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DEPARTMENT OF EDUCATION
LANSING

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Summer Food Service Program
Operational Memorandum No. 6
Fiscal Year 2013

SUBJECT: Automatic Revocation of Tax-Exempt Status

DATE: July 25, 2013

The Internal Revenue Service (IRS) has changed its filing requirements for some tax-exempt organizations. Failure to comply with the requirements may result in the revocation of an organization's tax-exempt status by the IRS. The Richard B. Russell National School Lunch Act allows the participation of private non-profit organizations. Further, the Act defines a private non-profit organization as one that has tax-exempt status under the Internal Revenue Code in the Summer Food Service Program (SFSP).

As a result of the new IRS requirements, the SFSP sponsors that have had their tax-exempt status automatically revoked by the IRS are not eligible for participation in SFSP. This memorandum is intended to provide guidance to SFSP sponsors that have had their non-profit tax-exempt status revoked.

According to the IRS, most tax-exempt organizations are required to file an annual return or notice with the IRS. Exceptions to this requirement include governmental and many faith-based organizations. Pursuant to authority in Section 6033(j) of the Internal Revenue Code of 1986, the IRS must automatically revoke the tax exemption of any private non-profit organization that fails to satisfy its filing requirement for three consecutive years. The IRS has in place an application process in which organizations may seek reinstatement of tax-exempt status after automatic revocation. Such reinstatements are generally effective on the date of the IRS determination, but retroactive reinstatement may be requested. Additional information about automatic revocation of tax-exempt status may be found at the following link: <http://www.irs.gov/Charities-&-Non-Profits/Automatic-Revocation-of-Exemption>.

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The IRS initiated this automatic tax exemption revocation, and it is possible that some SFSP sponsors are affected. Tax exemption is a condition of eligibility for private non-profit sponsors to participate. Therefore, revocation of tax exemption is considered a serious deficiency requiring corrective action or termination because it affects the sponsor's ability to administer the Program in accordance with Program requirements 7 CFR 225.11. If an approved SFSP sponsor has had its exemption revoked, the Michigan Department of Education (MDE) must follow the termination procedures outlined in 7 CFR §225.11(c), which includes providing notice of serious deficiency and an opportunity for corrective action. MDE will require corrective action for this serious deficiency within 30 business days of receipt of the notice.

The only appropriate corrective action is a sponsor's submission of documentation from the IRS indicating that:

- (a) The institution or the part of the organization under which the institution is operating continues to be tax-exempt under Section 501(a) of the Internal Revenue Code of 1986, or
- (b) The institution has submitted an application to the IRS for reinstatement of tax-exempt status.

Please note that fees associated with applying for tax-exempt status are not allowable SFSP costs. If sponsors are unable to provide such documentation, MDE must move to terminate. Sponsors applying for reinstatement must inform MDE immediately upon receipt of an IRS determination of tax-exempt status. MDE must move to terminate such sponsors if tax-exempt status has not been reinstated within 120 days of their receipt of the original serious deficiency notice.

Additionally, SFSP sponsors classified as non-profit that appear on the IRS Automatic Revocation of Exemption List (the List) are subject to the serious deficiency process.

If MDE proposes to terminate based on revocation of tax-exempt status, this action is subject to appeal under the procedures described in 7 CFR 225.13. MDE is required to continue to pay valid claims for reimbursement until MDE terminates the sponsor's agreement, including the period of any appeal 7 CFR 225.13(b)(11). Once the appeal process has been completed, terminated sponsors must be placed on the National Disqualified List (NDL). Sponsors terminated based on revocation of tax-exempt status may request removal from the NDL and reapply to participate in SFSP when tax-exempt status is reinstated.

Effective immediately, MDE will review the List and determine whether any approved SFSP sponsors are listed. The List, which is organized by state, may be found at the following link:

<http://apps.irs.gov/app/eos/revokeSearch.do?dispatchMethod=navigateSearch&pathName=forwardToRevokeSearch&searchChoice=revoked>. A serious deficiency notice will be sent to any affected sponsors.

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Additionally, MDE will check the List for any sponsor whose application to participate in SFSP is pending. Applicant sponsors appearing on the List may not be approved unless they can provide IRS documentation indicating that the organization or the part of the organization under which the sponsor is operating continues to be tax-exempt under the Internal Revenue Code. MDE will also check the List before approving new sponsor applications or approving renewing sponsor participation.

If you have any questions regarding this memo, please contact the School Nutrition Programs unit at 517-373-3347.