

Sales Tax – Are You Limiting Your Market

Steve Childs – Cornell Cooperative Extension Maple Specialist

Are all pure maple products sales tax exempt? Does it matter how or where it is sold? When applying to sell at a craft show you are likely to be told you have to have a sales tax number, is that true? What are the rules and where does a maple producer go to find out? Are you losing business by not selling taxable maple items?

The primary source of sales tax information for maple producers is the New York State Department of Taxation and Finance publication 880, Taxable and Exempt Foods and Beverages Sold at Retail Food Markets and Similar Establishments. The 880 publication states: “The Tax Law exempts from sales taxes, food, food products, dietary foods, health supplements and certain beverages sold for human consumption, when sold in the same form and condition, quantities and packaging as is commonly used by retail food stores or similar establishments such as bakeries or produce stands. This exemption does not apply to the sale of candy and confections; nor does it apply to prepared meals or any food or beverages sold for on-premises consumption, even when sold by a retail food store.” For me, that quote created as many questions about the sales taxability of maple products as it answered. Questions like, when does a maple product become a confection or candy, and what defines a product for on site consumption?

Publication 880, also lists foods that are taxable and exempt, possibly this list will clarify things. Here are some examples of foods and beverages that would be taxable or exempt when sold at retail food markets and similar establishments. This list is intended to be used as a guide. Questions about items not included should be referred to the Taxpayer Assistance Bureau.

Exempt Foods and Beverages

Bakery products	Flavoring preparations	Popcorn *
Chocolate (for baking)	Frozen desserts	Pretzels *
Cocoa	Ice Cream (prepackaged)	Sauces
Coffee	Marshmallows (all sizes)	Seasonings
Condiments	Nuts and nut products!	Sugar
Cookies	Oils (cooking, salad)	Sugar substitutes
Dressings	Peanuts *	Syrups

* Provided they are not candy- or sugar-coated or sold heated.

** Sugar-, chocolate- or candy-coated nuts, raisins, malted milk balls and similar products.

Taxable Foods and Beverage

Candy and confectionery	Coated candies **	Maple sugar candy
Caramels	Dietetic candy	Soft drinks
Carbonated beverages	French burnt peanuts	
Chocolate (candy)	Fudges	

Lets start with the simple conclusions first. Maple syrup, sugar, cream, mustard, salad dressings, ice cream, cookies, seasonings and maple marshmallows are not taxable unless sold for on site consumption. All these fall into the various products listed under exempt foods. Taxable maple products would include maple coated nuts, maple fudge, maple cotton candy, suckers and any maple candy or confection that includes ingredients other than pure sugar, pure maple sugar sold as candy, any maple related breakfasts or meals, any item sold that is not in a sealed consumer package for on site consumption such as maple ice cones or maple cotton.

Maple products of questionable interpretation would include items that are 100% sugar but not sold, labeled or identified as candy, such as maple cotton and molded sugars. The 880 list specifically records maple sugar candy as taxable, yet products made of 100% sugar, many producers assume, qualify as sugar which is exempt. My advice here would be to collect the sales tax and use the candy label to enhance your marketing. A well marked candy shelf in your display would likely be less confusing and much more attractive to the public than other names often given these products. This could also eliminate the risk of a confrontation with a sales tax inspector or auditor whose interpretation differed from yours. Being able to collect sales tax also opens the door to expanded marketing options such as books on maple, maple wood products and most important for anyone selling at a farmers market, fair or craft show maple products for on site consumption. These products often have the highest profit margins and don't sit around at home waiting to be used up before the next purchase.

If you choose to market only exempt products, tax publication 750 provides this information. A farmer is not required to register as a vendor for sales tax purposes if the only sales the farmer makes are sales of food and food products that are exempt from tax. When making purchases of maple equipment and supplies the unregistered farm must provide the seller with Form ST-125 to avoid paying sales tax on these items. This form does not require a tax number.

Producers not used to dealing with sales tax collection often find the idea intimidating. Yet, the vast majority of retail business deals with sales tax everyday and though it involves added record keeping it is a common and workable system. According to NYS Tax publication 20, for your business to be registered as a vendor, it must obtain a Certificate of Authority from the Tax Department. This certificate gives your business the authority to collect the required sales tax., and to issue appropriate sales tax exemption documents, such as the ST-120, resale certificates used for purchasing inventory. To obtain a Certificate of Authority, you must complete Form DTF-17, Application for Registration as a Sales Tax Vendor, and send it to the address listed in the instructions, at least 20 days before you begin conducting taxable business. According to NYS tax publication 750, if you engage in sales taxable business without having obtained a valid Certificate of Authority, you will be subject to a penalty.

Other expectations of a business that collects sales tax include keeping sales records. These rules are described in publication 750. See NYS tax publication 34 for rules on how you may list products for sale and writing proper receipts.

Sales tax issues can be confusing but broadening your market may be profitable. Make sure you have the best information available. Sales tax publications are available at:
http://www.tax.state.ny.us/pubs_and_bulls/publications/sales_pubs.htm
Forms most relevant to maple producers are also available at the Cornell Maple Webpage at:
<http://maple.dnr.cornell.edu/pubs/index.htm>.