INFORMATION BULLETIN #29

SALES TAX

JANUARY 2004

(Replaces Information Bulletin #29 dated December 2002)

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the statutes, rules or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current statute and procedures related to the subject matter covered herein.

SUBJECT: Sales of Food

REFERENCES: IC 6-2.5-1-11, IC 6-2.5-1-12, IC 6-2.5-1-16, IC 6-2.5-1-20, IC 6-2.5-1-26, IC 6-2.5-5-20, IC 6-2.5-5-21, IC 6-2.5-5-21.5, IC 6-2.5-5-22, IC 6-2.5-5-35

INTRODUCTION:

Generally, the sale of food and food ingredients for human consumption is exempt from Indiana sales tax. Primarily, the exemption is limited to the sale of food and food ingredients commonly referred to as "grocery" food. The purpose of this bulletin is to assist Indiana retailers in the proper application of this exemption.

A number of items sold by grocery stores, supermarkets, and similar type businesses are classified in this bulletin under the headings "Non-taxable Food Items" and "Taxable Grocery Items". These examples are for illustrative purposes and are not intended to be all-inclusive.

I. Non-taxable Food Items:

Food is defined as substances whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value. The term does not include tobacco, alcoholic beverages, candy, dietary supplements or soft drinks.

The Indiana sales tax does not apply to the sale of food and food ingredients listed below if sold unheated and without eating utensils provided by the seller.

Baby food
Bakery items (including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas)
Baking chocolate (whether liquid, powder, or solid)
Baking soda or other forms of leavening agents
Beverages containing 50% fruit or vegetable juice or containing milk, milk products or milk substitutes
Broths and bouillons (whether liquid, instant, freeze dried, or cubes)
Cereal and cereal products
Cocoa
Coconut (whether whole, shredded, sweetened, processed or raw)
Coffee and coffee substitutes (beans, grounds, freeze dried, bags and instant only)
Condiments
Deli items when sold unheated by weight or volume as a single item
Deli trays that only contain otherwise exempt items
Eggs and egg products or substitutes
Extracts and flavorings intended as a cooking ingredient
Fish and fish products (including all other forms of seafood)
Flour (including wheat, whole wheat, rye, corn, rice, barley, buckwheat, soy or other forms of milled grains or nuts)
Food coloring
Food sold by a seller whose primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries)
Food sold by weight or volume as a single item
Fruit and fruit products (whether fresh, frozen, canned or dehydrated, excludes items on salad bars)
Gelatins (whether powdered or prepared)
Honey
Ice
Ice cream (including toppings and novelties)
Jams and jellies (including marmalades and preserves)
Ketchup
Lard
Marshmallows (including marshmallow crème)
Meat and meat products (whether fresh, frozen, cured, canned, or dehydrated)

Milk and milk products
Mustard
Nuts (including salted, but not chocolate or candy coated nuts)
Oleomargarine
Olive oil
Peanut butter
Pepper
Pickles
Powdered drink mixes (including sweetened)
Relishes
Salad dressings and mixes
Salt
Sauces
Sherbets and sorbets
Shortenings
Soups
Snack chips and pieces (includes potato chips, corn chips, pig skins, pretzels and trail mixes.)
Spices
Sandwich spreads
Sugar, sugar products and sugar substitutes
Syrups (including molasses and dietetic syrups and similar products)
Tea (bags, leaves, or instant only)
Vegetables and vegetable products (whether fresh, frozen, canned or dehydrated, excludes items on salad bars)
Vegetable oils
Water

II. Taxable Grocery Items:

The following grocery items are subject to Indiana sales tax:

Alcoholic beverages
Candy and confections
Chewing gum
Chocolate covered nuts
Cocktail mixes (dry or liquid)
Cooking utensils
Dietary supplements
Liver oils
Lozenges
Over the counter medicines
Paper products
Pet food and supplies
Soap and soap products
Soft drinks

Tobacco and tobacco products
Tonics
Toothpaste and mouthwash
Vending machine sales
Vitamins

Food sold in a heated state or heated by the seller is taxable.

Two (2) or more food ingredients mixed or combined by the seller for sale as a single item are taxable (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illness).

Food that is sold with eating utensils, provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws is taxable.

A. Candy

Candy is defined as preparations of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The fact that these preparations contain ingredients, which if purchased separately, are considered exempt, does not exempt these preparations. The term does not include any preparation that contains flour as one of the first three (3) ingredients listed on the label or any preparation that requires refrigeration.

Baking chocolate and similar products, which are intended for use in cooking, will be considered exempt food within the meaning of this information bulletin. The method used in packaging, distributing and displaying the product, including the kind and size of container used, will be considered in determining the primary use for which it is sold.

B. Soft Drinks

Soft drinks are defined as nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) vegetable or fruit juice by volume.

C. Dietary Supplements

Sales of dietary supplements are subject to Indiana sales tax. The term "dietary supplements" means any product other than tobacco that:

(1) is intended to supplement the diet;

(2) contains one or more of the following ingredients:

(a) vitamins,
(b) minerals,
(c) herbs or other botanicals,
(d) amino acids,
(e) a dietary substance for use by humans to increase the total dietary intake,
(f) concentrates, metabolites, constituents, extracts or a combination of any of the above ingredients;

(3) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in the above form, is not represented as a conventional food and is not represented for use as a sole item of a meal or of the diet;

(4) is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required under 21CFR 101.36.

Dietary supplements include products such as Figurines, Carnation Diet Drinks, Slimfast, Slender, and Ensure.

Sales of food prescribed as medically necessary by a physician licensed to practice medicine in Indiana are exempt from the sales tax if dispensed by a registered pharmacist or sold by a licensed physician.

D. Prepared Food

(1) All food sold through a vending machine is subject to sales tax regardless of the type of food sold. The fact that the item qualifies as exempt food if sold in another manner does not make the purchase exempt if sold through a vending machine.

(2) All food items sold with eating utensils provided by the seller are taxable. Food shall be considered to be sold with eating utensils provided by the seller when the food is intended for consumption with the utensils provided. Taxable food therefore includes all food sold by an eating establishment that sells meals, sandwiches, or other food for consumption on or off the premises. Additionally, taxable food includes self-service food such as salad bars or drink islands. The presence of self-service utensils in a facility does not make otherwise exempt food taxable unless it is intended that the food be consumed with those utensils. Further, items provided solely pursuant to sanitary statutes or regulations and not for purposes of consumption do not qualify as utensils.

(3) All food items sold in a heated state are taxable. Food is also taxable if it was heated by the seller and is ready to eat without further cooking by the purchaser.

(4) Where 2 or more food ingredients are mixed or combined by the seller and then sold as a single food item, this item is taxable unless:

(a) the item is both sold in an unheated state by weight or volume as a single item and is sold without eating utensils, e.g., potato salad; or
(b) the item sold represents food that is only cut, repackaged, or pasteurized by the seller, e.g., vegetable trays; or
(c) the item sold contains raw animal foods that require cooking.

(5) Bakery items are not taxable unless they are:

(a) sold through a vending machine; or
(b) sold with eating utensils provided by the seller; or
(c) sold in a heated state.

(6) Food items sold by a seller whose proper primary NAICS classification is 311 food manufacturing (except subsector 3118, bakeries) are not taxable unless they are:

(a) sold through a vending machine; or
(b) sold with eating utensils provided by the seller; or
(c) sold in a heated state.

E. Unitary Transactions

When a taxable item is sold with a non-taxable item for a single price the entire purchase amount is subject to sales tax. If such items are separately priced and charged on the receipt, then only the amount charged for the taxable item is subject to sales tax.

III. Coupons, Redemption Certificates, and Bottle Deposits

Coupons or redemption certificates received by the seller as payment or partial payment of merchandise are considered as cash if such coupons are redeemable to the seller and were not extended by the seller.

Charges for bottle deposits are not subject to sales tax and should be removed from the total on which sales tax is computed. The refund of bottle deposits are not deductible when computing taxable receipts.

IV. Purchases by Retailers

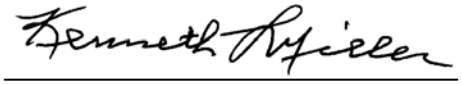
Purchases by the retailer of merchandise for resale and material for non-returnable packaging of merchandise sold is exempt from sales tax.

Gifts and premiums given by a retailer are not purchases for resale and such items are subject to the sales tax when purchased by the retailers. The retailer cannot purchase cash registers, equipment cleaning supplies, cash register tapes, sales tickets and other similar items exempt since the retailer is the final consumer of these items. The retail merchant must pay sales tax on all such items. Sales of merchandise to employees are subject to sales tax on the full final sales price.

V. Registration and Record Keeping Requirements

All grocers and other general merchandise retailers are required to file an application for a registered retail merchant's certificate for each location. Upon application with the Department of Revenue and the payment of a twenty-five dollar ($25.00) fee, a permanent certificate will be issued which must be displayed on the premises at all times.

Indiana retail merchants are required to keep adequate books and records for both taxable and non-taxable sales for a period of three (3) years, plus the current year.



Kenneth L. Miller
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