

RI22002 Appendix C, Part II Prepared Food, Request for interpretation supplemental 1-9-2023:

Agreement Section(s), Rules or Tax Administration Practice(s) involved:

SSUTA Appendix C, Part II- Prepared Food:

“Prepared food” means:

- (i) Food sold in a heated state or heated by the seller;
- (ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

SSUTA Appendix C, Part II-Prepared Food, paragraph C:

C. “Food sold with eating utensils provided by the seller” in (iii) means:

2. For a seller with a “prepared food sales percentage” of 75% or less calculated per D. below, food is sold with eating utensils provided by the seller if the seller’s business practice is to physically give or hand eating utensils to purchasers, except that plates, bowls, glasses and cups, necessary for the purchaser to receive the food need only be made available to purchasers.

Issues:

- 1. Whether physically giving or handing utensils to purchasers, as used to define “food sold with eating utensils provided by the seller” in Appendix C, Part II- Prepared Food, paragraph C.2 of the Agreement, includes a seller loading utensils that are owned by the purchaser and possessed by the seller into galley carts along with the food items the seller is selling to the purchaser.
- 2. For food that a plate, bowl, glass, or cup is necessary to receive the food, whether making the plate, bowl, glass, or cup available to purchasers, as used to define “food sold with eating utensils provided by the seller” in Appendix C, Part II- Prepared Food, paragraph C.2 of the Agreement, includes a seller placing food on plates, bowls, glasses, or cups that are owned by the purchaser and possessed by the seller and loaded into galley carts.

Statement of Background Facts:

A purchaser in the travel industry (airline, train, etc.) has contracted with a seller to load galley carts with food items and provide loading services. Per their contract, the purchaser is stipulated to “provide” the eating utensils. The purchaser purchases the eating utensils from a third-party and then supplies the utensils to the seller. The purchaser purchases the food items from the seller. The seller loads the galley carts with the purchased food items and the utensils supplied by the purchaser. The loaded galley cart is then provided to the purchaser.

Fact Patterns

1. Plate, bowl, glass, or cup not necessary for the purchaser to receive the food item.
 - a. Seller contracts to sell food items and provide loading services to purchaser.
 - b. Galley carts are loaded by the seller with food and utensils.
 - c. The food loaded does not require a plate, bowl, glass, or cup to receive the food.
 - d. The utensils being loaded were purchased by the purchaser from a third-party and supplied to the seller specifically for the purpose of being loaded into the galley carts.
 - e. The fully loaded galley cart is then provided to the purchaser.

2. Plate necessary for the purchaser to receive the food item.
 - a. Seller contracts to sell food items and provide loading services to purchaser.
 - b. Galley carts are loaded by the seller with food and utensils.
 - c. The food loaded requires a plate to receive the food. Example: a premade cake is purchased by the seller, cut into pieces by the seller, placed on plates by the seller, and then the cake and plates are loaded onto the galley cart by the seller.
 - d. The plates being loaded were purchased by the purchaser from a third-party and supplied to the seller specifically for the purpose of being loaded into the galley carts.
 - e. The fully loaded galley cart is then provided to the purchaser.

Additional Information:

1. The food items are not purchased for resale.
2. The food items are not sold in a heated state or heated by the seller.
3. Two or more food ingredients are not mixed or combined by the seller for sale as a single item.
4. The eating utensils purchased from a third party and supplied to the seller include a mixture of disposable and reusable utensils.
5. Utensils are loaded in all galley carts at issue.
6. The galley carts are owned by the purchaser.
7. Loading involves the seller physically placing the eating utensils in the galley cart along with food items and then providing the loaded galley cart to the purchaser.
8. While fact pattern 2 addresses a plate, this could be a plate, bowl, glass, or cup.

Proposed Interpretation:

The food sold in these transactions where utensils are owned by the purchaser and possessed by the seller meet the definition of prepared food.

A seller is considered to have physically given or handed utensils to the purchaser if the seller places both the utensils and the food being sold to the purchaser in the galley cart that is transferred to the purchaser, regardless of who supplied the utensils.

A seller is considered to have made the utensils available to the purchaser if the seller places the utensils that are necessary to receive the food items in the loaded galley cart along with the food, regardless of who supplied the utensils.