

OKLAHOMA SALES AND USE TAX GUIDE FOR PREPARED FOOD AND FOOD INGREDIENTS



OKLAHOMA
Tax Commission

Revised: June 2024

Effective August 29, 2024, sales of **food and food ingredients** are not subject to the state sales and use tax rate of 4.5%, but will continue to be subject to **local sales and use tax rates**.

Sales of **prepared food, alcoholic beverages** and **dietary supplements** are subject to the full state sales and use tax rate of 4.5%, as well as any applicable **local sales and use tax rates**.

TERMS

Alcoholic Beverages

Beverages that are suitable for human consumption and contain 0.5% or more of alcohol by volume.

Alcoholic beverages include:

- Beer
- Wine
- Distilled spirits
- Any other beverage that contains alcohol and is regulated pursuant to 37A Oklahoma Statutes.

Bottled Water

Water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie-free and does not contain sweeteners or other additives, except that it may contain antimicrobial agents, fluoride, carbonation, vitamins, minerals, electrolytes, oxygen, preservatives and only those flavors, extracts or essences derived from a spice or fruit.

Candy

A preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. Candy does not include any preparation containing flour or requiring refrigeration.

Dietary Supplements

A product that:

- Contains a vitamin, mineral, herb or other botanical, amino acid or dietary substance for use by humans to supplement the diet by

increasing the total dietary intake and/or a concentrate, metabolite, constituent or extract;

- Is not represented as conventional food, is not intended to be the sole item of a meal and generally comes in the form of a tablet, capsule, powder, soft gel, gel cap or liquid; and
- Is labeled as a dietary supplement, identifiable by the “Supplement Facts” box found on the label.

Marijuana, Usable Marijuana or Marijuana-Infused Products

Marijuana includes all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin. A marijuana product means a product that contains cannabinoids that have been extracted from plant material or the resin therefrom by physical or chemical means, including but not limited to, oils, tinctures, edibles, pills, topical forms, gels, creams, vapors, patches, liquids and forms administered by a nebulizer.

Soft Drinks

Any nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice, oat or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

Tobacco Products

Any cigars, smoking tobacco and smokeless tobacco.

FOOD AND FOOD INGREDIENTS

Food and food ingredients are substances in a (liquid, concentrated, solid, frozen, dried or dehydrated form) that are:

- Sold for ingestion or chewing by humans;
- Consumed for their taste or nutritional value; and
- Not specifically excluded items.

Food and food ingredients do not include:

- Alcoholic beverages
- Dietary supplements
- Marijuana, usable marijuana or marijuana-infused products
- Over-the-counter medications with a drug facts or active ingredients label
- Prepared food
- Tobacco products

A list of taxable and exempt food items can be found here ([link to Product List](#)). The list is not all-inclusive.

PREPARED FOOD

Prepared food is food intended for, and which is generally ready for, immediate consumption, either on or off the premises of the seller. To be considered prepared food, the legal entity that sells the product at retail must do an activity in addition to selling the item: heat, mix or provide utensils.

Prepared food means food that meets **any** of the following conditions:

- Food that is sold in a heated state or that is heated by the seller; or
- Food in which two or more ingredients are mixed or combined by the seller and sold as a single item; or
- Food sold with eating utensils, plates, bowls, cups, glasses, napkins or straws provided by the seller.

Prepared Food: When is food sold in a heated state or is heated by the seller?

Food that was heated by the seller at any time before the sale is taxable as prepared food, even if it is in an unheated state at the time of the sale.

Heating includes baking, braising, boiling, broiling, dehydrating, frying, microwaving, roasting, simmering, smoking, steaming or other forms of warming or cooking.

The heating may occur at premises other than the location where the sale is made.

EXAMPLES: Hamburgers, rotisserie chicken, baked beans, soups and coffee are foods that are sold in a heated state or heated by the seller and are prepared food. These items are not exempt from state sales tax.

Prepared food includes food that is served hot, even if the food was not otherwise prepared by the seller.

Food heated by the customer on the seller's premises is not prepared food.

- **EXAMPLE:** A convenience store sells frozen burritos (not prepared by the seller) and provides a self-service microwave for use by its customers. The customer selects a frozen burrito and heats it in the microwave. In this scenario, the burrito is not prepared food sold in a heated state because the food item is not heated by the seller. The burrito is exempt from state sales tax.

Prepared Food: When are two or more ingredients mixed or combined by the seller and sold as a single item?

Prepared foods include foods mixed or combined by the seller. A seller who mixes or combines two or more foods or food ingredients and sells the mixture or combination as a single item, is selling prepared food.

The combining or mixing may occur at premises other than the location where the sale is made.

EXAMPLES: Meals, salads, sandwiches, self-service fountain drinks and ice cream sundaes that are made by the seller are prepared food and are not exempt from state sales tax.

Prepared Food: When is food sold with eating utensils provided by the seller?

Food may qualify as prepared food if the food is sold with eating utensils provided by the seller, even if the seller did not heat the food or mix ingredients to create the food.

An eating utensil is a useful tool or instrument used in the consumption of food, including bowls, chopsticks, cups, forks, glasses, knives, napkins or plates designed for serving food, skewers inserted into food and handed to the customer, spoons or straws. **Note:** Material used solely to package and transport food does not qualify as an eating utensil.

A utensil is “provided by the seller” when one of the following criteria is met:

(1) The seller or another person who is not a food manufacturer **puts a utensil in a product’s packaging.** Note: If a manufacturer who is not the seller provides a utensil in a package, the food is not sold with eating utensils provided by the seller.

EXAMPLE: A food manufacturer sells a product containing crackers, tuna, a mayonnaise packet and a spreader to supermarkets. Because the seller (supermarket) did not provide the utensil to the customer, the product is exempt from state sales tax.

(2) The seller’s business practice is to **give or hand utensils to purchasers.**

EXAMPLE: The seller includes napkins or plastic forks in a to-go bag. The transaction is a sale of prepared food because the food is sold with an eating utensil provided by the seller. The sale is not exempt from state sales tax.

(3) The seller **makes available eating utensils necessary for the purchaser to receive the food.** A customer’s choice not to use a provided utensil does not affect whether an item is prepared food.

EXAMPLES:

- The seller serves fried chicken and potato salad on a plate. The transaction is a sale of prepared food because the plate is a utensil provided by the seller. The sale is not exempt from state sales tax.
- A cup for a dispensed beverage is a utensil generally necessary for the customer to receive the beverage. The dispensed beverage is prepared food and not exempt from state sales tax.
- A customer purchases a fountain drink at a convenience store. Instead of using the cups provided by the seller, the customer uses their own plastic cup. The fountain drink is still a dispensed beverage, which is prepared food and not exempt from state sales tax even though the customer did not use a cup provided by the seller.

These three criteria form a general standard applicable to all food sellers.

For any food item, if the seller does one of these three things, the food item is not exempt from state sales tax.

(4) A fourth special standard applies *only* to certain sellers. In certain circumstances, all food items sold by a seller may be considered prepared food because **a utensil is simply made available** at a self-service station or central location for the customer to take at will. Unlike the three-part general standard, which applies to all sellers, this special standard **applies only to sellers whose “prepared food sales percentage” exceeds 75% of their total food sales**. *This fourth standard provides that a utensil is “provided by the seller” when the seller **makes a utensil available** to the purchaser of a food item.*

EXAMPLE: Plastic forks, spoons and knives available at a salad bar are utensils that are generally necessary for the customer to consume the salad. A salad purchased from a salad bar is prepared food and not exempt from state sales tax.

PREPARED FOOD SALES PERCENTAGE (PFS%)

The PFS% is used to determine when simply making utensils *available* to customers constitutes selling food with a utensil “provided by the seller.” The PFS% is important to sellers that primarily sell prepared food, as well as items that would generally be considered food and food ingredients.

If a seller has sales of prepared food greater than 75% of total sales of food items, and utensils are made available by way of a self-service station or otherwise, then all food items sold by the seller are considered prepared food and are not exempt from state sales tax, unless the item meets the **servicing-size exception** (see below).

If the seller physically gives the eating utensils to the customer and the item contains four or more servings sold as one item, the food will be taxed as prepared food regardless of the PFS%,

Establishments that are likely to have a PFS% that is greater than 75% include but are not limited to, cafes, restaurants, fast food restaurants, food court restaurants, diners, delicatessens, food trucks, concession stands, cafeterias, coffee shops, sports/entertainment arena sellers, hot dog stands, juice bars, popcorn/kettle corn vendors, sandwich shops, ice cream shops, sushi bars, taverns, bars, grills and donut shops.

Serving Size Exception: Even if 75% or more of food sales are sales of prepared food, sales of food or food ingredients are exempt from state sales tax if:

- (1) The food item contains four or more servings packaged as one item for a single price;
- (2) The food item has not been made or heated by the seller; and
- (3) The seller makes available eating utensils necessary for the purchaser to receive the food, but does not physically give or hand utensils to the buyer

To determine the number of servings in the food item, use the information on the product label. If there is no product label, the seller can make a reasonable determination as to the number of servings in the food item. If the transaction is for less than four servings, or the seller does not maintain adequate records of these sales, these food sales are not exempt from state sales tax.

Either the purchaser or the seller can place the food in the package, and the food is sold for a single price if there is one price for the entire contents of the packaged food. If the seller charges for each individual serving in the package, the sale is not one item sold for a single price.

EXAMPLE: A coffee shop sells various bakery items that are made by an unrelated third party. The coffee shop has napkins and straws available on the premises for its customers. The sale of a whole cheesecake (not made by the seller) will not constitute a sale of prepared food unless the coffee shop physically gives a utensil to the customer with the purchase of the cheesecake.

How to Calculate the Prepared Food Sales Percentage (PFS %)

How to Calculate the Prepared Food Percentage (do not include alcoholic beverages)	
A. Calculate total dollar amount of sales of prepared food	
1. Food sold heated or heated by the seller	\$ _____
2. Food made or decorated by the seller	\$ _____
3. Food where plates, bowls, glasses, cups are provided or necessary to receive food	\$ _____
4. TOTAL of lines 1, 2 and 3	\$ _____
B. Calculate total dollar amount of sales of all food items	
5. Total sales of prepared food (line 4)	\$ _____
6. Food and food ingredients	\$ _____
7. Dietary supplements	\$ _____
8. TOTAL of lines 5, 6 and 7	\$ _____
Line 4	\$ _____
divided by Line 8	\$ _____
Prepared Food Sales Percentage	%

EXCLUSIONS FROM PREPARED FOOD

Prepared food does not include food that meets the following criteria:

1. Food that contains raw eggs, fish, meat or poultry products that require cooking after the sale to prevent food-borne illnesses and food the customer generally cooks or heats after the sale. Food that would be fully taxable prepared food because two or more ingredients were mixed or combined by the seller, or because the food was at some time heated by the seller, is not taxable when additional cooking is required (as opposed to just reheating) by the customer prior to eating.

EXAMPLE: A grocery store seasons raw meat, which is required to be cooked by the customer. The seasoned meat is food and exempt from state sales tax.

2. Food that is only cut, repackaged or pasteurized by the seller.

EXAMPLE: Meat from a deli counter that is sliced and wrapped for a customer; deli salad that is purchased in large quantities by a supermarket and repackaged into smaller containers (without further preparation) for sale; or fruit sliced by the seller and packaged into containers or onto a tray for sale is exempt from state sales tax.

3. Food sold in an unheated state by weight or volume as a single item. When eating utensils are not provided by the seller, ready-to-eat food in an unheated state sold by weight is exempt from state sales tax.

EXAMPLE: A deli prepares potato salad in bulk quantities. It packages the potato salad in uniform containers, but the containers are priced for sale according to the weight of each individual container. If eating utensils are not provided by the deli, the potato salad is exempt from state sales tax, because it is sold for a variable unit price determined by the weight of each individual container.

4. Food sold by food manufacturers.

5. Food that ordinarily requires additional cooking to finish the product to its desired final condition. Food that would be fully taxable prepared food because two or more ingredients were mixed or combined by the seller, or because the food was at some time heated by the seller, are exempt from

state sales tax when additional cooking is required (as opposed to just reheating) by the customer prior to eating.

EXAMPLE: At a specialty store, a customer purchases a take-and-bake pizza. If eating utensils are not provided by the specialty store, the take-and-bake pizza is exempt from state sales tax because it requires cooking.



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