



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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PLR 25-004

August 25, 2025

XXXXXXXXXX
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XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXX

Re: Sales tax exemption for items sold by bakery

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (the "Company"), to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Whether multi-packs of items, ranging from four to twelve items packaged in a box, are exempt from state sales tax when purchased in-store, via the Company app, or via its website.
2. Whether the orders that Company categorizes as catering or bulk orders are exempt from state sales tax when purchased in-store, via the Company app, or via its website.
3. Whether an individual boxed item is exempt from state sales tax when purchased in-store, via the Company app, or via its website.

Conclusions

1. Multi-packs of items, ranging from four to twelve items packaged in a box, are exempt from state sales tax when purchased in-store, via the Company app, or via its website.
2. The orders that Company categorizes as catering or bulk orders are exempt from state sales tax when purchased in-store, via the Company app, or via its website.
3. An individual boxed item is exempt from state sales tax when purchased in-store, via the Company app, or via its website.

Background¹

Company specializes in freshly baked cookies, pies, and cakes ("items"), all prepared and packaged for off-premises consumption. Company's business model includes:

¹ Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the initial request or in any supplement or amendment thereto, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted or omitted to ensure confidentiality as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

- In-store purchases: Customers order at the counter and receive products in takeout packaging (e.g. boxes);
- Online/mobile app orders for pickup: Customers pre-order via Company's app or website and collect items in-store, packaged in takeout boxes;
- Third-party delivery: Orders placed through Company's app or website are delivered to customers in sealed takeout packaging by a third party; and
- Catering and bulk orders: Pre-ordered large quantities, starting at forty-eight items and increasing in increments of twelve, prepared for events or corporate functions. Other than their size, these orders are similar in preparation and packaging to the typical multi-packs. These orders are packaged for pickup or delivery and include no additional services (e.g., setup, serving staff, or utensils).

Company offers no seating, utensils, napkins, or facilities for on-site consumption. Items are baked fresh in-store but are cooled to set and packaged before sale, typically in boxes of four, six, or twelve items ("multi-packs").

Discussion

Colorado generally imposes a sales tax on retail sales of tangible personal property.² The term "tangible personal property" means "corporeal personal property," and generally embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances that are dealt in and capable of being possessed and exchanged.³ Because food is tangible personal property, it is subject to state sales and use tax unless a specific exemption applies.

Colorado exempts the sale of food,⁴ which is defined for the purposes of sales tax as "food for home consumption as defined in 7 U.S.C. sec. 2012(k), as amended for purposes of the federal food stamp program."⁵ The food stamp program referred to in Colorado statute is the U.S. Department of Agriculture's (USDA) Supplemental Nutrition Assistance Program (SNAP). SNAP defines "food" as "any food or food product for home consumption except . . . hot foods or hot food products ready for immediate consumption. . . ."⁶ The Secretary of Agriculture further describes "eligible food" under SNAP as "[a]ny food or food product intended for human consumption except . . . hot foods and hot food products prepared for immediate consumption. . . ."⁷

Because of Colorado's reliance on the USDA's definition of food for purposes of the sales tax exemption, the exemption for food generally includes food sold for home consumption. The exemption for food does not include prepared food or food for immediate consumption.

Department rule 1 CCR 201-4, Rule 39-26-102(4.5) provides guidelines for determining when food is sold for home consumption (and so exempt) and when it is sold for immediate consumption (and so taxable). It provides that food generally sold for home consumption includes cookies and cakes, among other items.⁸ The rule further provides that "[s]ales by bakeries or pastry shops which do not have eating facilities are not subject to tax," because such businesses generally sell food for home consumption.⁹ Additionally, the rule stipulates that "[p]repared food or food marketed for immediate consumption, and therefore not exempt, includes food that is hot at the point of sale, food kept above room temperature to make it palatable and suitable for immediate consumption, food marketed to be heated on the premises whether or not hot at the point of sale."¹⁰ Non-exempt food also includes "[p]repared food or food marketed for immediate consumption includes all food furnished or

² Section 39-26-104(1)(a), C.R.S.

³ Section 39-26-102(15)(a)(I), C.R.S.

⁴ Sections 39-26-707(1)(e) and (2)(d), C.R.S.

⁵ Section 39-26-102(4.5)(a), C.R.S.

⁶ 7 U.S.C. § 2012(k).

⁷ Paragraph (1) of the definition of "eligible food" in 7 C.F.R. § 271.2.

⁸ Paragraph (1)(a)(1) of 1 CCR 201-4, Rule 39-26-102(4.5).

⁹ *Id.* at (3)(a)(1).

¹⁰ *Id.* at (1)(b)(4).

served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer.”¹¹

Multi-packs and Individual Boxed Items

Both multi-packs of items and individual boxed items are exempt from state sales tax when purchased in-store, or via the Company app or website for pickup or delivery by a third party. This is because items are sold for home consumption—whether sold individually or in multi-packs. Company is a bakery and products sold by bakeries are generally non-taxable because they are generally sold for home consumption.¹² Additionally, cookies and cakes are explicitly included in the federal food stamp program’s definition of food (and so generally exempted from sales tax). These sales lack indicators that items are intended to be consumed immediately—whether sold individually or in multi-packs. Items are not sold hot, nor can they be heated on premise. They are not served for consumption at tables, chairs, or counters, or from trays, glasses, or other tableware provided by the retailer. Therefore, because they are intended for home consumption, both multi-packs of items and individual boxed items are exempt from state sales tax.

Catering Orders

Company’s catering orders are exempt from state sales tax when purchased in-store or via the Company app or website for pickup or delivery by a third party. This is because the orders that Company categorizes as catering orders are large-volume orders of items, identical in preparation and packaging to its standard boxed sales (e.g., four-, six-, or twelve-packs, or larger boxes holding up to 48 items). These orders do not include on-site setup, serving staff, or utensils. So, they are exempt from sales tax for the same reason as multi-packs and individual boxed items: they are intended for home consumption.¹³

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, that all representations are true and complete, and that Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company’s facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department, and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at Tax.Colorado.gov for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.

¹¹ *Id.* at (2)(a).

¹² *Id.* at (3)(a)(1).

¹³ See also Paragraph (3)(c) of 1 CCR 201-4, Rule 39-26-102(4.5), which provides that, while sales by caterers are normally taxable (because the food they sell is normally intended for immediate consumption), if a “. . . caterer operates a retail store selling food items marketed for domestic home consumption . . . ,” then whether the items they sell via catering orders are taxable depends on the same considerations that determine the taxability of the multi-packs and individual boxed items.