale of the donut is not taxable as prepared food because (1) it is not sold heated, (2) it is not Bakery's customary practice to physically give or hand utensils to its customers with the donut, (3) plates, bowls, glasses, or cups are not necessary for the customer to receive the donut; and (4) Bakery's sales of prepared foods are 75% or less of all of its sales of food and food ingredients.

**Example 6 – Donut and Carton of Milk – Prepared Food:** Bakery sells one donut for \$0.75 and a carton of milk (single serving) for \$.50 to a customer "to go." Bakery's sales of certain prepared foods are **more than 75%** of all of its sales of food and food ingredients. Bakery's customary practice is to sell "to go" donuts and milk without physically giving or handing them napkins or other utensils. However, napkins and other utensils are made available to customers. Plates, bowls, glasses, or cups are not necessary for the customer to receive the donut or milk. The sale of the donut and the carton of milk are taxable as prepared food because (a) Bakery's sales of certain prepared foods are more than 75% of all of its sales of food and food ingredients and (b) Bakery makes utensils available to its customers.

**Example 7 – Internet Sales – Not Prepared Food:** Bakery makes bars, brownies, and cookies to sell to customers throughout Wisconsin and other states. Bakery does not have a storefront and only accepts orders for items by telephone or through its website. All bakery items are fully cooked and individually wrapped, labeled, and sold. The items are not sold heated and utensils are not included. All items sold by Bakery contain flour so the products do not meet the definition of candy. Although the bakery items are made by Bakery, these items are not prepared since they are sold unheated without utensils. Bakery's sales of the bars, brownies, and cookies are not taxable.

## B. Sales of Other Food Items

A bakery's sale of candy, soft drinks, alcoholic beverages, and dietary supplements are taxable. See Part 2. of [Publication 220, Grocers](#), for additional information.

## C. Sales of Business Assets

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

- (1) The sale of equipment and business assets (other than inventory held for sale) were previously used by the seller to conduct a trade or business at a particular location.
- (2) The sale occurs after the seller ceases operating the business at **that** location.

A sale meeting the above two conditions is not taxable, even though the seller holds a seller's permit for one or more other locations at the time of the sale. **Exception:** A bakery 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, or aircraft is required to collect and remit sales or use tax on its sales of these items. If the bakery 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 1 – Sale of Assets by a Business That Has Ceased to Operate:** Bakery ceases actively operating as a seller of tangible personal property on January 15, 2022. On January 25, 2022, Bakery sells its business assets that it used at its business location (other than inventory). Bakery is selling tangible personal property previously used in its business and has ceased operating at that location prior to the sale of its assets. The sale of the business assets is exempt from sales tax as an occasional sale.

**Example 2 – Sale of Assets by a Continuing Business:** Bakery holds a Wisconsin seller's permit and sells used shelving to a customer for \$1,000. Since Bakery has a seller's permit and is continuing to operate at the location where the shelving was located, the \$1,000 sale is taxable.

See [Fact Sheet 2110, Occasional Sales of Business Assets](#).

## 3. PURCHASES BY BAKERIES

### A. Food and Food Ingredients

Ingredients used to produce baked goods that are sold may be purchased without tax. If the ingredients are exempt food and food ingredients, as defined in sec. [77.51\(3t\)](#), Wis. Stats., the bakery does not need to provide the supplier with an exemption certificate. If the ingredients are not exempt food and food ingredients, the bakery must provide the supplier with a fully completed exemption certificate ([Form S-211, S-211E, or S-211-SST](#)), claiming resale or another appropriate exemption to purchase them without tax.

**Example 1 – Purchases of Food and Food Ingredients for Manufactured Items – No Exemption Certificate Needed:** Bakery purchases flour and eggs to make cakes. Since flour and eggs are exempt food or food ingredients, Bakery may purchase the flour and eggs without tax. Bakery is not required to provide the supplier of the flour and eggs with an exemption certificate.

**Example 2 – Purchases of Food and Food Ingredients for Manufactured Items – Exemption Certificate Is Needed:** Bakery purchases candy to make cakes that Bakery will sell. Since candy is not an exempt food or food ingredient, Bakery may purchase the candy without tax only if it provides the supplier with a fully completed exemption certificate ([Form S211, S-211E, or S-211-SST](#)).

Part 3.A. of [Publication 220](#), *Grocers*, contains lists of taxable and nontaxable food products that may be useful in determining whether an exemption certificate needs to be provided to a supplier to purchase the products without tax.

## B. Other Items Being Resold

If the item being purchased is not an exempt food or food ingredient (e.g. non-food cake decorations) but is being resold by the bakery, the bakery must provide the supplier with a fully completed exemption certificate ([Form S-211](#), [S-211E](#), or [S-211-SST](#)) to purchase these type of items without tax for resale.

**Example – Purchases of Cake Decorations for Resale:** Bakery purchases non-food cake decorations from Supplier to be resold to Bakery's customer as part of a cake. Bakery must provide Supplier with a fully completed exemption certificate ([Form S211](#), [S-211E](#), or [S-211-SST](#)) to purchase the decorations without tax for resale.

A bakery may also purchase disposable items without tax for resale if these items are transferred to customers in conjunction with the sale of food, food ingredients, and beverages. Examples include plastic and paper cups and plates, plastic eating utensils, napkins, straws, and disposable placemats.

## C. Items Not Being Resold

If a bakery purchases reusable items, other than containers used to transfer merchandise to customers, that are not being resold but instead are returned to the bakery, the bakery is the consumer of these types of items. Purchases of these types of items are taxable.

**Example – Purchases of Reusable Cake Decorations:** Bakery purchases reusable cake decorations from Supplier. Bakery's customers are required to return the decorations to Bakery after the cake is eaten. Bakery does not charge its customers for use of the decorations. Bakery is the consumer of the reusable decorations and must pay tax on its purchases of the decorations.

## D. Machinery and Equipment

Bakeries are considered manufacturers for Wisconsin sales and use tax purposes and may purchase certain machinery and equipment exempt from tax. Machinery and equipment used **exclusively and directly** in the manufacturing process qualify for the exemption and the bakery should provide the supplier with a fully completed exemption certificate ([Form S211](#), [S-211E](#), or [S-211-SST](#)).

**Note:** Exclusively, as it relates to machinery and equipment used in the manufacturing process, means the machinery and equipment is used solely by a manufacturer in the manufacturing process to the exclusion of all other uses, except the exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing.

**Example – Purchases of Equipment Used in Manufacturing Process:** Bakery purchases a mixer which will be used exclusively and directly in the manufacturing of donuts. Bakery must provide the supplier with a fully completed exemption certificate ([Form S211](#), [S-211E](#), or [S-211-SST](#)) claiming the appropriate manufacturing exemption to purchase it without tax.

The manufacturing process of a bakery begins with the removal of the ingredients from storage and ends when the finished product reaches the point of first storage. The first point of storage for a bakery is the location where the baked goods are stored until they are sold to customers. The manufacturing process 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.

**Example 1 – Packaging Not Part of Manufacturing Process:** Bakery manufactures donuts that are placed in a display case where customers choose the donuts they would like to purchase. As the donuts are selected, they are placed in a box. The packaging of these donuts is not part of the manufacturing process because the donuts were displayed prior to packaging them. The machinery and equipment used to package the donuts does not qualify for the manufacturing exemption. The packaging materials (e.g., boxes, bags) are exempt from tax because they are used to transfer the donuts to customers (see Part 3.G. below).

**Example 2 – Packaging Part of Manufacturing Process:** Bakery manufactures bread. Once the bread is removed from the oven, it is placed on a tray to cool. After the bread is cooled, equipment is used to package the bread into a bag. The equipment is used exclusively to package the bread prior to being stored or displayed for sale. The packaged bread is then displayed for sale to customers. This packaging equipment qualifies for the exemption for machinery and equipment used exclusively and directly in the manufacturing process.

Purchases of machinery and equipment and other business assets by a bakery that are not used exclusively and directly in the manufacturing process are taxable.

See [Publication 203](#), *Sales and Use Tax Information for Manufacturers*.

#### E. Items That Qualify for Manufacturing Exemption

Examples of items that may be purchased by a bakery without 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, measures, and can openers
- Ovens, mixers, gas fryers, and doughnut machines
- Thermometers used to check the temperature of dough
- Apparel worn by employees during the manufacturing process to prevent contamination of the product. For example, gloves worn by an employee making donuts to prevent the donuts from being contaminated during the manufacturing process
- Parts and repairs for machinery and equipment used exclusively and directly in manufacturing
- Cleaners and solvents used for cleaning manufacturing machinery
- Shelves and racks used to temporarily store baked goods that are not completely manufactured

**Note:** If the listed items are not used exclusively and directly in the manufacturing process, they do not qualify for the exemption and are taxable when they are purchased. If an item qualifies for the manufacturing exemption at the time of purchase but is later used in a taxable manner, the bakery is subject to use tax on the purchase price of the item.

#### F. Items That Do Not Qualify for Exemption

Examples of machinery, equipment, and other business assets and supplies 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 reusable 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)
- Cleaning equipment such as brooms, mops, and vacuums
- Refrigerated display cases, condensing units, and shelving systems
- Check-out counters, cash registers, and computer scanning systems
- Moveable display racks used to store raw materials or finished bakery goods
- Office furniture
- Walk-in cold storage units that are not a component part of a building
- Cleansers, chemicals, and cleaning agents used to clean the walls, ceilings, floors, drains, windows, and doors where the manufacturing takes place.

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

#### G. Containers and Packaging Materials

A bakery's purchases of containers and other packaging materials used to transfer baked goods to customers are exempt from tax. 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 within containers
- 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)
- Price tags
- Containers or other packaging and shipping materials used to transfer merchandise owned by a person from one location to another
- Bakery delivery carts used to deliver bakery goods to customers if they are not physically transferred to customers

## H. Supplies

A bakery's purchases of supplies are taxable. Examples of taxable supplies that a bakery may use in its business include:

- Office and store supplies used by the bakery, including pens, pencils, paper, and cash register tapes
- Employee uniforms, including smocks, aprons, hair nets, and name tags (see exception in Part 3.E. for apparel worn by employees to prevent contamination of the product)
- Training materials, including videos and manuals
- Cleaning supplies, such as brooms/mops and chemicals
- Advertising and display racks and signs
- Repairs to taxable equipment and other tangible personal property
- Prewritten computer software
- Specified digital goods and additional digital goods (See [Publication 240](#), *Digital Goods*)

If the bakery does not pay tax to the supplier at the time the supplies are purchased, the bakery is liable for Wisconsin use tax on such purchases unless an exemption applies.

## I. Fuel and Electricity Consumed in Manufacturing

Section [77.54\(30\)\(a\)6.](#), Wis. Stats., provides an exemption for fuel or electricity consumed in manufacturing tangible personal property in Wisconsin.

Fuel and electricity consumed in manufacturing means fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not consumed in manufacturing if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, storing raw materials or finished units, research and product development, receiving, sales, distribution, warehousing, shipping, advertising or administrative department activities. Fuel and electricity used directly in manufacturing steam, used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.

Purchasers (other than purchasers holding a direct pay permit) are not allowed to claim 100% of the fuel or electricity is exempt when they know at the time of purchase the exempt usage will be less than 100%. The exemption percentage claimed should represent the purchaser's best estimate of the exempt usage and should be calculated and claimed on a meter-by-meter basis for each meter that measures electricity and/or natural gas consumption.

See [Fact Sheet 2111](#), *Sales and Use Tax Exemption for Fuel and Electricity Consumed in Manufacturing*.

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

If you have additional questions, you may contact the Department of Revenue:

- Visit our website . . .** [revenue.wi.gov](http://revenue.wi.gov)
- Email . . .** [DORSalesandUse@wisconsin.gov](mailto:DORSalesandUse@wisconsin.gov)
- Write . . .** Mail Stop 5-77  
Wisconsin Department of Revenue  
P.O. Box 8949  
Madison, WI 53708-8949

**Telephone. . .** (608) 266-2776

**Fax. . .** (608) 267-1030

#### **Applicable Laws and Rules**

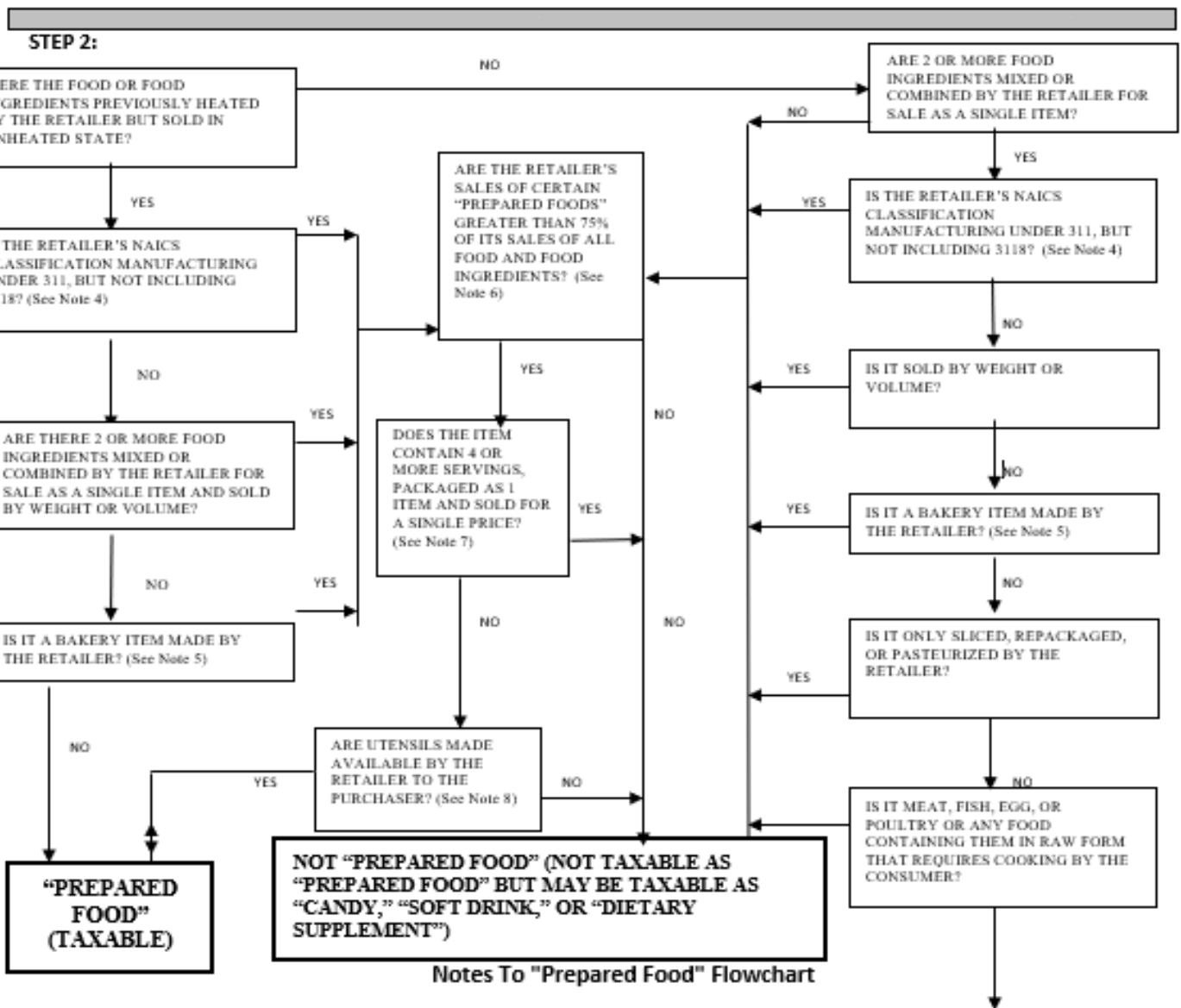
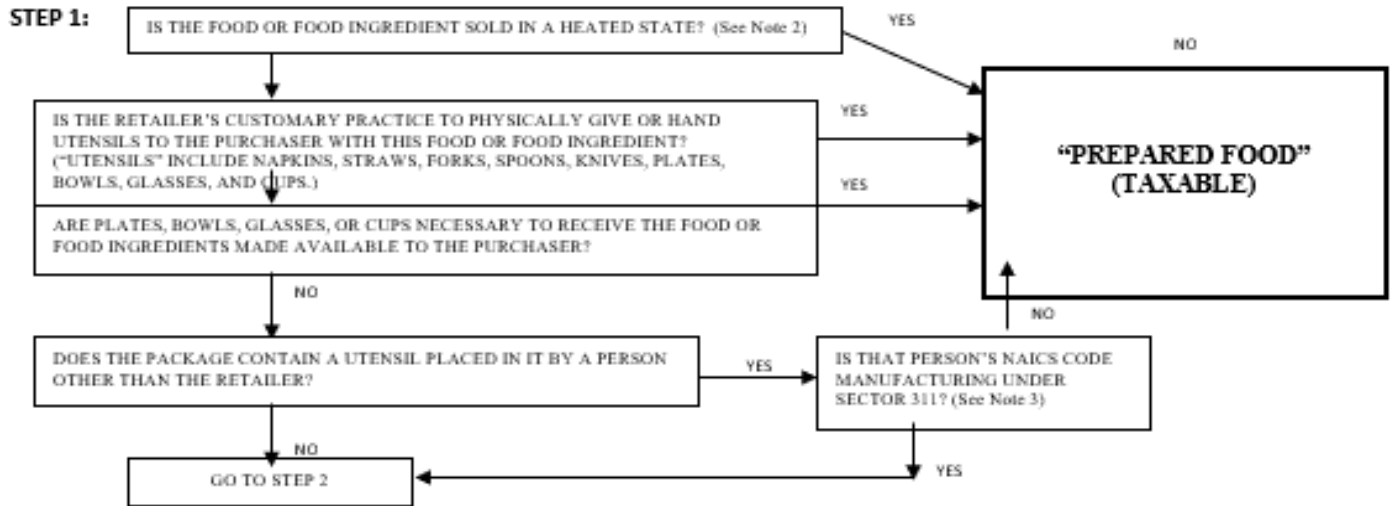
This document provides statements or interpretations of the following laws and regulations enacted as of May 26, 2022: ch. 77, [Wis. Stats.](#) and ch. Tax 11, [Wis. Adm. Code.](#)

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.

**APPENDIX I: FOOD CHART**

**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" does not include alcoholic beverages or 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:
    - The retailer's sales of bakery items,
    - Two or more food ingredients mixed or combined by the 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 the retailer for sales as a single item and sold unheated by weight or volume
  - (c) Two or more food ingredients mixed or combined by the retailer for sale as a single item, but not including:
    - The retailer's sales of bakery items,
    - Two or more food ingredients mixed or combined by the 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 the retailer for sale as a single item and sold unheated by weight or volume,
    - Items that are only sliced, repackaged, or pasteurized by the retailer, or
    - Eggs, meat, fish, poultry or any food item containing them in raw form that requires cooking by the consumer.
  - (d) Food requiring plates, bowls, glasses, or cups to receive the food.

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 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 with the food item by a person other than the retailer. "Utensils" include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.