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EXEMPT FOOD SALES

This section addresses issues involving §130A 250 (7), a statute that allows some food and drink sales to be exempt from regulation. This statute, §130A 250 (7), states:

Establishments (i) that are incorporated as nonprofit corporations in accordance with Chapter 55A of the General Statutes or (ii) that are exempt from federal income tax under the Internal Revenue Code, as defined in § 105-228.90, or (iii) that are political committees as defined in § 163-278.6(14) and that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days, including establishments permitted pursuant to this Part when preparing or serving food or drink at a location other than the permitted locations. A nutrition program for the elderly that is administered by the Division of Aging of the Department of Health and Human Services and that prepares and serves food or drink on the premises where the program is located in connection with a fundraising event is exempt from this Part if food and drink are prepared and served no more frequently than one day each month.

Local health departments have experienced issues involving the abuse of the exemption. These abuses include:

- food sales by individuals or organizations that do not meet the legal definition of (i),(ii), or (iii) of the exemption;
- food sales that exceed two consecutive days once per month;
- food sales by individuals that do not genuinely represent the organization that meets the legal definition of (i), (ii), or (iii) of the exemption.

The following questions have been posed by local environmental health programs regarding the interpretation and enforcement of §130A 250 (7):

1. How can I confirm that an organization is exempt under §130A 250 (7)?

One method is to search the database of corporations (including non-profits) on the N.C. Secretary of State website (www.

secstate.state.nc.us/). This database will confirm the status of non-profit organizations, such as churches, civic groups, and relief organizations. You may also call the Secretary of State’s office at (919) 807-2000.

To verify that an organization is exempt from federal income tax under the Internal Revenue Code, confirm that the organization has received 501(c)(3) approval or similar exemption from the Internal Revenue Service. To receive approval, the not-for-profit (i.e., nonprofit) organization must be organized and operated exclusively for one or more exempt purposes.

To verify political committees registered with the North Carolina Board of Elections, you can search the online database at www.app.sboe.state.nc.us/webapps/cf_rpt_search/. To search by candidate, enter the candidate’s last name within the

search engine. To search by political party, enter the county name and the database will list all committees within county. Local committees may not be reflected within the state database. Contact the local Board of Elections within the appropriate county to verify local candidates.

2. Can I require information or require an information collection form regarding an exempt food sales event?

It is important for local environmental health programs to collect information on an exempt event for trace back and investigative purposes. If a foodborne illness outbreak is linked to the event, the type of information that will be needed for the investigation includes:

- The organizer name and contact information
- Tax-exempt organization associated with the event
- Location(s) and date(s) of the event, and
- The types of food served (menu)

The local environmental health program should have a standard protocol for both regulated and exempt food sales event information collection forms.

- o Require advance notification. Use the same time frame you would use for regulated temporary events.

- o Use a standard information collection form. (See Appendix 4.1 for sample application.)

3. How can I know if the person really represents the exempt organization?

To verify the validity of the requested information, the person seeking the exemption should submit:

- official documentation of the tax exempt status;
- letter from organization incorporator, board member or other executive stating the location, dates of the fundraiser, date of the previous fundraiser and statement to the fact that the proprietor handling the sale is acting solely as an employee and that all proceeds are collected by the organization; and
- a food service permit if a coventurer or caterer is used.

4. How can I know if the exemption has already been used for the month?

Check with other local environmental health programs for information regarding past exemption usage. The environmental health listserv can be used for communicating information regarding specific events or organizations. In the future, there are plans to develop a statewide database that counties may research for exemption usage.

