

Approved by:

Date:

Tax Department Administrative Rule 2008-1

Date: February 13, 2008

RETAIL SALES TAX – FOOD AND NONFOOD COMBINATIONS

TDAR-08-1. This rule explains the appropriate retail sales tax treatment of grocery items that are packaged together with baskets or other items to sell as a single item.

BACKGROUND

Guidance was requested regarding the taxability of gift baskets, ceramic mugs, jars or other items that are filled with candy and other non-taxable food items and sold as a single item for consumption off premises.

DISCUSSION

Article VI of the Tax and Revenue Administration Ordinance imposes a retail sales tax, at the rate of 6% of gross receipts, for the privilege of engaging in the business of making sales at retail within Tribal and trust lands. A sale at retail is defined as the transfer of ownership of tangible personal property.

Although the Tax and Revenue Administration Ordinance does not include a deduction for food for home consumption, there is a deduction from retail sales tax for, “sales at retail which would be deductible from gross receipts under the State General Sales Tax Act, as amended, provided that person making the purchase provides the taxpayer with the form used by State taxpayers claiming exemption under one of the provisions in the General Sales Tax Act” (6.04o).

The State General Sales Tax Act at MCL 205.54g(a) allows a deduction for food or food ingredients, except prepared food intended for immediate human consumption. The Michigan Administrative Code Rule 205.136 further describes food for home consumption and provides a list with examples of nontaxable food items normally sold by a grocer or other food retailer for off-premises consumption.

Michigan Revenue Administrative Bulletin (RAB) 2002-20 provides an analysis of the taxability of various food items including Food and Nonfood Combinations as follows.

“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

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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.”

IMPLICATION FOR TRIBAL TAX

The Little River Band of Ottawa Indians Tax Department will follow the Michigan Department of Treasury bulletin on food and nonfood combinations. If the food portion of the combination is of greater value than the nonfood portion of the sale, the entire package is tax exempt. When the nonfood portion of the sale is of greater value, the entire transaction is subject to sales tax.

FOR ADDITIONAL INFORMATION:

Questions can be addressed by calling (231) 398-6874, or writing:

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All pertinent facts must accompany any request for a ruling.