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ETA 3184.2013

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Prepared Food Sales Applying the 75% Test Computation to Multiple Business Establishments

Background

The purpose of this Excise Tax Advisory (ETA) is to explain how taxpayers apply the 75% test computation for “prepared food” where multiple business establishments are involved. For more information on the application of the 75% test for taxability purposes please see WAC 458-20-244 *Food and food ingredients*.

Multiple business establishments

Taxpayers with multiple establishments in the state may calculate

- a separate percentage of prepared food sales for each establishment; or
- one percentage combining sales figures from all instate establishments.

Taxpayers with multiple business establishments, where some of these establishments are dissimilar, may group sales from similar businesses to determine their percentages. See Example 1 for additional information.

Sales figures can be used from the prior fiscal year or calendar year. Taxpayers with new businesses should make a good faith estimate for its first annual prepared food sales percentage. The taxpayer must adjust its estimate prospectively if its relative sales of “prepared foods” in the first ninety days of operation materially differ from the estimate. Once a taxpayer chooses a fiscal or calendar method of calculation, this method must be used for future calculations unless written consent is received from the Department of Revenue to change methods.

Exemption for 4 or more servings

There is an exemption for four servings or more of food or food ingredients packaged for sale as a single item (e.g. ground coffee, whole cakes, loaves of bread) and sold for a single price. Even if the business exceeds the 75% threshold as explained below, these items will not be considered “prepared food” unless the taxpayer's

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customary practice for the item is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the manufacturer's product label determines the number of servings included in a package of food or food ingredients. If no label is available, the taxpayer must reasonably determine the number of servings.

Examples

Example 1: A taxpayer operates two espresso stands and a mini-mart with gas sales. Taxpayer reports excise taxes using one excise tax return. The taxpayer may compute:

- one percentage for the combined income of the espresso stands and a separate percentage for the mini-mart;
- a separate percentage for each establishment; or
- one percentage for the combined income of all establishments.

Example 2: A taxpayer operates two restaurants and a separately located small food market (where no food sold qualifies as "prepared food"). The taxpayer may compute one percentage for the two restaurants or a separate percentage for each restaurant. The sales for the food market would not need to be included in the calculation as no "prepared food" is sold.

Example 3: A taxpayer operates a grocery store (where some "prepared food" is sold) and also has an espresso stand in the parking lot. The taxpayer may compute separate percentages for the grocery store and the espresso stand or one percentage for the combined sales income from the grocery store and espresso stand.

Example 4: A restaurant has a small area located at the entrance where food and food ingredients are sold. The taxpayer must compute the percentage based on all sales from the restaurant, including the sales from the area selling food and food ingredients. This is because both the restaurant and entrance area represent a single business establishment.

Additional information

Please refer to the Department's web site at www.dor.wa.gov for additional information including:

- RCW 82.08.0293; RCW 82.12.0293
 - WAC 458-20-244 Food and food ingredients
 - Special Notice on "Prepared Food Tax Changes"
 - Industry guide for "Restaurants and Retailers of Prepared Food".
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