

# 1. Application of the Meals Tax when a meal delivery platform delivers meals to consumers

## Background

- A new industry of meal delivery platforms has emerged, and has arrived in Vermont, accelerated by the global pandemic, which has increased interest in delivered meals. These platforms are independent companies, not restaurants, and are usually web-based. They deliver meals ordered from local restaurants to consumers and either collect a specific fee or build their payment into the price of the meal.
- This proposal will make it clear that the entire charge for the meal is subject to meals tax, just as if the restaurant itself delivered the meal. Any fee or mark-up charged by the meal delivery platform will be subject to the same meals tax as if delivered directly by the restaurant.

## Proposed Language

32 V.S.A. § 9202(4) is amended to read:

(4) "Operator" means any person, or his or her agent, operating a hotel, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise; and any person, or his or her agent, charging for a taxable meal or alcoholic beverage; and any person, or his or her agent, engaged in both of the foregoing activities. The term "operator" shall include booking agents and taxable meal facilitators. In the event that an operator is a corporation or other entity, the term "operator" shall include any officer or agent of such corporation or other entity who, as an officer or agent of the corporation, is under a duty to pay the gross receipts tax to the Commissioner as required by this chapter.

\* \* \*

10) "Taxable meal" means:

(A) Any food or beverage furnished within the State by a restaurant for which a charge is made, including admission, delivery or other facilitator charge, and minimum charges, whether furnished for consumption on or off the premises.

(B) Where furnished by other than a restaurant, any nonprepackaged food or beverage furnished within the State and for which a charge is made, including admission, delivery or other facilitator charge, and minimum charges, whether furnished for consumption on or off the premises. 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 under this subdivision.

\* \* \*

(21) “taxable meal facilitators” means a person who facilitates the sale of, and collects the purchase price for, a taxable meal or alcoholic beverage, through an Internet transaction or any other means.

## **2. Clarification of alcoholic beverage tax**

### **Background**

- Clarify that the meals tax exemption for food or beverage served on the premises of certain school, nonprofit and government entities does not apply to alcoholic beverages; alcoholic beverages are taxed separately under the alcoholic beverage tax.
- The Department currently believes the law is clear that alcohol does not mirror the meals exemptions. However, we have seen older guidance that says it does, and we have a 1989 document that said we intended that alcohol mirror meals, and intended to seek legislative change to conform, presumably the italicized sentence, below, which was added in 1990. But we are having difficulty seeing how that accomplished the mirroring. So we are seeking clarification that alcohol is taxable when served for immediate consumption, even when the meals are exempt. Vendors have raised the question, in addition to the 1989 statement. See current law below:

32 V.S.A. § 9202(11) (italics added)

(11) “Alcoholic beverages” means any malt beverages, vinous beverages, spirits, or fortified wines as defined in 7 V.S.A. § 2 and served for immediate consumption.  
*“Alcoholic beverages” do not include any beverages served under the circumstances enumerated in subdivision (10)(D)(ii) of this section under which beverages are excepted from the definition of “taxable meal.”*

### **Proposed Language**

Sec. 1. 32 V.S.A. § 9202(10)(D) is amended to read:

(D) “Taxable meal” shall not include:

\* \* \*

(ii) Food or beverage, including that described in subdivision (10)(C) of this section, but not including alcoholic beverages:

(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 the 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 18 V.S.A. chapter 43;

(V) furnished by any person while transporting passengers for hire by train, bus, or airplane if furnished on any train, bus, or airplane;

(VI) furnished by any person while operating a summer camp for children, in such camp;

(VII) sold by nonprofit organizations at bazaars, fairs, picnics, church suppers, or similar events to the extent of four such events of a day's duration, held during any calendar year; provided, however, where sales are made at such events by an organization required to have a meals and rooms registration license or otherwise required to have a license because its selling events are in excess of the number permitted, the sale of such food or beverage shall constitute sales made in the regular course of business and are not exempted from the Vermont meals and rooms gross receipts tax;

(VIII) furnished to any employee of an operator as remuneration for his employment;

(IX) provided to the elderly pursuant to the Older Americans Act, 42 U.S.C. chapter 35, subchapter VII;

(X) purchased under the USDA Supplemental Nutrition Assistance Program (SNAP);

(XI) served or furnished on the premises of a continuing care retirement community certified under 8 V.S.A. chapter 151; or

(XII) prepared and served by the employees, volunteers, or contractors of any nursing home, residential care home, assisted living residence, home for the terminally ill, therapeutic community residence as defined pursuant to 33 V.S.A. chapter 71, or independent living facility; provided, however, that "contractor" under this subdivision excludes meals provided by a restaurant as defined by subdivision (15) of this section when those meals are not otherwise available generally to residents of the facility.

## Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

### **3. Allow claimants to amend certain fields on their Property Tax Credit claim**

#### **Background**

- The Property Tax Credit Claim and Household Income schedule function together to determine a claimant's eligibility and credit amount.
- Presently, claimants are allowed to amend their Household Income schedule for up to 3 years, but are not permitted to amend their Property Tax Credit claim if an error was made relating to their eligibility.
- This policy would allow claimants to amend housesite value, housesite education tax, housesite municipal tax, ownership percentage. Currently, the only recourse for correcting errors in these fields is to request Extraordinary Relief from the Commissioner through the Taxpayer Advocate.

#### **Proposed Language**

**32 V.S.A. § 6074 is amended to read:**

#### **§ 6074. Amendment of certain claims**

At any time within three years after the date for filing claims under subsection 6068(a) of this chapter, a claimant who filed a claim by October 15 may file to amend that claim with regard to housesite value, housesite education tax, housesite municipal tax, ownership percentage, or to correct the amount of household income reported on that claim.

### **4. Payment options accepted by the Department**

#### **Background**

- This change would update 32 VSA §5874 to include all payment types accepted by the Department. Repealing this law may serve the same purpose.
- This outdated law is from 1966 and does not account for newer payment language in 32 V.S.A. §3110 inserted in 1991. The proposal would conform to the current treatment, which is to accept payment by check or ACH, and to require certified checks in certain circumstances.

#### **Proposed Language**

Sec. X. 32 V.S.A. § 3110 is amended to read:

§ 3110. PAYMENTS ~~BY CREDIT CARD~~ ACCEPTED BY THE COMMISSIONER

Notwithstanding any other provision of law to the contrary, The the Commissioner may accept payment of taxes, license fees, penalties, interest, fees, or other charges by any means he or she deems necessary for the effective administration of taxes. When accepting payment by of bank credit cards, and the Commissioner may charge the taxpayer an additional amount which approximates the cost of providing the service and which is approved by the Secretary of Administration for each payment made by credit card. Notwithstanding section 502 of this title, the Commissioner may charge against such collections paid using a bank credit card a percentage of collections and any service fee imposed.

Sec. X. 32 V.S.A. § 5874 is amended to read:

§ 5874. METHOD OF PAYMENT

All tax liabilities imposed by this chapter may be paid according to section 3110 of this title. If a tax liability is allowed to be paid with uncertified check, unless the Commissioner otherwise prescribes, but if a check so received is not honored by the bank on which it is drawn, the taxpayer shall remain liable for the payment of the tax and for all lawful penalties and interest, in the same manner as if the check had not been tendered.

Sec. X. 32 V.S.A. § 9243 is amended to read:

§ 9243. RETURNS AND PAYMENT

(a) Where the meals and rooms tax liability under this chapter for the immediately preceding full calendar year has been (or would have been in cases when the business was not operating for the entire year) \$500.00 or less, the gross receipts taxes imposed by this chapter shall be due and payable in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending the last day of March, June, September, and December of each year. In all other cases, the gross receipts tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Pursuant to section 3110 of this title, The the Commissioner may authorize payment of the tax due by electronic funds transfer. The Commissioner may require payment by electronic funds transfer from any taxpayer who is required by federal tax law to pay any federal tax in that manner, or from any taxpayer who has submitted to the Department of Taxes two or more protested or otherwise uncollectible checks with regard to any State tax payment in the prior two years. Each operator shall make out and sign under the pains and penalties of perjury a return for each quarter or month. The return shall be filed with the Commissioner on a form prescribed by the Commissioner. The Commissioner shall distribute return forms to the operators, upon request, but no operator shall be excused from liability for failure to file a return or pay the tax because he or she has failed to receive a form. A remittance for the amount of taxes shall accompany each quarterly or monthly return. Returns shall be made on forms provided by the Commissioner. Payment of taxes by electronic funds transfer does not affect the requirement to file returns.

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Sec. X. 32 V.S.A. § 9776 is amended to read:

§ 9776. PAYMENT OF TAX

Every person required to file a return under this chapter shall, at the time of filing the return, pay to the Commissioner the taxes imposed by this chapter as well as all other monies collected under this chapter; provided, however, that every person who collects the tax from purchasers of taxable items according to the tax bracket schedule of section 9772 of this title shall be allowed to retain, as partial compensation for services rendered to the State of Vermont in collecting the tax, any amount lawfully collected in excess of the tax imposed by this chapter. Pursuant to section 3110 of this title, ~~The~~ the Commissioner may authorize payment by electronic funds transfer. The Commissioner may require payment by electronic funds transfer from any taxpayer who is required by federal tax law to pay any federal tax in that manner, or from any taxpayer who has submitted to the Department of Taxes two or more protested or otherwise uncollectible checks with regard to any State tax payment in the prior two years. All the taxes for the period for which a return is required to be filed or for such lesser interval as shall have been designated by the Commissioner, shall be due and payable to the Commissioner on the date limited for the filing of the return for that period, or on the date limited for such lesser interval as the Commissioner has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of receipts, amusement charges or the value of property or services sold or purchased or the taxes due thereon.