

**New Hampshire Department of Revenue Administration
45 Chenell Drive, Concord, NH 03301**

**TECHNICAL INFORMATION RELEASE
TIR 2007-005 Date: August 7, 2007**

A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions should be directed to Customer Service at (603) 271-2191.

Meals and Rentals Tax Guidelines for Grocery Stores

The Department has been working with a group from the New Hampshire Grocers Association and the New Hampshire Lodging and Restaurant Association in an effort to create reasonable guidance for grocers in determining what is a taxable meal under RSA 78-A.

Historically, the Department has focused on those physical areas of grocery stores or convenient stores – such as salad bars, sandwich displays, and bakeries – that sell prepared foods that would qualify as meals under a strict reading of the statute and the rules. This has become problematic over time as taxability has become dependant on presentation and location of the product rather than on the product itself and its comparability to a meal served in or by a traditional restaurant. An item in one grocery store would be considered taxable because of the proximity of its display to the “restaurant” area of the grocery store, while in another grocery store the identical item would not be taxed. The purpose of this TIR is to provide some guidance to grocers concerning the types of prepared food items that the Department will consider taxable or not taxable. The rationale is that limiting the tax to meal-type, restaurant-type items as distinct from grocery-type items satisfies the intent of the statute and the rules that the tax be applied to the “restaurant”-type sales of the grocery store, convenient store or gas station.

This TIR applies only to grocery stores, convenient stores and gas stations and is not intended to affect the application of Rev 701.10 and 702.18 as those sections might otherwise apply to restaurants as defined in RSA 78-A:3, X(b) and Rev 701.19.

What is taxable at a grocery store, convenient store or gas station?

- Food prepared on the premises, as defined in Rev 701.16, that could reasonably be perceived as competing with an eating establishment that is primarily in the restaurant business, such as, but not limited to:
 1. Sandwiches of any kind whether prepared or packaged on or off the premises, except frozen or uncooked and which require additional cooking or further preparation.
 2. Beverages in unsealed containers including any alcoholic, malt, or vinous beverage.
 3. Salad bar and self-serve food carts, except stand-alone olive bars.
 4. Hot food items, including but not limited to, seafood, meats, vegetables, side dishes, soups, stews or chowders.
 5. Party platters or combination plates.
 6. Prepared, ready-to-eat products whether or not such products have been warmed or cooled to a preferred temperature.

What is not taxable at a grocery store, convenient store or gas station?

- All food products and beverages wholly packaged off the premises, as defined in Rev 701.16, and sold in their original containers.
- Deli items, such as coleslaw, potato salad, etc, in any quantity, unless sold as part of a combination plate.
- Pre-packaged bakery items, including but not limited to donuts, bagels, cookies, cakes, pies, brownies, breads, in any quantity, unless sold from a separately franchised bakery, as defined in Rev 702.18, operating by agreement at the grocery store, convenient store or gas station.
- Single serving bakery products sold in a quantity of 6 or more, such as, but not limited to, donuts, cookies, brownies or bagels.
- Whole, multiple serving bakery products, such as, but not limited to, cakes, pies or breads.

Grocery stores, convenient stores, and gas stations should have available a list of items to which they apply tax. The Department will work with stores as necessary to stay in compliance.

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the N.H. Department of Revenue Administration, 45 Chenell Drive, Concord, NH 03301 or by contacting them at (603) 271-2318.