



This Week in State Tax (TWIST)

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New York: Party Platters are Taxable Prepared Food

The New York Division of Tax Appeals recently addressed whether a deli operator was liable for sales taxes on sales of party platters. The party platters at issue came in varying sizes and consisted of a choice of three meats and three cheeses. The meats and cheeses were served on a deli tray with rolls, mayonnaise, mustard, oil, lettuce, tomatoes, onions, and banana peppers. The meats and cheeses were pre-sliced and were arranged in a circle in the middle of the tray. The outer ring consisted of individual containers that included the various condiments and sliced sandwich toppings. Rolls accompanied the platter and were contained in a separate bag. Under New York law, sales tax is imposed on prepared food sold by restaurants. There is an exception when the food is intended to be consumed off premises and is sold in an unheated state in the same form and condition, quantities, and packaging that is used when selling the food at the store. In other words, the deli had to establish that it sold these items in the same condition, quantities and packaging that was used when a food store sold the same item. The taxpayer argued that the products were sold in the same form and condition, quantities, and packaging as was commonly used by retail food stores. The ALJ, however, determined that this was simply not accurate. The deli separated the condiments into individual packaging, while retail stores would sell condiments in jars or bottles. The platters included pre-sliced lettuce, tomatoes, and onions whereas retail stores would sell them unsliced. In the ALJ's view, it was this preparation work done by the taxpayer in creating the platters that differentiated the deli trays from the same items sold in a retail store. As such, the platters were taxable as prepared food. Please contact Judy Cheng with questions on *Matter of the Petition of Todd A. Neupert*.

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