

## *Ruling 95-19*

Vermont Department of Taxes

Date: November 20, 1995

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a ruling whether food concession sales by [Taxpayer] at its performances are exempt from meals tax. You have also requested a refund of the meals tax paid for 1994 based upon [Taxpayer's] tax exempt status. This ruling is based on the facts contained in your letter dated June 21, 1995, our telephone conversation of August 1, 1995, and additional information provided by your letter of September 6, 1995.

Issue: Is [Taxpayer] a nonprofit, charitable organization exempt from meals tax under the provisions of 32 V.S.A. Section 9202(10)(D)(ii)(I)?

Facts: [Taxpayer's] predecessor, [Name], received 501(c)(3) designation from the Internal Revenue Service in 1974. A letter from the Internal Revenue Service dated February, 1990 to [Taxpayer] acknowledged receipt of information on changes to the organization and indicated the original exemption letter continues in effect. The original letter grants exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, but did not specify which exempt activity within that section applied. The corporate purpose of [Taxpayer], as stated in the claim for refund and request for ruling, is to conduct [type] performances and to promote study of, and interest in, the [type] as a performance art. The only activities conducted by [Taxpayer] are providing training to youngsters in [type] performance arts and production of [type] performances featuring the youngsters which is to advance the education of [type] performance art. All net proceeds from sales of meals are used exclusively for this purpose.

The [type] performances are held at [Taxpayer's] headquarters, at locations leased by [Taxpayer], and through sponsorships. The sample [Taxpayer]/sponsor agreement submitted with the request for ruling states the sponsor is responsible for providing the performance site, parking and toilet facilities, garbage receptacles and disposal, distribution of [type] promotional materials, electricity, box office, help to set up and take down tent, and help for site clean up. [Taxpayer] is paid a set fee for performing, receives rights to sell novelties such as T-shirts, buttons, balloons, etc., and exclusive food concession rights. If exclusive food concession rights are denied to [Taxpayer], the sponsor is charged an additional \$500 per day.

Ruling: The meals sold by [Taxpayer] at all their performance sites are exempt from meals tax. The request for refund of meals taxes paid in 1994 is approved.

32 V.S.A. Section 9202(10)(D)(ii)(I) exempts from tax meals served by non profits under the following conditions: "(D) 'Taxable meal' shall not include:...(ii) food or beverage...(I) served or furnished on the premises of a nonprofit corporation or association organized and operated exclusively for religious or charitable purposes, in furtherance of any of the purposes for which it was organized; with the net proceeds of said food or beverage to be used exclusively for the purposes of the corporation or association."

The statute is explicit as to the type of organizational purposes to receive the meals tax exemption. IRC Section 501(c)(3) defines nine qualifying activities<sup>1</sup>, but the Vermont statute exempts only the religious or charitable activities. The exemption for schools is provided separately under 32 V.S.A. 9202(10)(D)(ii)(II) with "school" defined at 32 V.S.A. 9202(9). Absent a definition of "charitable" within the meals and rooms tax statute, the following definition contained in the Internal Revenue Service Regulation 1.501(c)(3)-1(d)(2) shall control: "(2) Charitable defined. The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity as developed by judicial decisions. Such terms include: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science (emphasis added);...."

[Taxpayer] is organized to advance the education in [type] performance art. Using the Internal Revenue Service regulation definition, [Taxpayer's] activity qualifies as "charitable" and receives exemption from collecting Vermont meals tax on sales from their food concessions located on their premises. The food concessions located at [Taxpayer's] headquarters and locations leased directly by [Taxpayer] are located "on their premises." Sites provided by a sponsor shall be considered on [Taxpayer] premises if there is clear language in the contract that [Taxpayer] in turn subleases the location and the location is controlled by [Taxpayer].

I note you also sell novelties such as T-shirts, buttons, balloons, etc. at the performances. These items may be exempt from sales tax. Sales by non profits are exempt under 32 V.S.A. Section 9743(3)(C), effective July 1, 1995, if your sales of all tangible personal property did not exceed \$5,000 in the previous year. For example, if 1994 sales did not exceed this amount, the 1995 sales are exempt. You will need to determine your eligibility for the sales tax exemption each year.

This ruling is issued solely to your corporation and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

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<sup>1</sup> IRC 501(c)(3) "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals..."