

GENERAL SALES TAX ACT (EXCERPT)
Act 167 of 1933

205.54g Sales exempt from tax; tax on sale of food or drink from vending machine; definitions.

Sec. 4g. (1) The following are exempt from the tax under this act:

(a) Sales of drugs for human use that can only be legally dispensed by prescription, over-the-counter drugs for human use that are legally dispensed by prescription, or food or food ingredients, except prepared food intended for immediate human consumption. As used in this subdivision, "over-the-counter drug" means a drug that is labeled in accordance with the format and content requirements required for labeling over-the-counter drugs under 21 CFR 201.66.

(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased under the federal food stamp program or meals sold by a person exempt from the tax under this act that are eligible to be purchased under the federal food stamp program.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the Food and Nutrition Service of the United States Department of Agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department of treasury.

(e) Live animals purchased with the intent to be slaughtered for human consumption.

(2) Food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit, is subject to the tax under this act. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act based on 1 of the following as determined by the taxpayer:

(a) Actual gross proceeds from sales at retail.

(b) Forty-five percent of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(3) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages and tobacco.

(4) "Prepared food" means the following:

(a) Food sold in a heated state or that is heated by the seller.

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(c) Food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food.

(5) Prepared food does not include the following:

(a) Food that is only cut, repackaged, or pasteurized by the seller.

(b) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001 food code published by the Food and Drug Administration of the Public Health Service of the Department of Health and Human Services, to prevent foodborne illness.

(c) Food sold in an unheated state by weight or volume as a single item, without eating utensils.

(d) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, sold without eating utensils.

(6) "Prepared food intended for immediate consumption" means prepared food.

History: Add. 1974, Act 310, Eff. Jan. 1, 1975;—Am. 1978, Act 275, Imd. Eff. July 3, 1978;—Am. 1987, Act 121, Eff. Oct. 1, 1987;—Am. 1991, Act 87, Imd. Eff. July 18, 1991;—Am. 1992, Act 266, Imd. Eff. Dec. 14, 1992;—Am. 1994, Act 49, Eff. May 1, 1994;—Am. 1995, Act 63, Imd. Eff. May 31, 1995;—Am. 1996, Act 576, Imd. Eff. Jan. 16, 1997;—Am. 1998, Act 60, Imd. Eff. Apr. 20, 1998;—Am. 1999, Act 116, Imd. Eff. July 14, 1999;—Am. 2000, Act 329, Eff. Oct. 1, 2001;—Am. 2000, Act 417, Imd. Eff. Jan. 8, 2001;—Am. 2004, Act 173, Eff. Sept. 1, 2004;—Am. 2008, Act 438, Imd. Eff. Jan. 9, 2009;—Am. 2013, Act 211, Eff. Mar. 14, 2014;—Am. 2015, Act 171, Imd. Eff. Nov. 3, 2015.

Compiler's note: Enacting sections 1 and 2 of Act 116 of 1999 provide:

"Enacting section 1. Sections 4g and 4r of this amendatory act are effective for taxes levied after April 30, 1999.

"Enacting section 2. This amendatory act clarifies that, with the exception of telecommunications equipment taxed under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, a taxpayer may exclude a sale of tangible personal property from gross proceeds only to the extent that the property is used for exempt purposes. For telecommunications equipment exempt under section 4v of the general sales

tax act, 1933 PA 167, MCL 205.54v, this amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned. This amendatory act clarifies that existing law as originally intended provides a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a.”

Enacting section 1 of Act 171 of 2015 provides:

"Enacting section 1. This amendatory act is retroactive and effective beginning March 14, 2014."