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Mr. Tim Thomas  
Director of Finance  
Diocese of Marquette  
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Revised Michigan Sales and Use Tax Guidelines For  
Nonprofit Churches and Schools

Dear Tim:

In the fall of 2009, the Michigan Department of Treasury issued a bulletin explaining the Sales and Use Tax treatment of food and prepared food (Michigan Revenue Administrative Bulletin 2009-8, 10/21/2009). Enclosed is a copy of that bulletin. This bulletin replaced Michigan Revenue Administrative Bulletin 2002-20, 12/10/2002.

As a result of this bulletin, we have made a significant revision to the Michigan Sales and Use Tax Guidelines for Nonprofit Churches and Schools that we previously sent you.

The previous bulletin (2002-20) stated that prepackaged items (such as candy bars, potato chips, ice cream, popcorn, nuts, cans or bottles of soda pop and other food) sold at concessions at special events and entertainment facilities are taxable as prepared foods.

The latest bulletin (2009-8) states that these prepackaged items are not "prepared food" and are not taxable! It also explains the difference between prepared food and food that is not prepared. Prepared food is taxable.

This significant change is reflected in changes we have made on page two in the revised guidelines enclosed. The sale of prepackaged items is now shown under the heading of items generally exempt.

Also note the change to item 7 f) on page two, which now reflects that only the sale of hot dogs is taxable.

If you have any questions in the regard, please contact me.

Sincerely,

Robert J. Toutant

Enclosures  
RJT:mlc



*Our goal is to help you meet yours!*

## Revised Michigan Sales And Use Tax Guidelines For Nonprofit Churches and Schools

### **SALES TAX ON PURCHASES BY NONPROFIT CHURCHES AND SCHOOLS**

1. Purchases by nonprofit churches and schools with church and school funds for their own use and consumption are exempt from sales tax. The exempt church and school must indicate that the entity and not a named employee is the purchaser (a purchase by an individual on behalf of the church or school is taxable, even if the church or school later reimburses the individual). Payment for the purchases must be made with the entity's funds.
2. Purchases by religious organizations and societies composed of church members are subject to sales tax (e.g., men's club, women's societies, etc.). No exemption applies if members or others who join the group reimburse the church for participation in a tour or program.
3. Purchases of items to be given away as prizes in games of chance or skill are subject to sales tax.
4. Purchases of items to be used as employer gifts to employees are subject to sales tax.

### **SALES TAX ON SALES BY NONPROFIT CHURCHES AND SCHOOLS**

1. Sales of tangible property used in a commercial enterprise by a church or school are subject to sales tax. This includes the sale of tangible personal property for fund-raising purposes.
2. Exemption
  - a) Retail sales made by a church or school are exempt from tax if aggregate sales at retail for the calendar year are less than \$5,000.
  - b) A club, association, auxiliary or other organization affiliated with a school or church is not considered a separate person for purposes of this exemption.
  - c) For this purpose, a "school" means each elementary, middle, junior or high school site within a local district that represents a district attendance area as established by the board of the local school district. This allows a separate exemption for each elementary, middle, junior or high school site.
3. If the total sales at retail are \$5,000 or greater, the tax is due on the entire amount. Sales billed separately must be remitted regardless of the \$5,000 exemption.
4. Churches and schools making retail sales are still required to register and obtain a sales tax license even if their total sales are below the \$5,000 limit.
5. **Items generally taxable:**
  - a) Sale of alcoholic beverages at a fundraiser (exception - if sales tax paid when purchased by church or school).

- b) Food sold at concessions at special events and entertainment facilities (including but not limited to theaters, fairs, recreation centers, athletic events, etc.) that is "prepared food" is taxable. This would include, for example, popcorn sold hot, sandwiches made by the seller (not sold by weight or volume as single items), soda pop in a cup, a dish of ice cream with a spoon provided by the seller, a slice of pizza sold hot, and a hot dog heated by the seller.
  - c) Vending machines / mobile facility: food or drink 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 are taxable...except milk, non-alcoholic beverages in a sealed container (e.g. pop, juice products, water, etc., and fresh fruit).
  - d) Taxable food or meals:
    - Food provided by a church or school at an event where an admission fee is required or a donation is made.
    - Meals sold by schools to non-students, including teachers
    - Meals or direct sales from the caterer to the students
  - e) Auctioning and raffling of donated gifts is considered to be engaging in fundraising business activities, regardless of the frequency, and the fair market value of such gifts is subject to sales tax. The sales tax would be paid by the church or school unless otherwise disclosed that the recipient would be liable for the tax. Michigan requires a license to hold a raffle because it is a game of chance. Each church or school should obtain their own license, which can be obtained by going to the website [www.michigan.gov/cg](http://www.michigan.gov/cg) (click on raffle).
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6. **Items generally exempt:**

- a) Bottled water intended primarily for human consumption.
- b) Food sold at concessions that is not "prepared food" is not taxable. This would include, for example, fresh fruit, prepackaged items (e.g., candy bars, chips, nuts, cans or bottles of soda pop) not heated by the seller and sold without eating utensils provided by the seller, and cookies, doughnuts and muffins sold without eating utensils.
- c) Retail sales of food for human consumption, normally considered as grocery items for home consumption.
- d) Sealed containers of non-alcoholic beverages.
- e) Property donations by manufacturers, wholesalers, or retailers are exempt.

7. **Examples of taxable church or school sales:**

- a) Food sold to teachers or visitors by schools.
- b) Sales of class pins, rings, jackets, and similar articles when paid for, directly or indirectly, by the students.
- c) Sales of yearbooks to students or nonstudents.
- d) Sales to educational associations, parent teacher organizations, teachers, and other personnel of an educational institution.
- e) A church holds an "all-you-can-eat" pancake supper. Tickets are sold for \$5.00 per person for adults, \$2.75 per person for those under 12 years of age. Tax is due on the ticket price charged.
- f) A booster club sells hot dogs, bags of chips and nuts, candy bars, and cans/bottles of soda pop at a school athletic event. Tax is due only on the hotdogs.

- g) A church holds a fundraising fashion show where dessert and coffee will be served. Tickets are available for \$15.00. Sales tax will be due on the fair market value of any food or drink served. The fair market value may be determined by quotations from caterers or other reasonable method. The difference between the \$15.00 and the fair market value would be considered a donation to the church.

**8. Examples of tax exempt church or school sales:**

- a) Food sold to enrolled students by schools.
- b) Textbooks sold by a school to its enrolled students in Kindergarten through the twelfth grade.
- c) Trophies, medals, and other student awards sold to a school.
- d) Athletic equipment sold to a school for consumption or use (the athletic activities are under the management and control of the school and the entire receipts are expended for athletic or educational purposes).
- e) Printing materials sold to a school for use by the student government, school newspaper and school magazine, if the items were purchased on a school's purchase order using general funds.
- f) Building materials sold to a school for use in their building trades curriculum (the materials are used by the students to build homes that are sold upon completion).
- g) A class sells candy bars door-to-door. These sales are not food for immediate consumption and are not subject to tax as the candy bars are not sold at an event or public facility or place.

**9. Other Transactions**

- a) A company sponsored fundraiser donates a percentage of the proceeds of magazines or candy sales by students at a school. The school would have no responsibility regarding the sales tax since the sales are made by the company.
- b) Book fairs are taxable and sales tax should be collected and remitted to the company.
- c) The rental of meeting rooms and classrooms are exempt from sales tax.
- d) The rental of equipment (audio visual, etc.) and the sale or rental of audio and video tape recordings is subject to sales tax, except if made to exempt organizations or governmental agencies. See Exhibit A.
- e) Photocopies for a fee for faculty or students, whether for education or personal purposes, are not subject to sales tax.

**10. Remittance**

There are alternate methods for remitting tax on fundraising sales:

- a) Groups currently holding a sales tax licenses may remit the tax on their current sales tax return.
- b) Groups that hold fundraising events repeatedly for specific months of the year may obtain a seasonal sales tax license from the Treasury Department and remit tax on their sales tax return.
- c) Groups conducting a one-time fundraising event may remit their sales tax on a concessionaire return (Form C-5603a). These returns may be obtained by calling the Treasury Department's toll-free forms number (1-800-367-6263).

## **USE TAX**

- a) The rules and exemptions described for sales tax purposes apply for use tax purposes.
- b) Use tax applies to items that would normally be subject to sales tax, but the church or school did not pay sales tax because it was bought on-line (via computer) or from an out-of-state seller who did not charge sales tax.
- c) Property donated by manufacturers, wholesalers, or retailers is exempt from use tax.
- d) Items bought for exempt purposes that are later used for non-exempt purposes are subject to use tax.

## **SALES TAX AND USE TAX**

- a) Sales or rentals to qualified exempt organizations and governmental agencies are not subject to sales or use tax. See Exhibit A.
- b) See definition of various food terms used in this guideline in Michigan Revenue Administrative Bulletin 2009-8 attached.

EXHIBIT A

CERTIFICATE TO BE EXECUTED WHEN TAX EXEMPT SALE OR RENTAL IS MADE TO AN EXEMPT ORGANIZATION OR GOVERNMENTAL AGENCY

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

\_\_\_\_\_  
Name of Exempt Organization or Governmental Agency

\_\_\_\_\_  
Signature and Title of Person Making Certification

Date \_\_\_\_\_

(This information may be included as part of a purchase order, otherwise this certificate should be retained by the church or school.)

that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages or tobacco. "Alcoholic beverages" are beverages suitable for human consumption that contain 1/2 of 1% or more of alcohol by volume. "Tobacco" includes cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

**Prepared food defined.** "Prepared food" is: (1) food sold in a heated state or that is heated by the seller; (2) two or more food ingredients mixed or combined by the seller for sale as a single item; or (3) food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food. Standards for determining when an eating utensil is considered provided by the seller are contained in Mich. Admin. Code R205.136.

"Prepared food" does not include:

- food that is only cut, repackaged, or pasteurized by the seller;
- raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in the 2001 food code published by the food and drug administration of the public health service of the department of health and human services, to prevent foodborne illness;
- food sold in an unheated state by weight or volume as a single item, without eating utensils; or
- bakery items (including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas) sold without eating utensils.

So, regardless if an item might otherwise fall within the definition of "prepared food" outlined above, if that item is described in one of the exclusions to "prepared food," it is not "prepared food." For example: a seller fries pieces of chicken, then cools them and sells the pieces of cold fried chicken by the pound without eating utensils; even though the chicken was earlier "heated by the seller," when sold in an unheated state by weight without eating utensils it is not "prepared food."

Generally, an "eating utensil" is a tool, instrument, or item used or intended to be used to facilitate the eating of food. Statutory examples of "eating utensils" include, but are not limited to, knives, forks, spoons, glasses, cups, napkins, straws and plates. "Eating utensil" does not include a container or packaging used to transport food, such as a plastic carton in

### Michigan Provides Guidance on Sales Tax Treatment of Food

by Peter G. Pupke, Esq. (RIA)

The Michigan Department of Treasury has issued a release explaining the sales and use tax treatment of food and prepared food. Generally, food and food ingredients are exempt from sales and use tax. However, prepared food is subject to sales and use tax. (Michigan Revenue Administrative Bulletin 2009-8, 10/21/2009, replacing Michigan Revenue Administrative Bulletin 2002-20, 12/10/2002.)

**Food and food ingredients defined.** "Food and food ingredients" are substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form,

which takeout soup or salad is sold. A waxed paper sheet used by a seller to select an item and either to place the selected item in a container (such as a bag or a box) for transport or to hand the item directly to a customer (for example, for a doughnut or a cookie) is considered as used to transport food rather than used to facilitate the eating of food, and is not considered to be an "eating utensil."

**Items sold at concessions.** Food sold at concessions at special events and entertainment facilities (including but not limited to theaters, fairs, recreation centers, athletic events, parks and zoos) that is "prepared food" is taxable. This would include, for example, popcorn sold hot, sandwiches made by the seller (not sold by weight or volume as single items), soda pop in a cup, a dish of ice cream with a spoon provided by the seller, a slice of a pizza sold hot, and a hot dog heated by the seller.

Food sold at such concessions that is not "prepared food" is not taxable. This would include, for example, fresh fruit, prepackaged items (e.g., candy bars, chips, nuts, cans or bottles of soda pop) not heated by the seller and sold without eating utensils provided by the seller, and cookies, doughnuts and muffins sold without eating utensils.

**Bottled water.** The sale of all bottled water is not subject to sales or use tax.

**Ice.** The sale of ice for human consumption is not subject to sales or use tax. Ice sold for other uses (e.g., for cooling the contents of an ice chest, for use in an ice cream maker, for medical purposes) is subject to sales or use tax.

Bagged (for example, cubed or crushed) ice is presumed for ingestion/chewing by humans and exempt. The seller bears the responsibility for sales tax if this presumption is overcome.

Ice sold in block form is presumed not for ingestion/chewing by humans and taxable. If this presumption is overcome by specific information provided by the purchaser, the seller is not responsible for sales tax.

**Bakery items.** Bakery items (including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas) sold without eating utensils are not subject to sales or use tax. Bakery items sold with eating utensils are taxable. For example, the sale of a doughnut with a napkin (a napkin being statutorily defined as a utensil) is subject to sales and use tax. The sale of a box of a dozen doughnuts (with no eating utensil provided by the seller) is exempt from sales and use tax.

**Food bars, such as soup and salad bars.** Food sold at a temperature higher than the surrounding air temperature, is "prepared food" and is taxable. This would include, for example, a chicken that the seller roasts, maintains in a heated state, and sells as hot chicken. This would also include, for example, ready-made soup that the seller obtains in a frozen state, but heats in a large pot and sells hot, by the pint or quart.

A food item consisting of two or more food ingredients mixed or combined by the seller for sale as a single item, even if never heated by the seller and sold by weight or volume as a single item, when sold with an eating utensil is "prepared food" and is taxable. This would include, for example, cold tuna salad made by the seller and sold in a dish with a fork. Food sold in an unheated state by weight or volume as a single item, without eating utensils, is not prepared food. So, if a seller-prepared container of cold macaroni salad is sold by the pound and without an eating utensil, it would not be taxable.

Cold or room-temperature salad items (e.g., lettuce, tomatoes, olives, cheese, onions and cucumbers) sold by weight in a container used to transport the food, without eating utensils, are not subject to sales or use tax. Such items sold with eating utensils provided by the seller would be taxable.

**Delicatessens.** Food sold in an unheated state by weight or volume as a single item, without eating utensils, is not "prepared food" and is exempt from sales and use tax. Therefore, deli trays of such foods as cheese and crackers, luncheon meats, seafood, or vegetables and dip, sold in an unheated state by weight or volume as a single item, without eating utensils, are not subject to sales or use tax.

Deli items sold at (or below) room temperature by weight or volume as a single item, without eating utensils, such as potato salad, coleslaw, sliced meats, and vegetables, regardless whether previously heated by the seller, are not "prepared food" and are not taxable.

Deli items sold at a temperature higher than room temperature, whether sold by weight or volume as a single item or sold without eating utensils, are "prepared food" and are subject to sales and use tax. This would include, for example, hot roasted or fried chicken, buffalo wings, ribs, etc.

**Sandwiches.** A sandwich made by the seller (two or more food ingredients combined by the seller for sale as a single item) is "prepared food" and subject to sales and use tax, unless it is sold in an unheated



state by weight or volume as a single item, without eating utensils. A sandwich that is not made by the seller, that is not sold in a heated state, and that is not sold with an eating utensil provided by the seller, is not "prepared food" and is not taxable.

**Frozen foods.** Frozen foods may be taxable "prepared food," if they consist of two or more food ingredients mixed or combined by the seller for sale as a single item, or are sold with an eating utensil provided by the seller, and do not fall into any of the categories excluded from prepared food. For example, a frozen pizza sold with napkins or forks provided by the seller is taxable. The sale of a dish of ice cream with a spoon, or an ice cream cone with a napkin, is taxable. An ice cream cone sold by weight (e.g., by the ounce) or volume (e.g., by the scoop), without an eating utensil (e.g., without a napkin) would be exempt.

**Prepackaged food items sold by carry-out restaurants.** A prepackaged food item sold as restaurant carry-out may meet the definition of "prepared food" and be subject to sales and use tax: for example, a hot roast chicken packaged in a plastic container with a handle for easy carrying is taxable "prepared food." Prepackaged cookies, priced per cookie, sold with an eating utensil (a napkin) would be taxable prepared food.

Some prepackaged food items sold as restaurant carry-out will be excluded from the definition of "prepared food" and will not be subject to sales or use tax. Examples include a container of cold macaroni salad, sold by the pound without eating utensils. A prepackaged cookie or bag of chips, sold without a napkin or other eating utensil, would not be "prepared food" and would not be subject to sales or use tax.

**Food sold and heated in convenience stores.** Items such as sausages, hot dogs, and taquitos, cooked or heated on roller grills and sold heated, are taxable. Pizza maintained and sold in a heated state is taxable, regardless whether the pizza was made from scratch by the seller, or purchased frozen and heated by the seller.

Items sold at room temperature or below, not consisting of two or more food ingredients mixed or combined by the seller, sold without eating utensils, and after purchase heated by the buyer in a microwave oven made available at the convenience store, are not prepared food and are not taxable. For example, a sausage and biscuit sandwich prepared and packaged by a third party, sold cold and without eating utensils, is not subject to sales or use tax, even though the buyer, after purchasing the sandwich, heats it in a microwave oven provided by the seller.

**Sealed containers of beverages.** Sealed containers of nonalcoholic beverages (for example, cans of iced tea, bottles of soda pop or juice) are not taxable "prepared food" so long as they are not sold in a heated state or with an eating utensil provided by the seller. However, the sale of fountain soda pop in a cup (food sold with an eating utensil) is the sale of "prepared food" and is taxable.

**Popcorn and nuts.** Popped corn sold hot by the seller is taxable. Popped corn sold in an unheated state by weight or volume as a single item is nontaxable, unless sold with an eating utensil provided by the seller.

The sale of nuts when roasted, kept warm, and then placed into a box or bag and sold warm, is taxable. Nuts sold at room temperature (even if previously roasted by the seller) by weight or volume as a single item without eating utensils, are exempt from tax.

**Food sold through vending machines.** Food that is not "prepared food" (including, for example, bakery items sold without eating utensils) sold at room temperature through vending machines is not subject to sales or use tax. For example, vending machine sales of prepackaged gum, cookies, crackers and chips, at room temperature, are not subject to sales or use tax.

Milk, nonalcoholic beverages in sealed containers, and fresh fruit sold from 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 vending machine, are subject to sales and use tax. For example, the sale of a chilled can of soda pop from a vending machine is not taxable, while the vending machine sale of hot coffee, dispensed into a cup, is subject to sales and use tax.

Sales or use tax due on the sale of food or drink from a vending machine selling both taxable items and exempt items is calculated based on one of the following methods, as determined by the taxpayer:

- actual gross proceeds from sales at retail; or
- 45% of proceeds from the sale of items subject to sales and use tax or exempt from sales and use tax, other than from the sale of carbonated beverages.

**Federal food stamps.** The sales-use tax include provisions referencing the federal food stamp program, and exempt the following items from sales and tax:

(1) food purchased under the federal food stamp program;

(2) meals eligible to be purchased with food stamps and sold by a person not subject to sales tax, or to use tax on their purchases (for example, Meals-on-Wheels meals); and

(3) fruit or vegetable seeds, and fruit or vegetable plants, if purchased at a business authorized to accept food stamps by the food and nutrition service of the U.S. Department of Agriculture, or if purchased at a business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the Department of Treasury.

For example, the purchase of a raspberry plant at a qualifying business would be exempt from sales and use tax, while the purchase of an ornamental flowering plum tree would be taxable. The purchase of carrot seeds at a qualifying business would be exempt from sales and use tax, while the purchase of zinnia seeds would be taxable.

Other purchases made by the federal government pursuant to federally-authorized programs are exempt from sales or use tax.