

Sales And Use Tax Application To Purchases Of Machinery And
Equipment By Restaurants, Diners And Similar Establishments

It is the policy of the Department of Taxation and Finance to hold taxable all purchases of machinery, equipment and supplies used in the preparation of food by restaurants, diners and similar establishments, as well as energy sources or utilities used to operate such machinery and equipment.

The production exemption contained in section 1115(a)(12) of the tax law does not apply to the above mentioned purchases, as they are not used to produce tangible personal property for sale. They process and deliver restaurant food, a category distinct from tangible personal property. (See Regulation section 528.13(c), example 6.)

This policy is consistent with the decision reached by the New York Court of Appeals in the matter of Burger King, Inc., v. State Tax Commission, 51NY2d614.