

## **INFORMATION BULLETIN #7**

### **SALES TAX**

**AUGUST 2011**

**(Replaces Bulletin #7 dated September 2010)**

**DISCLAIMER:** Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information, which is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Application of Sales Tax to Meals and Banquets

**REFERENCES:** IC 6-2.5-4-1; IC 6-2.5-5-20(c)(8)

#### **I. GENERAL INFORMATION**

Indiana sales tax generally applies to the selling price of meals, banquets, smorgasbords, and all other food and beverage services and must be collected by the person or entity preparing and/or serving the food to any organization, group, or individual, with certain exceptions as provided in Section III of this bulletin.

Food and beverage services generally are not considered to be used for the purpose for which an entity might otherwise be granted sales tax exemption. Generally, sales tax must be collected whether the individual members are charged separately or the entity pays the entire cost in a single payment, irrespective of the type of entity.

Gratuities are not taxable when they result from an unsolicited, affirmative action on the part of the customer to reward good service. Charges for serving food or beverages furnished, prepared, or served for consumption at a location, or on equipment provided

by the retail merchant are not subject to sales tax. However, this exclusion only applies if the charges for the serving are stated separately from the price of the food and/or beverages when the purchaser pays the charge. Charges for delivery of prepared food, whether segregated or not, are subject to sales tax.

Some counties have adopted a food and beverage tax that applies to the sale of meals and banquets. Caterers who cater in those counties must collect and remit the food and beverage tax on food and/or beverages sold in the adopting counties. Please see Commissioner's Directive #30 (available online at <http://www.in.gov/dor/3330.htm>) or call the Department of Revenue for more information regarding local food and beverage taxes, including a current listing of those counties that have adopted a food and beverage tax.

## **II. INCLUSION OF ITEMS OTHER THAN FOOD SERVICES IN A SINGLE TICKET PRICE**

When events are held for which the price of the ticket or admission includes food services as well as entertainment and/or other intangible services, the entire selling price of the ticket is subject to the sales tax unless the price charged for food service is stated separately from the other items.

## **III. EXEMPTION FROM SALES TAX**

### **A. Nonprofit Organizations**

Meals purchased, prepared, and/or sold by a qualified nonprofit organization as a fundraising activity are exempt from sales tax when purchased and sold if:

- the proceeds from the sales are used to raise funds for the purpose for which such organization is granted exemption from sales tax; and
- such organization does not conduct selling activities of any nature on more than 30 days in a calendar year.

For more information concerning nonprofit organizations, please see the Department's Sales Tax Information Bulletin #10, available online at <http://www.in.gov/dor/3330.htm>

### **B. Federal, State, and Local Government Entities**

The United States Constitution prohibits any state from imposing any tax directly on the U.S. government, its agencies, and its federal instrumentalities, unless Congress consents to such taxation. Thus, many transactions related to the purchasing of banquets and meals made by these entities are exempt from Indiana sales and other transaction-based taxes. For more information related to transactions involving the U.S. government, its agencies, and its federal instrumentalities, please refer to the Department's Sales Tax Information Bulletin #4, available online at <http://www.in.gov/dor/3330.htm>

Meals purchased, prepared, and/or sold by a state or local government entity generally are subject to sales tax. Typically, purchases and sales of such meals by a governmental agency or subdivision are used in connection with or for a proprietary or nontraditional activity (i.e., an activity that traditionally is engaged in by a private or commercial entity and that does not directly serve the public's general health, welfare, and/or safety), which is subject to tax. However, in some instances, such as the furnishing of school meals to students by a school (or its agent), purchases and sales of meals are predominantly used by the entity to perform a governmental function and are exempt from sales tax on that basis. For more information related to transactions involving school meals, please refer to the Department's Sales Tax Information Bulletin #32, available online at <http://www.in.gov/dor/3330.htm>

#### **IV. DOOR PRIZES AND OTHER GIVEAWAY MERCHANDISE**

When events or tickets include door prizes or other types of giveaway merchandise, the organization or group must pay sales tax on the purchase price of such merchandise unless the event and/or organization comes within the exemption provided to nonprofit organizations. For more information related to raffles or gaming events, please contact the Indiana Gaming Commission at the following address:

East Tower, Suite 1600  
101 W. Washington Street  
Indianapolis, IN 46204  
Telephone: (317) 233-0046

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart  
Commissioner