



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

June 30, 2010

Federal ID: [REDACTED]
Account ID: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Dear Ms. [REDACTED]:

Your letter dated April 12, 2010 has been forwarded to this Division for a reply. You requested a written opinion on the taxability of brewed coffee and foods heated in your stores by microwave.

You state, "The coffee would be brewed and available to our customers for purchase and would be self-serve. Frozen foods in our freezer section can be purchased for home consumption. If a microwave was available for the customer to heat the food item would this change the taxability of the food item heated?"

G.S. 105-164.3(28) defines prepared food as "Food that meets at least one of the conditions of this subdivision. Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils.

- a. It is sold in a heated state or it is heated by the retailer.
- b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This sub-subdivision does not include foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses.
- c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws."

G.S. 105-164.3(10) defines food as "Substances that are sold for ingestion or chewing by humans and are consumed for their tasted or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not

include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco product, as defined in G.S. 105-113.4.”

The coffee brewed by the store is considered prepared food as defined pursuant to G.S. 105-164.3(28); therefore the receipts from the sale of self serve brewed coffee are subject to the general State and applicable local rates of sales and use tax. Frozen food does not qualify as prepared food as defined per statute and is, therefore, subject to the 2% rate of tax.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: [REDACTED], Director of Sales and Use Tax Division
[REDACTED], Assistant Director of Sales and Use Tax Division