

Excise Tax Division Newsletter
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Noteworthy Quote: "Every official of the government must be as clean as a hound's tooth." – Theodore Roosevelt

This publication is not an official taxability ruling. Your specific facts must be reviewed in detail before we can make official taxability rulings. Please direct your written inquiries for such rulings to Robert Tompkins at the address or fax number listed above. Or e-mail your inquiry to: Robert.Tompkins@wy.gov Please be sure to include all pertinent facts in your inquiry. We will respond with written guidance for your particular business transactions.

Exempt Food for Domestic Home Consumption:

The Budget Session of the 58th Wyoming Legislature adjourned on March 11, 2006. One of this session's significant events was the legislature's passage of temporary sales and use tax exemptions for "food for domestic home consumption." The unique aspect of this new law is that it was included in the legislature's budget bill. [House Bill 1 (Enrolled Act 11), See "Consumer Tax Relief" Section 325, page 73] Find it online at: <http://legisweb.state.wy.us>

These temporary sales and use tax exemptions for food for domestic home consumption commence on July 1, 2006 and end on June 30, 2008. This new law tasked our agency with defining in our rules the meaning of "food for domestic home consumption." See our rules online at: <http://revenue.state.wy.us> See also on our website our food exemption bulletin, frequently asked food exemption questions and answers and an option to e-mail questions for answers.

A Look at the Taxability of Food Generally – Our rules and web based educational material distinguish exempt food for domestic home consumption from taxable prepared food. The word "domestic" means having to do with the home or housekeeping (e.g. of the home or family). Thus, exempt food for domestic home consumption is groceries that are typically transported for home preparation and consumption. Conversely, taxable prepared food is typically intended for immediate consumption. Generally, exempt food for domestic home consumption is food that is purchased

in grocery stores or convenience stores or from like vendors. Similarly, taxable prepared food is purchased from restaurants or concessionaires or from like vendors. As might be expected there are some exceptions within these general guidelines. For example, retail sales of heated food by grocery stores are taxable. See our rules for other distinctions.

A Look at the Taxability of Food Specifically –

- Dietary supplements as defined in our rules are exempt.*
- Bakery items sold for other than immediate consumption are exempt.*

* These are two of five categories excluded from taxable prepared food in our rules. See our rules for the others.

- Alcoholic beverages containing one-half percent or more of alcohol by volume are taxable.
- Tobacco is not food and thus taxable.
- Vending machine food sales are taxable.
- Retail sales of candy, other than by concessionaires or via vending machines, are exempt.
- Exempt food for domestic home consumption includes: Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.
- Taxable prepared food is food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

One question that arose last month during our seminars for food vendors

relates to prepared food and the provision of utensils by vendors. Does merely having utensils available make all food sold taxable? Wyoming has adopted an interpretation that speaks to this issue. Succinctly, if a food vendor's sales are comprised of more than 75% food sold that is heated by the seller or where the seller combines ingredients to make a single item then all of the vendor's sales of single serving items are taxable. A good example of this is a sandwich shop that sells single serving potato chips. Since the vendor sells in excess of 75% prepared food then the sales of the potato chips are taxable. See our bulletin addressing this interpretation on the main page of our department's website.

Another issue addressed during the seminars was the bundling of taxable items with exempt food products. A good example is the retail sale of a basket filled with candy. To address this issue we have adopted a policy which will allow the purchase of the basket as exempt if the purchase price of the food comprises more than 50% of the total purchase price of the bundle. In this example, we consider the taxable property to be de minimus to the transaction and exempt from Wyoming sales tax. Lastly, these new food exemptions apply to both the state sales and use tax rates of four percent (4%) as well as to any local option taxes in place among Wyoming's twenty-three (23) counties.

Tax Rate Changes:

Past: Effective with the tax return quarter beginning April 1, 2006 the sales/use tax rate for Sweetwater County increased from 5% to 6%.

Present: There are no sales, use or lodging tax rate changes for the tax return quarter beginning July 1, 2006.

Future: There are no sales, use or lodging tax rate changes for the tax return quarter beginning October 1, 2006.

Find our tax rate charts online by clicking on the "Publications" tab in the red banner. Then scroll to "Sales and Use Tax Materials" followed by a click on "Sales and Use Tax Rates."

Oil and Gas Drilling Exemption Expanded:

House Bill 31 (Enrolled Act 26) is law effective July 1, 2006. This new law adds language to the existing drilling exemption at W.S. 39-15-105(a)(viii)(B). This sales tax exemption has been expanded to include the "deepening or extending of any well previously drilled for oil or gas beyond the point to which they were initially drilled."

For a more on this year's sales/use tax related legislation see *Taxing Issues* online. [Volume 9, Quarter 1 (March 2006)] Click on the "Publications" tab followed by a click on "Excise" under "Newsletters."

Important Changes Related to Exemption Certificates:

Effective July 1, 2006 only the Streamlined Sales and Use Tax Agreement Certificate of Exemption is valid for use in Wyoming. The ETS Form 101 Exemption Certificate is no longer valid for claiming Wyoming sales tax exemptions beginning July 1, 2006. Compliance is as close as our website. Click on "Forms" and scroll to the heading "Excise" and click on "Exemption/Power of Attorney Forms."

A second important change is that vendors are no longer required to retain copies of letters of authority from exempt religious and charitable organizations. Vendors need only retain copies of completed exemption certificates from these organizations. In completing their exemption certificates, religious and charitable organizations must write their

Revenue Identification Number (RID) on the exemption certificate. This number is assigned by our agency to such organizations. Federal tax identification numbers or those issued by other agencies are not sufficient for this purpose.

Vendor Education:

Check out the "What's New?" section of our web site's main page for a list of our division's scheduled seminars. To register for any of our listed seminars please contact Shanda Rice at (307)777-7615 or by e-mail at: Shanda.Rice@wy.gov

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* Please note the following personnel changes in our field offices marked with an asterisk. In Cheyenne, Brian Sissom has resigned his position and is relocating in July to Washington D.C. In Gillette, Larry Keen is retiring in July. In Laramie, Dave Vaske retired in June. We have hired Tamie Wick as the new field representative for our Laramie Office. We wish Brian, Larry, Dave and Tamie the best as they transition into either new employment or retirement. Special thanks to Larry and Dave for their many years of dedicated public service.