Title 35 Mississippi State Tax Commission

Part IV Sales & Use

Sub Part 09 Food and Beverage

Chapter 02 Beverage and Food Businesses

100 Levy

101 The gross proceeds of sales by restaurants, cafes, cafeterias, snack bars, drive-ins, beer parlors, lounges, night clubs, concessions, caterers or other vendors of beverages and food products are taxable at the regular retail rate of tax pursuant to Miss. Code Ann. Section 27-65-17.

101 (Reserved)

200 Gross Proceeds of Sales

201 Taxable gross proceeds include receipts from:
1. Admissions, minimum and cover charges for entertainment;
2. Sales of tangible personal property;
3. Service charges; and
4. Vending machine sales (except full service vending machines)

202 Gratuities or tips specifically added as such on the ticket to the cost of the meal, with the entire proceeds of indicated gratuity going to the employee of the restaurant, shall be considered in the same light as gratuities paid directly to the employee and is not considered to be taxable income.

203 The value of merchandise withdrawn from stock for consumption or any other use by the owner shall be included in gross proceeds of sales taxable at the regular retail rate.

204 The value of employee meals prepared by a restaurant and provided at no charge to employees of the restaurant is not included in the restaurants' taxable gross proceeds of sales. Restaurants that are operated as a part of a hotel, casino, hospital or other place of business cannot exclude employee meals provided to employees working in other areas of the operation.

205 The value of meals prepared by a restaurant and donated to a charitable organization exempt from federal income tax under IRC Section 501(c) (3) that regularly provides food to the needy and the indigent is not included in the restaurants' taxable gross proceeds of sales as provided for in Miss. Code Ann. Section 27-65-3 (h).

206 Food service companies who operate restaurants or cafeterias are to include any underwriting, management or other fees paid by the client. Clients, who underwrite or

discount meals to their employees and for whom the food service company serves as an agent for food service operations, may obtain a business license for the food service operation and pay the regular retail sales tax on the greater of (a) the meal charges to employees or (b) the cost to the employer of all purchases utilized in the food service operation, with employer costs for food preparation or food service management being expressly excluded from the computation of purchases. This sales tax treatment shall apply regardless of who is the food service operator as long as an agency relationship exists between the client/employers and the food service operator.

207 Food sold to schools or students as regular student meals is exempt from sales tax pursuant to Miss. Code Ann. Section 27-65-9(2)(a) and (b). Food served at banquets and luncheons for student groups is exempt from sales tax when the meal is paid for directly by the exempt entity. Food sold by or through school cafeterias and dining halls to non-students such as faculty members, employees, visitors and the public is subject to sales tax. Additional information concerning food sales at schools, colleges and universities can be found in Title 35, Part IV, Subpart 13, Chapter 2 of the Mississippi Administrative Code.

208 (Reserved)

300 Purchases

301 Purchases of equipment, fixtures, supplies and advertising materials that are used or consumed in the operation of the business are taxable at the regular retail rate of sales or use tax. Examples include soap, washroom supplies, cleaning materials, etc. as well as reusable napkins or dishes.

302 Purchases of merchandise which become a part of products resold are exempt from sales t ax. Examples include salt, pepper, flour, shortening, cooking oil, etc.

303 Purchases of non-reusable products such as paper or plastic napkins, plates, cups, knives, forks, spoons, wrapping paper, boxes, etc. which accompany food or beverage products sold are exempt from sales tax.

304 Wholesale tax paid on purchases of alcoholic beverages and beer for resale may be taken as a credit against the retail sales tax due on the retail sales of such merchandise.

305 (Reserved)

400 Reporting Requirements

401 Adequate records must be maintained to substantiate tax classifications of sales and purchases.

402 (Reserved)

500 Local and Private Levies

501 Additional local levies may be applicable to sales by restaurants depending upon where they are located in this state. The local tax shall be invoiced and collected as a separate levy and shall be reported on a separate return.

502 The local levy is due on the same basis as the sales tax and is levied on the sale of prepared foods. Additionally, some local levies may also include the sale of beer and/or alcoholic beverages. The basis for each local levy can be found in the appendix b.

503 Restaurants are defined as any place where prepared food and beverages are sold for consumption, whether the food and beverage is consumed on the premises or not. Restaurants do not include any school, hospital, convalescent or nursing home, or any restaurant-like facility operated by or in connection with a school, hospital, medical clinic, convalescent or nursing home providing food for students, patients, visitors or their families.

504 Any person who holds a valid direct pay permit cannot use such permit to cover any local levy. All taxes due from any of the local levies must be paid at the time of purchase and cannot be remitted on a use tax return through the use of a direct pay permit.

505 (Reserved)