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TREASURY BUILDING

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FOOD FOR HUMAN CONSUMPTION

RAB-90-7. The purpose of this Bulletin is to clarify the sales tax exemption for food purchased for human consumption. Under Michigan's Sales Tax Act, food purchased for human consumption is exempt from tax. However, prepared food intended for immediate consumption is subject to tax. [Sales Tax Act, MCL 205.54g; Use Tax Act, MCL 205.94d; Department of Treasury Sales and Use Tax Rule, 1979 AC, R 205.136]

The following is an analysis of the Sales and Use Tax Acts and the applicable administrative rules regarding the taxability of various food items.

1. Items Sold at Concessions

Food, including prepackaged items (such as candy bars, potato chips, ice cream, popcorn, nuts, cans or bottles of pop and other food) sold at concessions at special events and entertainment facilities including, but not limited to, theaters, fairs, recreation centers, athletic events, parks, zoos, are taxable as prepared food for immediate consumption. [MCL 205.54g] For periods before January 1, 1990, the Department of Treasury will not assess tax on sales of these items if an organization did not charge or pay sales tax on these items. (See Revenue Administrative Bulletin 1989-63 at page 2.)

2. Food Stamp Purchases

All food items, including deli trays, purchased with food stamps are exempt from tax. (See Revenue Administrative Bulletin 1987-8.)

3. Bakery Items

According to MCL 205.54g, food for human consumption is exempt from sales tax, except for "prepared food intended for immediate consumption."

Bakery items are referenced once in this section. The law says: "Prepared food intended for immediate consumption does not include bakery products for off-premise consumption." (Emphasis added.)

Pursuant to this statute, bakery products sold by a grocery store or a bakery for off-premise consumption are exempt from sales tax. Bakery items sold for consumption on the premises are taxable.



4. Food Bars, Such as Soup and Salad Bars

Food displayed on salad or food bars for carry out is considered prepared food for immediate consumption. This includes salad bars at restaurants or grocery stores. Items normally found on a salad bar include salads to be assembled by the purchaser, potato salad, pasta salad, cole slaw, cottage cheese, etc. These items are taxable. [MCL 205.54g(4)(a)]

Food cooked and maintained at a temperature higher than the surrounding air temperature is food for immediate consumption and is taxable [Sales Tax Act MCL 205.54g(4)(d)] Therefore, food kept warm on food bars, such as soup, chili, cheese for nachos, etc., is food for immediate consumption and taxable.

5. Delicatessen

The Sales Tax Act [MCL 205.54g(4)(c)] states "food or drink arranged on a plate or platter, whether intended for individual or multiple servings and whether sold by the pound or by the serving" is food for immediate consumption and is taxable. Therefore, deli trays of cheese and crackers, luncheon meats, seafood, vegetables and dip are subject to tax. Meals arranged and sold on a plate such as a sandwich, salad and dessert are also subject to tax.

Deli items maintained at room temperature or cooler and sold by weight or measure, such as potato salad, cole slaw, sliced meats, and vegetables, are not considered food for immediate consumption and are not taxable, except when sold on a salad bar.

Deli items maintained at a temperature higher than the surrounding air temperature, that are sold by the pound or otherwise, such as chicken, ribs, casseroles, are taxable. [MCL 205.54g(4)(d)]

Prepared deli food items sold by the piece, regardless of temperature, are taxable because they are for immediate consumption. [id.]

6. Sandwiches

The Sales Tax Act defines "a sandwich, either hot or cold" as food for immediate consumption. [MCL 205.54g(4)(c)] Therefore, sandwiches sold at a deli counter, lunch wagon, grocery or otherwise are subject to tax. Food for immediate consumption does not include frozen sandwiches purchased to thaw and/or heat at home, even if arranged on a plate with an item such as soup.

7. Frozen Foods

As stated above, tax is imposed on food or drink that is arranged on a plate or platter and on a sandwich (either hot or cold) because these items are considered food for immediate consumption. The Department does not interpret this to include frozen dinners and other frozen entrees arranged on a plate, platter or other container that are not intended to be consumed without thawing and heating. Frozen food items are not considered food for immediate consumption and are, therefore, exempt from tax.

However, ice cream products in single-serving sizes are considered to be food for immediate consumption and are subject to tax if sold at certain concessions (see item 1 on page 1 of this Bulletin) or from a mobile vendor (such as an ice cream truck). Ice cream products that are not prepackaged, such as ice cream cones, are taxable.

8. Prepackaged Food Items Sold by Carry-Out Restaurants

The Michigan Sales Tax Act [MCL 205.54g(4)(a)] states "[f]ood or drink prepared and served for immediate consumption at or near the premises or ordinarily sold on a takeout basis for immediate consumption either on or off the premises" is intended for immediate consumption and is taxable. Therefore, prepackaged items including canned or bottled beverages, candy bars, potato chips, boxes of cookies and salads sold by carry-out restaurants are taxable. For periods before January 1, 1990, the Department of Treasury will not assess tax on sales of these items if an organization did not charge or pay sales tax on these items.

9. Food Sold and Heated in Convenience Stores

Items such as burritos, pizza, and popcorn that are sold at convenience stores and heated on the premises are for immediate consumption and are taxable. If these items are sold and not heated in the store, then they are not subject to tax.

10. Sealed Containers of Beverages

Sealed containers of beverages, such as cans and bottles of pop and juice, including chilled beverages, are not included in the definition of "food for immediate consumption" and are exempt as food for home consumption, except as provided in items 1, 8 and 12 of this Bulletin. However, sales of covered glasses, cups or other containers of pop and juice are considered food for immediate consumption and are taxable because they are not sealed. Cans, bottles, and glasses of pop sold through vending machines are taxable. [MCL 205.54g(4)(e) and Department of Treasury Sales and Use Tax Rules, 1979 AC, R 205.126]

11. Popcorn and Nuts

Popped corn sold in bags, boxes, buckets, or disposable paper bowls is subject to tax as food for immediate consumption. Popped corn sold in presealed containers is exempt, except as provided in items 1, 8 and 12 of this Bulletin. "Presealed" means heat-sealed or twist-tied.

The sale of nuts when roasted, kept warm and then placed into a box or bag, is taxable. [MCL 205.54g(4)(d)] Nuts sold at room temperature, and placed into boxes, bags or other containers at the customer's order; and prepackaged nuts in sealed bags, boxes, tins or other containers, are exempt from tax, except as provided in items 1, 8 and 12 of this Bulletin.

12. Food and Nonfood Combinations

Frequently grocery items are packaged together with baskets or other items to sell as a single item (fruit baskets, cheese arranged on a cheese board). When the value of the food portion of the item predominates, the item is considered food and is exempt from tax. When the nonfood portion of the sale is of greater value, the entire transaction is subject to sales tax. However, if the vendor can substantiate the portion of the price pertaining to the food only, then sales tax would apply only to the nonfood portion.

Examples:

1. A ceramic figurine is filled with hard candy. The figurine is more valuable than the hard candy. Because the nonfood item is more valuable than the food item, the entire package is subject to tax.
2. An assortment of nuts is arranged in a holiday tin container. The nuts are more valuable than the holiday tin container. Because the food item is more valuable than the nonfood item, the entire package is exempt from tax.