



## Regulatory and Tax Implications of Food and Beverage On-Demand Services

By Michelle Tanzer, Esq., and Hannah Becker, Esq.

The food and alcohol delivery and to-go industries are booming and ever-changing to meet the desires of consumers. As a result, clubs are working overtime to keep up with these trends by offering ready-to-consume food and alcohol to-go or delivered right to members' homes. However, as with most non-traditional revenue producing activities, clubs must first consider the legal and tax implications before they begin offering new on-demand services. Specifically, food and beverage sales for off-site consumption could negatively impact a club's 501(c)(7) tax-exempt status. Further, in order to offer food and alcohol beverage to-go and delivery services, clubs must first comply with a variety of alcohol beverage, health, food safety and food handling laws on both the state and local agency levels.

When a club is contemplating food and alcohol beverage deliveries to members off-site, it is important to note that the laws, regulations and licensure requirements for off-site food and beverage services vary state-by-state and locality-by-locality. Generally, each jurisdiction has laws regulating preparation and handling of food, including disposal of contaminated or improperly handled food. Government agencies may also require a club to obtain and hold certain licenses and permits in order to lawfully offer food delivery and to-go services. Further, each state regulates alcohol beverage delivery uniquely.

With respect to alcohol beverages in particular, clubs typically hold on-premises retail licenses, and in some cases, hold private club-specific licenses that limit the sale of alcohol beverages to club members and guests only. The majority of states prohibit or heavily restrict on-premise retailers from delivering alcohol beverages off the licensed premises. Even if the state where a club is operating allows on-premise retailers to deliver alcohol beverages off-site, some states require (i) the retailer to hold separate delivery licenses/permits, (ii) the delivery personnel or agents to hold separate delivery licenses/permits,

and/or (ii) registrations for the vehicle used in the delivery. Further, alcohol beverage delivery laws also prohibit delivery of alcohol beverages to minors or intoxicated persons, restrict permissible times for sales and deliveries, as well as impose detailed record keeping requirements. The relevant alcohol beverage laws apply regardless of whether the club is delivering liquor or selling it packaged for off-site consumption.

Unfortunately, the regulatory hurdles for food, health, and alcohol beverage delivery services may be the least of a club's concerns when it comes to food-to-go or delivery services. Pursuant to the Internal Revenue Code, 501(c)(7) tax-exempt clubs should also consider whether off-site food and beverage services would impact their tax-exempt status. That is, tax-exempt clubs need to engage in activities that further their tax-exempt purposes, such as pleasure, recreation and other nonprofit purposes.

In simple terms, activities that tend to bring members together are likely to further tax-exempt purposes. Those activities that do not can be deemed a nontraditional activity. Under current IRS requirements, clubs may earn a "de minimus amount" (generally understood to be up to 5 percent) from non-traditional activities. Off-site food and beverage service activities

could be deemed nontraditional activities if they are not seen as bringing members together for the club's stated purposes. Thus, if the income derived from an off-site activity is deemed to be more than a de minimis amount of nontraditional activity, the club could lose its 501(c)(7) tax-exempt status.

Ensuring that food and beverage services are being provided to club members in a manner that matches or exceeds its competitors in the on-demand economy is important, but it is also important to ensure that the club remains in compliance with federal, state, and local laws and regulations relating to or implicated by on-demand services. Federal internal revenue laws as well as club operational issues need to be considered, such as logistics, employee training, consistency of quality and appropriate and adequate insurance. Before implementing any new food or alcohol beverage service, clubs should consult with their respective professional advisors to make sure all of these compliance and operational concerns are properly addressed. **CD**

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