

Vermont Department of Taxes
TECHNICAL BULLETIN

**TAX: SALES AND USE
MEALS AND ROOMS**

TB-27

ISSUED: July 21, 2003

**SUBJECT: COMPUTATION OF TAX IN NONMONETARY
(BARTER) TRANSACTIONS
32 V.S.A. SEC. 9241, 9771 AND 9773**

This bulletin clarifies the Vermont Sales and Use Tax (including the Sales Tax on charges for Amusements) and Meals and Rooms Tax procedures applicable to barter or trade transactions

IMPOSITION OF TAX AND DEFINITIONS¹:

32 V.S.A. § 9771 imposes a sales tax upon the receipts from: (1) The sale of tangible personal property sold at retail in the state and (4) Amusement charges.

32 V.S.A. § 9773 imposes a compensating use tax on any tangible personal property purchased at retail unless it has already been subject to sales tax.

32 V.S.A. § 9701 (4) defines “Receipt” as the amount of the sales price of any property and the charge for any amusement taxable under this chapter valued in money, whether received as money or otherwise.... excluding any allowance.... made for a trade-in of like-kind property

32 V.S.A. § 9701 (6) defines “Sale, selling or purchase” as any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor.

32 V.S.A. § 9701 (10) defines “Amusement charges” as the admission charge to... any place of recreation or amusement including athletic events and facilities,... performances, theaters, golf courses and ski areas...”.

32 V.S.A. § 9241 imposes a rooms tax on the rent for each occupancy and a meals tax on the total charge for the sale of each taxable meal.

32 V.S.A. § 9202 (6) defines “Occupancy” as the use or possession, or the right to use or possession, of any room or rooms in a “hotel” for any purpose, or the right to use or possession of the furnishings or to the services and accommodations accompanying the use and possession of a room or rooms.

32 V.S.A. § 9202 (8) defines “Rent” as the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever...

TAXABILITY:

The definitions in Sections 9701 and 9202 make clear that nonmonetary or barter transactions are taxable transactions under the Sales and Use and Meals and Rooms Taxes if the item or service given is a type of property, amusement, meal, or occupancy subject to tax. When there is a non-cash receipt, the taxable base (for any applicable tax) of each side of the transaction is the value in money of what was received. Physical presence at the event or location is not necessary for Sales tax to apply to a ticket or voucher for admission to a place of amusement nor for Rooms Tax to apply to the right to occupy a room. In both transactions, the incidence of tax is on the “right” to admission or to occupancy.

DETERMINING TAX:

Barter transactions should be recorded in an entity’s usual business records. The taxable base of each side of the transaction will be the value in money of what was received. Taxpayers will need to determine the fair market value of rooms, meals, services, goods, or amusements received in an exchange. Contracts or memorandums supported by broadcast times, rate schedules, product values, and/or computations in money could evidence this value.

If the value of the rooms, meals, goods, services or amusement received is difficult to determine the taxpayer may make a calculation based upon what has been surrendered if that value is more clearly evident. In an arms length transaction between knowledgeable unrelated parties it would be assumed the items exchanged would be equal in value.

If the taxpayer has not determined the value of the rooms, meals, services, goods or amusement received, or does not keep records in support of the value of the items received, the Tax Department may make a calculation based upon the receipt or exchange whichever is more clearly evident.

When trade occurs through a barter exchange or third party which awards dollars or exchange credits, the applicable tax should be calculated at the award date. At that time, the party trading knows the value they received.

EXAMPLES:

These are representative, not an all-inclusive list of trade or nonmonetary transactions. These exchanges may occur directly between the two parties or through a third party such as a barter exchange or a media broker.

1. A lodge exchanges meals and rooms with a retailer for a washer and dryer. The lodge’s tax base for the Meals and Rooms Tax is the fair market value in money of the

appliances received. The retailer's tax base for the Sales Tax is the value in money of the meals and rooms received.

2. The transaction is the same as above except that the retailer is located out of state and does not collect Vermont Sales Tax. The Lodge calculates Meals and Rooms Tax on the fair market value of the appliances received and is also liable for Vermont Use Tax when the appliances enter Vermont, as they have not been subject to Sales Tax.

3. An inn owner trades a week of lodging and meals to a carpet layer in exchange for installation of the inn's new carpet. The owner's tax base for the Meals and Rooms Tax is the value of the installation services. The installer's income tax base is the value of the lodging and meals. No Sales Tax is due as his installation is a service. If the installer were instead a contractor who provided the carpet and installed it, the inn owners tax base for Meals and Rooms tax would be the value of the carpet plus the installation. The contractors' income tax base would be the value of the lodging and meals. The barter transaction would not change the fact that the contractor would be liable for Sales/Use Tax as a consumer on the purchase of materials and supplies used in fulfilling the construction contract.

4. A restaurant trades "Dinner for Four" vouchers for radio advertising time. The restaurant's tax base for Meals Tax is the fair market value of the radio time received. Radio time is not subject to Sales Tax; the station does not owe Sales Tax. The station's income tax base would be the fair market value of the vouchers received.

5. Alternatively a ski area trades lift tickets for radio advertising time. The ski area's tax base for Sales Tax on the charge for an amusement is the fair market value of the radio time received. Radio time is not subject to Sales Tax; the station does not owe Sales Tax. The station's income tax base would be the fair market value of the tickets received.

6. If the ski area lift tickets were traded for advertising services, the ski area would owe Sales Tax on the charge for an amusement, valued as the fair market value of the advertising services received. Advertising services are not subject to Sales tax; the advertising agency trading the services does not owe Sales Tax.

7. The transaction is the same as above except that the tickets are traded for 50,000 trail maps. The maps are tangible personal property subject to Sales Tax. The Sales Tax base of the maps is the published value of the type of lift ticket received (weekday, holiday, etc). Published value means the face value (rack rate) of the tickets reflecting any restrictions on date of use.

8. A golf course exchanges vouchers for greens fees with a ski area for vouchers for lift tickets. Both parties will use the vouchers as customer/employee incentives. The golf course owes Sales Tax on the charge for amusement, valued by the ski tickets received and the ski area valued by the greens fees received. The value will depend upon the rate in effect for the time specified. It is immaterial how many customers/employees show up to play golf or ski. The amusement tax applies to the right to golf or ski.

9. Retailer A trades 100 cases of copier paper with a barter exchange for trade credits or dollars. Retailer B, a rental equipment/party center trades rentals with the barter exchange for trade credits or dollars. Eventually Retailer A and B exchange a quantity of copier paper for the rental of ladders, hand tools and a tent with an offsetting of credits at the barter exchange. These transactions are subject to Sales Tax (or Use Tax if either party does not collect Sales Tax). The offsetting credits were for the exchanges of different kinds of property. (Sales tax base excludes credits for trade-ins of like kind property.)

10. Retailer C trades fitness equipment to their building owner for the employee break room. In exchange the building owner provides janitorial service to C. C remits Sales Tax on the fitness equipment valued by the janitorial service received. Janitorial service is not subject to Sales Tax; the building owner will not owe Sales Tax.

SAFE HARBOR:

While the general rule requires taxpayers to value trade at the fair market value in money of what was received at the date traded, a taxpayer may choose to report under this safe harbor.

For redeemed tickets, occupied rooms, redeemed meal vouchers and transferred property, the Tax Department will accept reporting based upon what has been given in trade, valued at the rate in effect when used (transferred). For example, a ski area ticket used on President's Day may be valued at the holiday rate; a room occupied on a Wednesday in November, may be valued at the early season mid week rate; a washer and dryer or rental equipment may be valued at the date exchanged. All redemptions and transfers must be reported timely in accord with the taxpayers filing status (annual, quarterly, monthly). Unredeemed tickets, rooms not actually booked or vouchers not presented, may be valued at an average yield price with reporting due at the end of the season or expiration date, if later.

The computation of an average yield price should not include complimentary tickets or rooms for which there was no charge or no nonmonetary receipt. It has not been the Department's policy to treat complimentary tickets or rooms as taxable and this bulletin does not change that policy. All taxpayers may choose whether to value trade under the general rule of the fair market value in money of what was received or the Safe Harbor.

REMINDER:

All taxpayers should keep in mind the provisions of the Federal Income Tax Regulations at 1.61-1(a) which state "Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services." Gross Income is the starting point for the computation of Federal Taxable Income, which is in turn the computational starting point for Vermont Income Taxes. In all cases, each party must value the transaction and report the value as

income for income tax purposes, regardless of taxation under the Sales and Use Tax or Meals and Rooms Tax statute.

USE OF TECHNICAL BULLETINS:

A technical bulletin supplies general information to the public and does not replace the need for competent legal advice. This technical bulletin supercedes all prior department pronouncements on this subject.

2003 Act 68 amends Vermont Sales and Use tax statutes to bring them into conformity with requirements of the interstate Streamlined Sales Tax Agreement. Conforming legislation is ever passed any terms or definitions in this document which refer to or are based in whole or in part on statutory language changed by such legislation should be read as having been changed to agree with the new statutes as of the effective date of such legislation.

George Phillips
Policy Analyst

Ellen Tofferi
Acting Commissioner of Taxes

¹ 2003 Act 68 amends many of the sales tax definitions and imposition sections for conformity with the Interstate Streamlined Sales Tax Agreement. The changes will be effective upon Vermont's participation in the agreement, but not before January 2005. The amendments do not change the substance or the tax computation in the barter transactions.