

SC TEMPORARY REVENUE RULING #06-5

SUBJECT: Sale Tax Rate Reduction for Unprepared Foods
(Sales and Use Tax)

EFFECTIVE DATE: October 1, 2006

REFERENCES: Act 388 of 2006, Part I, Section 1 (Enacted June 22, 2006)

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 It is temporary, and is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 388 of 2006, Part 1, Section 1, enacted legislation to reduce the State sales and use tax rate on unprepared food items eligible for purchase with United States Department of Agriculture food coupons.

Beginning on October 1, 2006, the State sales and use tax rate on unprepared food items eligible for purchase with United States Department of Agriculture food coupons will be 3% instead of 5%. When the general State sales and use tax rate increases to 6% on June 1, 2007, the State sales and use tax rate on unprepared food items eligible for purchase with United States Department of Agriculture food coupons will remain 3%.

Act 388 of 2006, Part 1, Section 1, states:

A. Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Article 11
Additional Sales, Use, and Casual Excise Tax

Section 12-36-1110. Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

Section 12-36-1120. The revenue of the taxes imposed by this article must be credited to the Homestead Exemption Fund established pursuant to Section 11-11-155.

Section 12-36-1130. The Department of Revenue may prescribe amounts that may be added to the sales price to reflect the additional taxes imposed pursuant to this article."

B. 1. Section 12-36-910 of the 1976 Code, as last amended by Act 161 of 2005, is further amended by adding a new subsection at the end to read:

"(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."

2. Notwithstanding the general effective date provided in this act, this subsection takes effect October 1, 2006.

C. The provisions of Section 4-10-350(F) and (G) of the 1976 Code apply mutatis mutandis with respect to the tax imposed pursuant to Article 11, Chapter 36, Title 12 of the 1976 Code as added by this section.

Questions and Answers:

1. What unprepared food items are eligible for the lower sales tax rate beginning October 1, 2006?

Effective October 1, 2006, unprepared foods which lawfully may be purchased with United States Department of Agriculture (“USDA”) food coupons¹ are subject to the state sales and use tax at a rate of three percent.

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 lower sales tax rate and are subject to the state sales and use tax at the state rate of 5% (6% effective June 1, 2007).

The following are examples of foods eligible and not eligible for the lower state sales tax rate.

Foods eligible for the lower state sales tax rate beginning October 1, 2006 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 the lower sales tax rate and are, therefore, subject to the state sales and use tax at the state rate of 5% (6% effective June 1, 2007) 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 lower sales tax rate discussed 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 5% (6% effective June 1, 2007) 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 the sales and use tax. 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 eligible for the lower sales tax rate beginning October 1, 2006?

No.

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

3. Must the unprepared food items eligible for the lower sales tax rate beginning October 1, 2006 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 rate on unprepared food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 3% beginning October 1, 2006, 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 rate on unprepared food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 3% beginning October 1, 2006, the State sales and use tax rate on sales of such food items to persons 85 years of age or older will also be 3%.

5. When the State sales and use tax rate on unprepared food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 3% beginning October 1, 2006, what will be the local sales and use tax rate on 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?

When the State sales and use tax rate on unprepared food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 3% beginning October 1, 2006, the local sales and use tax rate on 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 change.

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 #06-16. 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 lower sales tax rate applicable?

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

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

August 23, 2006
Columbia, South Carolina