

SALES TAX OBLIGATIONS OF MICHIGAN PUBLIC SCHOOLS



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This practice guide discusses generally the Michigan sales tax obligations of Michigan public schools under the Michigan General Sales Tax Act, Act 167, Public Acts of Michigan, 1933, as amended (MCL §205.51 et.seq.) The Act imposes a tax on most retail sales of tangible personal property at a rate of 6% of the seller's gross proceeds from the sale. Under the Act retail sales to public schools for their own use, storage or consumption are generally exempt from sales tax and retail sales made by public schools are generally subject to sales tax. However, exceptions apply for various types of sales made by public schools.

» SALES TO PUBLIC SCHOOLS

Purchase not for Resale:

Under Section 4a of the Act (MCL §205.54a) sales of tangible personal property not for resale to Michigan public schools are exempt from the sales tax if:

1. The income or benefit from the use of the property does not inure, in whole or in part, to an individual or private entity, directly or indirectly; and
2. The activities of the public schools are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or any restricted group.

Under the above exemption the public school should inform the vendor(s) that the purchase is exempt and provide the vendor(s) with a completed "Certificate of Exemption" (Michigan Treasury Form 3372). See Revenue Administrative Bulletin 2016-14.

Purchase for Resale:

Under Section 1(1)(b) of the Act (MCL §205.51(1)(b)) a "sale at retail" or "retail sale" means a sale of tangible personal property for any purpose other than resale.

Items sold to public schools for resale would be exempt from the sales tax. Under this exemption public schools should inform vendors that they are purchasing such items for resale and provide the vendors with a completed "Certificate of Exemption" (Michigan Treasury Form 3372).

A public school may also be subject to sales tax on the resale of these items which is discussed below under the *Sales by a Public School* section.



Construction Materials:

With regard to the exemption applicable to public schools, a common question relates to the treatment of construction material purchased by an outside contractor (a taxable entity) performing a construction/improvement project for the public school.

Under the Act, a "sale at retail" also includes sales of tangible personal property to contractors in their trade or business. Thus, under the Act, a contractor performing services for a public school would pay the Michigan sales tax on the material it purchases to complete the construction/improvement project. There is no exemption under the Act based on the fact the contractor is performing the construction services for a public school.

It has been suggested that a public school could save the sales tax on the purchase of construction materials for use by a contractor in a construction project by purchasing that material directly. The problem with this strategy is that, technically, the material purchased by the public school does not constitute a sale at retail and is not for use or consumption by the public school but is for use and consumption by the contractor, making it subject to sales tax. See Revenue Administrative Bulletin 2016-18.

» SALES BY A PUBLIC SCHOOL

Sales Generally:

Public schools must remit sales tax on all sales they make at retail (i.e., the sale or lease of tangible personal property not for resale). The Act does provide public schools with various exemptions from the sales tax which are summarized below.

Exemptions for Sales by Public Schools:

FUNDRAISING ACTIVITY

The Act provides an exemption on the first \$10,000 of fundraising sales made by a public school if the public school's aggregate sales at retail in the calendar year are less than \$25,000 (MCL §205.54o(1)). For purposes of this exemption a "school" means each elementary, middle or high school site within a school district that represents a district attendance area (MCL §205.54o(2)). This thus allows a separate \$10,000 exemption and \$25,000 of aggregate sales threshold for each elementary, middle or high school site. It should also be noted that a club, association or other organization affiliated with a school, which does not have its own tax-exempt status, such as IRC 501(c)(3) status, is not considered a separate entity or site for purposes of this exemption and for sales tax purposes retail sales by all organizations associated with a site would be aggregated with the school site with which it is affiliated (MCL §205.54o(2)).

SALE OF TEXTBOOKS TO STUDENTS

The sale of textbooks by a public school to or for the use of students enrolled in any part of a K through 12th grade program is exempt from the sales tax (MCL §205.54a(1)(n)).

SALE OF FOOD

In general, all prepared foods that are sold by public schools for immediate consumption are subject to sales tax. (MCL §205.54g). The following are various exemptions and special rules for public schools:

- **SALE OF FOOD TO STUDENTS:** The sale of any food to bona fide enrolled students by a public school are exempt from the sales tax (MCL §205.54a(1)(c)). The sale of prepared food for immediate consumption to nonstudents, including teachers is subject to sales tax (Mich. Admin. Code, Rule 205.74(3)).
- **FOOD PROVIDED AT SCHOOL EVENT:** If prepared foods are included in the price of an event ticket (such as a dinner event), then the fair market value of the food consumed should be used in calculating the gross sales amount. The sales tax will be based on the total ticket price unless the school can demonstrate that the fair market value of the meal is less than the ticket price (Revenue Administrative Bulletin 2020-25). These event food sales may also be exempt under the fundraising sales exemption discussed above.
- **CATERED FOOD:** If the event is catered and the school pays sales tax on the catered food, no further sales tax is due on the food if the school does not mark up the price of the food. If it does mark up the price of the food, then sales tax is due on the total proceeds, with a credit given to the school for any tax it already paid on the food. If a school claims a sales tax exemption on the catered food because it is reselling it, then the school will be responsible for charging or paying the sales tax. These catered food sales may also be exempt under the fundraising sales exemption discussed above.
- **CONCESSIONS:** Food sold at concessions or special events (e.g. athletic events, concerts, etc.) that is prepared food for immediate consumption is subject to the sales tax. This includes for example, popcorn or nuts sold hot, prepared sandwiches, soda pop in a cup, a dish of ice cream with a spoon provided by the seller, a slice of pizza or hot dog sold hot. Food sold at such concessions that is not prepared is not subject to the sales tax. This includes for example fresh fruit, prepackaged items (e.g. candy bars, chips, nuts, or cans or bottles of soda) not heated and sold without eating utensils and cookies, doughnuts or muffins sold without eating utensils. Food sold to students at a concession is exempt from sales tax but the public school must maintain adequate records accounting for these sales. These concession food sales may also be exempt under the fundraising sales exemption discussed above.

SALE OR LEASE OF SCHOOL PROPERTY

- **REAL PROPERTY:** Sales tax only applies to the sale of tangible personal property and therefore the sale of real property by a public school is not subject to the sales tax.
- **PERSONAL PROPERTY:** The isolated sale of personal property by a public school, excluding the sale of school buses, (e.g. furniture and equipment) is not subject to the sales tax. The sale of school buses is subject to the use tax which is paid by the purchaser to the Secretary of State prior to the transfer of the title. (Mich. Admin. Code, Rule 205.13(1) and (2)).
- **LEASE OF SCHOOL FACILITIES:** Sales tax only applies to the sale or lease of tangible personal property and therefore the lease of school facilities is not subject to the sales tax.

SCHOOL STORE

The sale of items at a school store are subject to tax except for any food items sold to students and food sold to non-students that is not for immediate consumption. School store sales may also be exempt under the fundraising sales exemption discussed above.

FUNDRAISING AUCTIONS

If a fundraising auction is held, sales tax must be paid on sales or receipts on tangible personal property sold, including items that are donated. Items that are service-based, such as a day at the spa or a chef who will prepare a meal at your home, are not subject to sales tax. A school has the option of either collecting the sales tax from the bidders (which some commentators believe may alienate bidders) or pay the sales tax from the charitable auction proceeds. Sales tax is calculated based on the final bid price of each item, regardless of whether the final bid price is lower than, equal to, or higher than the fair market value of the item. It should be noted that the rules are different for auctions conducted by an IRC 501(c)(3) organization such as an education or athletics foundation. (See MCL §205.184)

RAFFLE TICKETS

The sale of raffle tickets is not subject to sales tax. If the raffled property was donated to the public school or the public school purchased the item and paid the sales tax the transfer of the raffled item to the raffle winner is not subject to the sales tax. If the public school purchased the raffled item without paying the sales tax the transfer of the raffled item to the raffle winner would be subject to the Michigan use tax. (Revenue Administrative Bulletin 2020-25)

Sales Tax License and Return Filing:

SALES TAX LICENSE


If a public school intends to sell or lease tangible property it is required to obtain a sales tax license from the Michigan department of Treasury regardless of the amount of revenue it intends to generate from such sales and whether the sales are exempt. (Mich. Admin. Code, Rules 205.1(1) and 205.140(5).

SALES TAX RETURNS

Public schools with a sales tax liability must file sales tax returns and remit the sales tax to the State according to the frequency assigned by the State (i.e., monthly, quarterly or annually) which is based on the sales tax amount to be remitted.

For further information on the Sales Tax License and Returns see the Sales and Use Tax Section of the Michigan Department of Treasury website.

This practice guide is intended as a general guide with respect to public schools' obligations to pay sales tax on tangible personal property that they purchase and/or sell at retail. We are available to address any specific questions you may have regarding your school's obligations to pay sales tax on its activities.



SALES TAX OBLIGATIONS of Michigan Public Schools

» CONTACTS



JAMES CROWLEY

Principal
+1.313.496.7606
crowley@millercanfield.com



AMANDA VAN DUSEN

Senior Counsel
+1.313.496.7512
vandusen@millercanfield.com



THOMAS COLIS

Principal
+1.313.496.7677
colis@millercanfield.com



KATRINA PILIGIAN DESMOND

Principal
+1.313.496.7665
desmond@millercanfield.com



ALAN SZUMA

Principal
+1.313.496.7604
szuma@millercanfield.com



RONALD LISCOMBE

Principal
+1.313.496.7906
liscombe@millercanfield.com

**MILLER
CANFIELD**
millercanfield.com