



5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

QUESTIONS:

1. Are sales of warm cookies boxed and ready to-go from the warmer taxable?
2. Are sales of chilled cookies sold boxed and ready to-go from the refrigerator taxable?
3. Are sales of catering-order cookies sold boxed and ready to-go at room temperature taxable?

ANSWERS:

1. Yes. Cookies kept warm by a heat source used to maintain them in a heated state are considered to be hot prepared food products which are not exempt under s. 212.08(1)(c) 6., F.S.
2. No. Since the cookies are in a chilled state, they are not considered hot prepared food products.
3. No. Since the cookies are at room temperature, they are not considered to be hot prepared food products.

March 23, 2023

[REDACTED]

Email: [REDACTED]

Re: Technical Assistance Advisement – TAA #: 23A-006
[REDACTED] (“Taxpayer”)
Florida Sales and Use Tax – Sales of Bakery Products
Sections 212.05, 212.08(1), Florida Statutes (F.S.)
Rule 12A-1.011(3), Florida Administrative Code (F.A.C.)
F.E.I.#: [REDACTED]
BP#: [REDACTED]

Dear [REDACTED]:

This is in response to your letter February 10, 2023, requesting this Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C, Florida Administrative Code, regarding the matter discussed below. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

REQUESTED ADVISEMENT

What is the taxability of the following items?

1. Warm cookies sold boxed and ready to-go from the warmer.
2. Chilled cookies sold boxed and ready to-go from the refrigerator.
3. Catering - order cookies sold boxed and ready to-go at room temperature.

FACTS

Taxpayer is a retail bakery located in [REDACTED] with no seating/dining facilities. To confirm this, you attached photos reflecting no eating facilities (inside or outside) and that the counter space was only for ordering and carry out.

All cookies are boxed and sold to-go (in single, 4-pack, 6-pack, and 12-pack boxes) for off-premises consumption. After Taxpayer bakes the cookies, the cookies are allowed to cool slightly but not all the way; then, the cookies are placed in a warmer to keep them warm.

The majority of cookies sold by Taxpayer are warm cookies sold boxed and ready to-go from the warmer. Taxpayer also sells chilled cookies sold boxed and ready to-go from the refrigerator. Lastly, catering- order cookies are sold boxed and ready to-go at room temperature.

LAW AND DISCUSSION

Unless a specific exemption applies¹, s. 212.05, F.S., provides it is the legislative intent that every person is exercising a taxable privilege that engages in the business of selling tangible personal property² in this state. For exercising such a privilege, a tax is levied on each taxable transaction or incident. The tax is due and payable at the rate of 6 percent, plus any applicable surtaxes imposed under s. 212.055, F.S., on the total consideration received for each item or article of tangible personal property when sold at retail in this state.

An exemption is provided for bakery products sold by bakeries, pastry shops, or like establishments that do not have eating facilities. See s. 212.08(1)(b)3., F.S.

However, s. 212.08(1)(c)6., F.S., provides that the exemption for sales of food products does not apply to "food products sold as hot prepared food products."

¹ The Department must point out that while taxing statutes are strictly construed against the taxing authority, statutes that grant an exemption are strictly construed against the taxpayer. See Asphalt Pavers v. Dept. of Revenue, 584 So.2d 55 (Fla. 1st DCA 1991), at 57 (citing the rule that exemptions from tax are strictly construed against the taxpayer, with any ambiguity resolved in favor of the administrative agency); State ex rel. Szabo Food Services Inc. v. Dickinson, 286 So.2d 529 (Fla. 1973) ("Exemptions to taxing statutes are special favors granted by the Legislature and are to be strictly construed against the taxpayer."). See also, United States Gypsum Co. v. Green, 110 So.2d 409 (Fla. 1959) (also stating that exemptions from tax are strictly construed against the taxpayer) and Wanda Marine Corp. v. Dep't of Revenue, 305 So.2d 65, 69 (Fla. 1st DCA 1975).

² Tangible personal property means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses. See s. 212.02(19), F.S.

Rule 12A-1.011(3)(a), F.A.C., provides that “bakery products sold by bakeries, pastry shops, or like establishments as hot prepared food products are taxable.” Rule 12A-1.011(3)(a)1., F.A.C., provides that “bakery products that are kept warm by a heat source used to maintain them in a heated state, or to reheat them, are hot prepared food products.” Subparagraph 2., of this paragraph provides that “bakery products that are sold while still warm from the initial baking are not hot prepared food products” and are not taxable.”

Bakery products, excluding items sold as hot prepared food products, sold for consumption off the premises are exempt. See Rule 12A-1.011(3)(c)1., F.A.C.

Cookies sold as hot prepared food products are not exempt from Florida sales and use tax. Therefore, any cookies sold by Taxpayer which are kept warm by a heat source used to maintain the cookies in a heated state, or to reheat the cookies, are not exempt from Florida sales and use tax, as these cookies are considered to be “hot prepared food products.”

Cookies, excluding any which may be sold as hot prepared items, are exempt from Florida sales and use tax.

CONCLUSION

QUESTIONS:

1. Are sales of warm cookies boxed and ready to-go from the warmer taxable?

Answer: Yes. Cookies kept warm by a heat source used to maintain them in a heated state are considered to be hot prepared food products which are not exempt under s. 212.08(1)(c) 6., F.S.

2. Are sales of chilled cookies sold boxed and ready to-go from the refrigerator taxable?

Answer: No. Since the cookies are in a chilled state, they are not considered hot prepared food products.

3. Are sales of catering-order cookies sold boxed and ready to-go at room temperature taxable?

Answer: No. Since the cookies are at room temperature, they are not considered to be hot prepared food products.

This response constitutes a TAA under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for TAA,

the backup material and this response, deleting names, addresses and any other details which might lead to identification of the Taxpayer. Your response should be received by the Department within ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-7759.

Sincerely,

Alesia Pride

Alesia Pride

Tax Law Specialist

Technical Assistance & Dispute Resolution

Record ID: 7000928918

TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000928918

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.