

This letter discusses the sales tax liabilities of dining facilities operated by schools. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

November 23, 2021

Dear NAME:

This letter is in response to your letter dated October 11, 2021, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing to request a General Information Letter addressing the application of sales tax to school cafeterias in elementary, middle, and high schools. We understand that you are the correct person to whom we should address this request, but ask that you forward this request as necessary if we are mistaken.

We represent a number of public school districts, cooperatives, and other public and private entities and vendors who provide elementary and secondary education and related services for school-aged children throughout the state. We are not aware of any current litigation or audit involving the questions below, but there is a recent Compliance Alert from the Department that is raising considerable questions in the field.

In October 2019, the Department issued Compliance Alert No. CA-2020-1 concerning the sale of food on school premises. The Compliance Alert reflects what we understand to be two general rules: on one hand, “a school does not incur sales tax liability on its operation of a cafeteria or other dining facility if it is conducted on the school’s premises and is confined to sales to the students and employees of the school”; and on the other hand, “food vendors that sell meals to students and not the school incur sales tax liability on meals purchased by the students.” The Compliance Alert identifies some specific nuances and details within these rules (for example, rules

allowing Parent-Teacher Organizations to hold one or two dinners per year), but this request does not concern those details.

We are writing, instead, to inquire about the outsourcing of cafeteria operations – that is, K-12 schools hiring food service companies to operate school cafeterias on the schools' behalf. As we explain below, in these situations the school cafeterias are still being operated in almost exactly the same manner in which they would be operated by the school itself. We do not believe that any of the differences in operations impact the nature of the transactions being made, and so we do not believe that these outsourcing arrangements should not trigger any new sales tax liability (whether for schools, or for students or staff, or even for food service companies that might pass those costs along).

### **I. Factual Background: The Outsourcing of School Cafeteria Operations**

We will discuss typical outsourcing arrangements below, but for purposes of this request please assume that the schools themselves would not incur any sales tax liability if the schools were operating their cafeterias with their own forces – in the words of the Compliance Alert, these situations would fall squarely into the rule that “a school does not incur sales tax liability on its operation of a cafeteria or other dining facility if it is conducted on the school's premises and is confined to sales to the students and employees of the school.”

The only difference here is outsourcing the operation of the cafeteria. While outsourcing is a multi-faceted arrangement, we believe that it does not change the fundamental nature of the transaction inside the school and that the outside food service companies are acting as agents of the schools themselves. If a school does not incur sales tax liability when it uses its own employees to operate the school's cafeteria on the school's premises for the school's students and staff, the school should not trigger sales tax liability when it hires an outside food service company to operate that same cafeteria on the same premises for the same students and staff.

***Ownership, Dominion, and Control of Cafeteria.*** Schools retain full and complete ownership of their cafeterias, including all permanent fixtures and kitchen equipment. The cafeterias are located within the school building, and the schools are responsible for maintaining the cafeterias. The schools provide and maintain all building systems (the physical plant itself, heat, air conditioning, security, etc.), utilities (water, electric, natural gas, ethernet/data, etc.), and furnishings necessary to operate the cafeteria.

The outside companies do not rent, lease, or otherwise have any ownership interest in the cafeteria. They might bring some personal equipment

(warmers, chillers, utensils, etc.), but they do not have any ownership interest in the cafeteria or permanent fixtures. They are generally responsible for cleaning the kitchen, and for repairing any damage above normal wear and tear, but they are not otherwise responsible for maintaining the cafeteria itself.

The cafeteria operations follow the school calendar, as their only purpose is to serve students and staff during school. The cafeterias are located within the school building, and are accessed from within the school; they might have emergency exits or loading dock access, but at meal times students and staff access the cafeteria through internal doors that are accessed from internal hallways inside secure school buildings – in other words, the cafeterias are not accessible by the general public. The schools are responsible for securing the premises at night and on weekends; the outside companies often have copies of keys to the cafeteria, but the schools control how and when the outside companies may access these facilities.

School rules and policies apply within the cafeteria at all times; school administrators have full access to all parts of the cafeteria at all times; and teachers and other school staff are present at all times necessary to supervise students during meal periods. Students and staff in the cafeteria are subject to the same codes of conduct, disciplinary rules, and other policies that otherwise apply throughout the rest of the school.

Finally, the schools remain responsible for students and staff while they are using the cafeteria. For students, breakfast and/or lunch periods are part of their assigned school day, and the schools remain responsible for their supervision, safety, and wellbeing. School staff in the cafeteria are typically on duty supervising students or purchasing meals for themselves during a meal break.

***Sales to Students and Staff.*** The school cafeterias are limited to students and staff of the school. The cafeterias are not open to the public.

The sales transactions themselves are typically executed using a point-of-sale (POS) system that is provided and maintained by the school, though commonly the staff at the register are employees of the outside company. The sales include free and reduced meals through the National School Lunch Program administered by the U.S. Department of Agriculture and the Illinois State Board of Education, as well as Illinois' School Breakfast and Lunch Program.<sup>1</sup>

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<sup>1</sup> See 105 ILCS 125/4, 126/15 and 126/20; 23 Ill. Admin. Code 305.10.

These programs are required by law, and are heavily regulated, but one legal requirement seems especially pertinent here: even when school cafeterias are operated by an outside food service company, that outside company cannot retain funds from selling free and reduced meals to students. All free and reduced transactions must settle to a dedicated, nonprofit account that is maintained in the name of the school or School District.<sup>2</sup> Regardless of who is operating the register, the provision of free and reduced meals is an immutable duty and obligation of the school itself to its qualifying students.

Otherwise, students and staff typically purchase meals using cash or a prepaid debit account linked to their school ID. As is the case with free and reduced transactions, these cash receipts and prepaid debits are held in a dedicated bank account that is established and maintained by the outside company in the name of each school. There are separate bank accounts for each school, and the monies collected at each school are strictly segregated from other funds for other schools.

***Employment of Cafeteria Staff.*** The outside food service company provides staff to prepare and serve meals, to operate the schools' POS systems, and to clean the kitchen facilities and equipment. The outside companies bear all payroll, benefits, and other costs of their employees.

These employees of the outside company are subject to the same background checks as the schools' own employees, including a fingerprint-based criminal background check, a check of the Statewide Sex Offender Database, and a check of the Statewide Murderer and Violent Offender Against Youth databases, with re-screening every five years.<sup>3</sup> They generally fall within the definition of "School Personnel" for Covid-19 mitigation purposes, and so they are subject to the same vaccination and testing requirements as the schools' own employees.<sup>4</sup> Schools have the authority to exclude any food service employee whose background check is unsatisfactory, or who is disruptive, endangering students or staff, or otherwise violating codes of conduct.

***Agency Relationship.*** The food service contracts typically designate the outside company as the school's agent and fiduciary for purchasing goods and supplies. The food service company uses the school's own tax exemption number to purchase meal ingredients, and also serves as the school's agent for selling meals, collecting monies, and depositing monies

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<sup>2</sup> See 7 Code Federal Regulations ("CFR") § 210.14; see further 7 CFR Part 2010 (National School Lunch Program), 105 ILCS 126/15 and 7 CFR Part 220 (School Breakfast Program), 105 ILCS 125/05 (Illinois Free Lunch and Breakfast Program), 105 ILCS 126/20 and 7 CFR Part 225 (Summer Food Service Program), 7 CFR Part 215 (Special Milk Program).

<sup>3</sup> See 105 ILCS 5/10-21.9(a), (a-5), (a-6), (f).

<sup>4</sup> See Executive Orders 2021-20, -22, -24, and -25.

into accounts held in the school's name – including, as noted above, free and reduced meals offered in accordance with the National School Lunch Program and the Illinois Breakfast and Lunch Program.

The cafeteria itself is still presented to students and staff as part of the school. The food service company might be identified on employee nametags, menu listings, or other incidental badging, but the cafeteria is not “branded” as a franchise, restaurant, or private operation. There is no signage suggesting otherwise. Any name that is given to the cafeteria (for example, “FRANCHISE”) is given by the school, not by the food service company.

**Meal Prep.** The food service companies prepare meals from scratch, on-site, from ingredients that have been procured tax-free using the schools' tax-exemption certificates. (The schools are generally exempt from sales tax on both purchases and sales of personal property,<sup>5</sup> and hold valid exemption numbers issued by the Department.) Some food items (such as milk and fruit) do not require cooking or preparation, but otherwise meals are prepared on-site at the cafeteria and are fresh rather than prepackaged. The food service companies are not selling their own branded goods or products.

**Menus and Pricing.** All menus and pricing must be approved by the school. Pricing is generally consistent with pricing that would apply in the absence of outsourcing. Free and reduced prices remain the same, pursuant to state and federal rules; and cash or debit prices are set at levels designed to support the cafeteria's operations. In general the schools believe the pricing is lower than the schools would otherwise need to charge for meals of the same quality and variety, in the absence of outsourcing.

## **II. Scenarios Not Included in this Request**

There are several other common scenarios that we do not intend to include within the scope of this Request.

First, some schools provide their students with “vended meals.” In a vended meals contract, the food service company does not provide staff, does not operate the cafeteria, and does not prepare meals on-site; the outside company simply purchases or prepares meals off-site, and delivers those meals to schools, so that school staff can deliver the meals to students. Vended meal contracts are not part of this Request.

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<sup>5</sup> 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11); 86 Ill. Admin. Code 130.120(h).

Second, sometimes schools hold special catered events separate and apart from the regular cafeteria operations – such as after-school parent-teacher events, sporting events, award banquets, and so forth. These catering functions are not at issue in this Request.

Finally, sometimes classroom teachers hold classroom events in which they purchase food for students from private restaurants outside the school – such as pizza parties, FAST FOODS Day, and so forth. These classroom events are not part of this Request.

### **III. Question Presented**

We believe that sales of cafeteria meals should receive the same exempt status regardless of whether the cafeteria is operated by the schools' employees or by outside companies acting as agent on the schools' behalf. Accordingly, we respectfully request guidance with respect to the following question:

Given the general rule that “a school does not incur sales tax liability on its operation of a cafeteria or other dining facility if it is conducted on the school's premises and is confined to sales to the students and employees of the school,” does it matter whether the cafeteria is operated by school employees or by an outside food service company hired by the school?

### **IV. Legal Authorities**

We believe there are both Department regulations and precedential rulings that provide meaningful guidance in answering this question.

First is Department Regulation 130.2005, which specifically addresses school cafeterias: “A school does not incur Retailers Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.”<sup>6</sup> This regulation appears to be directly on point for situations in which schools operate their cafeterias using exclusively their own employees.

Second is a 1990 Private Letter Ruling applying Regulation 130.2005, concerning a school cafeteria that was operated by a private food service retailer.<sup>7</sup> Students and staff bought meal coupons to redeem in the

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<sup>6</sup> 86 Ill. Admin. Code 130.2005(b)(4)(A).

<sup>7</sup> See Letter No. ST-90-0601-PLR.

cafeteria; sometimes the coupon books were sold by the school (in which case the retailer billed the coupon values back to the school), and sometimes the books were sold directly by the retailer itself (in which case the retailer kept the proceeds). The Department ruled that the food service retailer was not subject to sales tax, so long as the cafeterias were limited to serving students and staff of the school.

Third is Department Regulation 130.1915, which concerns the taxation of sales made by an agent on behalf of a disclosed principal, and which provides that those receipts are taxable to the principal to the extent that the principal is engaged in selling the same type of goods at retail. This rule specifically requires that the agent clearly disclose the name and address of the principal to the purchaser before the time of the sale, and that the name and address of the principal be kept in the agent's books and records.<sup>8</sup>

Fourth is a 2001 GIL applying Regulation 130.1915 to the publication and sale of school yearbooks for exempt schools.<sup>9</sup> The publisher was responsible for taking orders, billing, and collecting funds from students on behalf of the schools. The Department assumed (without being able to determine for certain) that the schools were making the sales, in which case liability for ROT turned upon whether the publisher (as agent) was working on behalf of a disclosed or undisclosed principal under Regulation 130.1915(b). The Department ruled that "[i]f a third party organization acts on behalf of a known or disclosed principal, e.g. a school with a valid Illinois tax exemption identification number, yearbook sales may be made tax exempt."

Fifth, a 1999 Office of Administrative Hearings ("OAH") decision considered whether a school bus company was liable for user tax on fuel purchases that were made when driving for an exempt school district.<sup>10</sup> The school district provided the bus company with its valid exemption certificate in order to purchase fuel for busses that were being driven on behalf of the school district. The administrative law judge found that this constituted an agency relationship between the school district and the bus company, such that the bus company was entitled to step into the school district's shoes and enjoy its User Tax exemption privileges when acting as its expressly authorized agent.

Finally, in 2001 the Fourth District Appellate Court held that Subway franchises located on the Illinois State University campus were liable for ROT because Subway was not acting as ISU's agent and, even if it were,

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<sup>8</sup> 86 Ill. Admin. Code 130.1915(a)(2), (b).

<sup>9</sup> See Letter No. ST 2001-0096-GIL

<sup>10</sup> *Department of Revenue v. "Big Yellow" School Bus Company*, MV 99-2 (DOR Hearings, 1/1/1999)

Subway was not making exempt sales.<sup>11</sup> In that case, Subway leased four locations from the University for the purpose of operating restaurants on campus. The lease agreements gave ISU some control to review Subway's menu and advertising methods, but specifically provided that Subway was not the University's agent. The restaurants were open to the public, although students and staff had the option of paying for meals with University ID/debit cards. The Appellate Court rejected Subway's theory that using an ID/debit system converted Subway into a sales agent; in this respect, the use of the ID/debit system was the functional equivalent of the relationship between a retailer and credit card company. The Court also noted that the restaurants were open to the general public, negating any application of the special rule for school cafeterias.<sup>12</sup>

## V. Legal Analysis

Under the outsourcing scenarios that we have described above, we think there are two alternative theories that lead to the same conclusion. First, notwithstanding the introduction of outsourced staff, these school cafeteria operations still fall within the letter of Regulation 130.2005, and trigger the special treatment afforded to school cafeterias. Second, even if not, the outsourced food service companies are acting as the schools' agents, such that the sales tax liability is determined by the schools' status as a tax-exempt principal under Regulation 130.1915.

### A. Regulation 130.2005.

Cafeteria sales to students and staff receive special treatment under Regulation 130.2005(b)(4)(A). These sales are related to the schools' primary educational purpose and are subject to the schools' strict oversight, including federal and state requirements pertaining to free and reduced meals. In order to meet the criteria set forth in Regulation 130.2005(b)(4)(A), the sales must be made exclusively to students and staff in school-owned cafeterias that are not open to the general public.

In the outsourcing arrangements described herein, the schools are hiring outside companies to perform the same cafeteria functions that the schools would otherwise perform with their own employees. Unlike the *Subway* case, the schools are not leasing space to restaurants selling their branded products, and the cafeterias are not open to the general public. The food service companies are standing in the schools' place to perform a necessary school function, acting as the schools' purchasing agents and

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<sup>11</sup> *Subway Restaurants of Bloomington Normal, Inc. v. Topinka*, 751 N.E.2d 203 (4<sup>th</sup> Dist. 2001).

<sup>12</sup> 751 N.E.2d at 208 (citing 86 Ill. Admin. Code 130.2005(a)(2)(A)).



operating the schools' own cafeterias on their behalf to serve students and staff.

These arrangements are similar to the coupon-book arrangements in Letter No. ST-90-0601-PLR. The Department ruled in that case that it did not matter how the coupons were sold, only whether the cafeteria was limited to students and staff, and closed to the general public. So long as those criteria were satisfied and the school was otherwise tax-exempt, the Department ruled that the food service retailer was not subject to tax, regardless of how the coupon book sales were structured.

In all functional respects, the outsourcing of cafeteria operations to outside food service companies does not change the nature of the transactions between schools and their students and staff. The schools still have an obligation to provide meals for students, including (and especially) free and reduced meals for eligible students; the students and staff still rely upon the cafeteria as an integral part of the school and the school-day experience. Ingredients are still procured tax-free on the schools' behalf, regardless of who employs the procurement agents; menus and prices are still subject to school approval, regardless of which employee develops and submits them for approval; meals are still prepared and served on-site in school-owned cafeterias, regardless of who employs the cooks and servers; and receipts from sales still settle to dedicated school accounts, regardless of who employs the cashiers entering the POS transactions.

The purpose of outsourcing is not to change the function of school cafeteria operations, but to achieve greater efficiencies, lower costs and superior food service. For similar reasons, schools regularly take advantage of outsourcing opportunities for many such services that are not within their core competencies in education – for example, transportation, maintenance and custodial, landscaping, even school nurses and specialists such as speech pathologists. None of these arrangements alter the fundamental nature of the school's educational mission or its relationship with its students. Outsourcing of cafeteria operations is not designed to alter the fundamental nature of those operations, only to make them better.

Adding sales tax liability to cafeteria operations solely because schools utilize outsourced services would have a negative impact upon the schools and their constituencies. No matter whether these taxes are borne by the schools themselves, passed through to (or from) outside food service companies, or collected from students and staff at the point of sale, they would ultimately result in some combination of higher cafeteria prices charged to students and/or increased costs for schools.

For these reasons, we believe that the outsourcing of school cafeteria operations still falls within the letter, spirit, and policy underlying Regulation 130.2005, and should not result in any new, different, or additional sales tax liability than the school itself would incur if operating the cafeteria through its own forces.

B. Regulation 130.1915.

Alternatively, in addition to the special treatment afforded to school cafeterias, we believe that these outsourcing arrangements fall within the general principal-agent rules set forth in Regulation 130.1915.

Agents who make sales on behalf of a disclosed principal are not liable for ROT, which instead falls on the principal. Students and staff who purchase meals in the school cafeterias are aware that the outside companies are acting on behalf of their school. The cafeterias are part of the school building, the students and staff know the name and address of the school prior to purchase, and the food service companies keep the schools' information in their books and records, all in compliance with the Regulation.

Regulation 130.1915(a)(2) also requires that a disclosed principal "is engaged in the business of selling such tangible personal property at retail." Schools sell cafeteria meals to their students and staff in the regular course of school operations.

Schools also have agency relationships with their outsourcing partners that are sharply different from the leasing relationship in the *Subway* case. In the *Subway* case, ISU specifically prohibited Subway from acting as its agent, and the Court rejected Subway's theory that utilizing ISU's debit system effectively turned Subway into a sales agent. When K-12 schools outsource their cafeteria operations, on the other hand, they specifically designate those food service companies to act as the school's agent: the schools provide their tax exemption numbers; the food service companies use that exemption number to purchase raw ingredients on a tax-free basis; the food service companies use those ingredients to prepare and serve meals in the cafeteria; the food service companies operate the point-of-sale system provided by the schools; and those sale proceeds settle to dedicated accounts for each school.

In this respect, the food service companies are acting in a similar manner as the yearbook company in Letter No. ST 2001-0096-GIL and the transportation company in No. MV 99-2. In those situations, the outside companies were simply stepping into the shoes of the school to perform services that the school would otherwise perform through its own forces. The ordering and purchasing of materials (whether yearbooks, fuel, or meal

ingredients) to be used by employees of a private company (whether they are publishing, driving, or preparing meals) does not, and should not, result in any tax liability that the school itself would not otherwise incur.

Simply put, the schools rely upon food service companies to step into their shoes to manage an integral part of school operations. This should result in the same tax treatment that applies when schools use their own employees to perform the same function.

### C. Compliance Alert CA-2020-1.

Finally, as we noted at the outset of this Request, many of the concerns among schools are based upon Compliance Alert CA-2020-1 issued by the Department in October 2019.

The title of the Alert, “Food Vendors Neglecting to Collect Illinois Sales Tax on Sales of *Ready-Made Meals* for School Lunch Programs” (emphasis added), appears to suggest that the Alert is focused on off-campus food businesses that sell pre-packaged, “ready-made” meals to students (e.g. “Pizza Friday” vendors, food delivery companies such as COMPANY, etc.), as opposed to meals made in school cafeterias. The body of the Alert tracks this distinction in some places: under the section heading “Compliance Problem,” the Alert describes a situation in which “[a] third party vendor makes bulk sales of prepared meals for students to the school, and the school then resells the meals to students”; under the section heading “Solution,” the Alert states “[f]ood vendors making sales of previously prepared meals to schools that are resold by the schools to their students do not incur sales tax liability.”

However, in other places, the Alert omits the distinction between previously-made meals and cafeteria meals. In particular, it states under the “Solution” that “[f]ood vendors making sales of meals directly to students must charge tax on the full amount of the sales.” We think this “Solution” is meant to apply to private businesses selling their own previously-made meals, not to outside food service companies stepping into the shoes of a school to operate the school’s cafeteria. A literal reading of the “Solution” appears to allow either reading, though, which has created concern among schools and their outsourcing partners.

For all of the reasons set forth above, of course, we believe the resolution of these concerns should depend upon this very distinction: that “food vendors” who are selling previously-prepared meals to students as part of their business of selling to the general public should incur tax liability; but that food service companies who are acting as the agents of schools, to operate schools’ own cafeterias on the same terms that the schools would

themselves, should not incur any different tax liability than if the schools were operating the cafeterias with their own forces.

## **VI. Conclusion**

For these reasons, we believe – and respectfully submit – that a school’s decision to use outsourced services for its cafeteria operations should not have any impact upon the tax treatment of meals sold to students and staff, as long as the school cafeterias are not otherwise open to the public; and we respectfully request that the Department confirm our interpretation of applicable Regulations and Compliance Alert CA-2020-1. If the Department is inclined to rule differently, though, or if you have any questions or need any additional clarification, we would very much appreciate an opportunity to discuss these issues with you before a ruling is issued.

Thank you for your time and consideration to this Request.

## **DEPARTMENT’S RESPONSE:**

The Illinois Retailers’ Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller’s gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as “sales tax” in Illinois. Purchases of tangible personal property are subject to Illinois sales tax unless a purchase qualifies for an exemption under Illinois tax law. Purchases of tangible personal property are subject to Illinois sales tax unless a purchase qualifies for an exemption under Illinois law.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E-number"). See 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E-number, then its purchases are subject to tax.

Organizations that have E-numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. Organizations can use their E-numbers to purchase

items for such limited exempt sales. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax.

In October of 2019, the Department issued Compliance Alert – Food Vendors Neglecting to Collect Illinois Sales Tax on Sales of Ready-Made Meals for School Lunch Programs to address common confusion regarding tax obligations triggered by the different methods schools, third-party vendors, and parent-teacher organizations (PTOs) use to make sales of meals to students. This Compliance Alert is intended to clarify that for sales of meals directly to students to be exempt from Retailers' Occupation Tax under Section 130.2005(b)(4)(A), they must be sales made by the school and not made directly by a third-party vendor or PTO. For example, the Compliance Alert states “[f]ood vendors making sales of previously prepared meals to schools that are resold by the schools to their students do not incur sales tax liability.” See Compliance Alert – Food Vendors Neglecting to Collect Illinois Sales Tax on Sales of Ready-Made Meals for School Lunch Programs, October 2019. This is because the sale of the prepared meals to the school with an E-number is not subject to sales tax, and the resale of the prepared meals by the school directly to its students is not subject to sales tax as long as the criteria of Section 130.2005(b)(4)(A) is met. However, “[f]ood vendors making sales of meals directly to students must charge tax on the full amount of the sales.” See *id.*

Special rules apply to dining facilities operated by schools. A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable. See 86 Ill. Adm. Code 130.2005(b)(4)(A). Nothing in this subsection restricts its applicability based on how the school operates its cafeteria, whether through contracting with an outside company or using its own employees.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Alexis K. Overstreet  
Associate Counsel

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