



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

PLR-14-006 Amended

July 6, 2016

XXXXXXXXXXXXXXXXXXXX
Attn:XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Food at Retirement Communities

DearXXXXXXXXXXXXXXXX,

The Colorado Department of Revenue issued a private letter ruling (PLR-14-006), dated October 2, 2014, to XXXXXXXXXXXXXXXXXXXX ("Company") concerning the taxability of meals served to residents of a retirement community operated by Company. The department ruled that the charge paid by residents for meals was subject to tax.

The Colorado legislature recently enacted legislation that affects the private letter ruling. In House Bill 16-1187, the legislature created an exemption for the sale of food, food products, meals, snacks, and beverages for consumption on the premises of a retirement community, as well as sales of such items to the retirement community. The exemption also applies to sales of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals consumed on the premises of a retirement community, as well as sales of such items to the retirement community. This legislation is effective for transactions occurring on or after July 1, 2016.

A retirement community means an assisted living facility, independent living facility, life care institution, and licensed nursing care facility, as these terms are defined by statute. I have attached a copy of HB16-1187 for your information. We have not made any determination that Company is or is not a retirement community as defined by this statute.

Pursuant to Department Rule 1 CCR 201-1, 24-35-103.5(10)(c)(ii), a private letter ruling is revoked if subsequent legislation contradicts determinations made in the ruling. HB16-1187 contradicts determinations made in the private letter ruling for sales transaction occurring on or after July 1, 2016 because the legislation

exempts sales that were determined to be taxable. Therefore, effective July 1, 2016, PLR-14-006 is revoked.

Please feel free to contact me if you have any questions.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

An Act

HOUSE BILL 16-1187

BY REPRESENTATIVE(S) Kraft-Tharp, Buckner, Court, Ginal, Hamner, Kagan, Lontine, Melton, Mitsch Bush, Pettersen, Priola, Rosenthal, Roupe, Ryden, Singer, Van Winkle, Williams, Young;
also SENATOR(S) Holbert, Aguilar, Baumgardner, Carroll, Cooke, Donovan, Garcia, Grantham, Guzman, Heath, Hodge, Jahn, Johnston, Jones, Kefalas, Kerr, Lundberg, Marble, Martinez Humenik, Merrifield, Neville T., Newell, Roberts, Scheffel, Scott, Tate, Todd, Woods, Cadman.

CONCERNING A SALES AND USE TAX EXEMPTION FOR MEALS PROVIDED IN CERTAIN RETIREMENT COMMUNITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly hereby finds and declares that:

(a) The department of revenue does not currently have a written policy with regard to the application of sales and use taxes on food purchased and provided as part of a meal plan to residents of a retirement community, nor with regard to the application of sales and use taxes on the packaging used in presenting that food to a resident of a retirement community. The question of the taxation of these items has been brought to light by the issuance of a department of revenue private letter ruling

indicating that these items should be taxed. In general, the retirement community industry has not been collecting and remitting sales or use tax for these items.

(b) The intended purpose of the tax expenditure in this act is to clarify that food purchased and provided as part of a meal plan to residents of a retirement community is exempt from sales and use tax as food for domestic home consumption, and clarifying that the packaging used in presenting that food to a resident of a retirement community is exempt from sales and use tax under the existing exemption for food packaging.

SECTION 2. In Colorado Revised Statutes, 39-26-707, add (1)(f), (2)(e), and (2.5) as follows:

39-26-707. Food, meals, beverages, and packaging - definitions.

(1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(f) (I) (A) ON AND AFTER JULY 1, 2016, ALL SALES OF FOOD, FOOD PRODUCTS, SNACKS, BEVERAGES, AND MEALS PROVIDED FOR CONSUMPTION BY RESIDENTS ON THE PREMISES OF A RETIREMENT COMMUNITY;

(B) ON AND AFTER JULY 1, 2016, ALL SALES TO A RETIREMENT COMMUNITY OF FOOD, FOOD PRODUCTS, SNACKS, BEVERAGES, AND MEALS FOR PURPOSES OF A SALE DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I);

(C) ON AND AFTER JULY 1, 2016, ALL SALES OF ANY CONTAINER, BAG, OR ARTICLE USED BY OR FURNISHED TO A CONSUMER FOR THE PURPOSE OF PACKAGING, BAGGING, OR USE WITH FOOD, FOOD PRODUCTS, SNACKS, BEVERAGES, AND MEALS PROVIDED FOR CONSUMPTION BY RESIDENTS ON THE PREMISES OF A RETIREMENT COMMUNITY; AND

(D) ON AND AFTER JULY 1, 2016, ALL SALES TO A RETIREMENT COMMUNITY OF ANY CONTAINER, BAG, OR ARTICLE USED BY OR FURNISHED TO A CONSUMER FOR PURPOSES OF A SALE DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I).

(II) FOR PURPOSES OF THIS PARAGRAPH (f), "FOOD" INCLUDES PREPARED SALADS, SALAD BARS, AND PACKAGED AND UNPACKAGED COLD

SANDWICHES.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(e) (I) (A) ON AND AFTER JULY 1, 2016, THE STORAGE, USE, OR CONSUMPTION OF FOOD, FOOD PRODUCTS, SNACKS, BEVERAGES, AND MEALS PROVIDED FOR CONSUMPTION BY RESIDENTS ON THE PREMISES OF A RETIREMENT COMMUNITY;

(B) ON AND AFTER JULY 1, 2016, THE STORAGE, USE, OR CONSUMPTION BY A RETIREMENT COMMUNITY OF FOOD, FOOD PRODUCTS, SNACKS, BEVERAGES, AND MEALS FOR PURPOSES OF A SALE DESCRIBED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF PARAGRAPH (f) OF SUBSECTION (1) OF THIS SECTION;

(C) ON AND AFTER JULY 1, 2016, THE STORAGE, USE, OR CONSUMPTION OF ANY CONTAINER, BAG, OR ARTICLE USED BY OR FURNISHED TO A CONSUMER FOR THE PURPOSE OF PACKAGING, BAGGING, OR USE WITH FOOD, FOOD PRODUCTS, SNACKS, BEVERAGES, AND MEALS PROVIDED FOR CONSUMPTION BY RESIDENTS ON THE PREMISES OF A RETIREMENT COMMUNITY; AND

(D) ON AND AFTER JULY 1, 2016, THE STORAGE, USE, OR CONSUMPTION BY A RETIREMENT COMMUNITY OF ANY CONTAINER, BAG, OR ARTICLE USED BY OR FURNISHED TO A CONSUMER FOR PURPOSES OF A SALE DESCRIBED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF PARAGRAPH (f) OF SUBSECTION (1) OF THIS SECTION.

(II) FOR PURPOSES OF THIS PARAGRAPH (e), "FOOD" INCLUDES PREPARED SALADS, SALAD BARS, AND PACKAGED AND UNPACKAGED COLD SANDWICHES.

(2.5) FOR PURPOSES OF THIS SECTION, "RETIREMENT COMMUNITY" MEANS:

(a) AN ASSISTED LIVING RESIDENCE AS DEFINED IN SECTION 25-27-102 (1.3), C.R.S.;

(b) AN INDEPENDENT LIVING FACILITY DESIGNED AND OPERATED

SPECIFICALLY TO SERVE AS THE PRIMARY RESIDENCE FOR PERSONS AGED FIFTY-FIVE OR OLDER THAT PROVIDES MEALS AND OTHER SERVICES TO RESIDENTS AS PART OF A COMPREHENSIVE FEE, INCLUDING A FACILITY THAT QUALIFIES AS HOUSING FOR OLDER PERSONS AS DEFINED IN SECTION 24-34-502 (7) (b), C.R.S., AND A LIFE CARE INSTITUTION SUBJECT TO ARTICLE 13 OF TITLE 12, C.R.S.; OR

(c) A NURSING CARE FACILITY LICENSED UNDER THE AUTHORITY OF SECTION 25-1.5-103 (1) (a) (I) (A), C.R.S., THAT PROVIDES SERVICES TO PERSONS WHO, DUE TO PHYSICAL CONDITION, MENTAL CONDITION, OR DISABILITY, REQUIRE CONTINUOUS OR REGULAR INPATIENT NURSING CARE.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Bill L. Cadman
PRESIDENT OF
THE SENATE

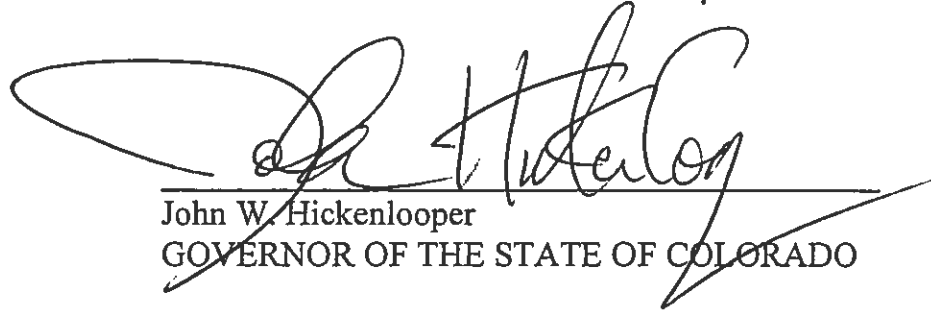


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Effie Ameen
SECRETARY OF
THE SENATE

APPROVED 3:15 PM 6/1/16



John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO