

§ 105-164.13B. Food exempt from tax.

(a) State Exemption. - Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. **The following food items are subject to tax:**

- (1) Repealed by Session Laws 2005-276, s. 33.10, effective October 1, 2005.
- (2) Dietary supplements.
- (3) Food sold through a vending machine.
- (4) Prepared food, other than bakery items sold without eating utensils by an artisan bakery. The term "bakery item" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. An artisan bakery is a bakery that meets all of the following requirements:
 - a. It derives over eighty percent (80%) of its gross receipts from bakery items.
 - b. Its annual gross receipts, combined with the gross receipts of all related persons, do not exceed one million eight hundred thousand dollars (\$1,800,000). For purposes of this subdivision, the term "related person" means a person described in one of the relationships set forth in section 267(b) or 707(b) of the Code.
- (5) Soft drinks.
- (6) Repealed by Session Laws 2003-284, s. 45.6B, effective January 1, 2004.
- (7) Candy.

(b) Administration of Local Food Tax. - The Secretary must administer local sales and use taxes imposed on food as if they were imposed under this Article. This applies to local taxes on food imposed under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws. (1998-212, s. 29A.1(b); 2001-347, s. 2.13; 2001-489, s. 3(b); 2003-284, ss. 45.6, 45.6A, 45.6B; 2003-416, s. 22; 2005-276, s. 33.10; 2008-107, s. 28.19(a); 2009-445, s. 42; 2015-6, s. 2.21.)

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North Carolina Department of Revenue
Post Office Box 25000
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IMPORTANT NOTICE: Taxation of Food and Prepared Food

G.S. 105-164.13B provides that food is exempt from the State sales and use tax unless the specific food item is included in one of the five categories listed in the following paragraph:

“Food” is defined broadly as “Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco product, as defined in G.S. 105-113.4.”

Food that is exempt from the State sales and use tax is subject to the 2% county tax. The additional ½% Mecklenburg County tax and the additional 1% Dare County tax (the additional 1% Dare County tax is repealed effective July 1, 2006) do not apply to sales of food that is exempt from the State tax.

The law provides that food included in the following categories is not exempt from the State tax but is subject to the applicable State and local sales and use tax: dietary supplements, food sold through a vending machine (however, receipts of items sold through vending machines are subject to tax at 50% of the sales price), prepared food, soft drinks, and candy. All of these terms are defined in G.S. 105-164.3.

There have been misunderstandings by taxpayers regarding the taxation of some items that, although they meet the definition of food, may be included in one of the five excluded categories listed in the preceding paragraph. If the item is included in one of the categories, the item is subject to both the State and local rates of tax. The primary area of concern pertains to “prepared food.” A food item is considered to be a “prepared food” and subject to the State and local rates of tax if one of the following conditions exists: 1) it is sold in a heated state or it is heated by the retailer, 2) it consists of two or more foods mixed or combined by the retailer for sale as a single item (not including foods containing raw eggs, fish, meat, or poultry that must be cooked by the consumer to prevent food borne illnesses, or 3) it is sold with eating utensils such as plates, knives, forks, spoons, glasses, cups, napkins, and straws that are provided by the retailer. The following are examples of the proper application of tax to certain food or food items:

- 1) Breads, cakes, and similar bakery items are subject to the 2% local tax unless the items are considered to be prepared foods, in which case they are subject to the general State and applicable local rates of tax. For June 2006 instance, bread selected from a shelf on the bread aisle of a grocery store is subject to the 2% county tax. However, bread purchased in a grocery store is subject to the general State and applicable local rates of tax as a prepared food if the retailer (i.e. grocery store) made the bread; the retailer mixed or combined two or more foods for sale as a single item.

- 2) Bakeries that make items they sell, such as breads, pies, cakes, and pastries, are liable for collecting the general State and applicable local rates of tax on their baked goods regardless of where the items are consumed. Whether items are consumed on the premises or taken off the premises (i.e., for “home consumption”) is not a factor in determining the application of tax.
- 3) Sales of bakery items that a bakery purchases from a third party and resells without altering or heating are subject to the 2% local rate of tax unless the bakery provides eating utensils to customers. If eating utensils are provided, the food items constitute prepared foods and are subject to the general State and applicable local rates of tax. Utensils include plates, knives, forks, spoons, glasses, cups, napkins, and straws.
- 4) Items such as pimiento cheese, cole slaw, and potato salad are subject to the 2% local tax unless the items are considered to be prepared foods, in which case they are subject to the general State and applicable local rates of tax. For instance, pimiento cheese, cole slaw, or potato salad selected from the refrigeration section of a grocery store is subject to the 2% county tax. However, a similar item purchased in the deli area of a grocery store is subject to the general State and applicable local rates of tax as prepared food if the retailer (i.e. grocery store) made the item; the retailer mixed or combined two or more foods for sale as a single item.
- 5) Fried chicken purchased in the frozen foods area of a grocery store is subject to the 2% local tax; fried chicken in the deli area is subject to the general State and applicable local rates of tax as a prepared food either on the basis of it consisting of two or more foods mixed or combined by the retailer or it being sold in a heated state or being heated (cooked) by the retailer.

Questions about this notice can be directed to the Taxpayer Assistance Division at telephone number 1-877-252-3052 (toll-free) or in writing to the Taxpayer Assistance Division, North Carolina Department of Revenue, P. O. Box 25000, Raleigh, N.C. 27640-0001.