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DEPARTMENT OF TREASURY
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SALES TAX - FOOD FOR HUMAN CONSUMPTION

(Replaces Revenue Administrative Bulletins 1987-8 and 1991-18)

RAB 2002-20. This Revenue Administrative Bulletin ("RAB") explains the sales tax treatment of food purchased for human consumption.

Pursuant to statute, generally, food purchased for human consumption is exempt from sales and use taxes. MCL 205.54g; MCL 205.94d; 1979 AC, R 205.136. However, prepared food intended for immediate consumption is subject to sales tax. MCL 205.54g(1)(a).

The following is an analysis of 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, and zoos, are taxable as prepared food intended for immediate consumption. MCL 205.54g(1)(a).

2. **Food Stamp Purchases**

The following items are exempt when purchased with food stamps.

A. **Edible Fruit and/or Vegetable Seed and/or Plants**

Purchases of fruit or vegetable seeds and fruit or vegetable plants are exempt from Sales and Use Tax whether purchased with food stamps or other consideration, if they are purchased at a business:

- i) Authorized to accept food stamps by the federal government, or
- ii) Which has made a complete and proper application for authorization to accept food stamps but has been denied authorization and which provides proof of denial to the Department of Treasury.

For example, a purchase of a raspberry plant at a business as defined above would be exempt from Sales or Use Tax, while a purchase of an ornamental flowering plum tree

would be taxable. A purchase of carrot seeds at a business as defined would be exempt from Sales or Use Tax, while a purchase of zinnia seeds would be taxable.

B. **Bottled Water**

The definition of “food for human consumption” includes bottled water exempting it from sales and use tax for all purchasers when primarily intended for human consumption and when not sold or served for immediate consumption.

C. **"Meals-on-Wheels"**

Purchases of “meals-on-wheels” and other meals eligible for purchase with food stamps are exempt from sales and use tax whether purchased with food stamps or other means.

D. **Ice**

Purchases of ice are exempt from Sales and Use Tax only when purchased with food stamps. Because ice remains taxable if purchased with cash, the following rule must be followed if ice is part of a groceries purchase paid for with a combination of cash and food stamps. The food stamps shall be applied to the purchase of ice first, and next to the other grocery items that are eligible to be purchased with food stamps.

Example A:

\$49.00	Food items (exempt from sales tax)
<u>\$ 1.00</u>	Bag of ice
<u>\$50.00</u>	Total purchase cost (before tax)

The purchaser presents food stamps with total value of \$48 and \$2 cash. The cashier charges no tax on the ice, considering it was paid for with part of the food stamps.

Example B:

\$39.00	Food items (exempt from sales tax)
\$10.00	Cleaning supplies and toiletries (taxable)
<u>\$ 1.00</u>	Bag of ice
\$50.00	Total purchase cost (before tax)

The purchaser presents food stamps with total value of \$20.00 and cash for the remainder of the sale. The cashier charges no tax on the ice, considering it was paid for with part of the food stamps. The tax charged on cleaning supplies, etc., is \$.60. The total purchase price is \$50.60, paid for with the \$20.00 in food stamps and \$30.60 in cash.

3. **Bakery Items**

Pursuant to 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. MCL 205.54g(5).

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 and is taxable. This includes salad bars at restaurants or grocery stores. Examples of items normally found on a salad bar include, without limitation, salads to be

assembled by the purchaser, potato salad, pasta salad, coleslaw, cottage cheese, etc. 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. 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**

MCL 205.54g(4)(c) states, "[f]ood 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 such foods as cheese and crackers, luncheon meats, seafood, or 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, coleslaw, 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, or casseroles, are taxable. Prepared deli food items sold by the piece, regardless of temperature, are taxable because they are for immediate consumption. MCL 205.54g(4)(d).

6. **Sandwiches**

A sandwich, either hot or cold is food for immediate consumption. MCL 205.54g(4)(c). Therefore, sandwiches sold at a deli counter, lunch wagon, grocery store or similar venues 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 of this RAB) or from a mobile vendor, such as an ice cream truck (see item 13 of this RAB). Ice cream products that are not prepackaged, such as ice cream cones, are taxable.

8. **Prepackaged Food Items Sold by Carry-Out Restaurants**

Food 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. MCL 205.54g(4)(a). Therefore, prepackaged items, including canned or bottled beverages, candy bars, potato chips, boxes of cookies and salads sold by carryout restaurants, are taxable

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, 12 and 13 of this RAB. 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.

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, 12 and 13 of this RAB. "Presealed" includes heat-sealed or twist-tied containers.

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, 12 and 13 of this RAB.

12. **Food and Nonfood Combinations**

Frequently, grocery items are packaged together with baskets or other items to sell as a single item (e.g., fruit baskets or 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.

Examples:

- A. 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.
- B. 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 tax exempt.

13. **Food Sold at Vending Machines and Mobile Facilities**

Bakery items sold through vending machines or from mobile facilities are taxable unless purchased for off-premises consumption. The burden of establishing off-premise consumption is upon the person claiming the exemption.

Milk, fresh fruit, and nonalcoholic beverages in a sealed container sold from mobile facilities or vending machines are exempt from sales and use tax. Other food or drink which is heated

or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a mobile facility or vending machine is taxable. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated after December 31, 1994 based on 1 of the following methods as determined by the taxpayer:

- A. Actual gross proceeds from sales at retail.
- B. Forty-five percent of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.