Ruling 97-07

Vermont Department of Taxes

Date: September 8, 1997

Written By: George H. Phillips, Tax Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You have requested a ruling as to the applicability of the Vermont meals and rooms tax to sales of meals by a contemplated new affiliate [Company] This ruling is based on representations made in your letter of May 6, 1997.

FACTUAL BACKGROUND

[Company] contemplates forming a wholly owned subsidiary, [Company], to provide food service for patients. Patient trays would be prepared by [Company] using a cook/chill process.

Under the cook/chill process, food is cooked to a state of 95 percent completion, meals are assembled on special trays, and the trays are chilled to less than 40 degrees Fahrenheit. Cooked/chilled meals are then stored for up to 72 hours. The tray is similar to a cafeteria tray in that it is designed to hold dishes and bowls of various sizes for entrees, salad, soup, etc. The individual dishes are covered. However, the design of the tray also accommodates a special insulated divider to separate the cold food from the hot food. At mealtime the "hot" food is reheated in a specially designed "rethermalization unit" and served. The trays and dishes are then collected and returned to the kitchen. Because meals are prepared and held rather than prepared and served, food preparation and tray assembly for all three meals can occur in a regular 8-hour work day.

In addition to the efficiencies associated with the cook/chill process, [Company] believes it would achieve significant economies of scale if meals were prepared and sold to other institutions. However, in light of [Company] tax-exempt status, it would be necessary to conduct such activity through an affiliate organization. Toward that end, [Company] plans to form a new wholly owned entity [Company] for such purpose. Initially, [Company] would be the sole customer for cook/chill meals. [Company] is a [business] licensed under Chapter 43 of 18 V.S.A. In time, it is anticipated that [Company] would sell such meals to other Vermont institutions including schools, elder care facilities and other [businesses] licensed under Chapter 43 of 18 V.S.A. (collectively the "Other Institutions"). In nearly all cases [Company] and the Other Institutions would resell the meals purchased from [Company] However, in the case of [Company] the other hospitals and the elder care facilities, it is unlikely that the price charged for the meals

would be separately stated. Rather, the price of meals would be included in such organizations' per diem charge. In the case of a school, it is likely that the school would separately state the charge for meals sold.

All cook/chill meals would be prepared at [Company] food service facility for sale to [Company] and the Other Institutions. No other sales of meals are contemplated.

STATEMENT OF REQUESTED RULINGS

Company] requests a ruling that the sale by [Company] of cook/chill meals to [Company] and to Other Institutions would not be subject to the Vermont meals tax imposed pursuant to Section 9241(b) (the "Vermont Meals Tax").

ANALYSIS

The general rule is that [Company] sales of food trays would be a taxable meal if [Company] is a restaurant, 32 V.S.A. §9202(10)(A); if the food is not prepackaged, §9202(10)(B); or if it is a sandwich, salad bar sale, or sold heated, §9202(10)(C). Notwithstanding the general rule, a sale would not be a taxable meal if one of the eleven exclusions listed in §9202(10)(D)(ii) applies, or if it is bought for resale, Reg. 1.9202(10)-2. The relevant portions of §9202(10)(D)(ii) are as follows: "(ii) Food or beverage, including that described in subdivision (10)(C) of this section: (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; (II) served or furnished on the premises of a school as defined herein; (III) served or furnished on the premises of any institution of the state, political subdivision thereof or of the United States to inmates and employees of such institutions; (IV) prepared by the employees thereof and served in any hospital licensed under chapter 43 of Title 18, or sanitorium, convalescent home, nursing home or home for the aged;...(IX) provided to the elderly pursuant to the Older Americans Act, 42 U.S.C. chapter 35, subchapter VII;...(XI) served or furnished on the premises of a continuing care retirement community certified under chapter 151 of Title 8."

Unless an exclusion applies, the sales of meal trays are taxable because the meal trays fit the definition of "taxable meal". Some of the meals may be taxable as sandwiches. None are "prepackaged" because they are prepared to individual specifications by [Company] and packaged on its premises. The concept of prepackaging implies that the inventory is packaged, then offered for sale. In the case of [Company][Company] sales, the packaging is simply the covering of specific orders.

The sales to [Company] would not be taxable meals because [Company] is purchasing the meals for resale. The exemption for resale may also be available for sales to Other Institutions but the scenarios for these hypothetical sales lack the specificity necessary for a ruling as to whether the substance of each Institution's relationship with its client is

a resale. You are correct, however, that the fact the charge for a meal was included as part of a larger charge, rather than itemized, would not be determinative. Note, for example, Reg. 1.9202(8)-3 Definition of "Rent" - Package Plans, which contemplates that meals may be an unitemized component of a broader charge.

The subsequent sales by [Company] would not be taxable meals. These sales would be excluded by §9202(D)(ii)(IV). The requirement that the meals be prepared by the employees of [Company] would be met as long as its employees performed substantial preparation (in this case the heating), notwithstanding the fact that employees of [Company] performed more substantial preparation.

Even if the fact pattern indicated that an Other Institution was not reselling the meals, [Company] could still claim an exclusion if the meals were furnished on the premises of a school, provided to the elderly pursuant to the Older Americans Act or furnished on the premises of a continuing care retirement community, §§9202(10)(D)(ii)(II),(IX),(XI). These exemptions are available to anyone furnishing the meals, not just to the operators of the institutions. If the meals were furnished in a hospital or other facility listed in §9202(10)(D)(ii)(IV), [Company] could claim the exclusion only if the requirement of preparation by the institution's employees was met. As noted above, this requirement could be met by any substantial preparation by the Institution's employees, even though [Company] employees had done more substantial preparation.

This ruling is issued solely to your business 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.