

Cite as 10 WTD 302 (1990)

**THIS DETERMINATION HAS BEEN OVERRULED OR MODIFIED IN WHOLE OR PART BY DET. NO. 05-0131, 25 WTD 116 (2006)**

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>F I N A L</u>
	)	<u>D E T E R M I N A T I O</u>
N		
For Refund of	)	
	)	No. 89-453A
	)	
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .
	)	

**[1] RULE 119 and RULE 244:** RETAIL SALES/USE TAX -- HOSPITALS -- MEALS FOR PATIENTS PURCHASED FROM CATERER. Where a hospital chooses to purchase prepared meals for its patients, the caterer is engaging in a retail activity and its sales of meals to the hospital are subject to retail sales tax.

**[2] RCW 82.08.0293, RCW 82.12.0293 AND RULE 244:** SALES/USE TAX -- NOT-FOR-PROFIT HOSPITAL -- MEALS FOR ELDERLY OR LOW-INCOME PATIENTS PURCHASED FROM CATERER. The sales/use tax exemption for meals served by not-for-profit hospital to elderly, disabled or low-income persons does not apply to meals purchased by the hospital from a third party when the meals are provided as part of the services rendered to such patients.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Taxpayer, a not-for-profit hospital, appeals a portion of Determination No. 89-453 to the Director and petitions for

refund of use/deferred sales tax on meals purchased for its patients from a third party.

FACTS:

Roys, Sr. A.L.J., Director's Designee<sup>1</sup> -- The facts in this appeal are discussed in Determination No. 89-453. However, we will clarify a few matters. The taxpayer is a not-for-profit hospital rather than a nursing home as referred to in the earlier determination. The taxpayer purchased prepared meals for its patients from a nursing home (. . .) without paying retail sales tax. The hospital staff then served the meals to the patients. The taxpayer claims in the appeal that approximately 70% if the hospital's patients were either elderly ([A]) or low-income ([B]) persons. The auditor assessed use tax and/or deferred sales tax on the meals purchased by the taxpayer from the nursing home.

TAXPAYER'S EXCEPTIONS:

The taxpayer contends that Det. No. 89-453 erred by characterizing the prepared food purchases as a catering activity. The taxpayer asserts the meals were not catered to the hospital by the nursing home. Instead, the hospital staff did the serving after receiving the meals from the nursing home, as noted.

In addition to arguing that all the food is exempt from sales/use tax, the taxpayer claims the provision in WAC 458-20-119 for sales tax on prepared foods was not all inclusive. It contends that the meals served to the [A] and [B] patients are exempt from the tax per WAC 458-20-244(5)(a)(vi) and RCW 82.08.0293(3)(b) [formerly WAC 458-20-244(3)(a)(ii) and RCW 82.08.0293(1)(a)(ii), respectively].

DISCUSSION:

[1] We agree with the reasoning of Det. No 89-453:

Taxpayer correctly notes that food purchased for human consumption is exempt from sales tax and was exempt during the audit period. However, no exemption exists for purchases of prepared meals, and this is the type of item against which the use

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<sup>1</sup>David M. De Luca, A.L.J. participated in rendering this Final Determination.

tax was assessed. The hospital chose not to prepare the meals against which the tax was assessed; when it does so, it gives up the option of purchasing sales-tax exempt food and preparing it on premises for service to patients. The hospital chose to use a third party preparer to provide meal service. The food purchased by the caterer is not subject to sales tax, but the selling of prepared meals to the hospital is a retail activity and sales tax applies to the full purchase price paid by the hospital. Because the hospital did not pay sales tax at the time of purchase, it was liable for use tax on the purchase price.

Both Det. No 89-453 and WAC 458-20-119 make it clear the meals provided by the hospital to the patients are not the transactions being taxed. Rule 119 states in part: "The serving of meals by hospitals ... to patients as a part of the service rendered ... is not subject to the retail sales tax." Instead, the tax is imposed on the sale of prepared meals from the nursing home to the hospital. RCW 82.08.0293(2), RCW 82.12.0293(2) and Rule 119.

Furthermore, merely because the taxpayer's staff rather than the food preparer serves the meals, does not result in an exemption. For our purposes it is unimportant who actually serves the meals. The key element is that the meals were sold to the hospital.

[2] Finally, the hospital claims it is entitled to the exemption for its [A] and [B] patients as found in RCW 82.08.0293(4)(b), RCW 82.12.0293(3)(b) and Rule 244. The statutes state the food products exemption applies to meals "which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW."

We concede the taxpayer is a not-for-profit organization and it cares for elderly, disabled or low income patients. However, we do not view the exemption as applicable to this factual situation. The sales tax exemption applies on meals purchased by a not-for-profit organization to distribute to elderly, disabled or low-income persons. Det. 87-110, 3 WTD 21 (1987). The exemption does not apply to purchases by a not-for-profit organization, such as this hospital, which provides the meals to such patients as part of the services it renders.

DECISION AND DISPOSITION:

The taxpayer's appeal and refund request is denied.  
Determination No. 89-453 is affirmed.

DATED this 29th day of April 1991.