

Food for Human Consumption

The Michigan Sales Tax Act in Section 4g (MCL 205.54g(1)(a)) and the Michigan Use Tax Act in Section 4d (MCL 205.94d(1)(a)) both exempt from tax "food or food ingredients, except prepared food intended for immediate human consumption."

Section 4g(3,4,5 and 6) of the Sales Tax Act and Section 4a(3,4,5 and 6) of the Use Tax Act provide definitions of food and ingredients, prepared food and prepared food intended for human consumption.

"Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, 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 and tobacco. (MCL 205.54g(3)) "Alcoholic beverage" means a beverage suitable for human consumption that contains 1/2 of 1% or more of alcohol by volume. (MCL 205.51a(a)) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. (MCL 205.51a(q))

"Prepared food" means food sold in a heated state or that is heated by the seller, two or more food ingredients mixed or combined by the seller for sale as a single item and 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. (MCL 205.54g(4))

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 section 3-401.11 of part 3-4 of chapter 3 of 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. (MCL 205.54g(5))

Dietary supplements fall within the definition of food and food ingredients, but only if they fall within the statutory definition found in Section 1a(f) of the Sales Tax Act and Section 2b((f)) of the Use Tax Act. (MCL 205.51a)

“Dietary supplement” means any product, other than tobacco, intended to supplement the diet that is required to be labeled as a dietary supplement identifiable by the “supplemental facts” box found on the label as required by 21 CFR 101.36 and contains 1 or more of the following dietary ingredients:

- (A) A vitamin.
- (B) A mineral.
- (C) An herb or other botanical.
- (D) An amino acid.
- (E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.
- (F) A concentrate, metabolite, constituent, extract, or combination of any ingredient listed in sub-subparagraphs (A) through (E).
 - (i) Intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in 1 of those forms, is not represented as conventional food or for use as a sole item of a meal or of the diet.

Food and Drink Dispensed from a Vending Machine

Section 4g(2) of the Sales Tax Act and Section 4a(2) of the Use Tax Act provide some specific rules for the sale of food or drink dispensed from a vending machine.

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 and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit, is subject to the tax under this act. 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 under this act based on 1 of the following 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. (MCL 205.54g(2))

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.

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 for immediate consumption. {MCL 205.54g(1)(a); MSA 7.525(7)(1)(a)}

Food Stamp Purchases

Section 4g((c) of the Sales Tax Act and Section 4d(1)(c) of the Use Tax Act exempts from tax all food items, including deli trays, purchased with food stamps under the federal food stamp program. Furthermore, subsection (d) exempts purchases of fruit or vegetable seeds and fruit or vegetable plants whether purchased with food stamps or other consideration, if they are purchased at a business authorized to accept food stamps by the federal government or 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.

Bottled Water

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

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.

Ice

Purchases of ice are exempt from Sales Tax and Use Tax only when purchased with food stamps. Because the ice remains taxable when 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.

Bakery Items

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))

Food Bars, Such as Soup & 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. Items normally found on a salad bar include salads to be assembled by the purchaser, potato salad, pasta salad, cole slaw, 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.

Delicatessen

The General Sales Tax Act (MCL 205.54g(4)(c)) states, "food 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 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, cole slaw, 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. (MCL 205.54g(4)(d)) Prepared deli food items sold by the piece, regardless of temperature, are taxable because they are for immediate consumption. (MCL 205.54g(4)(d))

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, or otherwise 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.

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 of Treasury 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. Ice cream products that are not prepackaged, such as ice cream cones, are taxable.

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.

Food Sold & 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.

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. 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.

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. "Presealed" means 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 105.54g(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.

Food and Nonfood Combinations

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

Food and Beverages Served at Fundraising Events

Food and beverages served at fund-raisers are sales of prepared food for immediate consumption and are subject to sales tax.

If food is purchased from a caterer or other preparer and sales tax is paid on the purchase, there is no further tax obligation on the food. The same tax treatment applies to alcoholic beverages if the charge for the beverage is included in the admission fee or donation and there is no further charge, such as a cash bar arrangement.

Sales by a nonprofit organization are not exempt simply because of the nonprofit status of the organization. Therefore, when food is provided by a nonprofit organization at an event where an admission fee is required or a donation is made, the food is subject to sales tax as provided here.

Determination of Tax Base

The tax base is the fair market value of the food sold. Usually the fair market value is the price of admission or a donation to attend the fund-raiser or to purchase and prepare the food. If the admission or a donation exceeds the fair market value of the food or drink, fair market value may be determined by any reasonable method. When food is provided by a caterer, the sales tax is paid by the caterer, who may add the tax to the customer's bill. If the fun-raising organization claims a sales tax exemption for resale on the caterer's purchase, then the sales tax must be paid by the organization.

The sale of alcoholic beverages at a fund-raiser is taxable. Sales tax is due on the total amount of the sales of beer, wine, and liquor. If an organization pays sales tax on alcoholic beverages when purchased and provides the alcoholic beverages at the fund-raiser at no additional charge to attendees, then no additional sales tax is owed. If at the fund-raiser there is a charge for alcoholic beverages, sales tax is due on the total gross proceeds of the beverage sales (and a credit may be taken for any sales tax paid when the organization purchased the alcoholic beverages).

Prepackaged items (such as candy bars, potato chips, ice cream, popcorn, nuts or cans or bottles of soda) sold at various public events, facilities and places including theaters, fairs, recreation center, athletic events, parks, and other similar public events, facilities or places, are taxable as prepared food for immediate consumption.

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