



BEER WORTH FINDING
**VERMONT BREWERS
ASSOCIATION**

May 6, 2021

Testimony on Section 2 of H.436 As Passed by the House

My name is Melissa Corbin and I am the Executive Director of the Vermont Brewers Association. With me today is Jessica Oski, from Necrason Group, the VBA's lobbyist.

We are here today to discuss **Section 2 of H.436 As Passed by the House**. We will provide an overview of the issue addressed in this bill and explain why we support these changes.

The Vermont Brewers Association is a nonprofit organization that was founded in 1995 to promote and strengthen the culture of craft brewing in Vermont through marketing, education and advocacy for Vermont made beer. We achieve our mission and support one of the largest economic drivers in the state by holding two annual fundraisers – The Vermont Brewers Festival at Killington in March and Burlington in July.

To the outside observer, these festivals might just appear as another listing on an event calendar. However, our festivals draw 10% more out of state patrons than the largest ticketed beer festival in the United States. With 47% of our attendees coming to Vermont specifically for the events that we produce, we contribute \$2.3M to our economy in one weekend. Over the course of the industry annually, that number jumps to \$367M worth of economic activity. Vermont is a leading state in the craft brewing industry and having complete clarity around the laws that govern our taxation is imperative.

The application of the meals and rooms tax to alcoholic beverages served by non-profits at fund raising events like ours has been a confusing area of the law for many years. Most non-profits do not believe the tax applies to their sales and do not, in fact, pay the tax.

If you have been to one of our festivals, you know that when you purchase a ticket, included in the price of your admission charge, is a branded tasting glass and a fixed number of beer samples.

In August of 2019, our accountant brought to our attention that we had been paying taxes on the alcohol portion of our admission sales and that those sales should have been exempt. Upon this discovery, we entered into a long and complicated dispute with the tax department that was only recently resolved.

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As part of that resolution, the department and the VBA agreed that the VBA is not required to remit any meals and rooms taxes with respect to the alcohol portion of our festival admission charges.

We are grateful that the tax department has proposed to clarify the statute going forward to settle any confusion for the VBA and other non-profit entities that hold similar fundraising events

Brief explanation of the proposed changes.

Section 2 of the bill, attempts to clarify the law, consistent with the resolution reached in the VBA's dispute with the tax department - that certain alcohol sales by non-profit organizations are not taxable.

Section 2 of the bill amends two definitions in the of meals and rooms tax statute. Like many statutes, the definitions in this statute, not only define terms, but really define the policy as well.

The two definitions that are amended in Section 2 are the definition of a "taxable meal" 32 VSA §2902(10) and the definition of "alcoholic beverages" 32 VSA §2902(11). They are amended to clarify that exempt meals and beverages, includes alcoholic beverages.

Specifically, the amendments in section 2 clarify that a taxable meal **shall not** include food or beverages, including alcoholic beverages, when they are:

- 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 sales revenue of the food or beverage or alcoholic beverages to be used exclusively for the purposes of the corporation or association; 32 VSA §2902 (10)(D)(ii)(I)

And, when they are:

- 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. If they have more than 4 events a year, such sales will not be exempt. 32 VSA §2902 (10)(D)(ii)(VII)

This proposal does not represent a change of policy or practice – as we said earlier the vast majority of nonprofits believe that these sales are already not taxable, and, in fact, have not been paying taxes on these sales. The tax department recently did an informal survey to confirm that this is indeed the understanding of the law in the field. Therefore, Section 2 of H.436 is a necessary *clarification* of a very confusing statute.

The exemption in Section 2 applies to alcoholic beverages that are served by non-profits, like the Vermont Brewers Association, as part of fundraisers or public-awareness events, such as festivals, farm-to-table dinners, tastings, charity fundraisers and other similar

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events. **These are usually events for which the cost of the alcoholic beverages is built into the ticket price for the event.**

This exemption does **not apply to** events that offer catered, for-profit beverage services, even if those events are hosted by a non-profit.

The VBA is pleased and relieved that the Tax Department has requested this clarification and we are happy to offer our support for Section 2 of H.436.

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32 V.S.A Chapter 225: Meals and Rooms Tax

32 VSA §9202 Definitions **as modified by Section 2 of H. 436**

§ 9202. Definitions

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) "Commissioner" means the Commissioner of Taxes appointed under section 3101 of this title, and his or her authorized representatives.

(2) "Person" means any individual, combination of individuals, firm, partnership, society, association, joint stock company, corporation, or any of the foregoing acting in a fiduciary or representative capacity, whether appointed by court or otherwise.

(3) "Hotel" means an establishment that 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. The term includes inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished-room houses, boarding houses, and private clubs, as well as any building or structure or part thereof to the extent to which any such building or structure or part thereof in fact is held out to the public by offering sleeping accommodations for a consideration. As used in this chapter, the term includes "short-term rental" as defined in 18 V.S.A. § 4301. The term shall not include the following:

(A) a hospital licensed under 18 V.S.A. chapter 43 or a 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;

(B) any establishment operated by any state or U.S. agency or institution, except the Department of Forests, Parks and Recreation of the State of Vermont;

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(C) an establishment operated by a nonprofit corporation or association organized and operated exclusively for religious, charitable, or educational purposes, one or more, which, in furtherance of any of the purposes for which it was organized, operates a hotel as defined herein;

(D) a continuing care retirement community certified under 8 V.S.A. chapter 151.

(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. 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.

(5) "Occupant" means a person who, for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license, or agreement. The term shall not include a permanent resident.

(6) "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. The term shall not include occupancy by a "permanent resident," or by an employee of an operator when such occupancy is granted to the employee as remuneration for his or her employment, or any occupancy furnished in a summer camp for children.

(7) "Permanent resident" means any occupant who has occupied any room or rooms in a "hotel" for at least 30 consecutive days.

(8) "Rent" means 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; and any monies received in payment for time-share rights at the time of purchase; provided, however, that such money received shall not be considered rent and thus not taxable if a deeded interest is granted to the purchaser for the time-share rights. The term "rent" shall include all amounts collected by booking agents except the tax required to be collected under this chapter. The term "rent" shall not include rental charges for living quarters, sleeping, or household accommodations to any student necessitated by attendance at a school as defined herein.

(9) "School" means an incorporated nonstock educational institution, including an institution empowered to confer educational, literary, or academic degrees, which has a regular faculty, curriculum, and organized body of pupils or students in attendance throughout the usual school year, which keeps and furnishes to students and others records required and accepted for entrance to a school of secondary, collegiate, or graduate rank, no part of the earnings of which inure to the benefit of any individual.

(10) "Taxable meal" means:

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

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(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 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.

(C) Regardless where sold and whether or not prepackaged:

- (i) sandwiches of any kind except frozen;
- (ii) food or beverage furnished from a salad bar;
- (iii) heated food or beverage;
- (iv) food or beverage sold through a vending machine.

(D) "Taxable meal" shall not include:

(i) Food or beverage, other than that taxable under subdivision (10)(C) of this section, that is a grocery-type item furnished for take-out: whole pies or cakes, loaves of bread; single-serving bakery items sold in quantities of three or more; delicatessen and nonprepackaged candy sales by weight or measure, except party platters; whole uncooked pizzas; pint or larger closed containers of ice cream or frozen confection; eight ounce or larger containers of salad dressings or sauces; maple syrup; quart or larger containers of cider or milk.

(ii) Food or beverage, including that described in subdivision (10)(C) of this section, **or 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 sales revenue** of the food or beverage **or alcoholic beverages** 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 **or alcoholic**

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beverages 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 III;

(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 **or alcoholic beverages** provided by a restaurant as defined by subdivision (15) of this section when those meals **or alcoholic beverages** are not otherwise available generally to residents of the facility.

(iii) Food or beverage purchased for resale, provided that at the time of sale the purchaser provides the seller an exemption certificate in a form approved by the Commissioner. However, when the food or beverage purchased for resale is subsequently resold, the subsequent purchase does not come within this exemption unless the subsequent purchase is also for resale and an exemption certificate is provided.

[Subdivision (10)(D)(iv) effective March 1, 2022.]

(iv) Cannabis or cannabis products as defined under 7 V.S.A. § 831.

(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 shall be exempt from the tax imposed under section 9241 of this chapter when served** under the circumstances enumerated in subdivision (10)(D)(ii) of this section under which **food or** beverages **or alcoholic beverages** are excepted from the definition of "taxable meal."

(12) "Food or beverage" means any substance used by humans for food, drink, confectionery or condiment, except alcoholic beverages.

(13) "Heated food or beverage" means any food or beverage prepared for sale in a heated condition by, for example, cooking, microwaving, or warming by infrared lights, steam tables, or other heating devices. Food is considered heated regardless of cooling to air temperature that incidentally occurs. Bakery products that are sold still warm from initial baking are not heated foods unless a heat source is applied to maintain them for sale in a heated condition.

(14) "Prepackaged" means packaged off the premises of the operator, whether packaged in single servings or larger quantities, and sold in the original unopened container; or packaged on the premises and sold in the unopened package provided the operator sells for resale at least 80 percent of all items packaged in the same type and size of packaging.

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(15) "Restaurant" means:

(A) An establishment from which food or beverage of the type for immediate consumption is sold or for which a charge is made, including a cafe, cafeteria, dining room, diner, lunch counter, snack bar, private or social club, bar, tavern, street vendor, or person engaged in the business of catering.

(B) An establishment 80 percent or more of whose total sales of food and beverage in the previous taxable year were, or in the first taxable year are reasonably projected to be, of alcoholic beverages, food, and beverage that are taxable under subdivision (10)(C) of this section, and food and beverage that are taxable under subdivision (10)(B) and are not exempt under subdivision (10)(D) of this section.

(C) "Restaurant" shall not include a snack bar on the premises of a retail grocery or "convenience" store.

(16) "Salad bar" means any counter, stand, table, or other display of salads and other foods at which the customer may handle, cook, cut, mix, or dispense in a nonpackaged state the food displayed.

(17) "Snack bar" means a counter with no seating at which prepared food is offered only for self-service.

(18) "Independent living facility" means a congregate living environment, however named, for profit or otherwise, that meets the definitions of housing complexes for older persons as enumerated in 9 V.S.A. § 4503(b) and (c), or housing programs designed to meet the needs of individuals with a disability as defined in 9 V.S.A. § 4501(2) and (3).

(19) "Vending machine" means a machine operated by coin, currency, credit card, slug, token, coupon, or similar device that dispenses food or beverages.

(20) "Booking agent" means a person who facilitates the rental of an occupancy and collects rent for an occupancy and who has the right, access, ability, or authority, through an Internet transaction or any other means, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate an occupancy that is subject to the tax under this chapter.

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