

Revenue Information Bulletin No. 16-026

April 15, 2016

Sales and Use Tax

Taxability of Food Items Donated to a Food Bank

Act 25 of the 2016 First Extraordinary Session of the Louisiana Legislature enacted La. R.S. 47:302(V), 321(L), and 331(S) which provide that certain state exclusions and exemptions are operative and in effect for the purposes of the imposition of state sales taxes pursuant to La. R.S. 47:302, 321, and 331. The effective date of Act 25 is April 1, 2016.

Act 26 of the 2016 First Extraordinary Session of the Louisiana Legislature enacted La. R.S. 47:321.1, which imposes an additional state sales tax in the amount of one percent (1%). Beginning April 1, 2016, certain state sales tax exemptions and exclusions will continue to be in effect with regard to the additional state sales tax levied pursuant to La. R.S. 47:321.1. The effective date of Act 26 is April 1, 2016.

Act 26 retains the use tax exclusion provided by La. R.S. 47:301(18)(a)(i) for food items donated to a food bank as defined in La. R.S. 9:2799(B). Act 25 does not retain the exclusion. Louisiana Revised Statute 9:2799(B) contains the following definition of "food bank":

"Food bank" means a nonprofit entity which operates as a clearinghouse for the purpose of gathering primarily from the food industry those products which, though edible, nutritious, or saleable, are not marketable for various reasons, and distributing those edible products to designated distributors with on-premises feeding programs that serve persons who are needy, ill, or have a disability, and infants, and to individuals or families who need emergency food assistance rendered in the form of emergency food boxes, provided the entity is inspected and issued permits under the terms of R.S. 40:3 and 5 by the Department of Health and Hospitals.

The purpose of this Revenue Information Bulletin is to explain the treatment, for Louisiana sales and use tax purposes, of food items donated to a food bank. Typically, a retail dealer, such as a grocery store, will donate unmarketable food items to a food bank in order to help provide for those in need. The food items would have been purchased free from sales tax pursuant to the sale for resale exclusion. Once the food items became unmarketable, for various reasons, the retail dealer could be liable for use tax on the food items. However, pursuant to La. R.S. 47:301(18)(a)(i), use tax does not apply.

Act 25 did not retain the La. R.S. 47:301(18)(a)(i) use tax exclusion; thus, the taxability of these food items must be determined. Pursuant to La. R.S. 47:302, 321, and 331, the use tax is imposed on the "cost price" of the tangible personal property. Pursuant to La. R.S. 47:301(3)(a), "cost price" is defined as the lesser of the actual cost of the tangible personal property or the

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reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax.

Since the food items become susceptible to the use tax at the point in time when the food items become unmarketable, there is no reasonable market value of the food items. Thus, the cost price would be \$0.00 and there would be no use tax due. Therefore, no Louisiana state use tax is due on food items donated to a food bank.

Questions concerning the collection of state sales tax in effect can be directed to sales.inquiries@la.gov.

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