



Important Rate Changes!

BEGINNING JANUARY 1, 2024:

- Milwaukee County sales and use tax rate increases from 0.5% to 0.9%
- City of Milwaukee imposes a new 2% sales and use tax
- See [Fact Sheet 2414 Milwaukee Sales and Use Taxes](#)

See the [Sales Tax Rate Chart](#) for a complete list of county sales and use tax rates and their effective dates

Local Exposition Taxes

For Persons Selling Lodging, Food or Beverages, or Renting Automobiles in Milwaukee County

Includes information on:

- Registering
- Filing returns and paying the tax
- What's taxable and what's exempt
- Recordkeeping

TABLE OF CONTENTS

	Page
1. INTRODUCTION	4
2. WHO IS SUBJECT TO LOCAL EXPOSITION TAXES?	5
A. Who Is Subject to the Taxes?	5
B. Where Does a Sale Take Place?	5
C. Who Must Register?	6
D. How to Register	6
3. COMPUTING THE TAX.....	7
A. Tax Imposed on Sales Price.....	7
B. Collecting Tax From Customers.....	7
C. Annual Tax Liability Less Than \$5.....	8
4. ACCOUNTING METHODS	8
5. FILING RETURNS AND PAYING THE TAX	8
A. Filing a Return.....	8
B. How Often Must a Return Be Filed?	8
C. Due Date for Filing	9
D. Business at More Than One Location	9
E. Seasonal Sellers	9
F. Obtaining an Extension of Time to File.....	9
G. Payment of Tax.....	10
6. ROOM TAXES	10
A. Basic Room Tax	10
B. Additional Room Tax.....	10
C. Exemptions From Room Taxes	11
7. FOOD AND BEVERAGE TAX	11
A. What's Taxable?	11
B. What's Exempt?	19
C. Examples Illustrating Sales of Candy, Soft Drinks, Prepared Foods, and Alcoholic Beverages	21
D. Combination of Items That Includes Items Subject to the Local Food and Beverage Tax	25
8. RENTAL CAR TAX	28
A. What's Taxable?	28
B. What's Exempt?	29
9. INTEREST AND PENALTIES.....	30
A. Interest.....	30
B. Penalties	30
C. Additional Enforcement of Room Tax.....	30
10. CORRECTING AN ERROR	31
A. Underpayments	31

TABLE OF CONTENTS (CONTINUED)

B. Overpayments – Claims for Refund	31
C. Seller's Requirement to Refund Local Exposition Tax to Its Customer	32
11. RECORDKEEPING.....	32
A. General Records to Keep	32
B. Records to Keep – Exempt Sales and Certificates.....	32
12. YOU MAY BE AUDITED.....	33
13. IF YOU HAVE QUESTIONS.....	33
APPENDIX 1	34
APPENDIX 1	35

IMPORTANT CHANGES

- **The local expo basic room tax increased from 2.5% to 3%, effective January 1, 2021.** Page 10.
- **The 0.1% baseball stadium tax ended March 31, 2020.** Effective April 1, 2020, the 0.1% baseball stadium tax no longer applies to sales and purchases made in Milwaukee, Ozaukee, Racine, Washington, or Waukesha County. See the [Sales Tax Rate Chart](#).
- **Several counties adopted the 0.5% county tax.** See the [Sales Tax Rate Chart](#).

1. INTRODUCTION

The City of Milwaukee created a Local Exposition District called the "Wisconsin Center Tax District" for the purpose of acquiring and managing exposition center facilities. To fund these facilities, the District adopted the following taxes:

- 3% basic room tax
- 7% additional room tax (City of Milwaukee only)
- 0.5% food and beverage tax
- 3% rental car tax

These taxes apply to persons selling lodging, certain food or beverages, or who are primarily engaged in the short-term rental of passenger automobiles in municipalities located wholly or partially within Milwaukee County.

This publication explains who is subject to the local exposition taxes, how to register, file returns and pay the taxes, and what types of tangible personal property and services are subject to these taxes.

The Wisconsin Department of Revenue is responsible for administering the local exposition taxes and distributing the taxes to the district.

Note: Certain sales and purchases which are subject to the local exposition taxes may also be subject to the 5% state and 0.5% county sales and use taxes. Additional information about these taxes is contained in [Publication 201, Wisconsin Sales and Use Tax Information](#).

All retailers that are registered to collect and remit the 5% Wisconsin state sales and use tax are also required to collect and remit the applicable county sales and use taxes for sales that are sourced to a county that has adopted the county tax. This provision applies regardless of whether the retailer is "engaged in business" in the county in which the sale takes place. See Part 2.A. for information about when a retailer is subject to the local exposition taxes.

Important: In this publication, "Milwaukee County" includes a city or village wholly or partially in Milwaukee County.

Example: The Village of Bayside is located in both Milwaukee County and Ozaukee County. The City of Milwaukee is located in Milwaukee, Washington, and Waukesha Counties. Since the Village of Bayside and the City of Milwaukee are located partially within Milwaukee County, they are in "Milwaukee County" for purposes of the local exposition taxes. All sales that take place in the Village of Bayside or the City of Milwaukee are considered to be in "Milwaukee County," regardless of whether the sale took place in the Milwaukee County portion or the other county portion of the Village of Bayside and City of Milwaukee.

2. WHO IS SUBJECT TO LOCAL EXPOSITION TAXES?

A. Who Is Subject to the Taxes?

Every person selling lodging or certain food or beverages, or who is primarily engaged in the short-term rental of passenger automobiles is subject to the local exposition taxes if the sale or rental takes place in Milwaukee County, regardless of whether the person is "engaged in business" in Milwaukee County.

Example: A company, located in Madison, sells candy to a customer located in Milwaukee County. The company is not "engaged in business" in Milwaukee County. The company ships the candy to the customer via the United States Postal Service to the customer's location in Milwaukee County. The company is required to collect and remit the 0.5% local food and beverage tax on this sale.

Exception: Persons selling candy, soft drinks, prepared foods, and alcoholic beverages subject to the food and beverage tax are exempt from the tax if their liability for the tax on such candy, soft drinks, prepared foods, and alcoholic beverages is less than \$5 for the taxable year.

B. Where Does a Sale Take Place?

The local exposition tax only applies to transactions that take place in a Local Exposition District.

- Local Lodging Tax

A sale of lodging takes place at the location where the purchaser makes first use of the lodging (i.e., where the lodging is furnished to the customer).

If the lodging is furnished in Milwaukee County, it is subject to the 3% basic room tax. If the lodging is furnished in the City of Milwaukee, it is subject to the 3% basic room tax **and** the 7% additional room tax.

- Local Food and Beverage Tax

A sale of taxable food and beverages takes place at the seller's business location if the purchaser receives the food or beverage at the seller's business location. If the purchaser does not receive the food or beverage at the seller's business location, the sale takes place at the location where the purchaser or the purchaser's designated donee receives the food or beverage, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

Example: A restaurant in Waukesha County receives an order for prepared food. The prepared food is delivered by the restaurant to the customer's Milwaukee County address. The sale of the prepared food is subject to the 0.5% local food and beverage tax, because the sale took place in Milwaukee County (where the restaurant delivered the prepared food to the buyer).

- Local Rental Car Tax

The location of an automobile rental is as follows:

A rental that requires only one payment

The rental of an automobile that requires only one payment takes place at the lessor's (seller's) business location if the lessee (customer) receives the automobile at the lessor's business location. If the lessee does not receive the automobile at the lessor's business location, the sale takes place at the location where the lessee or the lessee's designated donee receives the automobile, including the location indicated by the instructions known to the lessor for delivery to the lessee or the lessee's designated donee.

A rental that requires more than one payment

The rental of an automobile that requires more than one payment takes place at the automobile's primary location as indicated by an address for the automobile that is provided by the lessee and that is available to the lessor in the records that the lessor maintains in the ordinary course of the lessor's business, if the use of such an address does not constitute bad faith. The location of the rental of the automobile is not altered by any intermittent use of the automobile at different locations.

Example 1: An individual rents an automobile for the month of February 2021 (28 days) from a car rental company located in Milwaukee County. The monthly rental rate is \$300 and must be paid in one payment when the individual picks up the automobile at the car rental company's business location. The individual is staying at a hotel in Illinois. The car rental company's rental of the automobile is subject to the local rental car tax, since the rental of the automobile takes place at the car rental company's business location, where the individual receives the automobile from the car rental company.

Example 2: Assume the same facts as *Example 1*, except the car rental company delivers the automobile to the Illinois hotel where the individual is staying. The car rental company's rental of the automobile **is not** subject to the local rental car tax, since the rental of the automobile takes place at the location where the individual receives the automobile from the car rental company (i.e., the Illinois hotel where the car rental company delivers the automobile to the individual).

Example 3: Assume the same facts as *Example 1*, except the car rental company requires the individual to make four weekly payments for the rental of the automobile (rather than one monthly payment). The individual provides the car rental company with the Illinois address of the hotel as the primary location of the automobile. The car rental company's rental of the automobile **is not** subject to the local rental car tax, since the rental requires more than one payment and the primary location for the automobile provided by the individual is the Illinois hotel.

Note: For more information about which sales or rentals are subject to the local exposition taxes, refer to the following:

- Room taxes, Part 6.
- Food and beverage tax, Part 7.
- Rental car tax, Part 8.

C. Who Must Register?

Every person subject to any of the local exposition taxes is required to register with the Wisconsin Department of Revenue.

Note: Even though you are registered for Wisconsin sales and use tax purposes, you are still required to register for the local exposition taxes.

D. How to Register

Apply to collect local exposition taxes using one of the following methods:

- Complete the Department of Revenue's online [Business Tax Registration Process](#).
- Complete [Form BTR-101, Application for Business Tax Registration](#), and mail it to the Department of Revenue. Keep a copy of the completed application for your records.

It is important that you fill in all the requested information on the application.

Note: You may apply for a seller's permit and register for local exposition taxes at the same time or separately.

3. COMPUTING THE TAX

A. Tax Imposed on Sales Price

The local exposition taxes are imposed on a seller's taxable sales price. The sales price is the total amount of the consideration for the sale or rental of products and services, whether received in money or something other than money.

Example: A restaurant sells a pizza for \$10 and charges \$1 for delivering the pizza to a location in Milwaukee County. The sales price of \$11 is subject to the 0.5% local food and beverage tax. The charge to the customer is computed as follows:

Selling price of pizza	\$	10.00
Delivery charge		<u>1.00</u>
Sales price subject to tax*	\$	11.00
State and county tax (\$11 x 5.5%)		.61
Food and beverage tax (\$11 x 0.5%)		.06
Total charge to customer	\$	<u>11.67</u>

*The sales price does not include any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser (e.g., Wisconsin state and county sales tax).

The sales price for local exposition taxes is computed in the same manner as for Wisconsin state sales and use tax purposes, except that for local exposition taxes, there is no exemption for insurance charges, unless the insurance charges are separate and optional to the customer.

B. Collecting Tax From Customers

The local exposition lodging and food and beverage taxes imposed on a retailer may be passed on to and collected from the customer. When the local exposition rental car tax applies, the retailer is required to collect such tax from the customer.

A retailer determines the amount of local exposition tax that may be collected from a customer on a transaction by multiplying the 0.5% local food and beverage tax rate, the 3% rental car tax rate, or the 3% room tax (plus the 7% additional room tax, when applicable) by either the aggregate sales price of all taxable items sold in a single transaction or by multiplying the sales price of each item separately by the tax rate and then totaling the results. The tax collectible from the customer is rounded to the nearest cent.

Example 1: A grocery store in Milwaukee sells candy for 50¢. The food and beverage tax charged to the customer is zero (50¢ x 0.5% = .25¢ rounded to the nearest cent, which is zero).

Example 2: A restaurant in Milwaukee County sells prepared food for \$11. The food and beverage tax charged to the customer is 6¢ (\$11 x 0.5% = 5.5¢ rounded to the nearest cent, which is 6¢).

The seller is subject to the local exposition taxes, even if the tax is not collected from the customer.

C. Annual Tax Liability Less Than \$5

If a seller's liability for the local food and beverage tax is less than \$5 for the taxable year, that seller is exempt from that tax for that year (i.e., the exemption applies to persons with less than \$1,000 of sales subject to the local food and beverage tax).

4. ACCOUNTING METHODS

The accrual method of accounting must be used by all sellers to determine and report their taxable sales, with one exception. The Wisconsin Department of Revenue may, if it is satisfied that an undue hardship would result from using the accrual method, permit some other method, such as the cash method of accounting. Before using some other method, written approval must be obtained from the department.

Under the accrual method of accounting, all cash, credit, installment, and conditional sales are included in the total sales on the return for the reporting period in which the sale occurs, even though all or part of the payments for such sales are not received until a later reporting period.

Example: You file a return for the quarter ending March 31. A \$100 sale occurred in March for which you receive payment in April. Under the accrual method the \$100 sale must be reported on the return for the quarter ending March 31, even though payment is not received until April.

Note: The requirement to use the accrual method, as explained above, also applies to the 5% Wisconsin and 0.5% county sales and use taxes.

5. FILING RETURNS AND PAYING THE TAX

A. Filing a Return

Use [My Tax Account](#), the department's online filing system, to report the local exposition tax on the Local Exposition Tax Return.

My Tax Account is a free, secure online application that allows you to file and pay your local exposition taxes electronically. It computes the tax based on the information you enter and allows you to pay via electronic funds transfer, credit card or paper check. My Tax Account also allows you to:

- View business tax filing and payment history and identify tax periods that need attention.
- Change your address, request an extension to file a return, or inactivate your account.
- Appeal adjustment notices.

To use My Tax Account, you must create a logon ID and password. Go to [Using My Tax Account - Business Users](#) on the Department of Revenue's website for more information about creating your logon ID and password.

Note: Do not use the Wisconsin sales and use tax return to report local exposition taxes.

B. How Often Must a Return Be Filed?

You must file a return for each "reporting period," even if no tax is due for that period. Your reporting period will be quarterly, monthly, or annual. The Wisconsin Department of Revenue may notify you in writing that your returns must be filed more or less frequently depending on the amount of your local exposition tax liability. You can check your account status at any time using [My Tax Account](#).

C. Due Date for Filing

Returns must be filed by the last day of the month following the end of the reporting period. For example, a quarterly filer's first quarter return (January through March) is due by April 30. **Exception:** Early monthly sales tax filers are required to file by the 20th of the month following the end of the reporting period.

Returns and ACH debit payments made via My Tax Account, must be submitted by 4:00 p.m. (CST) of the due date.

D. Business at More Than One Location

If you are engaged in business at more than one location within Milwaukee County, you must file one consolidated local exposition tax return for all of your sales subject to the local exposition taxes.

Note: Do not include sales that take place outside Milwaukee County on your local exposition tax return.

Example 1: You operate ten restaurants at ten different locations in Milwaukee County. Your local exposition tax return should include the taxable receipts from sales subject to the local exposition taxes for all ten restaurants.

Example 2: You operate ten restaurants at ten different locations. Two locations have sales in Milwaukee County. The remaining eight locations are elsewhere in Wisconsin and do not have sales subject to the local exposition taxes. Your local exposition tax return should only include the total taxable receipts for the two restaurants that have sales subject to the local exposition taxes.

E. Seasonal Sellers

If you are open for business only part of the year, you may be allowed to file returns on a seasonal basis. You may submit a written request by mail or email to:

MS 5-77
Wisconsin Department of Revenue
P.O. Box 8949,
Madison, WI 53708-8949
DORBusinessTax@wisconsin.gov

This written request should include your Wisconsin seller's permit number, the beginning month of operation, and the closing month of operation.

F. Obtaining an Extension of Time to File

If you cannot file your return by the due date, you may request an additional month extension of time to file using [My Tax Account](#), the Department of Revenue's online service.

If you don't use My Tax Account to file your returns (for example, you have an approved e-file waiver), you may request an extension of time to file by writing to the Wisconsin Department of Revenue, Mail Stop 3-80, P.O. Box 8902, Madison, WI 53708-8902.

The department may grant you an additional month from the due date of the return to file and will notify you if the extension is granted. If the tax is not paid by the unextended due date, the tax will be subject to 1% interest per month during the extension period and 1.5% interest per month thereafter.

G. Payment of Tax

Payments may be made using [My Tax Account](#), the Department of Revenue's online service. See [Using My Tax Account](#) for additional information.

6. ROOM TAXES**A. Basic Room Tax**

A 3% room tax is imposed on the sales price from the furnishing of lodging if the lodging is furnished:

- (1) in Milwaukee County, **and**
- (2) to a person for a continuous period of less than one month.

This includes (this list is not all-inclusive):

- Lodging furnished in hotels, motels, inns, tourist homes, tourist houses, tourist courts, lodging houses, rooming houses, apartment hotels, resort lodges, cabins, and other accommodations available to the public.
- Lodging provided by private camps. See **Exception**, below. (**Note:** Private camps do not include those operated by corporations or associations organized and operated exclusively for religious, charitable, or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual.)

Exception: If a camp charges one nonitemized price for meals, lodging, and program access, the camp's charge is not subject to tax. It is presumed that the taxable products included in the price are less than 10% of the total price, and the exemption from Wisconsin sales and use tax provided in [sec. 77.54\(51\)](#), Wis. Stats., applies. For additional information, see the article on the department's website titled "[Summer Camps - Tax Treatment](#)."

Example: A hotel located in Milwaukee County provides lodging for two days at the rate of \$100 per day to a customer. The customer is also charged \$10 for video rentals and \$5 for telephone calls. The total charge to the customer is \$215 (\$200 + \$10 + \$5). Only the \$200 charge for lodging is subject to the 3% room tax.

B. Additional Room Tax

An additional 7% room tax is imposed on receipts subject to the 3% basic room tax, as described in A. above, if the lodging is **furnished in the City of Milwaukee**.

Important: This 7% additional room tax does not apply to lodging furnished outside the City of Milwaukee. However, other room taxes administered by municipalities within Milwaukee County still apply.

Example 1: A hotel, located in the City of Milwaukee, provides lodging for ten days at the rate of \$100 per day to a customer. The charge by the hotel for the lodging is subject to the 3% basic room tax and the 7% additional room tax (10% total). The charge to the customer is computed as follows:

Lodging	\$ 1,000
State and county tax (\$1,000 x 5.5%)	55
Basic room tax (\$1,000 x 3%)	30
Additional room tax (\$1,000 x 7%)	<u>70</u>
Total charge to customer	<u>\$ 1,155</u>

Example 2: Assume the same facts as *Example 1*, except that the hotel is located in Oak Creek, which is in Milwaukee County. The lodging is subject to the 3% basic room tax. However, since Oak Creek is not in the City of Milwaukee, the lodging is not subject to the 7% additional room tax. **Caution:** If Oak Creek imposes its own room tax, that tax still applies.

C. Exemptions From Room Taxes

The same exemptions that apply for the 5% Wisconsin sales and use tax apply to the 3% and 7% room taxes.

Examples of exemptions that apply to lodging for the 3% and 7% room taxes are:

- (1) Sales to the federal government.
- (2) Sales to any federally recognized American Indian Tribe or band in Wisconsin.
- (3) Sales to Wisconsin governmental units, including Wisconsin counties, cities, villages, towns, public schools, and school districts.
- (4) Sales to nonprofit organizations that hold a Certificate of Exempt Status (CES) from the Wisconsin Department of Revenue.
- (5) Sales to out-of-state nonprofit organizations that meet the requirements of sec. 501(c)(3) of the Internal Revenue Code as described in sec. 77.54(9a)(f), Wis. Stats.
- (6) Sales by public schools, colleges, universities, hospitals, sanitoriums, or nursing homes.
- (7) Sales by agency camps (i.e., camps operated by corporations or associations organized and operated exclusively for religious, charitable, or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual).
- (8) Sales for resale.

7. FOOD AND BEVERAGE TAX

A. What's Taxable?

The 0.5% tax is imposed on sales in Milwaukee County of **candy, soft drinks, and prepared foods** that are subject to the 5% Wisconsin sales or use tax. The 0.5% tax is also imposed on sales of **alcoholic beverages** in Milwaukee County if the alcoholic beverage is for consumption on the seller's premises.

The sales price subject to the local food and beverage tax on a restaurant's sale of prepared food includes mandatory tips. Discretionary tips are not subject to the local food and beverage tax when (1) the amount of the tip is wholly in the discretion or judgment of the customer; and (2) the customer has not made an arrangement with the seller regarding the amount or the percentage of the tip.

The local food and beverage tax does not apply to cover, minimum, entertainment, service, or other charges made to patrons or customers. However, sales of items subject to the local food and beverage tax that are sold to fulfill a minimum purchase requirement are subject to the tax.

Example 1: Tavern charges a cover charge of \$10 to enter the establishment. The \$10 cover charge is not subject to the local food and beverage tax.

Example 2: A nightclub requires patrons to purchase two drinks at \$5 each in order to enter the nightclub and enjoy the entertainment provided (i.e., "two drink minimum"). Upon entering the nightclub, a patron pays \$10 and receives two drink tickets (i.e., each ticket is redeemable at the bar for a drink). The nightclub's sale of the two drinks for \$10 is subject to the local food and beverage tax.

(1) Candy

Sales of candy in Milwaukee County are subject to the 0.5% local food and beverage tax.

Candy is defined in [sec. 77.51\(1fm\)](#), Wis. Stats., to mean "...a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. 'Candy' does not include a preparation that contains flour or that requires refrigeration."

Items that otherwise meet the definition of candy and do not require refrigeration but which are sold frozen or refrigerated are still candy.

Example: A grocery store sells candy at room temperature or from a refrigerated display case. Unless the candy is required to be refrigerated, it is still candy when sold, even if it was refrigerated when sold.

(2) Soft drinks

Sales of soft drinks in Milwaukee County are subject to the 0.5% local exposition food and beverage tax.

Soft drink is defined in [sec. 77.51\(17w\)](#), Wis. Stats., to mean "...a beverage that contains less than 0.5 percent of alcohol and that contains natural or artificial sweeteners. 'Soft drink' does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50 percent vegetable or fruit juice by volume."

- Natural and artificial sweeteners include corn syrup, dextrose, sucrose, fructose, sucralose, saccharin, and aspartame.
- Soft drinks are beverages that are in liquid form and do not include items that are not in liquid form such as powdered fruit drinks, powdered teas, and frozen drink concentrates.
- Water and tea that contain any sweeteners are soft drinks, unless they contain more than 50 percent fruit or vegetable juice.
- Water and tea that are unsweetened are not soft drinks, even if carbonated or flavored.

All sales of soft drinks in Milwaukee County are subject to the local food and beverage tax, regardless of whether the soft drinks are sold from a dispenser, or sold in cans or bottles, and regardless of whether they are sold for consumption on or off the seller's premises.

Example: A grocery store in Milwaukee County sells individual cans and bottles of soft drinks, as well as six-packs, 12-packs, and cases of soft drinks for off-premises consumption. Customers select the soft drinks they wish to purchase from shelves or refrigerated display cases. The store's sales of the soft drinks are subject to the local food and beverage tax.

(3) Prepared food

Sales of prepared food in Milwaukee County are subject to the 0.5% local food and beverage tax.

Prepared food is defined in [sec. 77.51\(10m\)](#), Wis. Stats., to mean any of the following:

(a) *Food and food ingredients sold in a heated state.*

Food and food ingredients are sold in a heated state if they are sold at a temperature that is higher than the air temperature of the room or place where the item is sold. Food and food ingredients that are sold unheated by the retailer and heated by the customer are not sold in a heated state.

Example 1: A retailer cooks chicken using a rotisserie. The retailer then sells these chickens in a heated state. The sale of the heated rotisserie chicken is the sale of prepared food.

Example 2: A grocer sells a donut in an unheated state. The grocer has a microwave that customers can use to heat the food and food ingredients they purchase, if they so desire. The customer uses the microwave to heat the donut and then takes the heated donut to the register and pays for it. The donut sold by the grocer is not sold in a heated state since the donut was not heated by the grocer.

(b) *Food and food ingredients heated by the retailer, except for the following:*

1. *Two or more food ingredients that are mixed or combined by a retailer for sale as a single item, if the retailer's primary classification in the North American Industry Classification System (NAICS), 2002 edition, published by the Federal Office of Management and Budget, is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.*

Example: A food manufacturer classified under industry code 31161 of the North American Industry Classification System NAICS), 2002 edition, makes hot dogs by mixing and combining two or more food ingredients, heating the hot dogs so that they are fully cooked and then packaging the hot dogs for sale once they have cooled. Although the hot dogs were heated by the retailer while they were being manufactured, they are not prepared food because the retailer's primary classification in the 2002 NAICS is manufacturing under subsector 311, assuming the hot dogs do not meet any of the other definitions of prepared food.

2. *Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.*

Example 1: A bakery mixes ingredients together and bakes a cake. Once the cake cools, it is decorated and sold to a customer. Although the cake was heated by the retailer, it is not prepared food because it meets the exception for bakery items. This also assumes that the cake does not meet any of the other definitions of prepared food.

Example 2: A bakery mixes two or more ingredients together to make a bagel. The bagel is then heated and placed in a heated display case for sale to a customer. Although the bagel meets the exception for bakery items, it is prepared food since it is sold heated.

3. *Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated, and sold by weight or volume.*

Note: *Examples 1-7, below, assume that it is not the retailer's customary practice to physically give or hand napkins or other utensils to the customer with the food product; plates, bowls, glasses, or cups are not necessary to receive the food product; and the retailer's NAICS code is not subsector 311 or 3118.*

Example 1: A grocery store prepares potato salad for sale to its customers. The grocery store boils the potatoes, cuts the potatoes, and combines the potatoes with various other ingredients to make potato salad. At the customer's request, the grocery store places a certain amount of potato salad into a container. When the customer is satisfied with the amount of potato salad in the container, the grocery store weighs the container and prints out a label that contains the weight and the price. The price is equal to \$3 per pound. Although the potatoes were previously heated by the retailer when the potato salad was being made, the potato salad is not prepared food since it is sold unheated by weight.

Example 2: Same as *Example 1*, except the grocery store prepackages the containers of the potato salad rather than having the customer select the amount she wants. The potato salad is not prepared food since it is sold unheated by weight.

Example 3: Same as *Example 1*, except the customer tells the grocery store which size container of potato salad she wants. The store charges \$1.79 for a ½ pint size container, \$2.89 for a pint size container, and \$5.49 for a quart size container. The potato salad is not prepared food since it is sold unheated by volume.

Example 4: Same as *Example 3*, except the grocery store prepackages the containers of the potato salad into the 1/2 pint, pint, and quart size containers as it is made, rather than upon the customer's request. The potato salad is not prepared food since it is sold unheated by volume.

Example 5: An ice cream store makes its own ice cream by mixing and combining the ingredients. The store charges \$2.50 for a small container and \$5.50 for a large container. Each container is filled to the top. The actual weight or volume associated with each size container is not identified. The ice cream is prepared food. It is not sold by weight or volume.

Example 6: Same as *Example 5*, except the ice cream store indicates that the small container is a pint and the large container is a quart. The ice cream is not prepared food since it is sold by volume.

Example 7: A store makes and sells ice cream cakes, which are not primarily bakery items. Store charges \$6.99 for a 4-inch ice cream cake, \$12.99 for a 9-inch ice cream cake, and \$16.99 for a 12-inch ice cream cake. The ice cream cakes are prepared food. They are not sold by weight or volume. Instead, they are sold by diameter.

(c) *Two or more food ingredients mixed or combined by the retailer for sale as a single item, except if any of the following apply:*

1. The retailer's primary classification in the North American Industry Classification System, 2002 edition, published by the Federal Office of Management and Budget, is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.

See example in (b)1., above.

2. The item is sold unheated and sold by volume or weight.

See example in (b)3., above.

3. The item is a bakery item made by the retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

See examples in (b)2., above.

4. The food and food ingredients are only sliced, repackaged, or pasteurized by the retailer.

Example 1: A grocer sells meat at its deli counter. A customer selects the type of meat to purchase. The employee at the deli counter slices the amount the customer wants and wraps it after it is sliced. This meat is not prepared food since the meat is only sliced and repackaged, assuming the meat does not otherwise meet the definition of prepared food.

Example 2: A grocer sells cheese trays. The cheese trays are put together by the grocer selecting the various types of cheeses to include on the tray, slicing the amount of each type of cheese to include, placing each type of sliced cheese on the tray, and then wrapping the cheese tray. The cheese tray is not prepared food since the cheese on the tray was only sliced and repackaged, assuming the cheese tray does not otherwise meet the definition of prepared food.

5. The item contains eggs, fish, meat, or poultry in raw form that requires cooking by the consumer, as recommended by the Food and Drug Administration in Chapter 3, part 401.11 of its food code to prevent food-borne illnesses.

Example: A grocer seasons and marinates various types of meat. The meat is required to be cooked by the customer, as recommended by the Food and Drug Administration. This meat is not prepared food since it is a meat that requires cooking by the consumer. This assumes the meat does not otherwise meet the definition of prepared food.

- (d) *Food and food ingredients sold with eating utensils that are provided by the retailer of the food and food ingredients, including plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws. However, "plate" does not include a container or packaging used to transport the food and food ingredients.*

Eating utensils are provided by the retailer if any one of (1) through (3) applies:

1. The retailer's customary practice is to physically give or hand the utensils to the purchaser, except that plates, glasses, bowls, or cups that are necessary for the purchaser to receive the food and food ingredients need only be made available to the purchaser.

Example 1: A grocer sells milk from a dispenser. The grocer has cups available for the purchaser to use to purchase the milk from the dispenser. The sale of the milk from the dispenser is the sale of prepared food since a cup is necessary for the purchaser to receive the milk and the cups are made available to the purchaser.

Example 2: A grocer has a self-service salad bar. Customers go to the salad bar, pick up a clam shell container at the salad bar, and place the items they would like in the clam shell container. The clam shell container is a plate or bowl necessary for the customer to receive the food. Therefore, sales from the self-service salad bar are sales of prepared food.

2. The retailer's sales of prepared foods described in Part 7.A.(3)(a), (b), and (c), and food for which plates, bowls, glasses, or cups are necessary to receive the food or food ingredients, are more than 75% of the retailer's total sales of all food and food ingredients and eating utensils are made available to the purchaser.

See the *Prepared Food Summary Chart*, Box C, "Computing the Percentage of Certain Prepared Foods Sold by the Retailer" on page 18.

Example: A fast food restaurant sells food and beverages to its customers. More than 75% of the restaurant's sales are sales of certain prepared food as computed per Box C of the *Prepared Food Summary Chart* on page 18. A customer orders a carton of milk "to go." The restaurant's employee does not give or hand any utensils to the customer; however, the restaurant has napkins available to its customers.

The restaurant's sale of the carton of milk is a sale of prepared food, since more than 75% of the restaurant's sales are sales of certain prepared foods and the restaurant has utensils (i.e., napkins) available to its customers.

3. The retailer sells food items that have a utensil placed in a package by a person other than the retailer, unless the primary classification in the North American Industrial Classification System (NAICS), 2002 edition, published by the federal office of management and budget, of the person who placed the utensil in the package is manufacturing under subsector 311.

Example 1: A retailer sells a food item that contains a spoon that was placed in the package by the manufacturer of the food item. The manufacturer's NAICS Code is under subsector 311. The retailer is not selling prepared food, since the spoon was placed in the package with the food by the manufacturer whose NAICS Code is under subsector 311.

Example 2: Same as *Example 1* except that the person who placed the spoon in the package with the food is not a manufacturer under subsector 311. Retailer's sale of this food item is a sale of prepared food, since the spoon was placed in the package by a person other than a manufacturer under subsector 311.

A flowchart and related notes have also been included in Appendix 1 of this publication and can be used to help determine if the product being sold is "prepared food" and subject to local food and beverage tax.

[Publication 220](#), *Grocers – How Do Wisconsin Sales and Use Taxes Affect Your Operations?* also provides information about prepared food.

Prepared Food Summary Chart

"Food and food ingredients" includes beverages, but not alcoholic beverages.

A. What is Prepared Food? Prepared food means any of the following:

1. Food and food ingredients sold in a heated state. *See Part 7.A.(3)(a).*
2. Food and food ingredients heated by the retailer but sold unheated, see exceptions. *See Part 7.A.(3)(b).*
3. Two or more food ingredients mixed or combined by the retailer for sale as a single item, see exceptions. *See Part 7.A.(3)(c).*
4. Food and food ingredients sold with eating utensils provided by the retailer of the food and food ingredients, including plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws. See Box B below.

Exceptions. Prepared Food does not include any of the following if sold (1) unheated and (2) without utensils provided:

- Two or more food ingredients mixed or combined by the retailer for sale as a single item if:
 - The retailer's primary NAICS code is manufacturing (311), not including bakeries and tortilla manufacturers (3118),
 - Sold by weight or volume,
 - Only sliced, repackaged, or pasteurized by the retailer, or
 - The item contains eggs, meat, fish, or poultry in raw form that requires cooking by the consumer.
- Bakery items made by the retailer

Chart continues on the next page.

Prepared Food Summary Chart

"Food and food ingredients" includes beverages, but not alcoholic beverages.

B. When Are Utensils Provided? Eating utensils are provided by the retailer if any of the following apply:

1. The retailer's customary practice is to physically give or hand the utensils to the purchaser, except that plates, glasses, bowls, or cups that are necessary for the purchaser to receive the food and food ingredients need only be made available to the purchaser. See Part 7.A.(3)(d)(1).
2. The retailer's sales of certain prepared foods are more than 75% of the retailer's total sales of all food and food ingredients and utensils are made available to the purchaser. All of the retailer's sales of food and food ingredients will be considered sales of prepared food when this percentage is more than 75%. See Box C to determine the percentage.

Exception: An item sold by the retailer that contains 4 or more servings packaged as one item and sold for a single price is only prepared food if Part B.1. of this chart applies.

3. The retailer sells food items that have a utensil placed in a package by a person other than the retailer, unless the primary classification in the North American Industrial Classification System (NAICS), 2002 edition, published by the federal office of management and budget, of the person who placed the utensil in the package is manufacturing under subsector 311. See Part 7.A.(3)(d)3.

C. Computing the Percentage of Certain Prepared Foods Sold by the Retailer.

1. The numerator:

- Includes prepared food listed in Parts A. 1., 2., and 3. of this chart
- Includes food for which plates, bowls, glasses, or cups are necessary to receive the food
- Does not include alcoholic beverages

2. The denominator:

- Includes all sales of food and food ingredients
- Includes sales of prepared food, candy, dietary supplements, and soft drinks.
- Does not include alcoholic beverages

3. **Percentage is based on prior tax year or business fiscal year.** A retailer must compute the percentage for the retailer's current tax year or business fiscal year based on the retailer's data from the retailer's prior tax year or business fiscal year, as soon as practical after the retailer's accounting records are available, but no later than 90 days after the day on which the retailer's tax year or business fiscal year begins.

4. **Retailer with no prior tax year or business fiscal year.** If a retailer has no prior tax year or business fiscal year in Wisconsin, the retailer shall make a good faith estimate of its percentage for the retailer's first tax year or business fiscal year and shall adjust the estimate prospectively after the first 3 months of the retailer's operations if the actual percentage is materially different from the estimated percentage.

5. **Retailer with more than one Wisconsin establishment.** For a retailer with more than one establishment in Wisconsin, a single determination that combines the information for all of the retailer's establishments in Wisconsin shall be made annually, and will apply to all of the retailer's establishments in Wisconsin.

(4) Alcoholic beverages

Sales of alcoholic beverages for consumption on the seller's premises are subject to the 0.5% local food and beverage tax. "Alcoholic beverage" means a beverage that is suitable for human consumption and that contains 0.5% or more of alcohol by volume.

Example 1: A tavern sells cans of beer to patrons for consumption at the tavern. The tavern's sales of the alcoholic beverages (i.e., cans of beer) are subject to the 0.5% local food and beverage tax since the beer will be consumed on the seller's premises.

Example 2: A convenience store sells cans of beer to its customers. The customers do not consume the beer at the convenience store. The convenience store's sales of the alcoholic beverages (i.e., cans of beer) are not subject to the 0.5% local food and beverage tax since the beer will be consumed off the seller's premises.

(5) Examples of taxable candy, soft drinks, prepared food, and alcoholic beverages:

- Beer served at a bar or restaurant
- Breath mints
- Candy apples
- Caramel apples
- Chewing gum
- Deli items that are heated
- Fruit drinks that are not more than 50% vegetable or fruit juice
- Granola bars that contain sugar but no flour
- Gum
- Heated foods and beverages
- Mixed drinks served at a bar or restaurant
- Nuts that are candy, such as honey roasted cashews or chocolate covered peanuts
- Raisins that are candy, such as chocolate covered raisins
- Sandwiches that are prepared food
- Soft drinks sold in cans, bottles, or from a dispenser
- Taffy apples
- Water that is sweetened
- Wine served at a bar or restaurant

For the treatment of taxable and nontaxable items sold as a package, see Part 7.C. below.

B. What's Exempt?

Sales of candy, soft drinks, prepared food, and alcoholic beverages that are exempt from the 5% Wisconsin state sales or use tax are also exempt from the 0.5% local food and beverage tax.

Examples of sales or purchases that are exempt from the local food and beverage tax include:

- (1) Candy, soft drinks, and prepared food furnished in accordance with any contract or agreement by a public or private institution of higher education if:
 - (a) The items are furnished by such institution to an undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or
 - (b) The items are furnished by such institution to a National Football League team.

Note: This exemption does not apply to alcoholic beverages sold for consumption on the seller's premises.

- (2) Candy and prepared food **sold by** hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in [sec. 50.01\(lg\)](#), Wis. Stats., or any facility certified or licensed under ch. 48, Wis. Stats.

Note: This exemption does not apply to (1) alcoholic beverages sold for consumption on the seller's premises, or (2) soft drinks.

Facilities certified or licensed under Chapter 48, Wis. Stats., include licensed day care centers, child placement agencies, residential care centers, foster homes, treatment foster homes, group homes, and shelter care facilities.

- (3) Candy and prepared food, but not soft drinks, **sold to** the elderly or handicapped by sellers providing "mobile meals on wheels."
- (4) **Sales to** federal and Wisconsin governmental units (including Wisconsin counties, cities, villages, towns, public schools, and school districts), nonprofit organizations holding a Certificate of Exempt Status (CES) number from the Wisconsin Department of Revenue, and any federally recognized American Indian Tribe or band in Wisconsin.
- (5) **Sales to** out-of-state nonprofit organizations that meet the requirements of sec. 501(c)(3) of the Internal Revenue Code as described in sec. 77.54(9a)(f), Wis. Stats.
- (6) **Sales by** any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts.
- (7) Occasional **sales by** nonprofit organizations. For more information, see [Publication 206](#), *Sales Tax Exemption for Nonprofit Organizations*.
- (8) Sales for resale.
- (9) Sales of candy, soft drinks, prepared food, and alcoholic beverages subject to the food and beverage tax if the liability for the tax on such food and beverages is less than \$5 for the taxable year.
- (10) Purchases of candy, soft drinks, and prepared foods that are furnished **for no consideration** by a restaurant to the restaurant's employees during the employees' work hours.

Note 1: Purchases of candy, soft drinks, and prepared foods that are furnished for no consideration by a restaurant to the restaurant's employees other than during the employees' work hours are subject to the local food and beverage tax.

Note 2: Sales by a restaurant of candy, soft drinks, and prepared food to the restaurant's employees are subject to the food and beverage tax. Sales of alcoholic beverages by the restaurant to its employees for consumption on the restaurant's premises are also subject to the local food and beverage tax.

Note 3: A restaurant's purchases of alcoholic beverages that are furnished for no consideration by a restaurant to the restaurant's employees are not subject to the local food and beverage tax, since the tax only applies to sales of alcoholic beverage for consumption on the seller's premises. The restaurant is the consumer, rather than the seller, of the alcoholic beverages that it gives to its employees for no charge. The restaurant is, however, subject to Wisconsin state and county sales and use taxes on its purchase of such alcoholic beverages.

Example 1: A restaurant purchases soft drinks that it provides to its employees during the restaurant's employees' work hours. The restaurant's purchase of the soft drinks is exempt from the local food and beverage tax.

Example 2: A restaurant purchases soft drinks that it sells to its employees for half-price during the employees' work hours. The restaurant may purchase the soft drinks without tax for resale. The restaurant's sales of the soft drinks to its employees are subject to the local food and beverage tax.

C. Examples Illustrating Sales of Candy, Soft Drinks, Prepared Foods, and Alcoholic Beverages

The tax treatment of the local food and beverage tax is illustrated in *Examples 1-18*.

Note: If the retailer's sales of certain prepared foods at the establishment are more than 75% of its total sales of all food and food ingredients at the establishment (as computed per Box C of the *Prepared Food Summary Chart* on page 18), and the retailer makes utensils available to purchasers, all of the retailer's sales of food and food ingredients are considered to be prepared foods and subject to the local food and beverage tax, with the exception of items that contain four or more servings packaged as one item and sold for a single price.

Utensils are not considered to be "made available" by the retailer to the purchaser solely by virtue of a utensil being placed in the package along with the food item by a person other than the retailer. "Utensils" include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.

Note: Additional information about how to compute the percentage of prepared food sold by the retailer is provided in [Publication 220](#), *Grocers – How Do Wisconsin Sales and Use Taxes Affect Your Operations?*

Index to Examples 1-18

As used in *Examples 1-18*, "Taxable" means subject to the local food and beverage tax; "Not taxable" means not subject to the local food and beverage tax, but may still be subject to Wisconsin state and county sales and use taxes.

More Than 75% – Retailers' sales of certain prepared food are more than 75% of its total sales of all food and food ingredients at the establishment and the retailer makes utensils available to customers. (See Boxes B and C of the *Prepared Food Summary Chart* on page 18.)

Example 1: Restaurant's sale of hamburger and milk – Taxable

Example 2: Restaurant's sale of hamburger and wine – Taxable

Example 3: Fast food restaurant's sale of hamburger and milk "to go" – Taxable

Example 4: Fast food restaurant's sale of milk in a carton "to go" – Taxable

Example 5: Coffee shop's sale of a cup of hot coffee, bottle of orange juice, and a case of bottles of iced coffee drinks – Coffee – Taxable; Orange juice – Taxable; Case of bottled drinks – Not taxable

75% or Less – Retailers' sales of certain prepared food are 75% or less of its total sales of all food and food ingredients at the establishment and the retailer makes utensils available to customers. (See Boxes B and C of the *Prepared Food Summary Chart* on page 18.)

Example 6: Discount store's sale of pizza and cup of milk – Taxable

Example 7: Discount store's sale of pizza and carton of milk – Pizza – Taxable; Milk – Not taxable

Example 8: Tavern's sale of candy, pretzels, and mixed drink – Candy – Taxable; Pretzels – Not taxable; Mixed drink – Taxable

Example 9: Grocery store's sales of ice cream cones, ice cream bars, and sundaes in frozen food section – Not taxable

Example 10: Ice cream shop's sale of sundae – Taxable

Example 11: Deli purchases sandwiches from wholesaler and sells unheated – Not taxable

Example 12: Deli makes and sells unheated sandwiches for \$5 each – Taxable

Example 13: Deli makes and sells unheated sandwiches for \$5 per pound – Not taxable

Example 14: Deli's sale of heated chicken – Taxable

Example 15: Tavern's sale of canned and bottled beer – Taxable

Example 16: Liquor store's sale of canned and bottled beer – Not taxable

Example 17: Vending machine sales of apples, cookies, and pretzels – Not taxable

Example 18: Vending machine sales of soft drinks – Taxable

Example 1: A restaurant in Milwaukee County sells food and beverages to its customers. More than 75% of the restaurant's sales are sales of certain prepared foods as computed per Box C of the *Prepared Food Summary Chart* on page 18. The customer is seated in the restaurant and provided with a napkin and eating utensils. The customer orders a hamburger and milk. The restaurant's employee serves the hamburger on a plate and the milk in a glass.

The restaurant's sale of the hamburger and milk is subject to the local food and beverage tax. All of the restaurant's sales of food and food products are prepared food since more than 75% of the restaurant's total sales of food and food ingredients are sales of certain prepared foods and the restaurant provides utensils to its customers.

Example 2: Same as *Example 1*, except the customer orders a glass of wine with the hamburger (instead of the milk). The wine is \$5 per glass and the hamburger is \$10. The restaurant serves the wine to the customer in a glass.

The sale of the hamburger (i.e., \$10) is subject to the local food and beverage tax, since the hamburger sold by the restaurant meets the definition of prepared food. All of the restaurant's sales of food and food products are prepared food since more than 75% of restaurant's total sales of food and food ingredients are sales of certain prepared foods and the restaurant provides utensils to its customers. The sale of the wine by the restaurant (i.e., \$5) is also subject to the local food and beverage tax since the local food and beverage tax applies to sales of alcoholic beverages that are consumed on the seller's premises.

Example 3: A fast food restaurant in Milwaukee sells food and beverages to its customers. More than 75% of the restaurant's sales are sales of certain prepared foods as computed per Box C of the *Prepared Food Summary*

Chart on page 18. A customer orders a hamburger and carton of milk "to go." The restaurant's employee puts the hamburger and the milk in a bag and gives the bag to the customer. The restaurant's employee does not hand the customer any utensils or put any utensils in the bag; however, utensils are available to the customer.

The sale of the hamburger and milk by the fast food restaurant to the customer is subject to the local food and beverage tax. All of restaurant's sales of food and food products are prepared food since more than 75% of the restaurant's total sales of food and food ingredients are sales of certain prepared foods and the restaurant has utensils available to its customers.

Example 4: Same as *Example 3*, except the customer only orders a carton of milk from the fast food restaurant. The restaurant's employee puts the milk in a bag and gives the bag to the customer. The restaurant's employee does not hand the customer any utensils or put any utensils in the bag; however, utensils are available to customer.

The sale of the milk by the fast food restaurant to the customer is subject to the local food and beverage tax. All of the restaurant's sales of food and food products are prepared food since more than 75% of the restaurant's total sales of food and food ingredients are sales of certain prepared foods and the restaurant has utensils available to its customers.

Example 5: A coffee shop's sales exceed the 75% computation per Box C of the *Prepared Food Summary Chart* on page 18. The coffee shop sells a cup of heated coffee for \$3, a bottle of orange juice (100% juice) for \$2, and a case containing six bottles of iced coffee drinks for \$10. Each bottle of iced coffee is one serving. The coffee shop's employee hands the customer the hot coffee in a cup and puts the bottle of orange juice and the case of iced coffee in a bag.

The coffee shop's sale of the hot coffee and the orange juice is subject to the local food and beverage tax, but its sale of the case of iced coffee is not subject to the local food and beverage tax. All of the coffee shop's sales of food and food products are prepared food since (a) more than 75% of Coffee Shop's total sales of food and food ingredients are sales of certain prepared foods and (b) the coffee shop provides utensils (e.g., cups) to its customers. However, the coffee shop's sale of the case of iced coffee drinks meets the exception explained in Box B.2. of the *Prepared Food Summary Chart* on page 18, since the case of iced coffee drinks contains four or more servings, is packaged as one item, and is sold for a single price.

Note: The cup of coffee would be subject to the local food and beverage tax, even if the coffee shop's sales of prepared foods did not exceed the 75% test, since the coffee was sold in a heated condition. It was also served in a cup (i.e., utensil).

For purposes of Examples 6-18, the retailer's sales of certain prepared foods at each establishment are 75% or less of its total sales of all food and food ingredients at the establishment as computed per Box C of the Prepared Food Summary Chart on page 18 and the retailer does not physically give or hand utensils to its customers.

Example 6: A discount store in Milwaukee County sells food and beverages. A customer orders a slice of pizza and milk. The discount store's employee hands the the customer pizza in a cardboard container and milk in a cup. Napkins and straws are available for the customer, but are not handed to the customer.

The sale of the pizza and milk by the discount store to the customer is subject to the local food and beverage tax, since both the pizza and milk sold by the restaurant are prepared food. The pizza is sold in a heated condition, and the milk is served in a cup (i.e., utensil).

Example 7: Same as *Example 6*, except the discount store's employee hands the customer milk in a carton. The discount store's sale of the heated pizza is subject to the local food and beverage tax. The sale of the carton of

milk is not subject to the local food and beverage tax. The milk is not prepared food because it is sold in a carton (i.e., not a utensil).

Example 8: A tavern in Milwaukee County sells beer, wine, mixed drinks, and soft drinks for consumption at the tavern. The tavern also sells various snacks, such as candy, bags of pretzels, and nuts. The customer orders a mixed drink, a bag of pretzels, and some candy.

The tavern's sale of the candy is subject to the local food and beverage tax. The bag of pretzels is not subject to the local food and beverage tax since the bag of pretzels is neither candy nor a prepared food. The tavern's sale of the mixed drink is subject to the local food and beverage tax since the mixed drink is an alcoholic beverage sold for consumption on the seller's premises.

Example 9: A grocery store in Milwaukee County sells prepackaged ice cream cones, ice cream bars, and sundaes in its frozen food section. The grocery store's sales of these items are not subject to the local food and beverage tax since the prepackaged frozen food is not mixed or combined by the retailer.

Example 10: An ice cream shop in Milwaukee County sells ice cream sundaes. When the customer orders a sundae, the ice cream shop scoops the ice cream into a dish, adds toppings (e.g., chocolate syrup, whipped cream), and provides the customer with a spoon.

Ice Cream Shop's sales of the sundaes are subject to the local food and beverage tax. The sundaes are prepared food since they consist of two or more items combined by the retailer for sale as a single item and the sundaes are served with eating utensils.

Example 11: A deli in Milwaukee County sells pre-packaged sandwiches that it purchases from a wholesaler. The deli's sale of these sandwiches are not subject to the local food and beverage tax, unless the deli sells the sandwiches in a heated condition or provides eating utensils with the sandwiches (i.e., the sandwiches would then be prepared food).

Example 12: A deli in Milwaukee County makes and packages a sandwich that it sells unheated for \$5. The deli's sale of the sandwich is subject to the local food and beverage tax since the sandwich is prepared food.

Example 13: A deli in Milwaukee County makes and packages a sandwich that it sells unheated for \$5 per pound. The deli's sale of the sandwich is not subject to the local food and beverage tax since the sandwich is sold unheated and by weight or volume. Unheated items sold by weight or volume are not prepared food.

Example 14: A deli in Milwaukee County sells chickens roasted on a rotisserie. The deli's sales of the roasted chickens sold heated are subject to the local food and beverage tax since the roasted chickens are prepared food (i.e., the roasted chicken is sold in a heated condition).

Example 15: A tavern in Milwaukee County sells individual cans and bottles of beer to its patrons for consumption at the tavern. The sale of the beer is subject to the local food and beverage tax since the beer is an alcoholic beverage sold for consumption on the seller's premises.

Example 16: A liquor store in Milwaukee County sells individual cans and bottles of beer, as well as six-packs, 12-packs, and cases for off-premises consumption. The sale of the beer is not subject to the local food and beverage tax.

Example 17: A vending machine located in Milwaukee County offers apples, cookies, and pretzels for sale. The sales of the apples, cookies, and pretzels are not subject to the food and beverage tax since these items are not candy, soft drinks, or prepared foods.

Example 18: A vending machine located in Milwaukee County offers cans of soft drinks for sale. Sales of canned soft drinks are subject to the local food and beverage tax.

D. Combination of Items That Includes Items Subject to the Local Food and Beverage Tax

Retailers may sell two or more distinct and identifiable products together for one non-itemized price. When one or more of the products is candy, soft drinks, or prepared foods, none of the products include real property or services to real property, and the sale occurs in Milwaukee County, the local food and beverage tax treatment of such combinations is provided in 1. and 2., below.

Note: If at least one of the products is real property or a service to real property, an allocation must be made to reflect the products that are subject to the local food and beverage tax.

- (1) 50% or less of the retailer's total purchase price or sales price is attributable to items subject to the local food and beverage tax

The entire sales price of a gift basket containing taxable and nontaxable products, one or more of which is a food or food ingredient, is exempt from the local food and beverage tax if both of the following apply:

- The products in the gift basket are packaged together by the retailer and sold for one non-itemized price, and
- The retailer's purchase price or sales price of the taxable products in the gift basket are 50% or less of the seller's purchase price or sales price, respectively, of all the products included in the gift basket. The retailer may use either its purchase price or sales price of the products (but not a combination of both) for this computation.

Note: The sale may, however, be subject to Wisconsin state, county, and stadium sales taxes.

An exemption is provided for the retailer's **purchase** of the items that would have been subject to the local food and beverage tax, except for the fact that this 50% provision applies. Therefore, the seller will not owe any sales or use tax on its purchase of the products included in the gift basket, since one or more of the products included was a food or food ingredient.

Example 1: A grocery store sells a gift basket for \$30 that includes a basket, fresh fruit, a package of hot cocoa mix, and a bag of candy. The grocery store's purchase price and sales price of each of the products is as follows:

Item	Cost	Sales Price *
Basket	\$ 1.00	\$ 3.00
Fresh Fruit	6.00	15.00
Cocoa Mix	3.00	7.00
<u>Candy</u>	<u>2.00</u>	<u>5.00</u>
Totals	\$12.00	\$30.00

The grocery store's sale of the gift basket is not subject to the local food and beverage tax. The basket, fruit, and cocoa mix are not items that are subject to the local food and beverage tax. The bag of candy is the only item that is subject to the local food and beverage tax. Since the purchase price and sales price of the candy is 50% or less of grocery store's total purchase price and sales price, respectively, the sale of the gift basket is not subject to the local food and beverage tax. Although the grocery store's sale of the gift basket is not taxable, the grocery store may still purchase the basket and the candy without tax for resale.

Note: The sale of the gift basket is also not subject to Wisconsin state or county sales taxes.

*The sales prices in this column are not itemized to the customer, but are the amounts these items would sell for if they were to be sold separately.

Example 2: Same as *Example 1*, except that the gift basket contains two cocoa mugs, rather than the fresh fruit. The purchase price and sales price of each of the items to the grocery store is the following:

Item	Cost	Sales Price *
Basket	\$ 1.00	\$ 3.00
Mugs	6.00	15.00
Cocoa Mix	3.00	7.00
<u>Candy</u>	<u>2.00</u>	<u>5.00</u>
Totals	\$12.00	\$30.00

The grocery store's sale of the gift basket is not subject to the local food and beverage tax. The basket, mugs, and cocoa mix are not items that are subject to the local food and beverage tax. The bag of candy is the only item that is subject to the local food and beverage tax. Since the purchase price and sales price of the candy is 50% or less of the grocery store's total purchase price and sales price, respectively, the sale of the gift basket is not subject to the local food and beverage tax.

Note: Although the sale of the gift basket is not subject to the local food and beverage tax, it is subject to Wisconsin state and county taxes, since more than 50% of the grocery store's total purchase price and sales price of the items in the gift basket is subject to such taxes.

- (2) More than 50% of the retailer's total purchase price or sales price is attributable to items subject to the local food and beverage tax

The entire sales price of a gift basket containing taxable and nontaxable products, one or more of which is a food or food ingredient, is subject to the local food and beverage tax if both of the following apply:

- The products in the gift basket are packaged together by the retailer and sold for one non-itemized price, and
- The retailer's purchase price and sales price of the products in the gift basket that are subject to the local food and beverage tax are more than 50% of the retailer's purchase price and sales price, respectively, of all the products included in the gift basket.

The seller may purchase the items that it sells without tax for resale.

In the following examples it is assumed that the retailers' sales of prepared foods at the establishment are 75% or less of its total sales of all of its food and food ingredients at the establishment and that the retailer does not physically give or hand utensils to its customers. (See the introduction in Part 7.C.)

Example 1: A bowling alley sells a children's lunch special at its snack bar for \$5.00, which includes a cheeseburger, french fries, and a toy. Bowling Alley's purchase price and sales price of the products is as follows:

Item	Cost	Sales Price *
Cheeseburger	\$1.00	\$2.00
French Fries	1.00	2.00
<u>Toy</u>	<u>0.50</u>	<u>1.00</u>
Totals	\$2.50	\$5.00

The bowling alley's sale of the lunch special is subject to the local food and beverage tax. The cheeseburger and french fries are items that are subject to the local food and beverage tax (i.e., prepared foods). The toy is not an item that is subject to the local food and beverage tax. Since the purchase price and sales price of the cheeseburger and french fries is more than 50% of the bowling alley's total purchase price and sales price, respectively, of the items included in the lunch special, the entire sales price of the lunch special (i.e., \$5.00) is subject to the local food and beverage tax.

*The sales prices in this column are not itemized to the customer, but are the amounts these items would sell for if they were to be sold separately.

Example 2: A deli sells a dinner package for \$30.00, which includes 12 pieces of heated fried chicken, two pounds of potato salad, and two bottles of soft drinks. The deli's purchase price and sales price of the products is as follows:

Item	Cost	Sales Price *
Fried Chicken	\$10.00	\$17.00
Potato Salad	5.00	7.00
<u>Soft Drinks</u>	<u>4.00</u>	<u>6.00</u>
Totals	\$19.00	\$30.00

The deli's sale of the dinner package is subject to the local food and beverage tax. The fried chicken and soft drinks are items that are subject to the local food and beverage tax (i.e., prepared foods and soft drinks, respectively). The potato salad is not an item that is subject to the local food and beverage tax (i.e., the potato salad is sold unheated by the pound and, therefore, is not a prepared food). Since the purchase price and sales price of the fried chicken and soft drinks is more than 50% of Deli's total purchase price and sales price, respectively, of all of the items included in the dinner package, the entire sales price of the dinner package (i.e., \$30.00) is subject to the local food and beverage tax.

*The sales prices in this column are not itemized to the customer, but are the amounts these items would sell for if they were to be sold separately.

Example 3: A grocery store sells a gift basket for \$30 that includes a basket, three oranges, two apples, and a box of candy. The grocery store's purchase price and sales price of the products is as follows:

Item	Cost	Sales Price *
Basket	\$ 1.00	\$ 3.00
Oranges	3.00	4.00
Apples	2.00	4.00
<u>Candy</u>	<u>12.00</u>	<u>19.00</u>
Totals	\$18.00	\$30.00

The grocery store's sale of the gift basket is subject to the local food and beverage tax. The basket, oranges, and apples are items that are not subject to the local food and beverage tax. The candy is an item that is subject to the local food and beverage tax. Since the purchase price and sales price of the candy is more than 50% of the grocery store's total purchase price and sales price, respectively, of all the items included in the gift basket, the entire sales price of the gift basket (i.e., \$30.00) is subject to the local food and beverage tax.

*The sales prices in this column are not itemized to the customer, but are the amounts these items would sell for if they were to be sold separately.

8. RENTAL CAR TAX

A. What's Taxable?

Establishments primarily engaged in the short-term rental of passenger automobiles are subject to a 3% tax on the sales price from the rental of Type 1 automobiles without drivers in Milwaukee County, for a period of 30 days or less. (See Part 2.B. to determine where the rental of an automobile takes place.)

A "Type 1 automobile" is a motor vehicle designed and used primarily for carrying persons and includes (this list is not all-inclusive):

- Automobiles licensed as automobiles
- Passenger vans licensed as automobiles

"Type 1 automobiles" do not include (this list is not all-inclusive):

- Motor buses
- Motorcycles, mopeds, or motor bicycles
- Motor homes
- Motor vehicles licensed as trucks

Example: An establishment located in Milwaukee County that is primarily engaged in the short-term rental of passenger cars without drivers provides a rental car for two days at the rate of \$50 per day to a customer. The customer is also charged \$10 per day for a child's car seat. This fee is only charged to customers who wish to rent a car seat, and the car seat is a standard car seat that can be used in any vehicle. The total charge to the customer is \$120 (\$100 + \$20 = \$120). Only the \$100 charge for the vehicle is subject to the 3% rental car tax. The charge to the customer for renting the child's car seat is not a part of the establishment's sales price from the rental of the automobile.

Caution: An "establishment primarily engaged in short-term rental of passenger cars" is a business location whose primary business is the rental of passenger cars for periods of 30 days or less. A location's primary business may be determined by comparing its total sales from each activity at a location for the previous taxable year (e.g., sales, service, rentals) to its total sales at that location for the previous taxable year. That activity with the greatest percentage of total sales is the primary business.

Example: A company has two locations in Milwaukee County. At one location, the company operates a motor vehicle dealership. At the other location, the company operates a rental business, only renting passenger cars for periods of 30 days or less. The percentage of total sales for the previous taxable year at the motor vehicle dealership is as follows: Sales (45%), service (35%), rental of passenger cars for 30 days or less (10%), and rentals of vehicles for more than 30 days (10%).

Since the motor vehicle dealership location's primary business is sales, it is not an "establishment primarily engaged in the short-term rental of passenger cars." Therefore, taxable sales from rentals of Type 1 automobiles for 30 days or less at that location are not subject to the rental car tax. However, the sales price from rentals of Type 1 automobiles at the company's rental location are subject to the rental car tax, since that establishment is primarily engaged in the short-term rental of passenger cars.

Caution: Total sales subject to the 3% rental car tax may not be reduced by insurance charges unless the insurance charges are separate and optional to the customer.

B. What's Exempt?

Rentals of automobiles that are exempt from the 5% Wisconsin sales or use tax are generally exempt from the 3% rental car tax.

Examples of rentals that are exempt from the 3% tax include:

(1) Rerentals.

Example: A business leases an automobile from a company for 30 days or less which it will lease to an individual. The individual takes possession of the automobile in Milwaukee County.

The charge by the company to the business for the lease of the automobile is not subject to the 3% tax because it is for rerental. The business should provide the company a fully completed [Form S-211](#), *Wisconsin Sales and Use Tax Exemption Certificate*, indicating resale. The charge by the business to the individual is subject to the 3% rental car tax, assuming the business is an establishment primarily engaged in the short-term rental of passenger automobiles.

(2) Service or repair replacement vehicles.

A lessor's rental of a Type 1 automobile to a customer is **not** subject to the 3% rental car tax if the customer's car is being serviced or repaired. The service or repair may be done by the lessor or someone other than the lessor.

Note: Although not subject to the rental car tax, the rental of a service or repair replacement vehicle is subject to the 5% Wisconsin sales or use tax.

Example: An individual takes his automobile to a company, for repair. For a fee of \$20 per day, the company provides the individual with an automobile to use while his car is being repaired. The individual picks up the automobile in Milwaukee County and uses it for five days.

The charge by the company to the individual for the use of the automobile is **not** subject to the 3% tax, regardless of who does the service or repair.

If the rental of a car is not subject to the 3% rental car tax because the customer's automobile is being serviced or repaired, the lessor must obtain a [Form RV-207](#), *Certificate of Exemption for Rental Vehicles*, or similar document from the customer. If a document other than Form [RV-207](#) is used, the document must contain all of the following:

- Signature of the customer
- Name and address of the customer
- Basis for the claimed exemption (e.g., customer is renting this automobile while his or her automobile is being repaired or serviced by [fill in company's name])

- (3) Rentals to the federal government.
- (4) Rentals to any federally recognized American Indian Tribe or band in Wisconsin.
- (5) Rentals to a Wisconsin governmental unit, including a Wisconsin county, city, village, town, public school, or school district.
- (6) Rentals to nonprofit organizations that hold Certificate of Exempt Status (CES) number issued by the Wisconsin Department of Revenue.
- (7) Rentals to out-of-state nonprofit organizations that meet the requirements of sec. 501(c)(3) of the Internal Revenue Code as described in sec. 77.54(9a)(f), Wis. Stats.
- (8) Rentals by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts.

Note: Transactions that are subject to the local exposition rental car tax are also subject to a state rental vehicle fee of 5%. For information on the state rental vehicle fee, refer to [Publication 202, Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs](#).

9. INTEREST AND PENALTIES

A. Interest

- (1) Refunds of local exposition taxes bear interest at 3% per year.
- (2) Additional local exposition taxes due as a result of an audit by the Wisconsin Department of Revenue or as a result of filing an amended return bear interest at 12% per year until such taxes are paid or become delinquent. Local exposition taxes that are delinquent bear interest at 18% per year.

B. Penalties

If you do not file returns, do not pay the tax by the due date of the return, or file incorrect returns, the following civil penalties may be imposed (this list is not all-inclusive):

- (1) Failure to File or Pay By the Due Date
 - Late filing fee - \$20 charge for not filing a return by the due date if due to neglect.
 - Negligence penalty - 5% of the tax due for each month (or part of a month) the return is filed after the due date because of negligence. The maximum negligence penalty for late filing is 25% of the tax due.
 - Fraud penalty - 50% of the tax not paid if there was intent to defeat or evade the tax.
- (2) Filing Incomplete or Incorrect Returns
 - Negligence penalty - 25% of the additional taxes due if there was negligence in filing the return.
 - Fraud penalty - 50% of the additional taxes due if there was intent to defeat or evade the taxes.

In addition, criminal penalties relating to the 5% Wisconsin sales or use tax may also apply to the local exposition taxes.

C. Additional Enforcement of Room Tax

The room taxes, in addition to enforcement by the Wisconsin Department of Revenue, may also be enforced by the Local Exposition District. The Local Exposition District may do any of the following with respect to its room taxes:

- (1) Whenever the district has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, it may inspect and audit the financial records of any seller subject to the room tax to determine whether or not the correct amount of room tax is assessed and whether or not any room tax return is correct.
- (2) Enact a schedule of forfeitures, not to exceed 5% of the room tax, to be imposed on any seller subject to the room tax who fails to comply with a request to inspect and audit the seller's financial records.
- (3) Determine the room tax according to its best judgment if any seller required to make a return fails, neglects, or refuses to do so for the amount, in the manner and form, and within the time prescribed by the district.
- (4) Require each seller who is subject to the room tax to pay an amount of taxes that the district determines to be due under 3., above, plus interest at the rate of 1% per month on the unpaid balance. No refund or modification of the payment determined may be granted until the seller files a correct room tax return and permits the district to inspect and audit his or her financial records pertaining to the furnishing of accommodations.
- (5) Enact a schedule of forfeitures, not to exceed 25% of the room tax due for the previous year or \$5,000, whichever is less, to be imposed for failure to pay the room tax.

10. CORRECTING AN ERROR

A. Underpayments

If you file your return and later become aware that you made an error on the return by underreporting local exposition taxes due, you should file an amended return with the Wisconsin Department of Revenue.

You may amend your return using [My Tax Account](#), the Department of Revenue's online taxpayer service.

If you've been granted an electronic filing waiver, you may also use [Form EX-12](#), *Local Exposition Tax Return*, to file an amended return. Check "Amended Return" at the top of Form EX-12 and complete the return with the amounts that should have been reported.

B. Overpayments – Claims for Refund

If you determine that you overpaid local exposition taxes to the Wisconsin Department of Revenue or to a seller, a claim for refund of the overpaid tax may be filed as explained below. Who may file the claim for refund depends on whether you are a seller or a buyer.

- *Sellers*

If you overpaid local exposition taxes on the sale to a buyer of lodging, food or beverages, or the rental of automobiles, you may file a claim for refund. It is suggested that you amend your return using [My Tax Account](#), the Department of Revenue's Internet-based taxpayer service.

If the department granted you an electronic filing waiver, you may also amend your return using [Form EX-12](#). Check "Amended Return" at the top of [Form EX-12](#), and fill in the correct amounts.

Caution: Refunds of local exposition taxes collected from a buyer, including interest, must be returned by the seller to the buyer. If a seller is unable to refund the tax and interest to the buyer, the refund must be returned to the Wisconsin Department of Revenue. See Part C. below for additional information about a seller's requirement to refund local exposition tax to its customer.

- **Buyers**

A buyer may request a refund from the seller of local exposition taxes that the buyer paid to the seller in error.

Alternatively, a buyer may file a claim for refund with the Wisconsin Department of Revenue for local exposition taxes paid to a seller in error if the claim for refund is \$50 or more of tax.

If the tax is less than \$50, a buyer may still file a claim for refund with the Department of Revenue for tax paid in error to a seller if 1) the seller is out-of-business, 2) the buyer is being field audited, or 3) the period covered in the claim for refund is within the statute of limitations for the buyer but is closed for the seller. If none of these conditions are met by the buyer and the claim for refund is under \$50, the buyer may not file a claim for refund with the Department of Revenue, but may request the seller who paid the tax to the Department of Revenue to file a claim for refund.

A buyer filing a claim for refund with the Wisconsin Department of Revenue for local exposition taxes paid in error to a seller should contact the Wisconsin Department of Revenue for information on how to file a claim.

The time limitations in which a claim may be filed are the same as for Wisconsin state and county sales and use tax. For more information, obtain [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*.

Claims for refund should be sent to Wisconsin Department of Revenue, Mail Stop 3-248, P.O. Box 8946, Madison, WI 53708-8946.

C. Seller's Requirement to Refund Local Exposition Tax to Its Customer

A seller is required to refund taxes and related interest to the buyers from whom the taxes were collected, in the following situations:

- (1) The seller files a claim for refund with the Wisconsin Department of Revenue for taxes that the seller has collected from buyers, and receives such refund.
- (2) The seller files a claim for refund with the Wisconsin Department of Revenue for taxes that the seller has collected from buyers, and the seller is entitled to a refund of such taxes, but the refund is offset against deficiencies of the seller due and owing on the books of the Wisconsin Department of Revenue.
- (3) The seller collects amounts as taxes erroneously from buyers but the seller does not remit such amounts to the state.

If the seller cannot locate the buyers, the seller must return the taxes and related interest to the Wisconsin Department of Revenue within 90 days after the date of the refund, within 90 days after the date of the offset, or within 90 days after discovering that the seller has collected taxes erroneously from the buyers.

11. RECORDKEEPING

A. General Records to Keep

If you are required to file local exposition tax returns, you must keep adequate records of business transactions to enable you and the Wisconsin Department of Revenue to determine the correct tax due.

B. Records to Keep – Exempt Sales and Certificates

The requirements for exemption certificates or other documentation that a sale or rental is exempt that apply to the 5% Wisconsin sales or use tax also apply to the local exposition district taxes.

An exemption certificate received by a seller as proof that a sale was exempt from sales and use tax may be used as proof of exemption from local exposition district taxes. You do not need a separate exemption certificate for local exposition district taxes if you receive an exemption certificate for sales and use taxes that applies to the same transaction.

Example 1: A company does not charge tax on its sale of food or beverages to its customer because the customer is going to resell the food and beverages. The company has an exemption certificate indicating resale on file for this customer for sales and use tax purposes. That certificate may also be used as proof that the sale was exempt from the 0.5% local food and beverage tax.

Example 2: A company does not charge the 5% Wisconsin sales tax on lodging furnished to a Wisconsin governmental unit. The company receives a purchase order from the governmental unit and invoices the governmental unit for the lodging furnished. This documentation is also sufficient for exempting the sale of the lodging from the 3% and 7% room taxes.

12. YOU MAY BE AUDITED

If you are in business, an auditor from the Wisconsin Department of Revenue may visit you. Don't be alarmed, as many taxpayers are audited to determine if they paid the correct amount of income, corporate, withholding, and sales and use taxes.

You will be notified prior to any audit so that a convenient time can be arranged to examine your records. As a taxpayer, you are required to make available your records for local exposition taxes as well as your records for other Wisconsin taxes. To perform the audit, it will be necessary for the auditor to examine these records. Don't hesitate to ask any questions of the auditor.

If the audit results show that you have not paid the proper amount of tax, the department will issue you a written notice indicating the amount of tax you owe or overpaid. As a taxpayer you have the right to appeal if you disagree with the audit. The notice from the department will explain the procedures for appealing.

13. IF YOU HAVE QUESTIONS

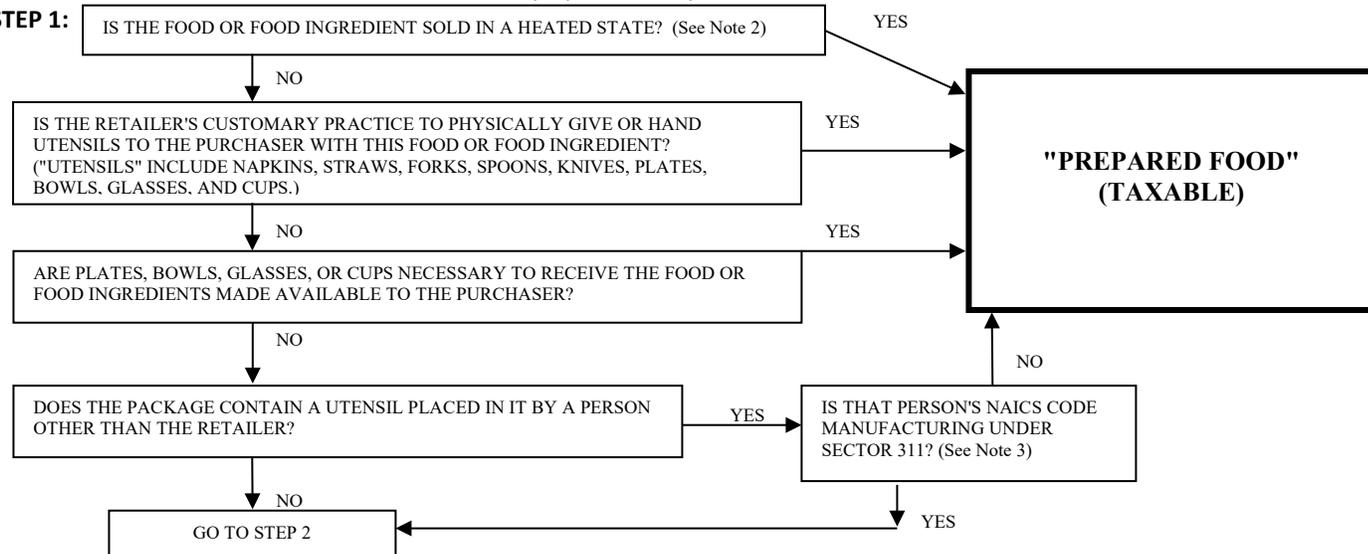
If you have any questions about the local exposition taxes, please refer to the [Common Questions](#) for Local Exposition Taxes on the department's website. You may also contact the department as follows:

Visit our website . . . revenue.wi.gov
Email. . . DORBusinessTax@wisconsin.gov
Write . . . Mail Stop 5-77
Wisconsin Department of Revenue
P.O. Box 8949
Madison, WI 53708-8949
Telephone. . . (608) 266-2776
Fax. . . (608) 267-1030

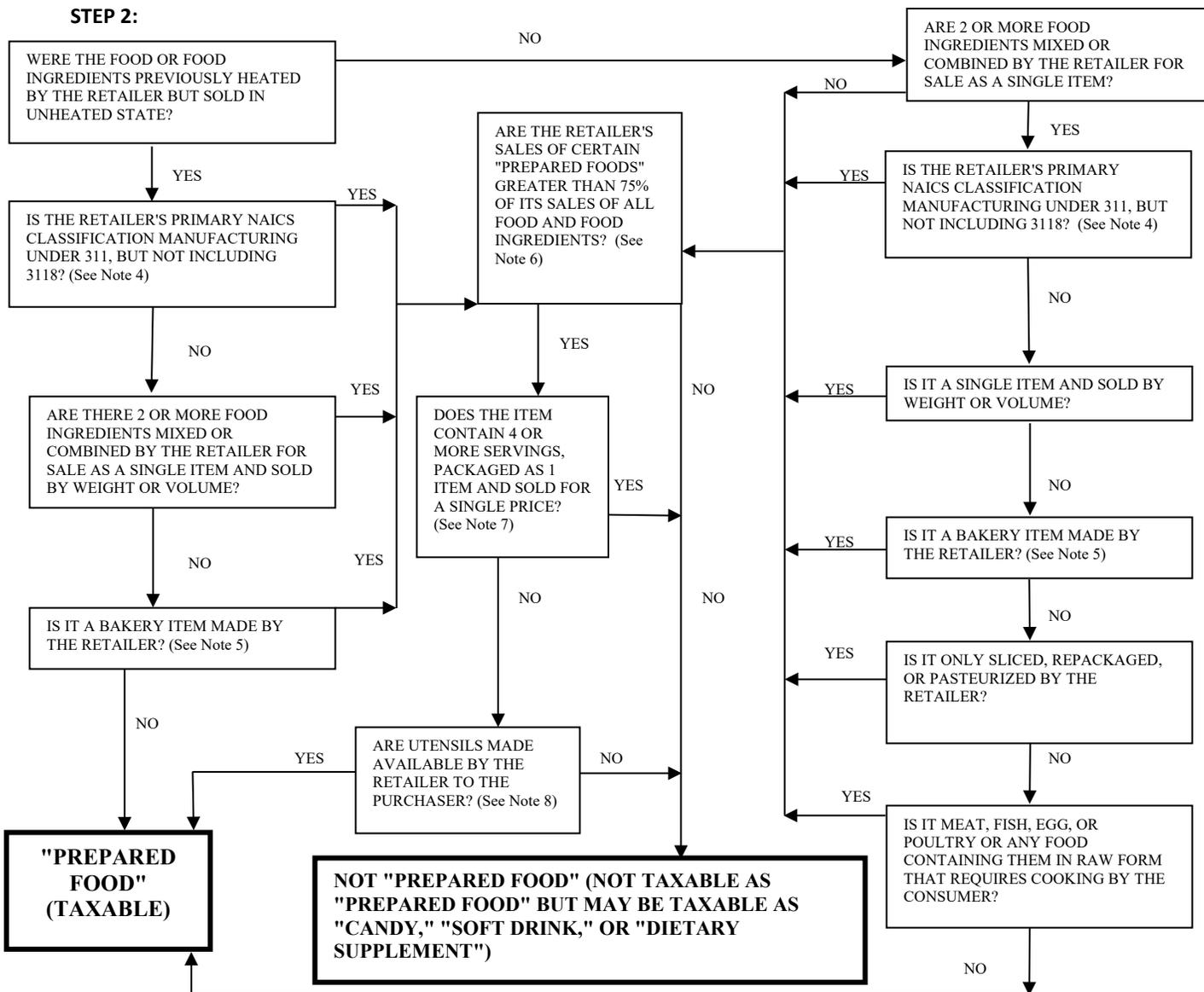
ARE YOU SELLING "PREPARED FOOD"?

(This flowchart only helps you determine if the "food and food ingredient" (See Note 1) being sold meets the definition of "prepared food" provided in sec. 77.51(10m), Wis. Stats.)

STEP 1:



STEP 2:



APPENDIX 1

Notes To "Prepared Food" Flowchart

1. "Food and food ingredient" means a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. "Food and food ingredient" includes beverages, but not alcoholic beverages. "Food and food ingredient" does not include tobacco.
2. Food and food ingredients are sold in a heated state if they are sold at a temperature higher than the room temperature.
3. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses.
4. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses and industry group number 3118 covers bakeries and tortilla manufacturing.
5. Bakery items include breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
6. For purposes of computing the 75%, the **numerator** is made up of the retailer's sales of food and food ingredients:
 - (a) That are sold heated;
 - (b) That were heated by the retailer but sold unheated, but not including:
 - The retailer's sales of bakery items,
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118, and
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item and sold unheated by weight or volume
 - (c) Two or more food ingredients mixed or combined by the retailer for sale as a single item, but not including:
 - The retailer's sales of bakery items,
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118,
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item and sold unheated by weight or volume,
 - Items that are only sliced, repackaged, or pasteurized by the retailer, or
 - Eggs, meat, fish, poultry or any food item containing them in raw form that requires cooking by the consumer.
 - (d) Food and food ingredients for which plates, bowls, glasses, or cups are necessary to receive the food and food ingredients.

The **denominator** is made up of all of the retailer's sales of food and food ingredients.

7. Serving sizes are based on the information contained on the label of each item sold, except that if the item does not contain a label, the serving size is based on the retailer's reasonable determination.
8. Utensils are not considered to be "made available" by the retailer to the purchaser solely by virtue of a utensil being placed in the package along with the food item by a person other than the retailer. "Utensils" include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of August 18, 2021: Chapter 77, Wis. Stats., and sec. Tax 11, Wis. Adm. Code.

Laws enacted and in effect after August 18, 2021, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to August 18, 2021, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.