

# STATEMENTS OF POLICY

## Title 61—REVENUE

### DEPARTMENT OF REVENUE

[ 61 PA. CODE CH. 60 ]

#### Sales and Use Tax Pronouncements; Nonprofit Associations which Support Sports Programs

The Department of Revenue (Department) has adopted amendments to a statement of policy under the authority in § 3.2 (relating to statements of policy). Section 60.17 (relating to sale of food and beverages by nonprofit associations which support sports programs) is amended and shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

This amendment to § 60.17 is promulgated by the Department to reflect a legislative change made by the act of April 23, 1998 (P. L. 239, No. 45) which removed the fixed location on public property requirement in section 204(49) of the Tax Reform Code of 1971 (72 P. S. § 7204(49)). Additionally, the Department is deleting examples affected by the legislative change.

Specific questions regarding information in this statement of policy should be directed to the Department of Revenue, Office of Chief Counsel, P. O. Box 281061, Harrisburg, PA 17128-1061.

DANIEL MEUSER,  
*Secretary*

*(Editor's Note: Title 61 of the Pa. Code is amended by amending a statement of policy in § 60.17 to read as set forth in Annex A.)*

**Fiscal Note:** 15-452. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 61. REVENUE

#### PART I. DEPARTMENT OF REVENUE

#### Subpart B. GENERAL FUND REVENUES

#### ARTICLE II. SALES AND USE TAX

#### CHAPTER 60. SALES AND USE TAX PRONOUNCEMENTS—STATEMENTS OF POLICY

#### § 60.17. Sale of food and beverages by nonprofit associations which support sports programs.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

##### *Nonprofit association—*

(i) An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of the Commonwealth or the United States.

(ii) An entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of the Commonwealth, and which is organized and operated on a nonprofit basis, including the following associations or separately chartered auxiliaries thereof:

- (A) Youth or athletic.
- (B) Volunteer fire.
- (C) Ambulance.

- (D) Religious.
- (E) Charitable.
- (F) Fraternal.
- (G) Veterans.
- (H) Civic.

*Sports program—*Subject to the limitations set forth in subparagraph (ii), a sports program shall include:

(i) Baseball, softball, football, basketball, soccer and other competitive sports formally recognized as a sport by one or more of the following:

(A) The United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (36 U.S.C.A. §§ 371—396).

(B) The Amateur Athletic Union.

(C) The National Collegiate Athletic Association.

(ii) The term is limited to a program or that portion of a program which meets the following criteria:

(A) Organized for recreational purposes and conducts activities substantially for these purposes.

(B) Organized primarily for participants who are 18 years of age or younger or whose 19th birthday occurs during the year of participation or the competitive season, whichever is longer. There is no age limitation for programs operated for persons with physical handicaps or persons with mental retardation.

*Support—*The term means the following:

(i) The nonprofit association sells food and beverages and uses the funds raised solely to pay the expenses of a sports program.

(ii) The nonprofit association sells food and beverages at a location where a sports program is being conducted.

(b) *Scope.*

(1) The sale of food and beverages by nonprofit associations which support sports programs is not subject to tax.

(2) The following are examples of taxable and nontaxable sales by nonprofit associations:

(i) "F" fraternal association sells food and beverages to fans from a food stand located on university property where basketball games are played by members of the various fraternities, most of whom are 20 years of age or older. Sales of food and beverages by "F" to fans are taxable since the sports program is primarily for participants who are older than 18 years of age.

(ii) "A" charitable association operates a food stand four times a year at a public park where food and beverages are sold to raise funds solely to pay the expenses of a sports program. Since the funds raised from the sales of food and beverages by "A" are used solely to support sports programs, these sales are not subject to tax even though they are made from a location other than where the sports program is being conducted.

(c) *Equipment and supplies.*

(1) A vendor of food or beverages (which is not otherwise an exempt organization under § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions)) is required to pay tax upon the purchase of utilities, equipment, fixtures, utensils—such as glasses, knives and forks, and

nondisposable plates and cups—table cloths, napkins, straws, returnable containers and related supplies.

(2) The purchase of the following items in connection with the sale of food or beverages is exempt from tax regardless of whether the purchaser is an exempt entity under § 32.21:

(i) Prepared or nonprepared food and beverages for resale.

(ii) Wrapping supplies as defined by § 32.1 (relating to definitions).

(3) The following examples illustrate what items are and are not subject to tax:

(i) In connection with the sale of food and beverages at a food stand where a sports program is being conducted, “N” nonprofit association provides tables and chairs for its customers to use. “N” is not an exempt organization

under § 32.21. “N” shall pay tax on these items at the time of purchase and may not claim the resale exemption even though the invoices separately state the charges for these items.

(ii) In connection with the sale of food and beverages at a food stand where a sports program is being conducted, “X” nonprofit association provides to its customers paper plates, styrofoam cups, straws, paper napkins, and plastic knives, forks and spoons. “X” is not an exempt organization under § 32.21. “X” can purchase paper plates and styrofoam cups exempt from tax on the basis that these items qualify as wrapping supplies. “X” shall pay tax upon the purchase of straws, paper napkins, and plastic knives, forks and spoons.

[Pa.B. Doc. No. 11-1095. Filed for public inspection July 1, 2011, 9:00 a.m.]