

Important Changes

- Calumet County tax begins April 1, 2018
- Brown County tax begins January 1, 2018
- Kewaunee County tax begins April 1, 2017
- Sheboygan County tax begins January 1, 2017
- Brown County football stadium tax ended September 30, 2015

Bakeries

How Do Wisconsin Sales and Use Taxes Affect Your Operations?

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IMPORTANT CHANGES

- **Updates for Streamlined Sales Tax.** The Wisconsin Legislature has passed the legislation necessary to conform Wisconsin's sales and use tax laws to the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA) as part of 2009 Wisconsin Acts 2 and 28. The conforming legislation, known as the Main Street Equity Act, became effective in Wisconsin on October 1, 2009. Changes include:
 - **New Definitions of "Food and Food Ingredients," "Candy," "Soft Drinks," "Dietary Supplements," and "Prepared Food."** Wisconsin law provides an exemption from Wisconsin sales and use tax for all "food and food ingredients" for human consumption except "candy," "dietary supplements," "prepared food," and "soft drinks." See Part II. of [Publication 220, Grocers](#), for these complete definitions.
 - **On-Premise Consumption No Longer a Factor in Determining if Sales of Foods and Food Ingredients Are Subject to Tax.** Effective October 1, 2009, sales of food and food ingredients consumed on the seller's premises are not subject to Wisconsin sales tax unless the food or food ingredient meets the definition of "candy," "dietary supplement," "prepared food," or "soft drink." See pages 2 to 5.
 - **Tables and Flowcharts Prepared to Help Determine Taxability of Sales Including Sales of Bakery Items.** The Wisconsin sales tax treatment of food and food ingredients in many cases depends on whether or not the food or food ingredient meets the definition of "prepared food." See Table 1 on page 3 and Appendix I.
 - **Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles as Defined in s. 340.01 (48r), Wis. Stats., Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft by Persons Who are Not Dealers.** Any retailer that is registered or required to be registered to collect and remit Wisconsin sales and use taxes must also collect and remit the applicable state, county, stadium, and premier resort area taxes

on its sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Wis. Stats., trailers, semitrailers, all-terrain vehicles and aircraft, even if they are not "dealers" or "registered dealers" of the item sold. See "Sales of Business Assets" on page 5.

- Effective November 1, 2011, cleansers, chemicals, and cleaning agents used to clean the walls, floors, drains, windows, doors, etc. where the manufacturing of the bakery goods takes place are subject to tax. The cleaners used to clean exempt manufacturing machinery and equipment continue to qualify for exemption. See pages 7 and 8.
- Effective January 1, 2006, fuel and electricity consumed in manufacturing tangible personal property in Wisconsin is exempt from Wisconsin sales and use tax. See pages 8 and 9.

I. INTRODUCTION

This publication explains how Wisconsin state sales and use taxes affect bakeries. It also provides examples of taxable and nontaxable sales and purchases related specifically to bakeries. For general sales and use tax information, including information on how to register and apply for a seller's permit, filing requirements, filing options available, the differences between sales and use tax, how to compute the amount subject to sales tax, and recordkeeping requirements, please see [Publication 201, Wisconsin Sales and Use Tax Information](#).

Note: Certain sales and purchases by bakeries which are subject to the 5% state sales and use tax may also be subject to the: (a) 0.5% county sales or use tax; (b) 0.1% baseball stadium sales or use tax; (c) 0.5% football stadium sales or use tax; (d) local exposition taxes; and (e) 0.5% premier resort area sales tax for the City of Bayfield and the City of Eagle River or 1.0% premier resort area sales tax for the City of Wisconsin Dells and the Village of Lake Delton. (**Note:** Prior to January 1, 2010, the premier resort area tax rate for the City of Wisconsin Dells and the Village of Lake Delton was 0.5%.) Additional information about these taxes is contained in the following:

- (a) County tax: [Publication 201, Wisconsin Sales and Use Tax Information](#), Part XVIII.
- (b) Baseball stadium tax: [Publication 201, Wisconsin Sales and Use Tax Information](#), Part XVIII. Applies to sales and purchases made in Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties.
- (c) Football stadium tax: [Publication 201, Wisconsin Sales and Use Tax Information](#), Part XVIII. Applies to sales and purchases made in Brown County.
- (d) Local exposition taxes: [Publication 410, Local Exposition Taxes](#). These taxes apply to sales and purchases of certain lodging, food and beverages, and car rentals in municipalities wholly or partially within Milwaukee County.
- (e) Premier resort area tax: [Publication 403, Premier Resort Area Tax](#). Applies to sales by certain types of retailers of tangible personal property; certain items, property, and goods under sec. 77.52(1)(b) to (d), Wis. Stats.; and taxable services in the Village of Lake Delton, City of Wisconsin Dells, City of Bayfield, and City of Eagle River.

Publications [201](#), [410](#), and [403](#) are available from any Department of Revenue office or the Department's web site at www.revenue.wi.gov.

CAUTION

- The information in this publication reflects interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of March 1, 2012. Laws enacted and in effect after that date, new administrative rules, and court decisions may change the interpretations in this publication.
- The lists and examples provided in this publication are not all-inclusive. They merely set forth common examples.

II. SALES BY BAKERIES

Sales of Bakery Goods: The taxability of bread, cakes, cookies, donuts, rolls, and other foods commonly made by bakeries and sold by a bakery depends on whether the items are sold "heated" or otherwise meet the defini-

tion of "prepared food." Part II. of [Publication 220, Grocers](#), provides the complete definition of "prepared food" along with numerous examples.

Appendix I contains a flowchart that can be used to determine whether or not the product being sold is "prepared food" and subject to Wisconsin sales and use tax. In addition, Table 1 on page 3 has been prepared specifically for bakeries and can be used to determine if what the bakery is selling is "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 now just reselling them to their customers.

Note: In order to determine the proper Wisconsin sales and use tax treatment of the sale of a bakery item 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 Part II.A., B., and E. of [Publication 220, Grocers](#). If the item meets the definition of candy, dietary supplement, or soft drink it is subject to tax.
- The retailer's 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, re-packaged, 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.

Table 1		
Retail Sales of Bakery Products by Bakeries		
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 and on previous page.		
1. Is the bakery product sold heated?¹	Yes →	Taxable
No ↓		
2. Is the bakery's customary practice to physically give or hand a utensil to the customer with this product?^{2,3}	Yes →	Taxable
No ↓		
3. Are plates, bowls, glasses, or cups necessary to receive the bakery product made available to the customer?	Yes →	Taxable
No ↓		
4. Are utensils made available by the retailer to the purchaser?^{2,4}	No →	Not Taxable
Yes ↓		
5. Are there 4 or more servings packaged as one item and sold for a single price?⁵	Yes →	Not Taxable
No ↓		
6. Are the bakery's sales of certain prepared food more than 75% of its total sales of food and food ingredients?⁶	Yes →	Taxable
	No →	Not Taxable

Notes to Table 1:

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.
2. "Utensils" includes plates, knives, forks, spoons, glasses, cups, napkins, and straws.
3. 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.
4. 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.

5. 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.
6. 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 1.

The following examples illustrate how to determine whether an item is "prepared food." All of 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 A sells one donut "to go" for \$0.75 to Customer B. Bakery A's sales of certain prepared foods, as explained in Note 6 of Appendix I, are

75% or less of all of its sales of food and food ingredients. Bakery A's customary practice when it sells donuts "to go" is to sell the 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 A, it does not meet the definition of "prepared food" because (1) it is not sold heated, (2) Bakery A's customary practice is not to physically give or hand utensils to its customers with donuts that are sold "to go," (3) plates, bowls, glasses, or cups are not necessary for the customer to receive the donut; and (4) Bakery A's sales of certain prepared foods, as explained in Note 6 of Appendix I, are 75% or less of all of its sales of food and food ingredients. Since the donut does not meet the definition of "prepared food," the sale of the donut is not subject to Wisconsin sales or use tax, regardless of whether Bakery A makes utensils available to its customers.

Example 2 - Donut and Coffee "To Go": Same as Example 1, except that Bakery A also sells a hot cup of coffee for \$1.00 to Customer B along with the donut. The sale of the donut is not subject to tax as explained in Example 1. The hot coffee is "prepared food" and the sale of it is subject to Wisconsin sales or use tax.

Example 3 - Coffee and Donut Eaten at Bakery - Prepared Food: Same as Example 1, except that the donut is sold to be eaten at the bakery. Bakery A's customary practice when selling donuts to be eaten at its bakery is to physically give or hand its customers a napkin along with the donuts purchased. The sale of the donut and hot coffee are subject to Wisconsin sales or use tax because they meet the definition of "prepared food." The coffee meets the definition of "prepared food" because it is sold heated. The donut meets the definition of "prepared food," because Bakery A's customary practice when it sells donuts to be eaten at the bakery is to physically give or hand its customer a napkin or other utensil along with the donut.

Example 4 - Donut "To Go" - Prepared Food: Bakery X sells one donut "to go" for \$0.75 to Customer Y. Bakery X's sales of certain prepared foods, as explained in Note 6 of Appendix I, are 75% or less of all of its sales of food and food ingredients. Bakery X's customary practice when it sells donuts "to go" is to physically give or hand napkins or other utensils to its customers with the donuts. Plates, bowls, glasses, or cups are not nec-

essary for the customer to receive the donut. Since Bakery X's customary practice when it sells donuts "to go" is to hand its customers napkins along with the donuts, Bakery X's sale of the donut to Customer Y is the sale of "prepared food" and subject to Wisconsin sales or use tax. The sale to Customer Y is subject to tax even if Customer Y does not receive a napkin along with the donut, since Bakery X's customary practice when it sells donuts "to go" is to physically give or hand its customers napkins or other utensils.

Example 5 - Coffee and Donut Eaten at Bakery: Same as Example 4, except that the donut is sold to be eaten at the bakery and Bakery X sells a cup of hot coffee for \$1.00 to Customer Y along with the donut. Bakery X'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 along with the donuts purchased. However, napkins and other utensils are made available to customers. The hot coffee is "prepared food" and the sale of it is subject to Wisconsin sales or use tax. The sale of the donut is not subject to Wisconsin sales or use tax since it does not meet the definition of "prepared food" because (1) it is not sold heated, (2) Bakery X's customary practice is not to physically give or hand utensils to its customers who purchase the donut sold to be eaten at the bakery, (3) plates, bowls, glasses, or cups are not necessary for the customer to receive the donut; and (4) Bakery X's sales of prepared foods, as explained in Note 6 of Appendix I, are 75% or less of all of its sales of food and food ingredients.

Example 6 - Donut and Carton of Milk - Prepared Food: Bakery Q sells one donut (single serving) for \$0.75 and a carton of milk (single serving) for \$.50 to Customer Y "to go." Bakery Q's sales of certain prepared foods, as explained in Note 6 of Appendix I, are **more than 75%** of all of its sales of food and food ingredients. Bakery Q's customary practice when it sells donuts and cartons of milk "to go" is to sell the donuts and milk to its customers 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 subject to tax as sales of "prepared" food because (a) Bakery Q's sales of certain prepared foods, as explained in Note 6 of Appendix I, are more than 75% of all of its sales of

food and food ingredients and (b) Bakery Q makes utensils available to its customers.

Sales of Other Food and Food Ingredients: In addition to its sales of prepared food, a bakery's sales of candy, soft drinks, alcoholic beverages, and dietary supplements are also taxable. See Part II. of [Publication 220, Grocers](#), for additional information and lists of taxable and nontaxable products.

Sales of Business Assets: Sales of business assets that are tangible personal property (for example, equipment, furniture, and fixtures), certain leased property affixed to real property, coins and stamps of the United States sold above face value, and certain digital goods are subject to Wisconsin sales tax 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 subject to Wisconsin sales and use tax if both of the following conditions are met:

1. The sale is of tangible personal property certain leased property affixed to real property, coins and stamps of the United States sold above face value, and certain digital goods, (other than inventory held for sale), which was 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 subject to Wisconsin 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 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(18r), Wis. Stats., semitrailer, all-terrain vehicle, or aircraft is required to collect and remit the Wisconsin sales or use tax on its sales of these items. In addition, 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 - Sale of Assets by a Business Which Has Ceased to Operate: Bakery C ceases actively operating as a seller of tangible personal property and taxable services on January 15, 2012. On January 25, 2012, Bakery C sells its business assets that it used at its business location (other than inventory). Since the items Bakery C is selling are tangible per-

sonal property previously used in its business and Bakery C has ceased operating at that location prior to the sale of its assets, the sale of the business assets is exempt from Wisconsin sales tax as an occasional sale.

Example - Sale of Assets by a Continuing Business: Bakery D holds a Wisconsin seller's permit and sells used shelving to Customer E for \$1,000. Since Bakery D 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 sale is subject to Wisconsin sales tax.

III. PURCHASES BY BAKERIES

Food and Food Ingredients: Ingredients used to produce baked goods which are sold may be purchased without paying Wisconsin sales and use tax. If the ingredients qualify for the exemption for food and food ingredients for human consumption, as defined in [sec. 77.51\(3t\), Wis. Stats. \(2009-10\)](#), the bakery does not need to provide the supplier with an exemption certificate. If the ingredients do not qualify for the exemption for food and food ingredients for human consumption, the bakery must provide the supplier with either a fully completed Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement Certificate of Exemption – Wisconsin ([Form S-211-SST](#)), claiming resale or other appropriate exemption to purchase them without Wisconsin sales and use tax.

[Publication 220, Grocers](#), contains lists of numerous taxable and nontaxable food products that may be useful in assisting a bakery in determining whether or not an exemption certificate needs to be provided to supplier to purchase the products without being required to pay Wisconsin sales or use tax.

Example 1 - Purchases of Food and Food Ingredients for Manufactured Items - No Exemption Certificate Needed: Bakery D purchases flour and eggs which will be used to make cakes. Since flour and eggs are exempt food or food ingredients for human consumption, Bakery D may purchase the flour and eggs without Wisconsin sales and use tax. Bakery D 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 E purchases candy

which will be used to make cakes the bakery will sell. Since candy is not an exempt food or food ingredient for human consumption, Bakery E may only purchase these items without Wisconsin sales and use tax if Bakery E provides the supplier of the candy with either a fully completed Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement Certificate of Exemption – Wisconsin ([Form S-211-SST](#)).

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 either a fully completed Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement Certificate of Exemption – Wisconsin ([Form S-211-SST](#)) to purchase these type of items without Wisconsin sales and use tax.

Example - Purchases of Cake Decorations for Resale: Bakery F purchases non-food cake decorations from Supplier G which will be resold to Bakery F's customer as part of a cake. Bakery F must provide Supplier G with a fully completed exemption certificate to purchase the decorations without Wisconsin sales and use tax.

In addition, a bakery may also purchase disposable paper and plastic eating utensils, napkins, straws, and placemats without tax for resale if these items are transferred to customers in conjunction with the sale of food, food ingredients, and beverages to its customers.

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 kept by the bakery or returned to the bakery and reused, the bakery is considered to be the consumer of these types of items. Purchases by the bakery of these types of items are subject to Wisconsin sales or use tax.

Example - Purchases of Reusable Cake Decorations: Bakery H purchases reusable cake decorations from Supplier I. Bakery H's customers are required to return the decorations to Bakery H after the cake is eaten. Bakery H does not charge its customers for use of the decorations. Bakery H is considered to be the consumer of the reusable decorations and must pay Wisconsin sales or use tax on its purchases of the decorations.

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

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

Example - Purchases of Equipment Used in Manufacturing Process: Bakery A purchases a mixer which will be used exclusively and directly in the manufacturing of donuts. Bakery A must provide the supplier with an exemption certificate ([Form S-211](#) or [S-211-SST](#)) claiming the appropriate manufacturing-related exemption to purchase the mixer without Wisconsin sales and use 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 point of first storage for a bakery will generally be the location at which the baked goods are stored until they are sold to customers. 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.

Example 1 - Packaging Not Part of Manufacturing Process: Bakery A manufactures donuts. Once the donuts are manufactured, they are placed in a display case where customers choose which donuts they would like to purchase. As the donuts are selected, they are placed in a box. The packaging of the donuts, as described above, is not part of the manufacturing process because the donuts were displayed prior to packaging them. As a result, the machinery and equipment used to package the donuts does not qualify for the manufacturing exemption. However, the packaging materials themselves (for example, boxes, bags) are exempt

from Wisconsin sales and use tax because they are used to transfer the donuts to customers.

Example 2 - Packaging Part of Manufacturing Process: Bakery B 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. The packaging equipment, if used as described above, 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 which are not used exclusively and directly in the manufacturing process are subject to Wisconsin sales or use tax.

Common Items Which Qualify for Exemption: Examples of items which may be purchased by a bakery without Wisconsin sales and use tax **if used exclusively and directly in manufacturing** include (this list is not all-inclusive):

- 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
- Wearing apparel worn by employees during the manufacturing process to prevent contamination of the manufactured product (for example, gloves worn by an employee making donuts which are worn to prevent the donuts from being contaminated during the manufacturing process qualify for this exemption)
- 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 any of the previously listed items are not used exclusively and directly in the manufacturing process, they do not qualify for the exemption and are subject to Wisconsin sales or use tax at the time they are purchased.)

Common Items Which Do Not Qualify for Exemption: Examples of machinery, equipment, and other business assets and supplies which are not considered to be used directly in the manufacturing process and are subject to Wisconsin sales or use tax include (this list is not all-inclusive):

- 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 (for example, 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
- 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. **Note:** This tax treatment applies to purchases of such cleansers, chemicals, and cleaning agents on and after November 1, 2011. Because the prior revision of Publication 203, *Sales and Use Tax Information for Manufacturers* (05/11), indicated that such purchases of chemicals and cleaning agents were exempt, the tax does not apply to purchases of such cleansers, chemicals, and cleaning agents prior to November 1, 2011, even though the

exclusive and direct use requirements have been in effect since August 1, 2009.

Example: Bakery A purchases a rack which will be used to display various products offered for sale. The purchase of the rack by Bakery A is subject to Wisconsin sales or use tax.

Containers and Packaging Materials: A bakery's purchases of containers and other packaging materials which are used to transfer bakery goods to customers are not subject to Wisconsin sales and use tax. The containers may or may not be returnable. To claim this exemption, the bakery must provide the supplier with either a fully completed Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Certificate of Exemption - Wisconsin (Form [S-211-SST](#)), or another fully completed exemption certificate claiming the appropriate exemption.

Examples of items which 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 which **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
- 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 the bakery delivery carts are not physically transferred to customers

Supplies: A bakery's purchases of supplies, except as noted in Notes 1 and 2 below, are subject to Wisconsin sales and use tax. Examples of supplies which a bakery may purchase and use in its business and which are subject to Wisconsin sales and use tax 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
- Training materials, including tapes 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](#) for more information on these items.)

Note: (1) Purchases of the above supplies are not subject to Wisconsin sales and use tax if the supplies: (a) are consumed or destroyed, or lose their identity exclusively and directly in the manufacturing process; or (b) prevent the contamination of the product while being manufactured.

(2) Effective January 1, 2006, 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, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities. However, fuel and electricity used directly in manufacturing steam which is 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 pur-

chase that 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 is measuring electricity and/or natural gas consumption.

If the bakery does not pay Wisconsin sales or use tax to the supplier at the time the supplies are purchased (other than those supplies which are exempt as previously explained), the bakery is liable for Wisconsin sales or use tax on such purchases.

IV. ANY QUESTIONS?

A. Department of Revenue Assistance

If you have questions about sales and use taxes, call or visit any Department of Revenue office or contact the department by any of the following:

Visit our web site . . . www.revenue.wi.gov

Email . . . salesl0@revenue.wi.gov

Write . . . Wisconsin Department of Revenue
Mail Stop 5-77
P.O. 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. For a listing of offices and their current hours, please see the department's web site at www.revenue.wi.gov/faqs/ise/address.html.

B. Other Information

1. Sales and Use Tax Report

The [***Sales and Use Tax Report***](#) is published one or more times each year by the Department of Revenue. It includes general information about sales and use tax, including new tax laws enacted by the legislature. These reports are available on the Department's web site at www.revenue.wi.gov/ise/sales/index.html.

Notification of new reports will be sent to subscribers on the sales and use tax electronic mail list. See Part IV.B.6.

2. Publications

You may obtain the following sales and use tax publications from any Department of Revenue office, or at the department's web site.

Number	Name
201	Wisconsin Sales and Use Tax Information
202	Sales and Use Tax Information: Motor Vehicle Sales, Leases, and Repairs
203	Sales and Use Tax Information for Manufacturers
204	Sales and Use Tax Information for Colleges, Universities and Technical Colleges
206	Sales Tax Exemption for Non-profit Organization
207	Sales and Use Tax Information for Contractors
209	Sales and Use Tax Information for Wisconsin Counties and Municipalities
210	Sales and Use Tax Treatment of Landscaping Services
211	Sales and Use Tax Information for Cemetery Monument Dealers
212	Businesses: Do You Owe Use Tax on Imported Goods?
214	Do You Owe Use Tax? (Businesses)
216	Filing Claims for Refund of Sales or Use Tax
217	Auctioneers
219	Hotels, Motels, and Other Lodging Providers
220	Grocers
221	Farm Suppliers and Farmers
222	Motor Vehicle Users - Do You Owe Use Tax?
223	Bakeries
224	Veterinarians
225	Barber and Beauty Shops
226	Golf Courses
228	Temporary Events
229	Brackets for Collecting Wisconsin Sales or Use Tax Paid on Retail Sales

Number	Name
230	Sales and Use Tax Information for Sellers of Antiques, Crafts and Artwork
240	Digital Goods
403	Premier Resort Area Taxes
405	Wisconsin Taxation of Native Americans
410	Local Exposition Taxes

3. *Wisconsin Tax Bulletin*

The [Wisconsin Tax Bulletin](#) is a quarterly publication of the Department of Revenue that includes information on most taxes administered by the Department of Revenue, including sales and use, income, franchise, and excise taxes. It includes up-to-date information on new tax laws, interpretations of existing laws, and information on filing returns. It gives brief excerpts of major Wisconsin tax cases decided by the Wisconsin Tax Appeals Commission and the courts.

The Bulletins are available online at: www.revenue.wi.gov/ise/wtb/index.html.

4. *Rules – Wisconsin Administrative Code*

The [Wisconsin Administrative Code](#) includes administrative rules that interpret the Wisconsin Statutes. Rules have the force and effect of law. The Department of Revenue has adopted a number of rules pertaining to sales and use tax.

A book of the administrative rules of the Department of Revenue may be obtained from: Department of Administration, Document Sales, P.O. Box 7840, Madison, WI 53707-7840. A subscription update service which provides all new Department of Revenue rules and changes to existing rules is also available from Document Sales. Sales and use tax rules are also available online at www.legis.state.wi.us/rsb/code/tax/tax011.pdf.

5. *Topical and Court Case Index*

The [Topical and Court Case Index](#) is a two-part index. The first part (a Topical Index) will help you find the particular Wisconsin Statute, administrative rule, Wisconsin Tax Bulletin tax release, private letter ruling, or Attorney Gen-

eral opinion that deals with your questions. The second part of the index (a Court Case Index) lists Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court decisions relating to your question.

The **Topical and Court Case Index** is available on the Department of Revenue's web site at: www.revenue.wi.gov/ise/top-cc/index.html.

6. *Electronic Mailing Lists*

The Department of Revenue has several free [Electronic Mailing Lists](#) available to the public. The goal of the electronic mailing lists is to provide an efficient means of communicating pertinent information from the Department to the persons who have signed up for the respective list(s). For additional information on the electronic mailing lists or to subscribe, go to: www.revenue.wi.gov/html/lists.html.

V. **SPEAKERS BUREAU**

The department's Speakers Bureau provides speakers to professional organizations and community groups throughout Wisconsin. If you would like a speaker to address your group, please call the Speakers Bureau at (608) 266-1911.

Subjects that may be discussed include updates on income, corporate, and sales tax and homestead credit laws, audit procedures, common taxpayer errors, how tax laws apply to exempt organizations, sales tax problems for contractors or manufacturers, etc.

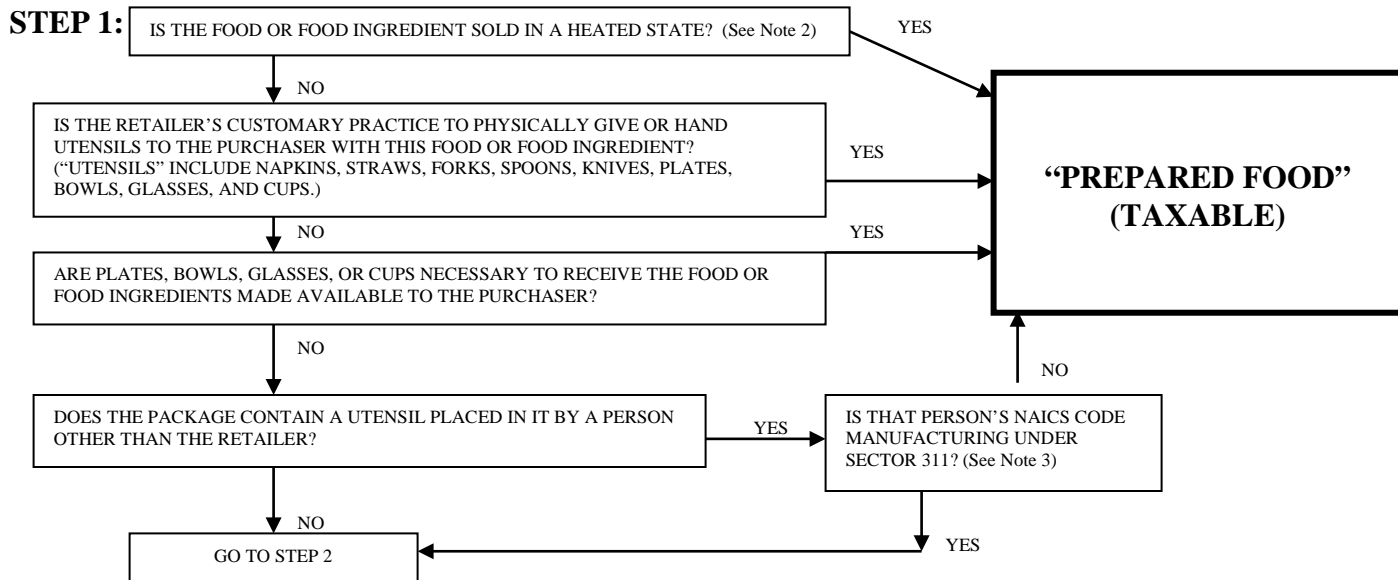
There is no charge for services provided by the Speakers Bureau.

VI. **BUSINESS DEVELOPMENT ASSISTANCE – WISCONSIN ECONOMIC DEVELOPMENT CORPORATION**

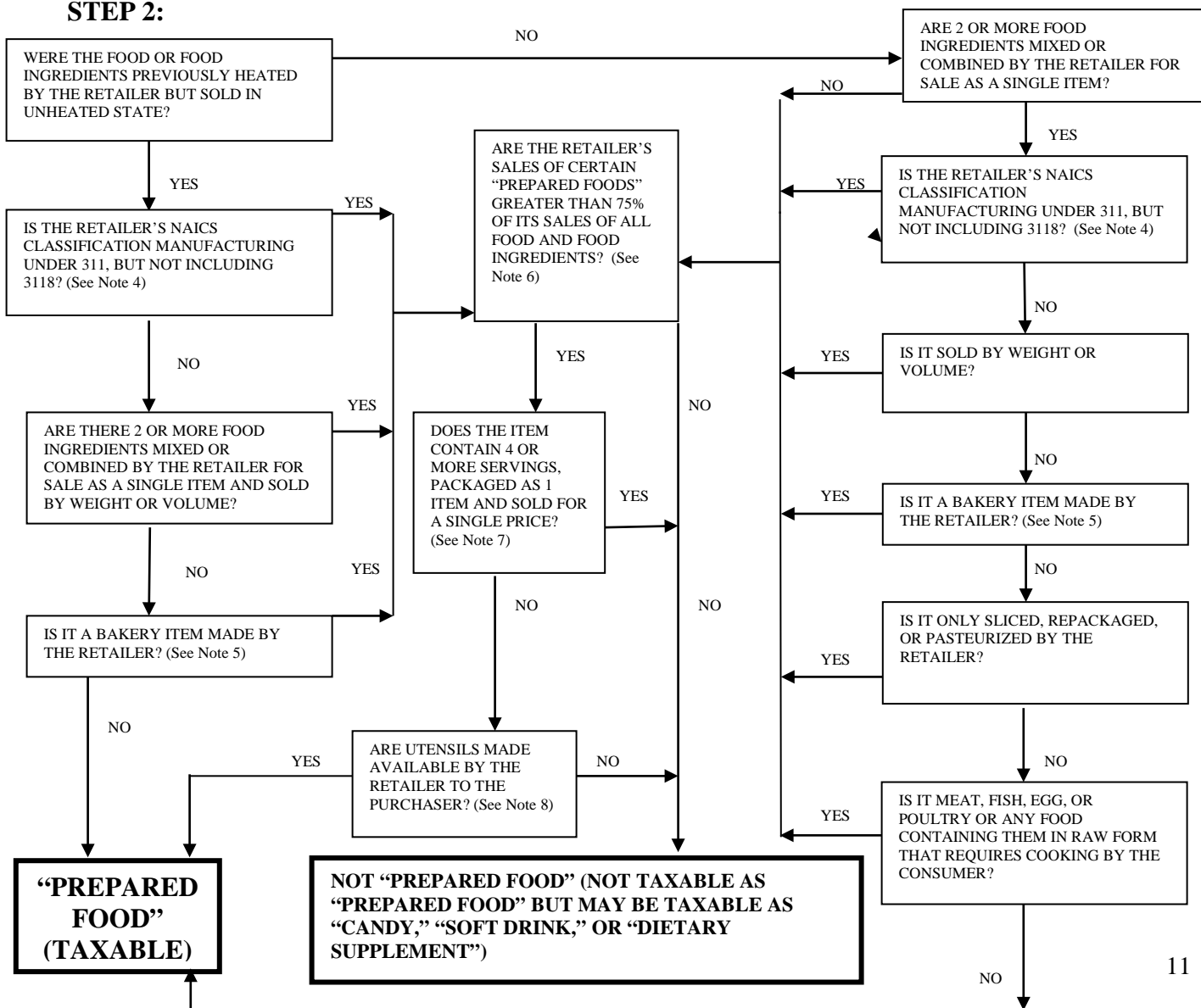
If you have questions about what other permits may be needed for your business, or need assistance in obtaining a permit, check the Wisconsin Economic Development Corporation's web site for information about [Entrepreneurs & Innovators](#).

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.)



STEP 2:



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 for which plates, bowls, glasses, or cups are necessary 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 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.