
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC TEMPORARY REVENUE RULING #07-4

SUBJECT: Exemption for Unprepared Foods
(Sales and Use Tax)

EFFECTIVE DATE: November 1, 2007

REFERENCES: Act 115 of 2007, Section 3 (Enacted June 29, 2007)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2005)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Temporary Revenue Ruling is to provide immediate guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is temporary, and is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Introduction:

The General Assembly, in Act 115 of 2007, Section 3, enacted legislation (Code Section 12-36-2120(75)) to exempt from the state sales and use tax "unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons."

Beginning on November 1, 2007, the state sales and use tax will no longer apply to unprepared food items eligible for purchase with United States Department of Agriculture food coupons.

Act 115 of 2007, Section 3, states:

A. Section 12-36-910 of the 1976 Code, as last amended by Act 388 of 2006, is further amended by deleting subsection (D) which reads:

"(D)(1) Notwithstanding the rate of the tax imposed pursuant to subsection (A) of this section or the rate of any other sales tax imposed pursuant to this chapter and the rate of any use tax imposed pursuant to this chapter, the sales and use tax on the gross proceeds of sales or sales price of unprepared food which lawfully may be purchased with United States Department of Agriculture food coupons is three percent.

(2) There is transferred from the general fund of the State to the EIA Fund in fiscal year 2006-2007 the revenue estimated by the Board of Economic Advisors to equal EIA revenue not received as a result of the two percent sales tax differential provided pursuant to this subsection."

B. Section 12-36-2120 of the 1976 Code is amended by adding a new item at the end appropriately numbered to read:

"() unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. However, the exemption allowed by this item applies only to the state sales and use tax imposed pursuant to this chapter."

C. Notwithstanding any other provision of law, for fiscal year 2007-2008 only, there must be transferred from the general fund of the State to the EIA Fund an amount estimated by the Board of Economic Advisors to equal the difference between EIA Fund revenues from the sales tax on food in fiscal year 2007-2008 and the amount of such revenue to the EIA Fund in fiscal year 2006-2007.

D. Notwithstanding any other effective date provided in this act, subsections A and B of this section take effect November 1, 2007.

Questions and Answers:

1. What unprepared food items are eligible for the state sales and use tax exemption beginning November 1, 2007?

Effective November 1, 2007, unprepared foods that lawfully may be purchased with United States Department of Agriculture (“USDA”) food coupons¹ are exempt from the state sales and use tax.

The term “unprepared” food does not include (1) meals and food sold by a restaurant, cafeteria, lunch wagon, or other similar places or businesses engaged in the business of selling prepared meals or food for immediate consumption; (2) meals prepared and delivered by a meal delivery service; (3) meals sold to or at congregate meal sites; or (4) meals and food sold at a grocery store, convenience store or any other similar store for the purpose of eating at or near the store, such as meals and food sold with eating utensils (e.g., plates, knives, forks, spoons, cups, napkins) provided by the seller. These meals and foods are considered “prepared meals or food” and are not eligible for the state sales and use tax exemption and are subject to the state sales and use tax at the state rate of 6%.

The following are examples of foods eligible and not eligible for the exemption from the state sales and use tax.

Foods eligible for the state sales and use tax exemption beginning November 1, 2007 include:

- * Any food intended to be eaten at home by people, including snacks, beverages and seasonings
- * Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)
- * Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered “prepared meals or food” as discussed above

Items which are not eligible for state sales and use tax exemption and are, therefore, subject to the state sales and use tax at the state rate of 6% are:

- * Alcoholic beverages, such as beer, wine, or liquor
- * Hot beverages ready-to-drink such as coffee
- * Tobacco
- * Hot foods ready to eat

¹ For purposes of the state exemption discussed in this advisory opinion, food coupons also means food stamps, electronic benefits transfer cards and any other method approved by the United States Department of Agriculture.

- * Foods designed to be heated in the store
- * Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court or that are considered “prepared meals or food” as discussed above
- * Vitamins and medicines (Note: Medicines sold by prescription are exempt from the 6% state sales and use tax.)
- * Pet food
- * Any non-food items such as tissue, soap or other household goods

Note: Some sales of meals and food may be exempt from state and local sales and use tax under other exemptions found in the sales and use tax law. For example, Code Section 12-36-2120(10) provides exemptions from the sales and use tax for (1) meals or foodstuff used in furnishing meals to school children within school buildings on a nonprofit basis; (2) meals or foodstuff provided to elderly or disabled persons at home by certain nonprofit organizations; (3) prepared or packaged foodstuff sold to nonprofit organizations for the homeless and needy; or (4) meals and prepared or packaged foodstuff sold to public and nonprofit organizations for congregate or in-home service to the homeless, needy, disabled adults over eighteen years of age or persons over sixty years of age (provided the meals or packaged foodstuffs in this item (4) are eligible for purchase with USDA food coupons). Code Section 12-36-2120(41) exempts from the sales and use tax tangible personal property, including meals or food, sold by certain nonprofit organizations.

2. Must the above unprepared food items be purchased with USDA food coupons to be exempt from the state sales and use tax beginning November 1, 2007?

No.

Note: Food items which are actually purchased with USDA food coupons are already exempt from the state sales and use tax.

3. Must the unprepared food items eligible for the state sales and use tax exemption beginning November 1, 2007 be purchased from a retailer authorized by the United States Department of Agriculture to accept food coupons?

No.

4. When the state sales and use tax exemption for unprepared food items eligible for purchase with United States Department of Agriculture food coupons begins November 1, 2007, what will be the State sales and use tax rate on sales of such food items to persons 85 years of age or older?

When the state sales and use tax exemption for unprepared food items eligible for purchase with United States Department of Agriculture food coupons begins November 1, 2007, sales of such food items to persons 85 years of age or older will be treated in the same manner as sales of such food items to any other individual. In other words, sales of such food items will be exempt from the state sales and use tax, but will not be exempt from the local sales and use tax unless the local sales and use tax specifically exempts such food items.

5. When the state sales and use tax exemption for unprepared food items eligible for purchase with United States Department of Agriculture food coupons begins November 1, 2007, will sales of such food items in counties that impose a local sales and use tax also be exempt?

When the state sales and use tax exemption for unprepared food items eligible for purchase with United States Department of Agriculture food coupons begins November 1, 2007, sales of such food items in counties that impose a local sales and use tax on food items eligible for purchase with United States Department of Agriculture food coupons will not be exempt from the local sales and use tax unless the local sales and use tax specifically exempts such food items.

Note: For information concerning the various types of local sales and use taxes being imposed by counties and other jurisdictions, and which of these local taxes exempt or do not exempt food items eligible for purchase with United States Department of Agriculture food coupons, see SC Information Letter #07-4. Please note that this information letter is updated periodically and updated versions of it can be found on the Department's website at www.sctax.org under "Dept. Advisory Opinions."

6. When an unprepared food item eligible for purchase with United States Department of Agriculture food coupons is prepackaged with a non-eligible item, or a single price is established for a combination of an unprepared food item eligible for purchase with United States Department of Agriculture food coupons and a non-eligible item, is the state sales and use tax exemption applicable?

No. For example, if a grocery store advertises and sells a basket containing fruit and a bottle of wine, the state sales and use tax exemption is **not** applicable.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

October 5 _____, 2007
Columbia, South Carolina