

6. PURCHASES

When a restaurant or caterer make purchases for use in its business, some purchases will be exempt as purchases for resale, (i.e. items sold as part of a meal), some will be exempt as purchases of packaging material (i.e. styrofoam meal containers, paper plates), and some purchases will be considered taxable, (i.e. cleaning supplies, dishes, cooking utensils).

a. Purchases for Resale. When a food preparer purchases tangible personal property for resale, the food preparer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the food preparer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, each time a purchase is made the food preparer must state to the supplier whether each particular purchase is for resale or not, and will be held responsible for the tax on any item purchased for resale but subsequently used by the food preparer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.**

The broadest category of purchases for resale by food preparers consists of food products which will become part of a meal sold to their customers. For any food products that do not qualify as a "grocery staple" as defined by 36 M.R.S.A. §1752-3B, a resale certificate must be supplied by the food preparer to the supplier in order to purchase these items without paying sales tax. For food products that do qualify as "grocery staples" as defined by §1752-3B, a resale certificate is not necessary.

Also, there are other, normally taxable, items that may be purchased by a food preparer which become part of the meal being sold; and are therefore, eligible to be purchased for resale by providing a resale certificate to the supplier. The following is a non-exclusive list of items which would be considered part of the cost of the meal.

Condiments Disposable Bibs Disposable Utensils

Disposable Napkins Disposable Tablecloths Moist Hand Towelettes

Disposable Placemats Salt & Pepper Stirrers

Straws Toothpicks Served in Food Trayliners

b. Packaging Materials. Purchases by food preparers of containers and packaging materials used to package the goods that they sell to their customers are not taxable.

Food preparers may purchase items that fall into this category without payment of tax by furnishing the supplier with a resale certificate as provided in Rule 301.

Please note, packaging material only qualifies for this exemption if it is transferred to the customer with the product sold. If similar products are used for storage or containment solely for use within the food preparer's business, it would not qualify for this exemption. Following is a non-inclusive list of examples of items which would be considered to qualify as packaging material for food preparers.

Coated Wrapping Paper Disposable Cups Disposable Plates

Paper Bags Disposable Containers Foil or Plastic Wrap

Tape Rubber Bands Plastic Bags

Sandwich Bags

In order to qualify for this exemption the items **must** be used to package food for sale to customers. If any of the above items are purchased for any other use by the

taxpayer they would not qualify for the exemption and tax should be paid to the supplier. If tax is not paid to the supplier at the time of purchase, the food preparer will be responsible for the tax.

c. Taxable Purchases. Purchases of tangible personal property, other than those discussed in sections a & b above, made by the food preparer are subject to sales tax. These items include, but are not be limited to the following:

Dishes Cleaning Supplies Maintenance Supplies

Furniture Cooking Utensils Appliances

Linens Complimentary Trinkets Silverware

Guest Checks Office Supplies Menus

Serving Trays Uniforms Safety Products

If a food preparer finds that in the course of doing business it purchases products that are used for both taxable and exempt purposes (for example, plastic wrap, which could be used to wrap products sold to customers but also to cover and store food) it is the responsibility of the food preparer to account for the tax based on the average percentage that is used for taxable purposes.

7. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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