Prepared Food Flow Chart

Did the seller:
- heat the food, or
- mix or combine two or more food ingredients for sale as a single item? ¹

Are any of the following true? ²
- The food is a bakery item
- The food requires cooking prior to consumption
- The food is ready-to-eat meat or seafood sold unheated by weight
- The food contains raw eggs, fish, meat, or poultry and it requires cooking by the consumer to prevent food borne illnesses ³
- The food is only sliced, repackaged, or pasteurized by the seller

Yes  No

Is it the seller’s practice to physically give or hand utensils to the customer along with the sale of food ⁴ (i.e. provide place settings, hand utensils to customers, or place utensils in the package with the food (including food prepackaged with utensils, unless they were packaged by a person classified as a manufacturer))

OR
Are eating utensils necessary to receive the food (such as a plate, glass, cup, or bowl) provided by the seller? ⁵

Yes  No

The sale is taxable prepared food.

The sale is taxable prepared food. [NOTE: Even if the seller’s prepared food percentage is greater than 75%, the sale of bulk servings (four or more servings packaged for sale as a single item for a single price) is taxable as prepared food only if it is the seller’s practice to physically give or hand utensils to the customer with the food.] ⁸

The sale is not taxable.

Does the seller make eating utensils available for customers? ⁶

Yes  No

Is the seller’s prepared food percentage greater than 75%? ⁷

Yes  No

The sale is taxable prepared food.

The sale is not taxable.

¹ Minn.Stat. 297A.61 Subd. 31 (2)
² Minn.Stat. 297A.61 Subd. 31 (2)
³ Minn. Stat. 297A.61, Subd. 31 (2) and FDA food code 3-401.11
⁴ Minnesota Rule 8130.4705 Subp. 2
⁵ Minnesota Rule 8130.4705 Subp. 3(A)
⁶ Minnesota Rule 8130.4705 Subp. 3
⁷ Minnesota Rule 8130.4705 Subp. 5
⁸ Minnesota Rule 8130.4705, Subp 4