



STATE OF WEST VIRGINIA

Department of Revenue  
State Tax Department

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Governor

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Administrative Notice 2015-20

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**Subject:** Sales and Use Tax Administration, Definition of Prepared Food

Due to questions and concerns regarding the treatment of certain food and food ingredients under the sales and use tax, the West Virginia State Tax Department issues this Notice regarding certain food that ordinarily requires additional cooking.

Section 11-15B-2(b)(40) of the West Virginia Code currently reads:

(40)(A) "Prepared food" means:

- (i) Food sold in a heated state or heated by the seller;
- (ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(B) "Prepared food" in subparagraph (ii), paragraph (A) of this subdivision does not include food that is only cut, repackaged or pasteurized by the seller, and eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code of 2001 so as to prevent food-borne illnesses.

(C) Additionally, "prepared food" as defined in this subdivision does not include:

- (i) Food sold by a seller whose proper primary NAICS classification is manufacturing in Sector 311, except Subsection 3118 (bakeries);
- (ii) Food sold in an unheated state by weight or volume as a single item; or
- (iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

The West Virginia State Tax Department will interpret the above definition to exclude from "prepared food" any food sold that ordinarily requires additional cooking (as opposed to reheating) by the consumer prior to consumption. This interpretation is binding on the Tax Department until it is changed by subsequent legislation.

**Notice of this determination will be filed in the West Virginia Register.**

Issued: November 10, 2015

Mark W. Matkovich  
State Tax Commissioner