

The Commonwealth of Massachusetts



IRA A. JACKSON
COMMISSIONER

Department of Revenue

Lowell Patterson Building,

100 Cambridge Street, Boston 02204

April 22, 1983

Inc. ("Company") operates an industrial commissary that sells food and beverages, including sandwiches, soft drinks, bakery goods and snacks, to independent canteen truck operators, snack bars, and vending machine operators. The purchasers resell the items to individual consumers in such form as to be available for immediate consumption. You inquire whether the industrial commissary is a "restaurant" within the meaning of General Laws Chapter 64H, Section 6(h).

Sales of food products for human consumption are exempt from the sales tax (G.L. c. 64H, s. 6(h)). "Food products" does not include "meals", which is defined in General Laws Chapter 64H, Section 6(h) as:

"any food or beverage, or both, prepared for human consumption and provided by a restaurant, where the food or beverages is intended for consumption on or off the restaurant premises, and includes food or beverages sold on a 'take out' or 'to go' basis, whether or not they are packaged or wrapped and whether or not they are taken from the premises of the restaurant."

"Restaurant" is a term of art defined in Section 6(h) as including "any...place or establishment where food or beverages are provided." Section 6(h) states that "restaurant" includes vending machines and parts of grocery stores that sell sandwiches, snacks, and other items commonly sold at snack bars, coffee shops or luncheon counters.

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With exceptions not here relevant, sales by a restaurant of the following items for off-premises consumption are not subject to the sales tax on meals:

"(a) Food sold by weight, liquid or dry measure, count, or in unopened original containers or packages, including, but not limited to, meat, bread, milk, specialty foods, cream and ice cream; provided, that such foods are commonly sold in such manner in a retail food store which is not a restaurant; (b) beverages in unopened original containers or packages when sold as a unit having a capacity of at least twenty-six fluid ounces; and (c) bakery products including but not limited to doughnuts, muffins, bagels, and similar items sold in units of six or more."

Chapter 64H, Section 8 states that all gross receipts of a vendor from sales of tangible personal property are presumed to be from taxable sales until the contrary is established; it also states that the burden of proving that a sale is not at retail is on the vendor unless he takes a resale certificate (Form ST-4) from a purchaser who is a registered Massachusetts vendor.

Based on the foregoing, it is ruled that the industrial commissary is a restaurant within the meaning of General Laws Chapter 64H, Section 6(h). Therefore, except where the Company takes a resale certificate in good faith from a purchaser who is a registered Massachusetts vendor, the sales tax applies to the Company's sales at the commissary of sandwiches and other items that are taxed when sold by a restaurant. The sales tax does not apply to the Company's sales at the commissary of items that are not taxed when sold by a restaurant for off-premises consumption, including soft drinks in unopened original containers or packages when sold as a unit having a capacity of twenty-six fluid ounces or more, and bakery products sold in units of six or more.

Very truly yours,



Commissioner of Revenue

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