

Excise Tax Advisory

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Meal Assembly Kitchens

Introduction Meal assembly kitchens are neither restaurants nor grocery stores. The kitchens do not, generally, cook or serve meals but rather provide menu options, purchase ingredients, and prepare the ingredients for assembly. Side dishes are also often available for purchase. In some cases, the customer assembles their own entrées. In other cases, kitchen staff may assemble selected entrées.

Business and occupation tax Gross income from sales of ready-to-cook and ready-to-freeze entrées to consumers is subject to the retailing business and occupation (B&O) tax classification. Gross income includes charges for all income related to the sale of the entrées, including but not limited to:

- fees charged for preparing the ingredients,
- fees charged for the use of kitchen space or utensils,
- delivery charges, and
- the price of the entrée containers.

Retail sales tax Generally, “food and food ingredients” are exempt from retail sales tax; however, the exemption does not apply to sales of “prepared foods.” RCW 82.08.0293. Sales of entrées are therefore exempt from retail sales tax unless the entrées meet the definition of “prepared foods.”

When is an entrée a “prepared food”? If entrées or any other food products meet **any one** of the following three tests, it is “prepared food”:

Test	Description
1	ALL food sold with utensils provided by the seller is “prepared

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	food.”
2	Food sold in a heated state is “prepared food” UNLESS it is a bakery item. “Bakery items” include bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas...
3	Two or more food ingredients mixed or combined by the seller for sale as a single item is “prepared food” UNLESS the food or food ingredients: <ul style="list-style-type: none"> • are bakery items; or • are only cut, repackaged, or pasteurized (in addition to being combined) by the seller; or • are or contain eggs, fish, meat or poultry, in a raw or undercooked state requiring cooking to prevent food-borne illness; or • are sold in unheated state AND by weight or volume.

Customer – vs. kitchen-assembled entrées

Meal assembly kitchens generally operate in one of two different ways:

- **Customer-assembled entrées** – Customers schedule a meal assembly session for the kitchen and then assemble their own entrées using the kitchen’s ingredients, recipes, and facilities. Side dishes are often available for purchase.
- **Kitchen-assembled entrées** – Customers select from a menu of entrées and have the kitchen staff assemble the selected entrées.

General taxability of customer- vs. kitchen assembled entrées

Customer-assembled entrées generally do not meet the definition of “prepared foods” because they are not sold with utensils, and they are not heated or combined by the seller. Therefore, they are generally not subject to retail sales tax.

Kitchen-assembled entrées generally meet the definition of “prepared foods” and are subject to retail sales tax. However, retail sales tax does not apply to sales of kitchen-assembled entrées that contain raw animal product requiring cooking to prevent food-borne illness (eggs, fish, meat, or poultry).

Note: “Utensils” include plates, knives, forks, spoons, glasses, cups, napkins, or straws. The term does not include a container or packaging used to transport food. RCW 82.08.0293 and WAC 458-20-244.

Entrées sold at “one nonitemized price”

Meal assembly kitchens may sell packages that consist of both taxable and exempt entrées for one nonitemized price, where the price does not vary based on the entrée selections. The following table provides a general guideline for determining taxability.

If ...	Then ...
If the seller's purchase price or sales price of the taxable entrées is greater than fifty percent of the combined purchase price or sales price.	Retail sales tax applies to the entire package.
If the seller's purchase price or sales price of the taxable entrées is fifty percent or less of the combined purchase price or sales price.	The entire package is exempt from retail sales tax.

Note: The seller may make the determination based on either purchase price or sales price, but may not use a combination of the purchase price and sales price. See WAC 458-20-244, RCW 82.08.190 and 82.08.195.
