

550.0305

Memorandum

To: Ms. Jean McNeil
Return Review

Date: August 20, 1991

From: John L. Waid
Tax Counsel

Subject: REDACTED TEXT

I am writing this to respond to your memorandum to the Legal Division of July 11, 1991. You have requested advice as to whether the above taxpayer's sales qualify for a line 5 deduction pursuant to the 80/80 rule.

Although you did not include any facts in your memorandum regarding the nature of the taxpayer's (REDACTED TEXT) business, the Application for a Seller's Permit and Registration as a Retailer contained in the file, and also our recent telephone conversation indicate that REDACTED TEXT is an off-premises caterer. As such, I assume that REDACTED TEXT sells food products for consumption on premises other than its own.

OPINION

We are of the opinion that the 80/80 rule contained in Regulation 1603(c) (the so-called "McDonald's Rule") does not apply to off-premises caterers. As the rule only applies to sales of food products sold in a form suitable for consumption on the seller's premises, it assumes that the seller has premises on which food may be consumed. Such is not the case with off-premises caterers. The rules applicable to them are found in Regulation 1603 (f) or (h), depending on the nature of the services which they are obligated to provide.

JLW:es
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cc: Mr. O. A. McCarty, Supervisor, Return Review.