

M e m o r a n d u m**550.1000**

To: Eval & Planning (JAN)

Date: January 5, 1970

From: Tax Counsel (LAA)

In response to your memo of December 18, 1969, I have reviewed your letter of December 11, 1969 to "G". I concur in your conclusion that the meals are subject to tax, though not for both reasons which you cite.

In my opinion, where the number of guests is limited specifically or impliedly, the meals are not available to the general public, and the guests never pay for their own meals, furnishing meals to guests of members should be considered furnishing the meals to members.

Where the club regularly meets on a weekly schedule, the fact that meetings are occasionally not held does not change the fact that they sell meals on a once a week basis. In all such cases, it is a factual issue, but here the number of meetings and their regularity subjects them to tax.

Apparently the reason we allow the exemption at all, since it is not provided for in the code, is that where the club or organization sells only to its members on a less than once a week basis they are not engaged in the business of selling meals. This is analogous to our rule in regard to boarding houses serving fewer than five paying guests. The soundness of the rule must be based in the avoidance of the practical problems which would arise were we to require such persons to register and file returns.

LAA:ph [lb]