

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-38**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of school lunch exemption.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and

(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER], [A LIMITED LIABILITY COMPANY], owns a catering business and has a contract with [NAME] School (hereinafter "the school") in [CITY], Tennessee. The school is a parochial school which currently has grades from kindergarten through the [GRADE NUMBER]. The school is not a boarding school.

The school personnel approve all menus one month in advance. The food is delivered to the school in the morning; the school personnel distribute the food to the students at lunchtime. The school personnel supervise all lunchroom activities, and provide clean up services. Periodically, the taxpayer contracts with a pizza delivery concern to deliver pizza for lunch. A dairy concern delivers the milk and other drink products directly to the school. These items which are provided by outside vendors are billed to the taxpayer, who in turn includes charges for the items in the price of the lunches. Formerly, the school paid for the lunches directly to the taxpayer. At present, the school requires the parents of the students to make payment directly to the taxpayer. Checks and cash from the parents are deposited into the taxpayer's bank account.

QUESTION

Are sales of the lunches as described subject to sales tax?

RULING

No.

ANALYSIS

The statutory basis for the exemption of school lunches from sales tax is found in Tenn. Code Ann. Sec. 67-6-329, which states in pertinent part:

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

* * * *

(12) School books and school lunches;

TENN. COMP. R. & REGS. 1320-5-1-.36 (hereinafter, "Rule 36") provides further guidance, stating in pertinent part:

(1) The sale of food to the State, counties, municipalities of the State, Parent Teacher Associations, or other similar school organizations for the purpose of furnishing school lunches is exempt from the Sales or Use Tax.

(2) "School lunches" shall mean lunches furnished or sold to students in public or private schools, grades K-12.

It can be seen that the lunches sold under the circumstances described in the ruling request fall squarely within the definition of "school lunches" provided by Rule 36. The lunches are sold to students in a private school which includes grades falling in the range between grades K-12. The fact that the sale is not to one of the entities listed in paragraph (1) of the Rule 36 does not override or alter the statutory exemption for "school lunches." Historically, the Department has not required the collection of tax on money collected from students in payment for school lunches, as long as the meals involved were "school lunches" under the definition provided by Rule 36. Therefore, the lunches described here are exempt from the sales and use tax.

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APPROVED: _____
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DATE: 9-9-98