


# ***STD 95/6 - Donut production equipment used in retail food shops***

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This Document is a Ruling for the purposes of section 77 of the *Sales Tax Assessment Act 1992*. As a result you may act on it as if it had the force of law.

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## Sales Tax Determination

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Title: Donut production equipment used in retail food shops

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### Background

Donuts are often made in both specialised donut shops and other retail food establishments.

Under the sales tax law, manufacturers are generally entitled to exemption from sales tax on their production equipment. However special rules apply where a person manufactures *bread, cakes or pastry* for sale in a *retail establishment*. In these circumstances, only an *eligible manufacturer* is entitled to exemption on production equipment that is for use mainly in connection with the manufacture of these goods.

A manufacturer who is not an *eligible manufacturer*, pays sales tax on production equipment that is used to make *bread, cakes or pastry* in a *retail establishment*.

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### Issue

When does donut production equipment used in retail food shops qualify for exemption from sales tax?

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### Decision

Donut production equipment (including mixers, proving ovens, deep-frying equipment, utensils and parts for these goods) qualifies for exemption from sales tax where:

- the donut maker is an *eligible manufacturer*, that is, where the predominant activity of the shop is the production and sale of *bread, cakes or pastry*; and
- the equipment is used mainly (that is, more than 50%) in the production of those goods.

In practice this means that production equipment used by specialised donut shops will qualify for exemption. This decision overturns private rulings which previously denied sales tax exemption for production equipment used by specialised donut shops.

Where tax has been paid on donut production equipment used in circumstances that would qualify for exemption under this determination, tax will have been overpaid within the meaning of the credit provisions in both the current and previous sales tax legislation. Entitlement to a credit would be subject to a claimant satisfying the normal requirements of the relevant credit provisions.

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**Date of effect**

This determination is effective immediately.

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**Reasons**

*We have based our decision on the following legislative provisions:*

*Sales Tax (Exemptions and Classifications) Act 1992, section 12; Item 18, Schedule 1.*

Where donuts are produced in a *retail establishment* for sale, the donut maker must be an *eligible manufacturer* in order to qualify for exemption from sales tax on equipment used mainly in the production of donuts.

In the sales tax law:

- an *eligible manufacturer* means a *confectioner, baker, pastry-cook, or a person who carries on a business of manufacturing savoury snacks*;
- a *retail ... establishment* includes a *retail shop, retail outlet (including a vehicle) or any similar establishment or outlet*; and
- *pastry* does not include pizzas or similar goods.

The expressions *baker* and *pastry-cook* are not defined in the sales tax law and therefore take their ordinary meaning. The Macquarie Dictionary defines them as follows:

- a *baker* is one who bakes; one who makes and sells bread, cake, etc.;
- a *pastry-cook* is a maker or seller of pastries, cakes, etc.; and
- a *donut* is a small ring-shaped cake of sweetened or, sometimes, of unsweetened dough fried in deep fat.

The expressions *baker* and *pastry-cook* (in the definition of *eligible manufacturer*) refer to the general character of a particular business. A *baker* or *pastry-cook* normally produces a range of breads, cakes or pastries. Therefore a business is characterised as a *baker* or *pastry-cook* if the production and sale of bread, cakes or pastries is the predominant activity.

As donuts are *cakes*, a donut maker will be an *eligible manufacturer* if the production and sale of donuts is the predominant activity of the business. This is the case with specialised donut shops.

On the other hand a hotel, restaurant or snack bar may, for example, also produce donuts. None of these businesses would normally be characterised as a *baker* or *pastry-cook*. Accordingly the hotel, restaurant or snack bar would not be an *eligible manufacturer* and would pay sales tax on purchase of any donut production equipment.

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## Communication of the Decision

This determination is a public ruling for the purposes of section 77 of the *Sales Tax Assessment Act 1992* and may be relied upon by any person to whom it applies. The document has been made available for publication by the sales tax publishing houses.

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## Commissioner of Taxation

15 June 1995

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Related Determinations:

Related Rulings:

Subject Ref: donut production equipment; eligible manufacturer, generally - excluded property; sales tax classifications; sales tax exemptions

Legislative Ref: Sales Tax (Exemptions and Classifications) Act 1992 section 12 and Item 18, Schedule 1

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