VERMONT DEPARTMENT OF TAXES

MEALS AND ROOMS TAX REGULATIONS

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Meals and Rooms Tax Regulations – Table of Contents

MEALS AND ROOMS TAX REGULATIONS
Effective Date: 03/01/2010

REG. SEC. 1.9202 STATUTORY PROVISIONS; DEFINITIONS.

Reg. § 1.9202(3)-1 "Hotel" Defined

Vermont law broadly defines a hotel as "an establishment which holds itself out to the public by offering sleeping accommodations for a consideration, whether or not the major portion of its operating receipts is derived therefrom and whether or not the sleeping accommodations are offered to the public by the owner or proprietor or lessee, sublessee, mortgagee, licensee, or any other person or the agent of any of the foregoing." 32 V.S.A § 9202(3). Hotel accommodations are subject to the tax.

Reg. § 1.9202(3)-2 Examples

The following lists are non-exclusive:

A. Hotel accommodations subject to the tax:

1. Sleeping accommodations offered to the public for a consideration on premises operated by a private person, entity, institution or organization, when the rental of such accommodations totals fifteen (15) or more days in any one year. Note that the hotel may offer its accommodations to a smaller consumer market than the entire population. For example, a bunk house operated by a ski club is a hotel and rentals of sleeping accommodations, by both members and non-members, are taxable.

2. Rentals of sleeping accommodations provided by or to an entity organized pursuant to Section 501(c)(3) of the Internal Revenue Code on premises other than premises owned and operated by the 501(c)(3) entity and used exclusively in furtherance of an exempt purpose. 32 V.S.A. § 9202(3)(C). For example, members of a charitable organization that sponsors a conference at a public hotel and convention center must pay the rooms tax on their rentals of accommodations and meeting rooms, even if the conference is in furtherance of the organization's charitable purposes.

3. Rentals of sleeping accommodations in a campground that offers such accommodations to the public for a consideration. The term "sleeping accommodations" includes cabins, tents or other structures that may be used by occupants for sleeping purposes. It does not include bare land or land and recreational vehicle hookup.

4. Sleeping accommodations offered to the public for a consideration by owners or operators of real property, including private residential dwellings, where the occupants are not permanent residents and the property is rented for fifteen (15)

days or more in a calendar year. For example, the rental of a residential dwelling, though typically occupied by its owners, is subject to the tax when the dwelling is rented to occupants for a total of fifteen (15) days or more during a year, and the occupant does not qualify as a permanent resident. *See* 32 V.S.A. § 9202(7) (definition of permanent resident); Reg. § 1.9202(7).

B. Accommodations not subject to the tax:

1. Rentals of sleeping accommodations for a total of less than fifteen (15) days in any one year. For example, if the owners of a seasonal lakeside cabin rent the property to occupants for two weeks annually, no tax is due because the occupancy is not for fifteen (15) or more days of the year.

2. Rentals of sleeping accommodations provided by an entity organized pursuant to Section 501(c)(3) of the Internal Revenue Code on premises owned and operated by the 501(c)(3) entity and used exclusively in furtherance of an exempt purpose. *See* 32 V.S.A. § 9202(3)(C).

3. Rentals of a plot or parcel of land in a campground on which a customer may park a recreational vehicle or pitch a tent, unless the recreational vehicle or tent is provided by the operator. Note, however, that the use of campgrounds that provide recreational facilities is subject to the sales tax. *See* 32 V.S.A. § 9771(4); Reg. §1.9771(4).

4. Rentals of sleeping accommodations to permanent residents. *See* 32 V.S.A. § 9202(7); Reg. § 1.9202(7). For example, if a hotel operator or an owner of residential property rents sleeping accommodations under the terms of a lease to an occupant for one calendar month, the occupant is a permanent resident and the occupancy is not taxable.

Reg. § 1.9202(3)-3 Operators of Multiple Rental Units

If an owner or operator reporting tax as a single reporting entity rents more than one room, rental property or rental unit concurrently, each individual rental of a room, property or unit is counted collectively when determining the number of days that the properties are occupied. It is immaterial that the operator may hold separate licenses for separate rental locations.

Examples:

1. An operator rents two separate rooms to two different individuals, each for the same two-week period. The operator does not rent any rooms for the remainder of the year. All occupancies are subject to the tax because the operator rented the accommodations, collectively, for fifteen (15) days or more in a year. (Two rooms at fourteen (14) days each equals twenty-eight (28) rental days.)

2. An operator manages two rental locations under a single meals and rooms tax account, and each location is separately licensed. One of the locations is rented for two weeks of the year. The other is rented for one week of the year. Tax is due on each rental because the cumulative number of rentals for the reporting entity is fifteen (15) or more days. (One room for fourteen (14) days plus one room for seven (7) days equals twenty-one (21) rental days.)

Reg. § 1.9202(5)-1 "Occupant" Defined

A. The term "occupant" includes any person who, for a consideration, uses, possesses, or has a right to use or possess any room in a hotel, whether or not the room contains sleeping accommodations or is to be used for that purpose.

   Example: A salesperson who rents a room to display samples in a hotel is an occupant.

B. An occupant may be a business entity.

   Example: A corporation rents a room or rooms, on a continual basis, in a hotel for use by its employees as the need arises. The occupant is the corporation, and it is immaterial that different employees may use the rooms.

Reg. § 1.9202(6)-1 "Occupancy" Defined

A. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of a room or rooms.

B. "Occupancy" does not include the use or possession, or the right to the use or possession, of any room or rooms in a "hotel" when occupied by

   1. a permanent resident, as defined in Reg. §1.9202(7)-1;

   2. an employee when the occupancy is granted by an operator as all or part of the employee's remuneration for employment; or

   3. children when enrolled in a summer camp for children. The term "summer camp for children" does not include family vacation camps, resorts, or any programs that are designed for families or adults, rather than specifically for children.

Reg. § 1.9202(7)-1 "Permanent Resident" Defined

The term "permanent resident" includes:

A. Occupants for at least thirty (30) consecutive days. A person who occupies any room in a hotel for at least thirty (30) consecutive days becomes a permanent resident effective as of the thirty-first day and will continue to be considered a permanent resident thereafter as long as occupancy remains continuous and uninterrupted. Any discontinuance or interruption in occupancy results in the creation of a new and separate rental. A change of rooms in the same hotel will not be considered a discontinuance or interruption of occupancy. Transfer from one hotel to another operated under a different meals and rooms license, however, begins a new period of occupancy even when the hotels are owned by the same person or entity. Since qualification as a permanent resident under this subsection is not effective until the person has occupied a room or rooms in a hotel for thirty (30) consecutive days, rent for the first thirty (30) days of occupancy remains subject to meals and rooms tax.

B. Tenants under leases covering at least thirty (30) days. A person who has a right to occupy a room pursuant to a pre-existing lease for at least thirty (30) consecutive days, or one calendar month, whichever is less, is considered a permanent resident for the entire period of occupancy pursuant to the lease. Accordingly, no meals and rooms tax is payable with respect to any rent paid or received under the lease. If the lease is broken and actual occupancy is for less than thirty (30) days, or in the case of the month of February, less than the calendar month, such person will not be considered a permanent resident for any portion of the occupancy.

   For purposes of this regulation, a lease is an oral or written agreement that creates a landlord-tenant relationship between the parties. A lease must contain the essential terms of the agreement, and transfers the right of exclusive possession to the tenant. A lease is distinguishable from a license or contract to occupy in which a hotel owner or operator retains rights of possession and care of the premises, and may revoke the occupancy at his or her pleasure.

   The tax applies solely to occupancies by transient occupants or lodgers and does not apply when a lease creates a landlord-tenant relationship. Accordingly, occupancies by persons considered tenants under the provisions of the Vermont Residential Rental Agreements Act (RRAA), 9 V.S.A. § 4451 *et seq*., are not subject to the tax. Conversely, agreements containing provisions inconsistent with the RRAA are not leases for meals and rooms tax purposes.

Reg. § 1.9202(8)-1 Rent - Itemization of Charges

The charges for services, such as laundry service, and for facilities, such as the use of a swimming pool or exercise room, that are optionally available to hotel occupants at an extra charge do not constitute rent provided the charges are separately stated and itemized on the customer's bill or invoice. If the charges for any services or the use of facilities are not itemized, or the services or facilities are available without any charge in addition to that normally made for the room, the total amount charged is considered rent and is subject to meals and rooms tax.

Additional charges for items that are intrinsic to the occupancy are considered rent and are subject to the tax, even if such items are separately stated on the bill. Examples of such charges include, but are not limited to, charges for a lake or mountain view room, local telephone usage charges, the use of an extra bed or crib, the use of a safe, pet charges, and hotel or inn closure fees entitling occupants to exclusive use of the property.

Itemized charges for the optional use of facilities, such as a pool or fitness center, or for access to items such as rental movies or cable television, may be subject to sales tax under 32 V.S.A. § 9771(4).

Reg. § 1.9202(8)-2 Rent - Tips

A. The term “rent” does not include tips. "Tip" means either

1. a sum of money gratuitously and voluntarily left by a customer for service, or
2. a charge for service that is indicated by the seller on the bill, invoice or charge statement that

a) does not exceed twenty percent (20%) of the total room charges. Charges in excess of twenty percent must be reported as taxable rent, even if fully distributed to service employees; and

b) is separately accounted for and fully distributed to service employees, in addition and supplemental to normal salary and wages, which must meet or exceed state and federal minimum wage requirements. The charge for service may not be used to make up for wages.

i. If any portion of the service charge is retained by the operator, rather than by service employees, the portion retained constitutes rent and is thus subject to the tax.

ii. For meals and rooms tax purposes, business owners and operators are not service employees, even when they perform functions typically performed by service employees.

B. Examples

1. A hotel occupant voluntarily leaves a 25% tip in his hotel room for housekeeping staff at the end of the occupancy. The gratuity is shared by the hotel’s two housekeepers, neither of whom are owners or operators of the hotel. The tip, left voluntarily and gratuitously by the occupant, is not part of the taxable room charge.

2. A hotel adds a 22% service charge to a customer’s bill for rent of a block of rooms for use by a wedding party. The gratuity is fully distributed to the housekeeping staff, none of whom own or operate the hotel. Because the service

charge is not gratuitous, the 2% in excess of the allowable 20% tip is part of the taxable room charge.

3. Same as 2, above, but the service charge is split equally between the housekeeping staff and the hotel operator. Because the service charge is not fully distributed to the service employees, the amount retained by the hotel operator (11%) is part of the room charge and is subject to the tax.

Reg. §1.9202(8)-3 Rent - Package Plans

A. Itemization of charges

Where charges for lodging, meals, rental of equipment, use of facilities, or lessons are purchased under a package plan rather than on an item-by-item basis, only the meals and lodging portion of the charge for the package plan is subject to meals and rooms tax if the charges are separately stated on the customer's bill or invoice. Separately stated charges for the rental of equipment and use of facilities are subject to sales tax. Separately stated charges for lessons or other services (except expressly taxable services, such as telecommunications service) are not taxable.

B. Allocation of charges

A taxpayer may elect to allocate the charge for the package plan among its various components, but such allocation must be easily ascertainable from the financial records of the taxpayer and must be based on reasonable formulae. The Department shall accept an allocation of the charges if the portion allocated to sales subject to the sales and use tax and to nontaxable services equals or is less than the charges that would be incurred for those sales and services if purchased separately from the package plan for the same period. Where the charges allocated for sales subject to sales and use tax and nontaxable services are greater than the separate charges for such items for a comparable time period, the burden will be on the taxpayer to demonstrate that the allocation is reasonable.

C. Advertising

Advertising that indicates the sales price for package plans is not required to separately state the charges for each component of the plan, but shall state that the price includes, or is subject to, Vermont meals and rooms tax. *See* Reg. § 1.9242-2. If any portion of the package plan is subject to Vermont sales tax, the advertising shall similarly state that the price includes, or is subject to, the sales tax.

Reg. §1.9202(8)-4 Rent – Forfeited Deposits on Rooms

A deposit or any portion of a deposit paid by a customer to reserve the right to occupy a hotel room is subject to the meals and rooms tax when forfeited by the customer and retained by the operator. When reporting the retained deposit, the operator may allocate

the total amount retained between rooms receipts and the tax. The retained deposit should be reported as taxable rent in the tax period in which it is ascertainable by the operator.

Reg. § 1.9202(9)-1 School – Fraternities and Sororities

The term "school" includes fraternities and sororities which are associated with a college or university.

Reg. § 1.9202(10)-1 "Taxable Meal" Defined

Generally, taxable meals are food or beverage offered for a charge, to be consumed on or off premises, available for immediate consumption. With minimal exception, food or beverage furnished by restaurants, as defined in 32 V.S.A. § 9202(15), is subject to the meals and rooms tax. Only certain food or beverage typically sold for immediate consumption – such as heated food or beverage – is subject to the tax when furnished by an establishment that does not qualify as a restaurant. For example, items considered grocery items are not taxable meals.

More specifically, food or beverage, as defined by 32 V.S.A. § 9202(12), is taxable as follows:

A. When furnished by a restaurant:

1. The charge for all food or beverage, when furnished in Vermont by a restaurant, *see* 32 V.S.A. § 9202(15), with the exception of those items listed in subsection D of this regulation, is taxable.
2. When the charge includes a minimum charge, or an admission charge that may otherwise be subject to the sales tax, *see* 32 V.S.A. § 9771(4), those charges are also subject to the meals tax unless separately stated on the receipt or invoice, and separately reported to the Department. If the operator allocates the charges between the taxable meals and the taxable sales, such allocation must be reasonable and supported by the operator's books, receipts, invoices, or other documentation.

B. When furnished by other than a restaurant:

1. Prepackaged food or beverage, as defined in 32 V.S.A. § 9202(14), does not constitute a taxable meal and is not subject to tax.
2. Fruits, vegetables, candy, flour, nuts, coffee beans and similar unprepared grocery items sold self-serve for take-out from bulk containers are not subject to tax.
3. Nonprepackaged food or beverage (for example, single-serving bakery items sold in quantities of less than three, or self-serve fountain drinks) is taxable.

C. Items taxable regardless of where sold and whether or not prepackaged:

1. Sandwiches of any kind, except frozen,
2. food or beverage furnished from a salad bar,
3. heated food or beverage, as defined by 32 V.S.A. § 9202(13). Note that items such as single servings of tea, where the customer must combine the tea bag and hot water, constitute a heated beverage.

D. Grocery-type items furnished for take-out, other than those taxable under Reg. § 1.9202(10)-1 C., above, are nontaxable:
   1. whole pies or cakes, loaves of bread,
   2. single-serving bakery items sold in quantities of three or more,
   3. delicatessen and nonprepackaged candy sales by weight or measure, except party platters,
   4. whole uncooked pizzas,
   5. pint or larger closed containers of ice cream or frozen confection,
   6. eight ounce or larger containers of salad dressings or sauces,
   7. maple syrup, and
   8. quart or larger containers of cider or milk.

Additionally, pursuant to 32 V.S.A. § 9202(10)(D)(ii), food or beverage otherwise taxable may not be subject to the tax because of where, by, or to whom it is served. For example, food furnished on school premises, or on trains, buses or airplanes, and food or beverage served at state and federal correctional facilities to inmates and employees is not subject to the tax. (*See* 32 V.S.A. § 9202(10)(D)(ii) for full list of these exemptions). Note that the exemptions are strictly construed; accordingly, charges for items such as pizzas delivered to a student dormitory, catering of a private event on a college campus, or restaurant lunches delivered to employees of a correctional facility are not exempt from the tax.

Exemptions under the sales and use tax (chapter 233 of title 32) do not apply to meals and rooms tax. There is no exemption, for example, for meals purchased by organizations qualifying under section 501(c)(3) of the Internal Revenue Code. Meals purchased by the Federal Government, and the State of Vermont and its instrumentalities, however, are exempt.

Reg. § 1.9202(10)-2 Meals - Tips

A. The term “taxable meal” does not include tips. "Tip" means either

   1. a sum of money gratuitously and voluntarily left by a customer for service, or
   2. a charge for service that is indicated by the seller on the bill, invoice or charge statement that
      a. does not exceed twenty percent (20%) of the total meals charges. Charges in excess of twenty percent must be reported as taxable meals, even if fully distributed to service employees; and

b. is separately accounted for and fully distributed to service employees, in addition and supplemental to normal salary and wages, which must meet or exceed state and federal minimum wage requirements. The charge for service may not be used to make up for wages.
   i. If any portion of the service charge is retained by the operator, rather than by service employees, the portion retained constitutes taxable meals and is subject to the tax.
   ii. For meals and rooms tax purposes, business owners and operators are not service employees, even when they perform functions typically performed by service employees.

B. Examples:

1. A customer voluntarily leaves a 25% tip on a taxable meal charge. The tip is retained by the waitperson. Because the tip has been left gratuitously by the customer, it is not subject to the tax.

2. A restaurant operator helps her employees by waiting on a few tables when the restaurant is busy. If a non-gratuitous service charge is added to a customer's bill, any portion of such charge retained by the operator is subject to the tax. In contrast, gratuitous tips left for the operator are not taxable, even if they exceed 20% of the taxable meal charge.

3. A restaurant adds a standard 22% service charge to all taxable meal charges for parties of eight or more. Even if the full amount is distributed to service employees, 2% of the service charge is subject to tax because the service charge is not left voluntarily by the customer, and exceeds 20%.

4. Same as 3, above, but the restaurant operator retains one-half of the 22% service charge, and distributes one-half to service employees. The operator must report and pay tax on 11% of the service charge, which is the amount retained and not distributed to service employees.

Reg. § 1.9202(15)-1 "Restaurant" Defined

A. A restaurant is "[a]n establishment from which food or beverage of the type for immediate consumption is sold or for which a charge is made." 32 V.S.A. § 9202(15)(A). The term includes eating establishments whether stationary or mobile, temporary or permanent.

B. In addition, any establishment with 80 percent or more of its gross receipts from taxable alcoholic beverage, food or beverage is a "restaurant" under Vermont law. 32 V.S.A. § 9202(15)(B). The 80 percent requirement will be met where the establishment's sales in the previous taxable year meet, or in the first taxable year are reasonably projected to meet, the 80 percent threshold.

Reg. § 1.9202(15)-2 Restaurants – Eighty Percent Rule

The term "restaurant" is broadly defined and includes, but is not limited to, cafes, cafeterias, dining rooms, diners, lunch counters, snack bars, private or social clubs, bars, taverns, street vendors, and caterers. These facilities are restaurants regardless of the 80 percent rule. In addition, establishments with 80 percent or more of their total gross receipts from the sale of alcoholic beverages, food or beverage, as set forth in Sections 9202(10)(B) and 9202(10)(C) of Title 32 and not exempted under 32 V.S.A. §9202(1)(D), are restaurants. 32 V.S.A. § 9202(15)(B).

As a result of the 80 percent rule, less traditional venues, such as all or portions of grocery or convenience stores that serve taxable food or beverage, may be restaurants for meals and rooms tax purposes.

Examples:

A. When more than one food or beverage selling activity occurs at the same location, all food and beverage sales activity will generally be considered in determining if the establishment meets the 80 percent requirement. For example, if a single operator sells both groceries and taxable meals and there is no physical separation of the two operations, sales relating to the grocery store operations will be considered in determining whether the establishment meets the 80 percent requirement. If it meets the 80 percent requirement, certain items that may not otherwise be subject to the tax, such as bottled beverages (other than quart or larger containers of cider or milk, *see* 32 V.S.A. § 9202(D)(i)) are taxable.

B. When more than one food or beverage selling activity occurs at the same location but there is a physical separation of the two operations so that customers of one may not pass freely into the other, each operation will be considered separately to determine if it meets the 80 percent requirement. For example, if an establishment maintains separate rooms and separate entrances for the respective purchases of groceries and taxable meals, each operation will be considered separately, even if a common kitchen is used. If the area selling taxable food and beverage, standing alone, meets the 80 percent requirement, items that may not otherwise be subject to the tax, such as bottled beverages (other than quart or larger containers of cider or milk, *see* 32 V.S.A. § 9202(D)(i)) are taxable when purchased in that area, but not when purchased from the grocery operations (assuming that such area does not meet the 80 percent requirement).

C. Use of a separate cash register, standing alone, does not constitute a physical separation as discussed in paragraphs A and B, above.

D. In those instances where separate and distinct operators occupy the same location and collect and report taxable sales on a separate basis, their operations will be considered separately for the purpose of the 80 percent requirement.

E. A snack bar does not constitute a restaurant when located on the premises of a retail grocery or convenience store. 32 V.S.A. § 9202(15)(C); *see also* 32 V.S.A. § 9202(17) (definition of "snack bar").

F. A vending machine is not a restaurant, but food or beverage that is sold from a vending machine is considered sold by a restaurant if the vending machine is located on the restaurant's premises. For example, if a restaurant sells food cafeteria-style and offers bottled or canned soft drinks to its customers from a vending machine, sales of the beverages are taxable, and the operator must report such sales to the Department and pay the appropriate tax. In contrast, sales of bottled or canned drinks from a vending machine located in a grocery store are not subject to the tax.

G. Prepackaged items such as ice cream bars, chips and soft drinks sold by a street vendor are subject to the tax, even when the vendor sells 80 percent or more of the prepackaged items. The items are taxable because the street vendor operates a restaurant, *see* 32 V.S.A. § 9202(15)(A) (definition of "restaurant"), and "any food or beverage furnished within the state by a restaurant for which a charge is made" is subject to the tax. 32 V.S.A. § 9202 (10)(A). Note that there are exceptions to this general rule of taxability pursuant to 32 V.S.A. § 9202(10)(D).

Reg. § 1.9202(15)-3 Food and Beverage "for immediate consumption"

The phrase "for immediate consumption," as used in statute and regulation, means that the food or beverage offered for sale is

1. in a form that requires no further processing by the purchaser, not including minimal preparation such as toasting, or microwave heating of refrigerated foods where the store provides the heating units; and

2. in a size or portion that ordinarily may be immediately consumed by one person. Note, however, that restaurants may serve prepared food or beverage items that are specifically for more than one person. For example, appetizers may feed two or more individuals, but are sold for immediate consumption; an ice cream parlor may serve sundaes or other desserts prepared specifically for two or more persons.

Reg. § 1.9202(15)-4 Local Option Meals and Rooms Tax and City Charter Meals, Entertainment and Lodging Tax

A. Some Vermont municipalities impose a local option or city charter tax on taxable meals and alcoholic beverages, or on lodging furnished in the municipality, or on both. *See* 24 V.S.A. § 138. The tax is due on charges subject to the Vermont meals and rooms tax. It is administered and collected in one of two ways:

    1. In several Vermont jurisdictions, the tax is authorized by city charter, and is administered and collected by the municipality. Operators should contact the municipality for specific information concerning the imposition and collection of the tax.

2. For other municipalities that impose the local option tax pursuant to 24 V.S.A. § 138, the tax is administered and collected by the Department. Operators must collect the local option tax on receipts subject to the state tax if the meal or lodging was provided in a municipality with a local option tax. The tax collected for each municipality must be separately reported on the operator's return.

B. Operators collecting the meals and rooms tax in local option municipalities may state either the combined meals and rooms tax and local option tax as a single tax amount, or separately state the meals and rooms and the local option tax. If sales of taxable meals and alcoholic beverages and/or lodging are made on a tax-included basis, notice must be made to the customer that the price includes both state and local tax. An operator may not make sales on a tax-included basis for one tax and separately itemize the other.

C. Examples:

1. Meals served to patrons of a restaurant located in municipalities that impose the local option tax are subject to the tax.

2. A restaurant in a municipality that imposes the local option tax contracts to cater an event in a municipality that does not impose the tax. No local option tax applies, unless the customer picks up the taxable meals at the restaurant. If the caterer is in a municipality that does not impose the tax, but the meal is furnished in a municipality that does, the tax would apply.

3. A mobile vendor sells sandwiches, coffee, or other taxable meals at various locations during the day. Local option tax applies to any sales made in municipalities that impose the tax.

4. A pizza shop takes telephone orders at its store located in a municipality subject to the local option tax, and delivers taxable food to its customers. Only those orders delivered in municipalities where the tax is imposed are subject to the tax. Similarly, a pizza shop located in a municipality that does not impose the tax must collect the local option tax on deliveries in municipalities subject to the tax.

5. An inn in a local option municipality rents a room. The charge is subject to the local option tax.

6. A real estate agency located in a municipality that imposes the local option tax rents a cottage for one week (subject to the meals and rooms tax) to a customer. The rental is located in a municipality that does not impose the local option tax. The transaction is not subject to the tax. Conversely, if the

agency was in a municipality that does not impose the tax, but the rental is in a municipality that does, the local option tax applies.

REG. SEC. 1.9203 STATUTORY PROVISIONS; RECORDS, INSPECTION

Reg. § 1.9203-1 Records; General Requirements

Every person required to collect and remit to the commissioner any tax imposed by Chapter 225 of Title 32 shall maintain all records necessary for a determination of the correct tax liability. Such records must show the total and individual sales prices of taxable and nontaxable items.

Such records shall include, but are not necessarily limited to, the books of account ordinarily maintained by the average prudent business person engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, sales slips, or other documents of original entry supporting the entries in the books of account, and all schedules or working papers used in conjunction with the preparation of tax returns. *See also* Reg. § 1.9242-3.

Reg. § 1.9203-2 Inspection

On request by the commissioner or the commissioner's duly authorized agent or employee, all required records must be made available for inspection at all reasonable times. "All reasonable times" includes, at minimum, the regular business or office hours of the premises where sleeping accommodations are rented or taxable meals are sold. The commissioner or the commissioner's duly authorized agent or employee may enter in or upon such premises, at all reasonable times, to examine such records in order to determine whether the operator is complying with the meals and rooms tax laws.

If a taxpayer retains records required to be retained under this regulation in both electronic and hard-copy formats, the taxpayer shall make the records available to the commissioner in the form requested by the commissioner.

Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. The taxpayer is not relieved, however, of its obligation to provide electronic records when so requested by the commissioner.

Reg. § 1.9203-3 Electronic Records

A. Electronic records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the electronic records can be identified and made available to the commissioner upon request. A

taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

B. At the time of inspection, the retained records must be capable of being retrieved and converted to a standard record format.

C. Taxpayers are not required to construct electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

D. Electronic records must contain a level of record detail that is equivalent to that which is contained in an acceptable paper record. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commissioner to interpret the coded information.

E. Business Process Information

Upon the request of the commissioner, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;

2. the internal controls used to ensure accurate and reliable processing; and

3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

F. Access to Electronic Records

The manner in which the commissioner is provided access to electronic records as required in this regulation may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer:

1. The taxpayer may arrange to provide the commissioner with the hardware, software and personnel resources necessary to access the records.

2. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the records.

3. The taxpayer may convert the electronic records to a standard record format that is agreed to and specified by the commissioner.

4. The taxpayer and the commissioner may agree on other means of providing access to the records.

Reg. § 1.9203-3 Alternative Storage Media

A. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this regulation are met. The documents must exhibit a high degree of legibility and readability. Documents that may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

B. Upon request by the commissioner, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

Reg. § 1.9203-4 Records Retention – Time Period

Records required to be retained under this regulation shall be preserved for a period of three years in accordance with 32 V.S.A. § 9203. The time for retention shall begin to run from the date on which the taxpayer is required to file the return or the return is filed, whichever is later. A prudent taxpayer may choose to retain such records for a longer period of time. *See* 32 V.S.A. § 9273(b) (permits assessment of additional tax beyond the three-year period in certain instances).

REG. SEC. 1.9242 STATUTORY PROVISIONS; COLLECTION OF MEALS AND ROOMS TAX BY OPERATOR AND IMPOSITION OF GROSS RECEIPTS TAX.

Reg. § 1.9242-1 Collection of Meals and Rooms Tax by Operator

A. Each operator is required to give notice to each purchaser of taxable meals or alcohol and to each occupant of a hotel that it is charging meals and rooms tax, and shall give notice to each such purchaser or occupant of the amount of tax charged.

B. An operator shall not indicate in any manner that it is paying the tax due from a hotel occupant or from a purchaser of taxable meals or alcohol. The operator must demand and collect the tax from each purchaser or occupant and remit the tax to the commissioner.

Reg. § 1.9242-2 Required Notice of Tax Due

A. Any receipt, invoice, bill or statement of charges given to any hotel occupant or to any purchaser of taxable meals or alcohol must include a statement of the amount of tax charged.
B. If meals, rooms or alcohol are sold inclusive of the tax, the operator must give notice to the purchaser or occupant that the amount charged includes the applicable tax. The notice shall consist of one or more of the following:

    1. A sign or signs, viewable by all purchasers or occupants, stating that the price charged includes the applicable tax.

    2. A statement on the menu or price list stating that the price charged includes the applicable tax, provided that a copy of such menu or price list is presented to each purchaser or occupant.

    3. A statement on the receipt, invoice, bill or statement given to the purchaser or occupant that the price charged includes the applicable tax.

C. At the request of a purchaser or occupant, an operator shall provide the purchaser or occupant an itemized statement of the taxable charges for meals, alcohol or rent, and the amount of tax computed thereon.

D. An operator shall maintain books and records that clearly reflect the breakdown of charges for taxable meals, alcohol or occupancies and the amount of tax charged and collected on each transaction. *See* 32 V.S.A. § 9203; Reg. § 1.9203.

E. An operator that fails to abide by the foregoing provisions of this regulation shall be responsible to the commissioner for payment of meals and rooms tax that should have been collected from the purchaser or occupant on the entire amount charged to the customer for taxable meals, alcohol or occupancies.

Reg. § 1.9242-3 Computation of the Gross Receipts Meals and Rooms Tax Due From Operator

A. Each operator shall compute the meals and rooms tax due for each required reporting period based on the gross receipts from the sales of meals and alcohol and from the charges for occupancies for that period.

B. "Gross receipts" means the total amount of all charges for meals and alcohol and the total charges for rents during the reporting period. It does not include taxes collected by the operator.

C. Gross receipts, less the following exemptions (which are narrowly construed), equals taxable receipts:

1. Any amounts representing tax charged to the customer where the operator provided the customer appropriate notice of the tax being charged.

2. Any amounts charged for the sales of meals or alcohol or for hotel occupancies when such charges are specifically exempted from tax under the provisions of Chapter 225 of Title 32 of the Vermont Statutes Annotated.

3. Any amounts charged to a credit union pursuant to 8 V.S.A. § 2085.

4. Any amounts charged to a nonprofit medical service corporation pursuant to 8 V.S.A. § 4590.

5. Any such amounts charged to a nonprofit hospital corporation pursuant to 8 V.S.A. § 4518.

6. Any amounts charged directly to and paid directly by the State of Vermont or any of its agencies, instrumentalities, public authorities, public corporations, political subdivisions, cities, towns, school districts and Vermont state colleges including the University of Vermont. Amounts charged to and payable by an individual employed by one of these entities are not exempt, even if the entity reimburses the employee, and must be included in the gross receipts computation. Similarly, if payment is made using a credit card that bears the name of the governmental entity, the purchase is not exempt if the employee, rather than the entity, is responsible for paying the charged amount.

7. Any amounts charged directly to and paid directly by the federal government or any of its agencies or instrumentalities. Amounts charged to and payable by an individual employed by one of these entities are not exempt, even if the entity reimburses the employee, and must be included in the gross receipts computation. Similarly, if payment is made using a credit card that bears the name of the governmental entity, the purchase is not exempt if the employee, rather than the entity, is responsible for paying the charged amount.

8. Any amounts charged to individuals who present a Tax Exemption Card issued by the United States Department of State that identifies the individual as a diplomatic or consular official and specifically exempts that individual from the tax on meals and/or lodging.

9. Any amounts charged to individuals by a provider or operator that were subsequently refunded to those individuals, but only to the extent that the tax associated with the charge was also refunded.

D. To compute the tax due from the operator for the reporting period, gross receipts for taxable meals, for alcohol and for rooms shall each be multiplied by the applicable tax rate, and such amount remitted to the commissioner. If the amount of tax collected exceeds the amount computed, the operator may retain the difference, provided that the tax collected from each customer was computed in the manner set forth in 32 V.S.A. § 9241.

E. If sales are made on a tax-included basis, and receipts do not accompany each sale (for example, vending machine sales, alcoholic beverage sales at bars), vendors may calculate the tax and maintain records of tax based on the following formula:

Tax = Gross Receipts – (Gross Receipts / (1 + Tax Rate))

Note that all tax-included sales must be properly noticed to the public. *See* Reg. §1.9242-2 (Required Notice of Tax Due); Reg. §1.9202 (15)-4 (Local Option Meals and Rooms Tax and City Charter Meals, Entertainment and Lodging Tax).

REG. SEC. 1.9245 STATUTORY PROVISIONS; OVERPAYMENT; REFUNDS.

Reg. § 1.9245-1 Refunds

A. An operator holding a meals and rooms tax license may, upon written application to the commissioner, receive a refund of any tax, interest or penalty which

1. the operator remitted to the commissioner more than once, or

2. has been erroneously or illegally collected or computed.

B. Charges for meals furnished by restaurants, charges for prepared foods and heated foods, and charges for rooms in hotels are presumed taxable. Accordingly, an operator seeking refund of any tax bears the burden to prove that the tax was erroneously or illegally collected or computed. Additionally, the operator must affirmatively establish that any erroneously or illegally collected tax is or will be returned to the customer that paid the tax and therefore bore the tax burden. An operator making sales on a tax-included basis pursuant to Reg. § 1.9242-2 has collected tax from the customer.

C. If tax is incorrectly computed by an operator and remitted to the commissioner, and the operator, rather than the customer, paid the tax and thus bore the tax burden, the operator may show that it is entitled to a tax refund. For example, if the operator collected the tax at the applicable tax rate from its customers, but remitted the tax to the commissioner at a higher, incorrect tax rate, the difference between the collected and remitted amount shall be refunded to the operator, subject to the operator's written request supported by sufficient, affirmative proof that it is entitled to the refund.

D. Overpayments of tax shall first be credited against any outstanding tax liabilities for any of the taxes administered by the Department that are due from the operator, and the balance shall be refunded. Interest is computed on any refund beginning forty-five (45) days after the date the return was filed, or forty-five (45) days after the date the return was due, including any extensions of time thereto, with respect to which the excess payment was made, whichever is later. No credit or refund will be allowed after three (3) years from the date from which the return was due.

Reg. § 1.9245-2 Bad Debt

A. Where the operator is unable to collect accounts receivable in connection with which he or she has already remitted the tax to the commissioner, the operator may apply to the commissioner for a refund or credit. Bad debt shall be defined as in Section 166 the Internal Revenue Code. 26 U.S.C. § 166.

B. An operator claiming an amount is uncollectable must be able to demonstrate to the satisfaction of the commissioner that the amount of any receipt for which a refund or credit is being claimed is actually worthless and uncollectable. The fact that a check is returned or a credit card not honored will not be considered sufficient evidence, in and of itself, that a receipt is uncollectable.

C. An operator seeking recovery for bad debt shall deduct the debt on the return for the period during which the bad debt is written off as uncollectable in that operator's books and records and is eligible to be deducted for federal income tax purposes. If the operator is not required to file federal income tax returns, the operator may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the operator's books and records and would be eligible for a bad debt deduction for federal income tax purposes if required to file a federal income tax return.

D. If an operator takes a deduction for bad debt, and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

E. If the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, the operator may file a refund claim with the commissioner in accordance with 32 V.S.A. § 5884. The three-year limitations period shall be measured from the due date of the return on which the receipt was required to be reported.

F. For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the meals or rooms and the tax thereon, and secondly to interest and any other charges.

REG. SEC. 1.9271 STATUTORY PROVISIONS; LICENSES REQUIRED.

Reg. § 1.9271-1 Licenses Required

A. Every operator of a hotel or seller of taxable meals or alcoholic beverages must separately register with the Department and obtain separate licenses for each fixed location where a hotel is operated or where taxable meals or alcoholic beverages are sold. If an operator uses preset locations on a seasonal basis, each location is considered a fixed location and must be separately registered.

B. Operators of mobile facilities that sell taxable food directly to the public (for example, hot dog vendors or lunch wagons) must obtain one license per each mobile facility.

C. An operator that operates more than one vending machine at multiple locations is required to obtain only one license that will cover all of the vending machines. The operator of the vending machines shall provide the Department with a list of each machine's location. This provision applies only to machines that sell taxable meals (for example, hot food, sandwiches, and unpackaged drinks).

D. An operator must display its license to operate a hotel or to sell taxable meals or alcoholic beverages upon its premises in such a manner that it may be readily viewed by its customers.

E. Licenses are nonassignable and must be surrendered immediately to the commissioner if a business holding such license is sold or otherwise transferred, ceases doing business, or is ordered to cease operations by the commissioner or a court. Surrender of a meals and rooms license does not relieve the operator from liability for the tax.

F. Failure by an operator to register a hotel or restaurant with the Department, to obtain a meals and rooms license, or to surrender such license in the event the business is sold or otherwise transferred, ceases doing business, or is ordered to cease operations by the commissioner or a court, does not relieve the operator from liability for the tax.