

**IN THE MATTER OF THE PETITION OF  
THE "A" CORPORATION  
FOR A DECLARATORY RULING**

**Doc #5025, Eff. December 11, 1990**

Pursuant to RSA 541-A:1, I-b; 541-A:2, I(c); and Rev PART 209 of the Code of Administrative Rules, the "A" Corporation, .... Road, ....., New Hampshire has petitioned the Department of Revenue Administration for a Declaratory Ruling with respect to the application of the Meals and Rooms Tax to a "....." package.

The petitioner has included in his request the following items within the "....." package:

1. live (.....),
2. live (.....), and
3. (soup) base (to which milk must be added and then must be heated).

**Analysis**

Our analysis consisted of comparing the facts, provided by The "A" Corporation, to the incidence of the tax. RSA 78-A:6, Imposition of Tax, clearly places the incidence of tax by stating, in part,

"A tax is imposed on taxable meals based upon the charge therefor ..." (emphasis added).

The law [RSA 78-A:3, X (c)] has further defined "taxable meal" as: "... any meal for which a charge is made that is purchased from a person in the business of operating a restaurant, and which is subject to a tax under RSA 78-A:6". (emphasis added).

Thus, we must conclude that if a tax is to be imposed upon the

".....", it must be deemed to be a meal.

RSA 78-A:3, X(a) has defined meal as:

(a) "Meal" means any food or beverage, or both, prepared for human consumption and served by a restaurant, whether the food or beverage is served for consumption on or off the restaurant premises. The term "meal" includes food or beverages sold on a "take out" or "to go" basis, whether or not they are packaged or wrapped and whether or not they are taken from the premises of the restaurant. The term "meal" excludes any food or beverage wholly packaged off the premises except: (1) sandwiches of all kinds; (2) beverages in unsealed containers; and (3) catered meals or meals which are delivered to the location where the meal is consumed. Beverage includes an alcoholic beverage, served with or without food. (emphasis added)

It is clear that the ".....", as described in the request for ruling, is not prepared for human consumption as the package is uncooked and the foods included are not commonly consumed in this fashion. " xx " To Go does not constitute a "meal", therefore, would not be subject to the Meals and Rooms Tax under RSA 78-A.

Our analysis follows the intent of the statute as expressed by the General Court, effective January 1, 1986, which states:

"It is the intent of the legislature to impose a tax upon the sale of meals and not upon the sale of groceries as those expressions are commonly understood."

### **Ruling**

The "A" Corporation shall not be required to collect from the public or remit to the Department a Meals and Rooms Tax on the packages known as the ".....". The "....." package, for the purpose of this ruling, shall consist of live ....., live ..... and a ...(soup)... base (to which milk must be added and then it must be heated before eating). Furthermore, it is the responsibility of The "A" Corporation to keep separate and distinct records of any "....." sales, as well as any other non-taxable sales in order to provide a clear and convincing record of all non-taxable sales. This ruling is specific to The "A" Corporation and the " ....." package, as defined above. Application of this ruling to any other situation is not binding upon the Department.

Stanley R. Arnold, Commissioner