

(REVISED 10/17/05)

**NOTICE: CHANGES IN THE SALES AND USE TAX ACT AFFECTING  
THE SALE OF FOOD AND FOOD PRODUCTS**

**NEW JERSEY SALES AND USE TAX ACT-STREAMLINED LEGISLATION  
(P.L. 2005, c.126) (EFFECTIVE OCTOBER 1, 2005)**

Through the enactment of Public Law 2005, chapter 126, New Jersey joined a national coalition of states in conforming the New Jersey Sales and Use Tax Act to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA was developed over the course of several years through the joint effort of over forty states participating in the Streamlined Sales and Use Tax Project. The underlying purpose of the Agreement is to simplify and modernize the administration of the sales and use tax laws of the member states in order to facilitate multi-state tax administration and compliance. The provisions of New Jersey's law are effective on October 1, 2005.

**The new law imposes sales tax on “prepared foods,” “candy” and “soft drinks.” This may result in a difference in the tax treatment of some items when compared to prior law. “Food and food ingredients” and “dietary supplements” remain exempt from sales tax.**

**Food and food ingredients**

Under the amended version of N.J.S.A.54:32B-8.2, the sale of **food and food ingredients purchased for human consumption are exempt from sales tax**. “Food and food ingredients” are defined as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. This term does not include tobacco, alcoholic beverages, candy, or soft drinks.

“Dietary supplement” means any product intended to supplement the diet required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label and as required pursuant to Federal law.

**Prepared Food**

N.J.S.A.54:32B-3(c)(1) has been amended to impose sales tax on the sale of “prepared food.”

Under the SSUTA, “prepared food” is defined to include:

- Food sold in a **heated** state by the seller; or
- Food items that are a result of the **combination of two or more food ingredients by the seller** to make single item; or
- Food **sold with eating utensils provided by the seller** (plates, cutlery items, glasses, cups, napkins or straws. Plates do not include containers for transport)

“Prepared Food” does NOT include the following:

- Food that is only cut, repackaged, or pasteurized by the seller; or
- “Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration...”

“Prepared Food” includes the following **only** when served by the seller with utensils:

- Food sold in an unheated state by weight or volume as a single item
- Bakery items sold as such, including but not limited to, bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pie, tarts, muffins, bars, cookies, and tortillas
- Food sold by a seller that is primarily a manufacturer (NAICS Section 311), except Bakeries (Section 3118)

### **Candy**

The exemption for food under N.J.S.A.54:32B-8.2 does not apply to “candy.” “Candy” is defined as any **“preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the forms of bars, drops, or pieces.”** The term “candy” **does not include any preparation containing flour as an ingredient.**

Because many products commonly categorized as candy contain flour, **packaging labels must be examined to determine which items are deemed taxable candy or exempt food products.** Examples of items exempt after 10-1-05 include KitKats, Twix, some licorice, Nestle Crunch, and Milky Way.

The term “candy” **does not include any preparation that requires refrigeration.** If an item that would otherwise be included in the definition of “candy” above requires refrigeration under health regulations, it would be deemed an exempt food product.

Candy that does not *require* refrigeration is taxable even if sold as such. For example, a number of candy bars that are regularly marketed at room temperature in the candy aisle may also be found in the refrigerated section of a convenience store. These products are refrigerated for customer preference rather than as directed on the label. Therefore, these items are not exempt from sales tax.

### **Soft drinks**

“Soft drinks” are subject to sales tax. Soft drinks are defined as **nonalcoholic beverages that contain natural or artificial sweeteners.** The term **does not include beverages that contain milk or milk products (including soy, rice, or similar milk products) or greater than 50 percent vegetable or fruit juice by volume.** **Again, product labels must be examined.** Frozen, or powdered soft drink mixes are not deemed to fall within the definition of “soft drink”, which must be in liquid form, and are therefore exempt as foods. This new definition may change the taxability of specific products, particularly in the area of non-carbonated beverages, which were all exempt under prior law.

Examples of taxable soft drinks:

- Artificially sweetened water

- Teas containing sweeteners
- Drinks labeled as containing 50 percent or less fruit or vegetable juice
- Sports drinks (Gatorade, Powerade, etc.)
- Sodas (colas, root beer, artificially sweetened diet colas, ginger ales, etc.)

Examples of items that are deemed exempt food products, rather than taxable soft drinks:

- Unsweetened Water (regardless of carbonation)
- Fruit or vegetable juices that contain more than 50 percent juice by volume
- Nutritional drinks that contain soy (Ensure, Boost, etc.)
- Apple cider
- Beverage powders (Kool-aid, lemonade, sweetened iced tea)
- Frozen fruit juice concentrates (regardless of percentage of juice, product is not in beverage form)

You may view the law under “Chapter Laws” at the New Jersey Legislature’s website located at: [www.njleg.state.nj.us](http://www.njleg.state.nj.us)

[E-mail](#) Questions concerning the new streamlined sales and use legislation.