

# C&K MARKET INC.

*Family Owned. Family Values. Since 1956*

September 20, 2010

VIA EMAIL AND  
FIRST CLASS MAIL

Michael G. Dowsett  
City Attorney  
City of Yachats  
PO Box 345  
Yachats, OR 97498

Dear Mr. Dowsett:

Re: Yachats Prepared Food Tax

Thank you for your letter dated September 1, 2010. In your letter, the City conceded that C&K Market located in Yachats is not a "combination facility" under Section 3.12.010 B of the Yachats Municipal Code. However, the City now contends that C&K Market is a "restaurant" under Section 3.12.010 F of the Code, and is therefore subject to the tax imposed by Section 3.12.020. C&K disagrees.

First, C&K opposes the City's interpretation of the term "restaurant" under the Code. Because the phrase: "includes any establishment where food or beverage is prepared for consumption by the public" is separated by: "any establishment where the public obtains food or beverage so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared" with the conjunction "or," the two phrases should be read independently of each other. Therefore, when reading "any establishment where the public obtains food or beverage so prepared...", the "so prepared" has to refer to "any establishment," not "...for consumption by the public." Because none of the food sold at C&K Market is prepared on premises, it is not a restaurant. Since C&K Market is neither a restaurant nor a combination facility, it is not subject to the taxes imposed by Section 3.12.020.

Even if the City disagrees with this interpretation, it is unlikely the drafters intended a supermarket like C&K Market to fall under the definition of "restaurant." As you know, the purpose of Section 3.12.020 is to impose a tax on all prepared foods. However, if the City classifies C&K Market as a restaurant, C&K will be taxed on much more than prepared foods. Under Section 3.12.020 A.1, a "restaurant" is subject to tax on "[a]ll food and beverages"; the only items exempted are "whole cakes, pies, and loaves of bread if purchased for consumption off premises" and various other items specifically listed at Section 3.12.030. This imposition is

**Phone:** 541-469-3113

**Fax:** 541-469-6717

**Web:** [www.ckmarket.com](http://www.ckmarket.com)

615 5th St. • Brookings, OR 97415

SEP 20 2010

RECEIVED

615 5th St. • Brookings, OR 97415

Michael G. Dowsett  
City Attorney  
City of Yachats  
Re: Yachats Prepared Food Tax  
September 20, 2010  
Page 2 of 2

overly broad as it relates to C&K, as it would include many non-prepared foods and beverages that C&K sells. Such application is beyond the law's intent.

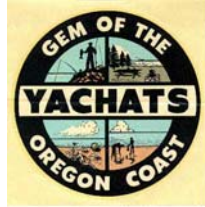
C&K enjoys being a part of the Yachats community and looks forward to many years of working with the City. However, for the reasons discussed above, we believe that the prepared foods tax does not apply to C&K. Please let me know if further discussion is required.

Sincerely,

  
John J. Christianson  
Corporate Counsel

JJC:ch

cc: Elizabeth W. Bauer



# City of Yachats

441 Hwy 101 N.  
P O Box 345  
Yachats, OR 97498

September 1, 2010

John J. Christianson  
Corporate Counsel, C & K Market, Inc.  
615 5<sup>th</sup> St.  
Brookings, OR 97415

Dear Mr. Christianson:

Pursuant to our telephone conversation of September 1, 2010, I am sending you this follow up letter. In my August 19, 2010 letter I mistakenly stated that the Yachats market is a combination facility.

Upon review C and K Market is determined to be a restaurant as defined in Section 3.12.010 F of the Yachats Code. Even if the establishment is not separately licensed as a restaurant by the State of Oregon Health Division, it meets the definition in that it is an "...establishment where the public obtains food or beverages so prepared in form or quantity consumable then and there..."

The "so prepared" language in my opinion, does not relate back to "any establishment", but rather to the phrase "...for consumption by the public..."

You requested some time in order to determine your company's position on the issue. August 19, 2010 was the date Elizabeth W. Bauer responded stating C and K Markets, Inc. was not subject to the prepared food tax and I responded thinking you were a combination facility. Although C and K Market, Inc. must file an amended return with the appropriate taxes backdated to the date of store opening and accumulated interest, any penalty will not occur until 30 days from August 19, 2010, since you in good faith correctly challenged my opinion that you were not a combination facility.

Please comply by September 19, 2010 to avoid the imposition of penalties, which would have normally occurred 30 days following non-compliance.

If you have further questions or need further information, please feel free to contact Nancy Batchelder directly rather than contacting me.

Sincerely,

Michael G. Dowsett  
Yachats City Attorney

Sent by USPS, Fax and email

s:\mike dowsett\c&k market - 09-10.doc