

**RAB 1990-3 HAS
BEEN REPLACED
BY 1995-3**



JAMES J. BLANCHARD, Governor
ROBERT A. BOWMAN, State Treasurer

STATE OF MICHIGAN

DEPARTMENT OF TREASURY

TREASURY BUILDING

LANSING, MICHIGAN 48922

REVENUE ADMINISTRATIVE BULLETIN 1990-3

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**SALES AND USE TAX EXEMPTION
APPLICATION PROCESS - CERTAIN NONPROFIT ORGANIZATIONS**

RAB-90-3. The purpose of this Bulletin is to set forth the procedures used by the Michigan Department of Treasury to review applications for exempt status under the Sales and Use Tax Acts, MCL 205.54a(a) and 205.94(i), respectively. These procedures are for organizations that were previously determined to be exempt from sales and use tax. The basis for these procedures is Rule 90 of the Michigan Sales and Use Tax Rules, 1979 AC, R 205.140. The procedures do not apply to public schools and colleges, nonprofit private schools and colleges, regularly organized churches and houses of religious worship, nonprofit hospitals and governmental agencies. Other nonprofit organizations may apply for rulings of exempt status pursuant to these procedures.

Background

Nonprofit organizations often assume that once they are granted exempt status under the Internal Revenue Code that the federal exemption automatically qualifies the organization for exemption from Michigan sales and use taxes. This assumption is wrong because the criteria used in reviewing an organization for qualification pursuant to the federal income tax exemption are not identical to the criteria used for reviewing an organization for qualification pursuant to the Michigan sales and use tax exemption.

Effective April 1, 1990, purchases made by any organization (other than a public school, nonprofit private school, regularly organized church or house of religious worship, nonprofit hospital or governmental agencies) must be certified as tax exempt, pursuant to Rule 205.140 (Rule 90). These organizations must present to the vendor an "exemption ruling letter" signed by the Administrator of the Sales, Use and Withholding Taxes Division to purchase items exempt from tax. (See Exhibit A.) Any sales not supported by such a letter will be deemed taxable. The following organizations must continue to use the exemption certificates or guidelines as outlined in the Michigan Sales and Use Tax Rules: public schools and colleges, nonprofit private schools and colleges, 1979 AC, R 205.74; regularly organized churches and houses of religious worship, 1979 AC, R 205.65; nonprofit hospitals, 1979 AC, R 205.87; and governmental agencies, 1979 AC, R 205.79. (See Exhibit B.)



A nonprofit organization currently ruled as exempt from sales and use tax will need to apply for a renewal of its exempt status. After a review of the application and documents submitted with the application, the Department will render a decision. An unfavorable decision may be appealed to the Department within 20 days of the date of the decision or the Michigan Tax Tribunal within 30 days of the date of the decision. An unfavorable decision rendered after a Department conference may also be appealed to the Michigan Tax Tribunal within 30 days of the date of the Decision and Order of Determination issued by the Commissioner of Revenue. See the Revenue Act, MCL 205.21 and 205.22.

Previously, when a vendor was about to sell property to an organization claiming exempt status, the vendor would accept a "certificate of exemption" from the organization or advise the organization to seek a ruling of exemption from the Department before the sale. On an audit of this vendor for sales and use tax liability, the file would not be closed until the vendor had a reasonable time to obtain missing exemption certificates from organizations who had claimed exemption but had failed to complete a certificate. EFFECTIVE JANUARY 1, 1990, a vendor will be required to produce either (1) a completed exemption certificate from public schools or colleges, nonprofit public schools and colleges, regularly organized churches and houses of religious worship, nonprofit hospitals and governmental agencies or (2) a ruling letter from other nonprofit organizations who have applied for and been granted exempt status by the Department to substantiate exempt sales.

Procedures

1. The organization, when requesting a ruling from the Department, shall complete an application for exemption from sales and use taxes. Information submitted with the application shall include Articles of Incorporation, by-laws, Federal Exemption Letter, verification from local authorities when exempt from local property taxes, and any other information requested by the Department. (CAUTION: FEDERAL EXEMPT STATUS DOES NOT AUTOMATICALLY QUALIFY AN ORGANIZATION FOR MICHIGAN SALES AND USE TAX EXEMPTION.) The application shall be filed with the Michigan Department of Treasury, Sales, Use and Withholding Taxes Division.
2. All applications and documents will be reviewed and exempt status will be determined based on the four requirements (A through D below) as presented in the Michigan Sales and Use Tax Acts, MCL 205.54a(a) and 205.94(i), respectively, and the Department's Sales and Use Tax Rule, 1979 AC, R 205.140.
 - A. Qualify as a nonprofit school or college, hospital, home for the care and maintenance of children or aged persons, health or welfare agency, cultural arts, or charitable or benevolent institution or agency.
 - (1) Public schools and colleges, nonprofit private schools and colleges are exempt under state law and need not complete an application.

2. A. (2) Hospital - A facility offering inpatient, overnight care and services for observation, diagnosis and active treatment of an individual with a medical, surgical, obstetric, chronic or rehabilitative condition requiring the daily direction or supervision of a physician.
 - (3) An educational institution must meet the educational needs of the public that would otherwise be an obligation of the state or local government. For example: the Michigan Supreme Court in Detroit v Detroit Commercial College, 322 Mich 142, 153 (1948), ruled that an educational institution must fit into the "general scheme of education provided by the state and supported by public taxation."
 - (4) A charitable or benevolent institution or agency in seeking exemption must rely on the definition of charity as adopted by the Michigan Supreme Court in Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc. v Sylvan Twp., 416 Mich 340, 348-349, (1982). This case denotes that charity is "a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." (Emphasis omitted.)
 - (5) Cultural Arts must be classified as one of the following: theater, music, dance, visual arts, creative arts, museums, film, or allied arts and crafts.
- B. Be operated by an entity of government, a regularly organized church, religious or fraternal organization, a veteran's organization or a corporation incorporated under the laws of the state or qualified to do business as such.
- (1) The United States government, the state and its political subdivisions, departments and institutions are exempt by law and need not complete an application.
 - (2) Regularly organized churches and houses of religious worship are not subject to the tax if the item purchased is paid for by the church from church funds. The exemption does not apply to church employees or organizations and societies composed of church members who are organized separately and maintain separate operating funds.

- C. The income or benefit from the operation of an organization shall not inure, in whole or in part, to any individuals or private shareholders, directly or indirectly.
- (1) No individual may profit from an organization's activities. Direct inurement would involve the payment of dividends or distribution of funds to officers, stockholders or shareholders. Indirect inurement would involve officers, stockholders or shareholders of a nonprofit organization with outside interests that may have contracts with the nonprofit organization. If organized on a stock basis, the organization's articles of incorporation and bylaws pertaining to the shareholders will be reviewed.
 - (2) Upon dissolution of the organization, the assets must be distributed to other nonprofit organizations, governmental agencies or consumed in the payment of debts.
- D. The activities of the entity or agency shall be carried on exclusively for the benefit of the public at large and not limited to the advantage, interests, or benefits of its members or any restricted group.
3. If any one of the four requirements above is not met, the organization will not qualify for certification of exempt status.
 4. Upon review of the application for renewal of exempt status, the Department will issue an "exemption ruling letter" to the qualifying organization affirming the exemption from sales and use tax. The "exemption ruling letter" and certificate required for tax-exempt purchases will have an effective date and an expiration date. The letter must be signed by the Administrator, Sales, Use and Withholding Taxes Division and must be presented to the vendor at the time of the purchase of goods or taxable services consumed by an organization. The Certificate Required for Tax Exempt Sales must be signed and dated by an authorized representative of the nonprofit entity making the claim. The letter may be reproduced by the nonprofit organization and relied upon by vendors.
 5. All nonprofit exempt organizations receiving a ruling of tax exempt status will be required to re-apply for a renewal of exempt status 120 days prior to the expiration date on their "exemption ruling letter." If, during an audit or for any other reason, an organization ceases to qualify as an exempt entity regarding all or a portion of its activities, the exemption ruling is revoked automatically, without any formal action required on the part of the Department, and the organization is immediately subject to sales and use tax on its purchases from the date it ceases to qualify for exemption.

C-3138 (8/89)

*This form must be kept by the seller when making tax-exempt sales.
You may reproduce this form.*



JAMES J. BLANCHARD, Governor
ROBERT A. BOWMAN, State Treasurer

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
TREASURY BUILDING
LANSING, MICHIGAN 48922

Effective Date

Expiration Date

After reviewing your application, we have determined that your organization qualifies for a Michigan Sales and Use Tax Exemption (under P.A. 167 of 1933 and P.A. 94 of 1937, both as amended).

This exemption covers the purchase of goods or taxable services that are used or consumed by your organization and paid for from your organizational fund. Employees or members may not use this exemption to purchase goods or services for personal use.

Treasury does not issue tax exempt numbers. To purchase without paying tax, a copy of this letter and completed certificate must be given to the seller when the purchase is made. The seller must keep this document with a record of the sale.

Any retail sales made by the organization, like selling prepared food, greeting cards, calendars, T-shirts or other fundraising sales, are subject to sales tax. You must collect and remit tax on these sales. If you hold more than two of these events a year, you must get a sales tax license. If you hold two (or fewer) events a year, you may use a concessionaire return to pay the tax due. Contact this office if you need either of these forms.

This exemption is not permanent. It expires on the date given above. Treasury may review your exempt status at any time to verify eligibility. You must reapply for the exemption 120 days before it expires. If you do not reapply timely, your exemption may expire before our review is complete.

If during an audit or for any other reason, your organization ceases to qualify as an exempt entity for all or any portion of its activities, then the organization no longer qualifies for exemption and is immediately subject to sales and use tax on its purchases. If you have any questions, please contact this office at 517-373-3190.

Sincerely,

Jesse A. Weaver, Administrator
Sales, Use and Withholding Taxes Division

EXAMPLE COPY

CERTIFICATE REQUIRED FOR TAX-EXEMPT SALES

I certify that the items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named above and that the consideration for this purchase moves from the funds of the designated institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of tax involved.

Signature of Authorized Representative of Non-Profit Entity

Date

MICHIGAN DEPARTMENT OF TREASURY
SALES AND USE TAXES

R 205.74. Rule 24. Educational Institutions.

(1) Sales, not for resale, to regularly organized educational institutions not operated for profit are not taxable. "Not operated for profit", as used in this rule, means operated by an entity of government, a regularly organized church, religious or fraternal organization, where the income from the operation does not inure, in whole or in part, to the benefit of individuals or private shareholders, directly or indirectly, and where the activities of the entity are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, or benefits of its members or a restricted group. "Educational institution", as used in this rule, means an institution of learning, organized solely for educational purposes, which maintains a faculty of qualified instructors, and teaches regular, continuous courses of study, and which confers upon students a recognized diploma after completion of a specific curriculum.

(2) Sales of athletic equipment to a regularly organized educational institution for consumption or use are not taxable if the athletic activities are under the management and control of the educational institution and the entire receipts are expended for athletic or educational purposes.

(3) Educational institutions which are not operated for profit, and which operate lunchrooms, cafeterias, or dining rooms for the exclusive use of bona fide enrolled students, are not taxable. Whenever such a lunchroom, school cafeteria, or dining room, sells to nonstudents, including teachers, the institution operating it is subject to the tax on those sales.

(4) Sales of class pins, rings, and similar articles are taxable when paid for, directly or indirectly, by the students.

(5) Sales to educational associations, parent teacher organizations, teachers, and other personnel of an educational institution are taxable.

(6) If an exemption is claimed, then at the time of the transfer of the tangible personal property, the seller shall retain, as part of the seller's records, an executed exemption certificate which reads as follows:

CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE IS
MADE TO AN EXEMPT INSTITUTION OR AGENCY

The undersigned hereby certifies that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named in the space provided below and that the consideration for this purchase moves from the funds of the designated institution or agency. In the event this claim is disallowed the transferee promises to reimburse the seller for the amount of tax involved.

Name of exempt institution or agency

Date _____

Signature and title of person
making certification

(7) Schools operating a kindergarten through twelfth grade program are not required to pay tax on the sales of textbooks to enrolled students. Sales of textbooks to nonstudents are taxable. Sales of yearbooks and annuals to both students and nonstudents are taxable.

MICHIGAN DEPARTMENT OF TREASURY

SALES AND USE TAXES

R 205.65. Rule 15. Churches and houses of religious worship.

(1) Sales, not for resale, to regularly organized churches and houses of religious worship are not subject to the tax if the item purchased is paid for by the church from church funds; however, sales of property used in a commercial enterprise by a church or house of religious worship, and sales of vehicles licensed for use on the public highways, are taxable. Sales of tangible personal property, including sales of meals in a commercial activity, when conducted as a retail business for gain, benefit, or advantage, direct or indirect, are taxable, and a sales tax license shall be obtained for the purpose of reporting and paying the tax due.

(2) Sales to religious organizations and societies composed of church members are taxable.

(3) Sales of merchandise to be given as prizes in games of skill or chance are taxable.

(4) Sales to all church employees for their own use are taxable.

(5) If an exemption is to be claimed, the seller, at the time of transfer of the tangible personal property, shall retain, as part of the seller's records, an executed exemption certificate which reads as follows:

CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE IS MADE TO AN EXEMPT INSTITUTION OR AGENCY

The undersigned hereby certifies that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named in the space provided below and that the consideration for this purchase moves from the funds of the designated institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of tax involved.

SAMPLE COPY

Date _____
_____ of institution or agency
Signature and title of person making certification

MICHIGAN DEPARTMENT OF TREASURY
SALES AND USE TAXES

R 205.87. Hospitals

Rule 37. (1) Sales, not for resale, of tangible personal property to hospitals not operated for profit, are not taxable. A "hospital", for the purpose of this rule, means only a separately organized institution or establishment, the primary purpose of which is to provide medical, obstetrical, psychiatric, or surgical attention and nursing to persons requiring the same. The sales tax exemption for sales to a hospital which is not operated for profit does not apply to an institution, establishment, or organization that is not a hospital as defined above, notwithstanding the fact that it may not be operated for profit. "Not operated for profit" means that the income or benefit from the operation of the hospital does not inure, in whole or in part, to individuals or private shareholders, directly or indirectly, and that the activities of the entity or agency are carried on exclusively for the benefit of the public at large, and are not limited to the advantage, interests, and benefits of its members or a restricted group.

(2) If an exemption is claimed, then, at the time of transfer of the tangible personal property, the seller shall retain, as part of the seller's records, an executed exemption certificate which reads as follows:

CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE IS
MADE TO AN EXEMPT INSTITUTION OR AGENCY

The undersigned hereby certifies that the item or items being purchased are to be used or consumed in connection with the operation of the exempt institution or agency named in the space provided below and that the consideration for this purchase moves from the funds of the designated institution or agency. In the event this claim is disallowed, the transferee promises to reimburse the seller for the amount of tax involved.

SAMPLE COPY

Name of institution or agency

Date _____

Signature and title of person
making certification

(3) A hospital claiming an exemption shall prove by its articles of association and bylaws that it is not directly or indirectly operated for profit, and that its income and assets may not inure, in whole or in part, directly or indirectly, to the benefit of any individuals, members or private shareholders whatsoever. A copy of the articles of association and bylaws shall be submitted to the revenue division of the Department of Treasury for determination as to whether the hospital is entitled to the exemption.

(4) Sales by hospitals which are taxable retail sales include, but are not limited to, the following:

- (a) Meals sold to visitors and employees.
- (b) Nonprescription drugs, nonprescription medicines, and supplies sold to patients, doctors, employees, and the general public for consumption off the premises.
- (c) Sales of cosmetics, souvenirs, and other similar merchandise.
- (5) Sales by hospitals which are not taxable retail sales include, but are not limited to, the following:
 - (a) Drugs, medicines, insulin, and meals furnished patients and consumed on the premises.
 - (b) Charges for oxygen, blood plasma, and blood administered to patients.
 - (c) Dressings and bandages applied in the hospital.
 - (d) Charges for X-ray radiation treatments, braces, splints, casts, therapeutic diets, and intravenous solutions furnished patients.
 - (e) Charges for anesthesia supplies and laboratory reports.
 - (f) Sales of eyeglasses prescribed or dispensed to correct a person's vision by an ophthalmologist, optometrist, or optician, and repair and replacement parts for such eyeglasses. (See R205.104, Rule 54)
- (6) Hospitals making sales at retail shall be licensed and shall pay the sales tax, where applicable, whether organized for profit or not.

MICHIGAN DEPARTMENT OF TREASURY

SALES AND USE TAX DIVISION

R 205.79 Federal and state governments.

Rule 29. (1) Sales to the United States government, the state and its political subdivisions, departments and institutions are not taxable if such sales are ordered on the prescribed respective government form or purchase order and are paid for directly to the seller by warrant on government funds.

(2) When such sales are made without the required purchase order form being supplied in advance, the sale is taxable but the licensee may later take credit for the tax payment upon his subsequent receipt of purchase order and warrant covering such sales.

(3) Sales to governmental employees for their own consumption or use are taxable.

(4) The tax applies on sales by private entrepreneurs on federal areas, if the sale is not made directly to an exempt federal instrumentality.

(5) The tax does not apply on sales to the regular departments of the United States government. Exempt also are sales to federal agencies, offices, establishments and instrumentalities which the state is prohibited from taxing under the constitution or laws of the United States. Address inquiries to the department of revenue as to the taxability of sales to specific federal agencies, giving full information concerning the transaction.

(6) A person subject to a tax under this act need not include in the amount of his gross proceeds used for the computation of the tax any proceeds of his business derived from sales to the United States, its unincorporated agencies and instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, and the state or its departments and institutions or any of its political subdivisions.

(7) Sales to and purchases by national banks are taxable.