

Tax Bulletins

Document Number: 16-68

Bulletin Number: VTB 16-3

Tax Type: Meals Tax

Brief Description: Meals and catering purchased by nonprofit organizations, churches and governmental entities

Topics: Nonprofits

Taxable Transactions

Date Issued:

05/02/2016

TAX BULLETIN 16-3
Virginia Department of Taxation
May 2, 2016

IMPORTANT INFORMATION REGARDING MEALS AND CATERING PURCHASED BY NONPROFIT ORGANIZATIONS, CHURCHES, AND GOVERNMENTAL ENTITIES

Effective April 22, 2016, the Department of Taxation (“the Department”) changed its policy regarding the application of the Retail Sales and Use Tax to catering and other services related to purchases of food and meals by nonprofit organizations, nonprofit churches, and state and local governmental entities. This Tax Bulletin is intended to provide guidance regarding this change in policy.

Generally

Effective for purchases made on and after April 22, 2016, state and local governmental entities, nonprofit organizations, and nonprofit churches may use their Retail Sales and Use Tax exemption certificates issued pursuant to *Va. Code* § 58.1-609.1(4), § 58.1-609.11, and § 58.1-609.10(16) to make exempt purchases of food and meals, as well as certain “taxable services” provided in connection with the provision of meals. The Department will no longer deny these organizations an exemption on purchases of catering and meals on the basis that the entity is purchasing a taxable service. Moreover, the Department will no longer deny the governmental or nonprofit exemption on the basis that the qualifying entity has purchased the meals and related services for consumption by individuals. Rather, the Department will now apply a new test to determine whether the purchases are made for the qualifying entity’s use or consumption.

CURRENT LAW AND POLICY_

Sales and Use Tax Exemptions for Nonprofits and Governmental Entities

Code of Virginia § 58.1-609.1(4) exempts from the Retail Sales and Use Tax tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This

exemption allows federal, state, and local governmental organizations, public schools, and other governmental entities to make exempt purchases of tangible personal property using the Government Exemption Certificate, Form ST-12.

Under *Va. Code* § 58.1-609.11, nonprofit organizations enjoy an exemption from the Retail Sales and Use Tax on tangible personal property purchased for the organization's use or consumption. In order to be eligible for the exemption, the nonprofit organization must meet the statutory requirements for exemption, file an application, and be issued a certificate of exemption by the Department.

As an alternative to satisfying the nonprofit exemption requirements, *Va. Code* § 58.1-609.10(16) allows qualifying nonprofit churches a limited exemption on purchases of eligible tangible personal property, using the self-issued exemption certificate, Form ST-13A. The exemption applies to tangible personal property used in religious worship services by a congregation meeting together in a single location and tangible personal property for use in rooms in the public church buildings used in carrying out the church's work. The exemption also applies to other specified tangible personal property, such as baptistries and bulletins.

Exemption Denied for Prepared Meals, Catering, and Certain Other Taxable Services

Generally, charges for services are exempt from the sales and use tax. Services provided in connection with exempt tangible personal property also are exempt from the tax. However, services provided in connection with the sale of taxable tangible personal property are deemed, "taxable services" and are subject to the sales and use tax. The Department has declared food and meals to constitute taxable tangible personal property; therefore, services provided in connection with the furnishing, preparing or serving of food or meals are deemed "taxable services" that are subject to the tax.

Because the sales and use tax exemption for nonprofit organizations, governmental entities, and churches using limited self-issued exemption certificates applies only to tangible personal property, and not to taxable services, generally, these entities are prohibited from using their sales and use tax exemption certificates to make exempt purchases of prepared meals, catering and similar taxable services. Under the Department's current policy, only those nonprofit organizations that fall within the same class of those entities exempt from paying tax on taxable services as of June 30, 2003, may make exempt purchases of taxable services. This exception is required under *Va. Code* § 58.1-609.11(A).

Exemption Generally Denied for Meals Consumed by Individuals

The statutes granting the governmental and nonprofit exemptions require that the property at issue be purchased for the eligible entity's use or consumption in order for the sales and use tax exemption to apply. The Department has

interpreted this requirement so as to deny the exemption for food, prepared meals and related taxable services purchased by state and local governments for consumption by individuals. Therefore, state and local governmental employees purchasing meals while traveling on governmental business are not entitled to the exemption on such purchases, regardless of whether the governmental entity pays for the meals directly or whether the employee will be reimbursed by the governmental entity. Similarly, state and local governments must pay sales and use tax on meals purchased for banquets, office parties, and other social events where the meals will be consumed by individuals. The Department has allowed the exemption for food and meals purchased by state and local governments for consumption by individuals only if the provision of the meals to individuals is an official function of the exempt entity. For example, the Department allows local government entities to purchase meals exempt of the tax for inmates housed in jail facilities. Similarly, state-owned hospitals may purchase meals for consumption by their patients exempt of the sales and use tax.

Purchases of meals by the federal government or its employees traveling on government business are exempt from the tax provided payment for the meals is made directly by the federal government pursuant to a required official purchase order to be paid out of public funds. If an employee pays for meals and lodging with personal funds, a personal credit card or a credit card provided by the government, the bill for which is sent directly to the employee and will be reimbursed by the government, no exemption is available.

CHANGE IN POLICY EFFECTIVE APRIL 22, 2016

Services Provided in Connection with Exempt Food Sales Are Exempt; Accommodations Remain Taxable

Effective for purchases made on and after April 22, 2016, nonprofit organizations, state and local governmental entities, and churches may use their respective nonprofit exemption certificate, governmental exemption certificate, Form ST-12, and self-issued exemption certificate, Form ST-13A to purchase prepared foods, catering and related services provided in connection with the sale of food exempt of the sales and use tax. The Department will no longer deny nonprofit organizations, state and local governmental entities, and churches an exemption on their purchases of meals, catering services, or other services provided in connection with the provision of food on the basis that the entity is purchasing a taxable service. Eligible nonprofit entities and state and local governments purchasing food, meals, and associated services for consumption by individuals must satisfy the Department's new use and consumption test explained below, in order for the exemption to apply.

Churches using a self-issued ST-13A exemption certificate and federal government entities are not required to satisfy the new use and consumption test in order to purchase meals, catering, and related services exempt of the tax. Churches using the limited exemption certificate must satisfy the

requirements set forth in *Va. Code* § 58.1-609.10(16) to qualify for exemption.

Federal governmental entities and employees traveling on government business remain exempt from the tax on their purchases of meals and catering, provided payment for the meals is made directly by the federal government pursuant to a required official purchase order to be paid out of public funds.

State and local governmental entities, nonprofit organizations, and churches using the limited, self-issued exemption certificate will continue to be liable for the Retail Sales and Use Tax on purchases of taxable accommodations furnished for fewer than 90 continuous days and other taxable services that are not furnished in connection with the provision of meals.

Use or Consumption Requirement for Governmental Entities and Nonprofits Purchased for Individual Consumption

Under the new policy, the Department will use a bright-line test to determine whether a state and local governmental entity or nonprofit organization's purchase of food or other tangible personal property, prepared meals, catering or related services satisfies the statutory "use or consumption" requirement when purchased for consumption by individuals. Under this test, nonprofit organizations and state and local governmental entities must demonstrate the following:

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- The provision of the applicable prepared meals, catering or services furthers a function, mission, service or purpose of the governmental or nonprofit entity; and
- The charge for the food, meals or catering is billed to and paid for by the entity claiming exemption from the tax with payment drawn from the entity's account, rather than using cash or an individual's account; and
- The entity claiming the exemption determines to whom, when and how the meals or food are served and consumed.

Examples

Example 1: A Virginia state agency holds an annual banquet to honor its employees and purchases catering services from a local restaurant. The lump sum catering charge on the invoice includes charges for the catered food, charges for servers, and charges to set up and break down tables. The state agency pays the invoice using a check drawn from the agency's official account. The employee banquet furthers the service of the agency, the catering charges are paid for by the agency, and the agency has determined how the meals will be distributed (namely, to its employees). As such, the state agency may use the governmental exemption certificate, Form ST-12 to purchase the catered meals and services exempt of the Retail Sales and Use Tax.

Example 2: On a monthly basis, Church A purchases prepared meals and catering from Restaurant A to serve the homeless in the church sanctuary. The church does not hold a nonprofit exemption certificate from the Department. Instead, the church uses the limited self-issued exemption certificate, Form ST-13A to purchase qualifying tangible personal property exempt of the sales and use tax. Because the sale of the prepared meals and catering services was treated as a taxable sale of a service, Restaurant A has never accepted the church's Form ST-13A for the prepared food and catering purchases. Beginning April 22, 2016, Church A may use its Form ST-13A exemption certificate to purchase the prepared food and catering for service to the homeless in the church sanctuary exempt of the Retail Sales and Use Tax.

Example 3: The volunteer coach for a nonprofit Little League team purchases pizzas for the team using his personal account. The Little League team has its own account, from which the volunteer will be reimbursed for the costs of the pizza at a later date. The charges for the pizza are subject to the tax.

Example 4: A local government employee traveling to an in-state conference purchases his meals using a local government-issued credit card. The credit card charges are billed directly to the local government employee, but the locality will reimburse the employee at a later date. Because the charge for the meals is not billed directly to the local government and the local government does not determine to whom, when and how the meal will be consumed, the local government employee will be subject to tax on the meal purchase.

Example 5: A nonprofit organization that holds a valid exemption certificate with the Department books a conference in a hotel. The nonprofit's conference package includes meeting rooms, audiovisual equipment, and catering services. The charges for each transaction are separately stated on the hotel invoice. Effective April 22, 2016, the nonprofit organization may use its nonprofit exemption certificate to purchase the catering services exempt of the sales and use tax. The audio visual equipment also may be purchased exempt of the tax. The meeting room charges remain subject to the sales and use tax, as the nonprofit exemption certificate may not be used to purchase taxable accommodations exempt of the tax. Note that if the meeting rooms and audiovisual equipment were lumped together as a single charge, sales tax would apply to the total charge.

To the extent that the nonprofit organization in this example imposes a cover or registration charge upon conference attendees, which charge incorporates the costs for meals, the nonprofit may be relieved from charging and collecting sales and use tax on the registration fee if the nonprofit holds similar events on fewer than 23 occasions per year and otherwise meets the occasional sale exemption requirements under *Va. Code* § 58.1-609.10(2). For more information on the nonprofit exemption for occasional sales, see Virginia Tax Bulletin 09-08.

New Policy Implementation

This new policy applies to purchases of prepared meals and catering, as well as any charges for labor in connection with the provision of prepared meals and catering, such as charges for serving services, charges for preparing or serving the food, setting up and breaking down the site, and cleaning. Nothing herein changes the policy relating to taxable services, other than to food.

The new policy will apply on a prospective basis. Nonprofit organizations, state and local governmental entities, and churches must apply the sales and use tax in the manner set forth under the Current Policy section of this Tax Bulletin for all purchases of prepared food, catering, and related services made prior to April 22, 2016.

Although the current nonprofit exemption certificate explicitly prohibits the use of the certificate to purchase taxable services exempt of the tax, at this time, the Department will not issue a new nonprofit exemption certificate to any nonprofit organizations that purchase qualifying prepared food, catering, and other related services. Instead, the Department will issue a notice letter that qualifying nonprofit organizations may present, along with their exemption certificates, when making purchases of prepared meals, food and catering. Updated exemption certificates will be issued when an organization renews its exemption certificate, or upon request by the organization.

As the Department's regulations concerning nonprofit organizations, set forth in 23VAC10-210-1070 *et seq.*, sales to governmental entities, set forth in 23VAC10-210-690, and churches, set forth in 23VAC10-210-310 do not reflect this change in policy, the Department plans to amend these regulations in the near future.

This Tax Bulletin is available on-line in the Laws, Rules, and Decisions section of the Department's website, located at www.tax.virginia.gov. If you have any questions regarding this Tax Bulletin, please contact the Department of Taxation Office of Customer Services at (804) 367-8037. For specific questions related to nonprofit organizations, please contact the Nonprofit Exemption Unit at (804) 4023.

Last Updated 05/13/2016 08:53