

HOUSE No. 01695

The Commonwealth of Massachusetts

PRESENTED BY:

Jay Kaufman and

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to promote sales tax fairness for Main Street retailers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jay Kaufman</i>	<i>15th Middlesex</i>
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>William "Smitty" Pignatelli</i>	<i>4th Berkshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>

HOUSE No. 01695

By Mr. Kaufman of Lexington and Senator Moore, a joint petition (accompanied by bill, House, No. 1695) of Jay R. Kaufman, Richard T. Moore and others for legislation to promote sales tax fairness for small businesses. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 2732 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to promote sales tax fairness for Main Street retailers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Section 1 of Chapter 64H of the General Laws, as so appearing, is hereby
2 amended by striking it out in its entirety and inserting in its place the following new section 1:

3 As used in this chapter and chapter 64I the following words shall have the following
4 meanings:

5 "Alcoholic Beverages" means beverages that are suitable for human consumption and contain
6 one-half of one percent or more of alcohol by volume.

7 "Bundled transaction" is the retail sale of two or more products, except real property and services
8 to real property, where (1) the products are otherwise distinct and identifiable, and (2) the

9 products are sold for one non-itemized price. A "bundled transaction" does not include the sale
10 of any products in which the "sales price" varies, or is negotiable, based on the selection by the
11 purchaser of the products included in the transaction.

12 (A) "Distinct and identifiable products" does not include:

13 1. Packaging - such as containers, boxes, sacks, bags, and bottles or other materials such as
14 wrapping, labels, tags, and instruction guides that accompany the "retail sale" of the products and
15 are incidental or immaterial to the "retail sale" thereof. Examples of packaging that are incidental
16 or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery
17 envelopes and boxes.

18 2. A product provided free of charge with the required purchase of another product. A
19 product is "provided free of charge" if the "sales price" of the product purchased does not
20 vary depending on the inclusion of the product "provided free of charge."

21 3. Items included in the definition of "sales price" in G.L. c. 64H, § 1.

22 (B) The term "one non-itemized price" does not include a price that is separately identified by
23 product on binding sales or other supporting sales-related documentation made available to the
24 customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt,
25 contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or
26 price list.

27 (C) A transaction that otherwise meets the definition of a "bundled transaction" as defined above,
28 is not a "bundled transaction" if it is:

29 (1) The "retail sale" of tangible personal property and a service where the tangible personal
30 property is essential to the use of the service, and is provided exclusively in connection with the
31 service, and the true object of the transaction is the service; or

32 (2) The "retail sale" of services where one service is provided that is essential to the use or
33 receipt of a second service and the first service is provided exclusively in connection with the
34 second service and the true object of the transaction is the second service; or

35 (3) A transaction that includes taxable products and nontaxable products and the "purchase price"
36 or "sales price" of the taxable products is de minimis.

37 (a) De minimis means the seller's "purchase price" or "sales price" of the taxable products is ten
38 percent (10%) or less of the total "purchase price" or "sales price" of the bundled products.

39 (b) Sellers shall use either the "purchase price" or the "sales price" of the products to determine if
40 the taxable products are de minimis. Sellers may not use a combination of the "purchase price"
41 and "sales price" of the products to determine if the taxable products are de minimis.

42 (c) Sellers shall use the full term of a service contract to determine if the taxable products are
43 de minimis; or

44 (4) The "retail sale" of exempt tangible personal property and taxable tangible personal property
45 where:

46 (a) The transaction includes "food and food ingredients", "drugs", "durable medical equipment",
47 "mobility enhancing equipment", "over-the-counter drugs", "prosthetic devices" as defined in
48 G.L. c. 64H, § 1, or medical supplies; and

49 (b) Where the seller's "purchase price" or "sales price" of the taxable tangible personal property
50 is fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled tangible
51 personal property. Sellers may not use a combination of the "purchase price" and "sales price" of
52 the tangible personal property when making the fifty percent (50%) determination for a
53 transaction.

54 "Business" means any activity engaged in by any person or caused to be engaged in by
55 him with the object of gain, benefit or advantage, either direct or indirect.

56 "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in
57 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
58 drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no
59 refrigeration.

60 "Certified Automated System" means software certified by the Streamlined Sales Tax
61 Governing Board to calculate the tax imposed by each jurisdiction on a transaction, determine
62 the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

63 "Certified Service Provider" means an agent certified by the Streamlined Sales Tax
64 Governing Board to perform all of a seller's sales and use tax functions, other than the seller's
65 obligation to remit tax on its own purchases.

66 "Clothing" means all human wearing apparel suitable for general use.

67 "Clothing accessories or equipment" means incidental items worn on the person or in
68 conjunction with "clothing."

69 "Commissioner" means the commissioner of revenue.

70 "Computer" means an electronic device that accepts information in digital or similar form
71 and manipulates it for a result based on a sequence of instructions.

72 "Computer software" means a set of coded instructions designed to cause a "computer" or
73 automatic data processing equipment to perform a task.

74 "Delivered electronically" means delivered to the purchaser by means other than tangible
75 storage media.

76 "Delivery charges" means charges by the seller of personal property or services for preparation
77 and delivery to a location designated by the purchaser of personal property or services including,
78 but not limited to, transportation, shipping, postage, handling, crating, and packing. The term
79 "delivery charges" does not include "delivery charges" for "direct mail."

80 If a shipment includes exempt property and taxable property, the seller should allocate the
81 delivery charge by using:

82 A. A percentage based on the total sales prices of the taxable property compared to the
83 total sales prices of all property in the shipment; or

84 B. A percentage based on the total weight of the taxable property compared to the total weight
85 of all property in the shipment.

86 The seller must tax the percentage of the delivery charge allocated to the taxable property but
87 does not have to tax the percentage allocated to the exempt property.

88 "Dietary supplement" means any product, other than "tobacco," intended to supplement
89 the diet that:

90 (a) Contains one or more of the following dietary ingredients:

91 1. A vitamin;

92 2. A mineral;

93 3. An herb or other botanical;

94 4. An amino acid;

95 5. A dietary substance for use by humans to supplement the diet by increasing the
96 total dietary intake; or

97 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
98 described in above; and

99 (b) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or
100 if not intended for ingestion in such a form, is not represented as conventional food and is not
101 represented for use as a sole item of a meal or of the diet; and

102 (c) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental
103 Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.

104 "Direct mail" means printed material delivered or distributed by United States mail or
105 other delivery service to a mass audience or to addressees on a mailing list provided by the
106 purchaser or at the direction of the purchaser when the cost of the items are not billed directly to
107 the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by
108 the purchaser to the direct mail seller for inclusion in the package containing the printed material.
109 "Direct mail" does not include multiple items of printed material delivered to a single address.

110 "Drug" means a compound, substance or preparation, and any component of a compound,
111 substance or preparation, other than "food and food ingredients," "dietary supplements" or
112 "alcoholic beverages:"

113 (a) Recognized in the official United State Pharmacopoeia, official Homeopathic
114 Pharmacopoeia of the United States, or official National Formulary, and supplement to any of
115 them; or

116 (b) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
117 disease in human beings; or

118 (c) Intended to affect the structure or any function of the body.

119 "Durable medical equipment" means equipment including repair and replacement parts
120 for same, but does not include "mobility enhancing equipment," which:

121 (a) Can withstand repeated use; and

122 (b) Is primarily and customarily used to serve a medical purpose; and

123 (c) Generally is not useful to a person in the absence of illness or injury; and

124 (d) Is not worn in or on the body.

125 As used in this definition, "repair and replacement parts" does not include items which are for
126 single patient use only.

127 "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
128 optical, electromagnetic, or similar capabilities.

129 “Engaged in business” means commencing, conducting or continuing in business, as well
130 as liquidating a business when the liquidator thereof holds himself out to the public as
131 conducting such a business.

132 “Engaged in business in the commonwealth” means having a business location in the
133 commonwealth; regularly or systematically soliciting orders for the sale of services to be
134 performed within the commonwealth or for the sale of tangible personal property for delivery to
135 destinations in the commonwealth; otherwise exploiting the retail sales market in the
136 commonwealth through any means whatsoever, including, but not limited to, salesmen, solicitors
137 or representatives in the commonwealth, catalogs or other solicitation materials sent through the
138 mails or otherwise, billboards, advertising or solicitations in newspapers, magazines, radio or
139 television broadcasts, computer networks or in any other communications medium; or regularly
140 engaged in the delivery of property or the performance of services in the commonwealth. A
141 person shall be considered to have a business location in the commonwealth only if such person
142 (i) owns or leases real property within the commonwealth; (ii) has one or more employees
143 located in the commonwealth; (iii) regularly maintains a stock of tangible personal property in
144 the commonwealth for sale in the ordinary course of business; or (iv) regularly leases out
145 tangible personal property for use in the commonwealth. For the purposes of this paragraph,
146 property on consignment in the hands of a consignee and offered for sale by the consignee on his
147 own account shall not be considered as stock maintained by the consignor; a person having a
148 business location in the commonwealth solely by reason of regularly leasing out tangible
149 personal property shall be considered to have a business location in the commonwealth only with
150 respect to such leased property; and an employee shall be considered to be located in the
151 commonwealth if (a) his service is performed entirely within the commonwealth or (b) his

152 service is performed both within and without the commonwealth but in the performance of his
153 services he regularly commences his activities at, and returns to, a place within the
154 commonwealth. “Within the commonwealth” means within the exterior limits of the
155 commonwealth of Massachusetts, and includes all territory within said limits owned by, or
156 leased or ceded to, the United States of America.

157 “Essential Clothing” means clothing with a sales price below \$200.

158 "Food and food ingredients" means substances, whether in liquid, concentrated, solid,
159 frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are
160 consumed for their taste or nutritional value. "Food and food ingredients" does not include
161 "alcoholic beverages", “candy”, “dietary supplements”, “soft drinks”, or "tobacco", as those
162 terms are defined in this chapter.

163 "Food sold through vending machines” means food dispensed from a machine or other
164 mechanical device that accepts payment.

165 “Fur clothing” means “clothing” that is required to be labeled as a fur product under the
166 Federal Fur Products Labeling Act (15 U.S.C. § 69), and the value of the fur components in the
167 product is more than three times the value of the next most valuable tangible component. “Fur
168 clothing” is human wearing apparel suitable for general use.” For the purposes of the definition
169 of “fur clothing” the term “fur” means any animal skin or part thereof with hair, fleece, or fur
170 fibers attached thereto, either in its raw or processed state, but shall not include such skins that
171 have been converted into leather or suede, or which in processing, the hair, fleece, or fur fiber
172 has been completely removed.

173 "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste,
174 mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items
175 meet the definition of "over-the-counter-drugs."

176 "Gross receipts" means the total sales price received by a seller as a consideration for
177 retail sales, provided however that a seller may exclude from its gross receipts the amount
178 charged for property returned by purchasers to sellers upon rescission of contracts of sale when
179 the entire amounts charged therefore, less the sellers' established handling fees, if any, for such
180 return of property, are refunded either in cash or credit, and when the property is returned within
181 ninety days from the date of sale, and the entire sales tax paid is returned to the purchaser.

182 "Lease or rental" means any transfer of possession or control of tangible personal
183 property for a fixed or indeterminate term for consideration. A lease or rental may include future
184 options to purchase or extend.

185 (a) Lease or rental does not include:

186 1. A transfer of possession or control of property under a security agreement or deferred
187 payment plan that requires the transfer of title upon completion of the required payments;

188 2. A transfer or possession or control of property under an agreement that requires the
189 transfer of title upon completion of required payments and payment of an option price does not
190 exceed the greater of one hundred dollars or one percent of the total required payments; or

191 3. Providing tangible personal property along with an operator for a fixed or indeterminate
192 period of time. A condition of this exclusion is that the operator is necessary for the equipment to

193 perform as designed. For the purpose of this subsection, an operator must do more than maintain,
194 inspect, or set-up the tangible personal property.

195 (b) Lease or rental does include agreements covering motor vehicles and trailers where the
196 amount of consideration may be increased or decreased by reference to the amount realized upon
197 sale or disposition of the property as defined in 26 USC 7701(h)(1).

198 (c) This definition shall be used for sales and use tax purposes regardless if a transaction is
199 characterized as a lease or rental under generally accepted accounting principles, the Internal
200 Revenue Code, the Uniform Commercial Code, or other provisions of federal, state or local law.

201 (d) This definition will be applied only prospectively from the date of adoption and will have no
202 retroactive impact on existing leases or rentals.

203 "Load and leave" means delivery to the purchaser by use of a tangible storage media
204 where the tangible storage media is not physically transferred to the purchaser.

205 "Mobility enhancing equipment" means equipment including repair and replacement
206 parts to same which:

207 (a) Is primarily and customarily used to provide or increase the ability to move from
208 one place to another and which is appropriate for use either in a home or a motor vehicle; and

209 (b) Is not generally used by persons with normal mobility; and

210 (c) Does not include any motor vehicle or equipment on a motor vehicle normally provided
211 by a motor vehicle manufacturer.

212 Mobility enhancing equipment does not include "durable medical equipment."

213 "Motion picture", a feature-length film, a video, a digital media project, a television series
214 defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in
215 whole or in part, for theatrical or television viewing or as a television pilot. The term "motion
216 picture" shall not include a production featuring news, current events, weather and financial
217 market reports, talk show, game show, sporting events, awards show or other gala event, a
218 production whose sole purpose is fundraising, a long-form production that primarily markets a
219 product or service, or a production containing obscene material or performances.

220 "Motion picture production company", a company including any subsidiaries engaged in the
221 business of producing motion pictures, videos, television series, or commercials intended for a
222 theatrical release or for television viewing. The term "motion picture production company" shall
223 not mean or include any company which is more than 25 per cent owned, affiliated, or
224 controlled, by any company or person which is in default on a loan made by the commonwealth
225 or a loan guaranteed by the commonwealth.

226 "Over-the-counter drug" means a drug that contains a label that identifies the product as a
227 drug as required by 21 C.F.R. § 201.66. The "over-the-counter-drug" label includes:

228 (a) A "Drug Facts" panel; or

229 (b) A statement of the "active ingredient(s)" with a list of those ingredients contained
230 in the compound, substance or preparation.

231 An over-the-counter drug does not include "grooming and hygiene products."

232 "Person", An individual, trust, estate, fiduciary, partnership, limited liability company,
233 limited liability partnership, corporation, or any other legal entity.

234 "Prepared food" means:

235 (a) Food sold in a heated state or heated by the seller;

236 (b) Two or more food ingredients mixed or combined by the seller for sale as a single
237 item; or

238 (c) Food sold with eating utensils provided by the seller, including plates, knives,
239 forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or
240 packaging used to transport the food.

241 "Prepared food" in section (b) of this definition does not include food that is only cut,
242 repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these
243 raw animal foods requiring cooking by the consumer as recommended by the Food and Drug
244 Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

245 "Prepared food" does not include the following if sold without eating utensils provided by the
246 seller:

247 1. Food sold in an unheated state by weight or volume as a single item.

248 2. Bakery items including but not limited to bread, rolls, buns, biscuits, bagels, croissants,
249 pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, cookies or tortillas.

250 "Prescription" means an order, formula or recipe issued in any form of oral, written,
251 electronic, or other means of transmission by a duly licensed practitioner.

252 "Prewritten computer software" means "computer software," including prewritten
253 upgrades, which is not designed and developed by the author or other creator to the
254 specifications of a specific purchaser. The combining of two or more "prewritten computer

255 software" programs or prewritten portions thereof does not cause the combination to be other
256 than "prewritten computer software." "Prewritten computer software" includes software designed
257 and developed by the author or other creator to the specifications of a specific purchaser when it
258 is sold to a person other than the specific purchaser. Where a person modifies or enhances
259 "computer software" of which the person is not the author or creator, the person shall be deemed
260 to be the author or creator only of such person's modifications or enhancements. "Prewritten
261 computer software" or a prewritten portion thereof that is modified or enhanced to any degree,
262 where such modification or enhancement is designed and developed to the specifications of a
263 specific purchaser, remains "prewritten computer software;" provided, however, that where there
264 is a reasonable, separately stated charge or an invoice or other statement of the price given to the
265 purchaser for such modification or enhancement, such modification or enhancement shall not
266 constitute "prewritten computer software."

267 "Prosthetic device" means a replacement, corrective, or supportive device including
268 repair and replacement parts for same worn on or in the body to:

- 269 (a) Artificially replace a missing portion of the body;
- 270 (b) Prevent or correct physical deformity or malfunction; or
- 271 (c) Support a weak or deformed portion of the body.

272 Prosthetic devices include, but are not limited to corrective eyeglasses; contact lenses; hearing
273 aids and dental prosthesis.

274 "Protective equipment" means items for human wear and designed as protection of the
275 wearer against injury or disease or as protections against damage or injury of other persons or
276 property but not suitable for general use.

277 "Purchaser", a person to whom a sale of tangible personal property is made or to whom
278 services are furnished and includes a buyer, vendee, lessee, licensee, or grantee.

279 "Purchase price" applies to the measure subject to use tax and has the same meaning as
280 "sales price".

281 "Retailer" includes (i) every person engaged in the business of making sales at retail; (ii)
282 every person engaged in the making of retail sales at auction of tangible personal property
283 whether owned by such person or others; (iii) every person engaged in the business of making
284 sales for storage, use or other consumption, or in the business of making sales at auction of
285 tangible personal property whether owned by such person or others for storage, use or other
286 consumption; (iv) every salesman, representative, peddler or canvasser who, in the opinion of the
287 commissioner, it is necessary to regard for the efficient administration of this chapter as the agent
288 of the dealer, distributor, supervisor or employer under whom he operates or from whom he
289 obtains the tangible personal property sold by him, in which case the commissioner may treat
290 and regard such agent as the retailer jointly responsible with his principal, employer or
291 supervisor for the collection and payment of the tax imposed by this chapter; and (v) the
292 commonwealth, or any political subdivision thereof, or their respective agencies when such
293 entity is engaged in making sales at retail of a kind ordinarily made by private persons.

294 "Retail establishment", any premises in which the business of selling services or tangible
295 personal property is conducted, or, in or from which any retail sales are made.

296 "Retail sale or Sale at retail" means any sale, lease, or rental for any purpose other than
297 for resale, sublease, or subrent.

298 "Sale" and "selling" include (i) any transfer of title or possession, or both, exchange,
299 barter, lease, rental, conditional or otherwise, of tangible personal property or the performance of
300 services for a consideration, in any manner or by any means whatsoever; (ii) the producing,
301 fabricating, processing, printing or imprinting of tangible personal property for a consideration
302 for consumers who furnish either directly or indirectly the materials used in the producing,
303 fabricating, processing, printing or imprinting; (iii) the furnishing and distributing of tangible
304 personal property or services for a consideration by social clubs and fraternal organizations to
305 their members or others; (iv) a transaction whereby the possession of property is transferred but
306 the seller retains the title as security for the payment of the price; (v) a transfer for a
307 consideration of the title or possession of tangible personal property which has been produced,
308 fabricated or printed to the special order of the customer, or of any publication; (vi) the
309 furnishing of information by printed, mimeographed or multigraphed matter, or by duplicating
310 written or printed matter in any other manner, including the services of collecting, compiling or
311 analyzing information of any kind or nature and furnishing reports thereof to other persons, but
312 excluding the furnishing of information which is personal or individual in nature and which is
313 not or may not be substantially incorporated in reports furnished to other persons, and excluding
314 the services of advertising or other agents, or other persons acting in a representative capacity,
315 and information services used by newspapers, radio broadcasters and television broadcasters in
316 the collection and dissemination of news and excluding the furnishing of information by
317 photocopy or other similar means by not for profit libraries which are recognized as exempt from
318 taxation under § 501(c)(3) of the Federal Internal Revenue Code; (vii) the performance of

319 services for a consideration, excluding (a) services performed by an employee for his employer
320 whether compensated by salary, commission, or otherwise, (b) services performed by a general
321 partner for his partnership and compensated by the receipt of distributive shares of income or
322 loss from the partnership; and (c) the performance of services for which the provider is
323 compensated by means of an honorarium, or fee paid to any person or entity registered under 15
324 USC 80b-3 or 15 USC 78q-1 for services the performance of which require such registration, for
325 services related thereto or for trust, custody, and related cash management and securities services
326 of a trust company as defined in chapter one hundred and seventy-two.

327 "Sales price" applies to the measure subject to sales tax and means the total amount of
328 consideration, including cash, credit, property, and services, for which personal property or
329 services are sold, leased, or rented, valued in money; whether received in money or otherwise,
330 without any deduction for the following:

331 (a) The seller's cost of the property sold;

332 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
333 transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

334 (c) Charges by the seller for any services necessary to complete the sale, other than
335 delivery and installation charges;

336 (d) Delivery charges;

337 (e) Credit for any trade-in, except as provided in sections 26 and 27A of this chapter;

338 The following charges are excluded only if they are separately stated on the invoice, billing, or
339 similar document given to the purchaser:

340 (a) Installation charges;

341 "Sales price" shall not include:

342 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that
343 are allowed by a seller and taken by a purchaser on a sale;

344 (b) Interest, financing, and carrying charges from credit extended on the sale of personal
345 property or services, if the amount is separately stated on the invoice, bill of sale or similar
346 document given to the purchaser;

347 (c) Any taxes legally imposed directly on the consumer that are separately stated on the
348 invoice, billing, or similar document given to the purchaser; and

349 (d) Employee discounts that are reimbursed by a third party on sales of motor vehicles and
350 manufacturer rebates on motor vehicles.

351 "Sales price" shall include consideration received by the seller from third parties if:

352 A. The seller actually receives consideration from a party other than the purchaser and
353 the consideration is directly related to a price reduction or discount on the sale;

354 B. The seller has an obligation to pass the price reduction or discount through to the purchaser;

355 C. The amount of the consideration attributable to the sale is fixed and determinable by the
356 seller at the time of the sale of the item to the purchaser; and

357 D. One of the following criteria is met:

358 1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a
359 price reduction or discount where the coupon, certificate or documentation is authorized,
360 distributed or granted by a third party with the understanding that the third party will reimburse
361 any seller to whom the coupon, certificate or documentation is presented;

362 2. The purchaser identifies himself or herself to the seller as a member of a group or
363 organization entitled to a price reduction or discount (a “preferred customer” card that is
364 available to any patron does not constitute membership in such a group), or

365 3. The price reduction or discount is identified as a third party price reduction or discount on the
366 invoice received by the purchaser or on a coupon, certificate or other documentation presented
367 by the purchaser.

368 “Seller” or “Vendor” a retailer or other person making sales, leases or rentals of tangible
369 personal property or services.

370 “Services” as used in this chapter and chapter 64I, the term “services” shall be limited to
371 telecommunications services and related services as defined in Section 1A of this chapter and the
372 provision of access to prewritten computer software on a server owned by the seller or a third
373 party.

374 “Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners.
375 “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar
376 milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

377 “Sport or recreational equipment” means items designed for human use and worn in
378 conjunction with an athletic or recreational activity that are not suitable for general use. “Sport or

379 recreational equipment" are mutually exclusive of and may be taxed differently than apparel
380 within the definition of "clothing," "clothing accessories or equipment," and "protective
381 equipment."

382 "Tangible personal property" means personal property that can be seen, weighed, measured, felt,
383 or touched, or that is in any other manner perceptible to the senses. "Tangible personal property"
384 includes electricity, water, gas, steam, and prewritten computer software. The term shall not
385 include any products delivered electronically to a purchaser except prewritten computer
386 software.

387 "Tax" the excise tax imposed by this chapter.

388 "Taxpayer" any person required to make returns or pay the tax imposed by this chapter.

389 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that
390 contains tobacco.

391 SECTION 2: Chapter 64H of the General Laws, as so appearing, is hereby amended by inserting
392 after section 1 the following new sections:--

393 SECTION 1A. Telecommunications and Related Services

394 All of the following shall be deemed to be services for purposes of this chapter and chapter sixty-
395 four I:

396 "Ancillary services" means services that are associated with or incidental to the provision of
397 "telecommunications services", including but not limited to "detailed telecommunications
398 billing", "directory assistance", "vertical service", and "voice mail services".

399 “Conference bridging service” means an “ancillary service” that links two or more participants
400 of an audio or video conference call and may include the provision of a telephone number.

401 “Conference bridging service” does not include the “telecommunications services” used to reach
402 the conference bridge.

403 “Detailed telecommunications billing service” means an “ancillary service” of separately stating
404 information pertaining to individual calls on a customer’s billing statement.

405 “Directory assistance” means an “ancillary service” of providing telephone number information,
406 and/or address information.

407 “International” means a “telecommunications service” that originates or terminates in the United
408 States and terminates or originates outside the United States, respectively. United States includes
409 the District of Columbia or a U.S. territory or possession.

410 “Interstate” means a “telecommunications service” that originates in one United States state, or a
411 United States territory or possession, and terminates in a different United States state or a United
412 States territory or possession.

413 “Intrastate” means a “telecommunications service” that originates in one United States state or a
414 United States territory or possession, and terminates in the same United States state or a United
415 States territory or possession.

416 “Vertical service” means an “ancillary service” that is offered in connection with one or more
417 “telecommunications services”, which offers advanced calling features that allow customers to
418 identify callers and to manage multiple calls and call connections, including “conference
419 bridging services”.

420 “Voice mail service” means an “ancillary service” that enables the customer to store, send or
421 receive recorded messages. “Voice mail service” does not include any “vertical services” that the
422 customer may be required to have in order to utilize the “voice mail service”.

423 “Telecommunications service” means the electronic transmission, conveyance, or routing of
424 voice, data, audio, video, or any other information or signals to a point, or between or among
425 points. The term “telecommunications service” includes such transmission, conveyance, or
426 routing in which computer processing applications are used to act on the form, code or protocol
427 of the content for purposes of transmission, conveyance or routing without regard to whether
428 such service is referred to as voice over Internet protocol services or is classified by the Federal
429 Communications Commission as enhanced or value added. “Telecommunications service” does
430 not include:

431 A. Data processing and information services that allow data to be generated, acquired,
432 stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where
433 such purchaser’s primary purpose for the underlying transaction is the processed data or
434 information;

435 B. Installation or maintenance of wiring or equipment on a customer’s premises;

436 C. Tangible personal property;

437 D. Advertising, including but not limited to directory advertising.

438 E. Billing and collection services provided to third parties;

439 F. Internet access service;

440 G. Radio and television audio and video programming services, regardless of the medium,
441 including the furnishing of transmission, conveyance and routing of such services by the
442 programming service provider. Radio and television audio and video programming services shall
443 include but not be limited to cable service as defined in 47 USC 522(6) and audio and video
444 programming services delivered by commercial mobile radio service providers, as defined in 47
445 CFR 20.3;

446 H. “Ancillary services”; or

447 I. Digital products “delivered electronically”, including but not limited to software, music, 4
448 video, reading materials or ring tones.

449 “800 service” means a “telecommunications service” that allows a caller to dial a toll-free
450 number without incurring a charge for the call. The service is typically marketed under the name
451 “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated
452 by the Federal Communications Commission.

453 “900 service” means an inbound toll “telecommunications service” purchased by a subscriber
454 that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or
455 live service. “900 service” does not include the charge for: collection services provided by the
456 seller of the “telecommunications services” to the subscriber, or service or product sold by the
457 subscriber to the subscriber’s customer. The service is typically marketed under the name “900”
458 service, and any subsequent numbers designated by the Federal Communications Commission.

459 “Fixed wireless service” means a “telecommunications service” that provides radio
460 communication between fixed points.

461 “Mobile wireless service” means a “telecommunications service” that is transmitted, conveyed or
462 routed regardless of the technology used, whereby the origination and/or termination points of
463 the transmission, conveyance or routing are not fixed, including, by way of example only,
464 “telecommunications services” that are provided by a commercial mobile radio service provider.

465 “Paging service” means a “telecommunications service” that provides transmission of coded
466 radio signals for the purpose of activating specific pagers; such transmissions may include
467 messages and/or sounds.

468 “Prepaid calling service” means the right to access exclusively “telecommunications services”,
469 which must be paid for in advance and which enables the origination of calls using an access
470 number or authorization code, whether manually or electronically dialed, and that is sold in
471 predetermined units or dollars of which the number declines with use in a known amount.

472 “Prepaid wireless calling service” means a “telecommunications service” that provides the right
473 to utilize “mobile wireless service” as well as other non-telecommunications services including
474 the download of digital products “delivered electronically”, content and “ancillary services”,
475 which must be paid for in advance that is sold in predetermined units of dollars of which the
476 number declines with use in a known amount.

477 “Private communications service” means a “telecommunications service” that entitles the
478 customer to exclusive or priority use of a communications channel or group of channels between
479 or among termination points, regardless of the manner in which such channel or channels are
480 connected, and includes switching capacity, extension lines, stations, and any other associated
481 services that are provided in connection with the use of such channel or channels.

482 “Residential telecommunications service” means a “telecommunications service” provided to an
483 individual for personal use at a residential address, including an individual dwelling unit such as
484 an apartment. In the case of institutions where individuals reside, such as schools or nursing
485 homes, “telecommunications service” is considered residential if it is provided to and paid for by
486 an individual resident rather than the institution.

487 “Value-added non-voice data service” means a service that otherwise meets the definition of
488 “telecommunications services” in which computer processing applications are used to act on the
489 form, content, code, or protocol of the information or data primarily for a purpose other than
490 transmission, conveyance or routing.

491 SECTION 1B. General Sourcing Rules.

492 (a) The provisions of this section apply regardless of the characterization of a product as tangible
493 personal property, a digital good, or a service. The provisions of this section only apply to
494 determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the
495 seller's retail sale of a product under this chapter and chapter sixty-four I. These provisions do
496 not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the
497 taxing jurisdictions of that use. The provisions of this section also apply to watercraft, motor
498 vehicles, trailers, and semi-trailers. The provisions of this section do not apply to (i) direct mail,
499 (ii) telecommunications services, except prepaid calling services and prepaid wireless calling
500 services, and (iii) ancillary services. So called wire sales by florists, that is orders taken by a
501 florist in the commonwealth and filled by another florist in another state, are sourced to the
502 business location of the florist in the commonwealth in accordance with (b)(1) of this section.

503 (b) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

504 (1) When the product is received by the purchaser at a business location of the seller, the sale is
505 sourced to that business location.

506 (2) When the product is not received by the purchaser at a business location of the seller, the sale
507 is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as
508 such by the purchaser) occurs, including the location indicated by instructions for delivery to the
509 purchaser or donee, known to the seller.

510 (3) When paragraphs (1) and (2) of subsection (b) do not apply, the sale is sourced to the location
511 indicated by an address for the purchaser that is available from the business records of the seller
512 that are maintained in the ordinary course of the seller's business when use of this address does
513 not constitute bad faith.

514 (4) When paragraphs (1), (2) and (3) of subsection (b) do not apply, the sale is sourced to the
515 location indicated by an address for the purchaser obtained during the consummation of the sale,
516 including the address of a purchaser's payment instrument, if no other address is available, when
517 use of this address does not constitute bad faith.

518 (5) When none of the provisions of paragraphs (1), (2), (3) or (4) of subsection (b) apply,
519 including the circumstance in which the seller is without sufficient information to apply the
520 provisions of paragraphs (1), (2), (3) or (4) of subsection (b), then the location will be
521 determined by the address from which the tangible personal property was shipped, from which
522 the digital good or the computer software delivered electronically was first available for
523 transmission by the seller, or from which the service was provided (disregarding for these
524 purposes any location that merely provided the digital transfer of the product sold).

525 (c) The lease or rental of tangible personal property, other than the property identified in
526 subsection (d) or (e) shall be sourced as follows:

527 (1) For a lease or rental that required recurring periodic payments, the first periodic payment is
528 sourced the same as a retail sale in accordance with the provisions of subsection (b). Periodic
529 payments made subsequent to the first payment are sourced to the primary property location for
530 each period covered by the payment. The primary property location shall be as indicated by an
531 address for the property provided by the lessee that is available to the lessor from its records
532 maintained in the ordinary course of business, when use of this address does not constitute bad
533 faith. The property location shall not be altered by intermittent use at different locations, such as
534 use of business property that accompanies employees on business trips and service calls.

535 (2) For a lease or rental that does not require recurring periodic payments, the payment is
536 sourced the same as a retail sale in accordance with the provisions of subsection (b).

537 (3) Subsection (c) does not affect the imposition or computation of sales or use tax on leases or
538 rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

539 (d) The lease or rental of motor vehicles, trailers or semi-trailers that do not qualify as
540 transportation equipment, as defined in subsection (e), shall be sourced as follows:

541 (1) For a lease or rental that requires recurring payments, each periodic payment is sourced to the
542 primary property location. The primary property location shall be as indicated by an address for
543 the property provided by the lessee that is available to the lessor from its records maintained in
544 the ordinary course of business, when use of this address does not constitute bad faith. This
545 location shall not be altered by intermittent use at different locations.

546 (2) For a lease or rental that does not require recurring periodic payments, the payment is
547 sourced the same as a retail sale in accordance with the provisions of subsection (b).

548 (3) Subsection (d) does not affect the imposition or computation of sales or use tax on leases or
549 rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

550 (e) The retail sale, including lease or rental, of transportation equipment shall be sourced the
551 same as a retail sale in accordance with the provisions of subsection (b), notwithstanding the
552 exclusion of lease or rental in subsection (b). “Transportation equipment” means any of the
553 following:

554 (1) locomotives and railcars that are utilized for the carriage of persons or property in interstate
555 commerce;

556 (2) trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or
557 greater, trailers, semi-trailers, or passenger buses that are registered through the International
558 Registration Plan and operated under authority of a carrier authorized and certificated by the
559 United States Department of Transportation or other federal authority to engage in the carriage of
560 persons or property in interstate commerce;

561 (3) aircraft that are operated by air carriers authorized and certificated by the U.S. Department of
562 Transportation or another federal or foreign authority to engage in the carriage of persons or
563 property in interstate or foreign commerce.

564 (4) containers designed for use on and component parts attached or secured on the items set forth
565 in this subsection.

566 (f) For purposes of subsection (b), the terms “receive” and “receipt” mean: taking possession of
567 tangible personal property, or making first use of services, or taking possession or making first
568 use of digital goods, whichever comes first. The terms “receive” and “receipt” do not include
569 possession by a shipping company on behalf of the purchaser.

570 SECTION 1C. Direct Mail Sourcing Rules.

571 (a) Notwithstanding section 1B, a purchaser of direct mail that is not a holder of a direct mail
572 pay permit shall provide to the seller in conjunction with the purchase either a Direct Mail Form
573 or information to show the jurisdiction to which the direct mail is delivered to recipients.

574 1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect,
575 pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax
576 on a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of direct mail
577 by the seller to the purchaser until it is revoked in writing.

578 2. Upon receipt of information from the purchaser showing the jurisdictions to which the
579 direct mail is delivered to recipients, the seller shall collect the tax according to the delivery
580 information provided by the purchaser. In the absence of bad faith, the seller is relieved of any
581 further obligation to collect tax on any transaction where the seller has collected tax pursuant to
582 the delivery information provided by the purchaser.

583 (b) If the purchaser of direct mail does not have a direct pay permit and does not provide the
584 seller with either a Direct Mail Form or delivery information, as required by subsection (a) of
585 this section, the seller shall collect the tax according to section 1B, subsection (a) 5. Nothing in
586 this paragraph shall limit the purchaser’s obligation for sales or use tax to any state to which the
587 direct mail is delivered.

588 (c) If a purchaser of direct mail provides the seller with documentation of direct pay
589 authority, the purchaser shall not be required to provide a Direct Mail Form or delivery
590 information

591 SECTION 1D. Telecommunications and Related Services Sourcing Rules.

592 (a) Except for the defined telecommunication services in subsection (c), the sale of
593 telecommunications services sold on a call by call basis shall be sourced to (i) each level of
594 taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of
595 taxing jurisdiction where the call either originates or terminates and in which the services address
596 is also located.

597 (b) Except for the defined telecommunications services in subsection (c), a sale of
598 telecommunications services sold on a basis other than a call by call basis, is sourced to the
599 customer's place of primary use.

600 (c) The sale of the following telecommunications services shall be sourced to each level of
601 taxing jurisdiction as follows:

602 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone
603 service and prepaid calling service, is sourced to the customer's place of primary use as required
604 by the Mobile Telecommunications Sourcing Act.

605 2. A sale of post-paid calling service is sourced to the origination point of the
606 telecommunications signal as first identified by either (i) the seller's telecommunications system,
607 or (ii) information received by the seller from its service provider, where the system used to
608 transport such signals is not that of the seller.

609 3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in
610 accordance with section 1B of this chapter. Provided however, in the case of a sale of prepaid
611 wireless calling service, the rule provided in section 1B, subsection (b)(5) shall include as an
612 option the location associated with the mobile telephone number.

613 4. A sale of a private communication service is sourced as follows:

614 a. Service for a separate charge related to a customer channel termination point is sourced to
615 each level of jurisdiction in which such customer channel termination point is located.

616 b. Service where all customer termination points are located entirely within one jurisdiction
617 or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination
618 points are located.

619 c. Service for segments of a channel between two customer channel termination points
620 located in different jurisdictions and which segment of channel are separately charged is sourced
621 fifty percent in each level of jurisdiction in which the customer channel termination points are
622 located.

623 d. Service for segments of a channel located in more than one jurisdiction of levels of
624 jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on
625 the percentage determined by dividing the number of customer channel termination points in
626 such jurisdiction by the total number of customer channel termination points.

627 (d) The sale of an ancillary service is sourced to the customer's place of primary use.

628 SECTION 1E. Telecommunications Sourcing Definitions. For the purpose of section 1D, the
629 following definitions apply:

630 A. “Air-to-Ground Radiotelephone service” means a radio service, as that term is defined in
631 47 CFR 22.99, in which common carriers are authorized to offer and provide radio
632 telecommunications service for hire to subscribers in aircraft.

633 B. “Ancillary Services” means services that are associated with or incidental to the provision
634 of “telecommunications services,” including but not limited to “detailed telecommunications
635 billing,” “directory assistance,” “vertical service,, and “voice mail services.”

636 C. “Call-by-call Basis” means any method of charging for telecommunications services
637 where the price is measured by individual calls.

638 D. “Communications Channel” means a physical or virtual path of communications over
639 which signals are transmitted between or among customer channel termination points.

640 E. “Customer” means the person or entity that contracts with the seller of
641 telecommunications services. If the end user of telecommunications services is not the
642 contracting party, the end user of the telecommunications service is the customer of the
643 telecommunications service, but this sentence only applies for the purpose of sourcing sales of
644 telecommunication services under section 1C. “Customer” does not include a reseller of
645 telecommunications service or for mobile telecommunications service of a serving carrier under
646 an agreement to serve the customer outside the home service provider’s licensed service area.

647 F. “Customer Channel Termination Point” means the location where the customer either
648 inputs or receives communications.

649 G. “End User” means the person who utilizes the telecommunication service. In the case of
650 an entity, “end user” means the individual who utilizes the service on behalf of the entity.

651 H. “Home service provider” means the same as that term is defined in section 124(5) of
652 Public Law 106-252 (Mobile Telecommunications Sourcing Act).

653 I. “Mobile telecommunications service” means the same as that term is defined in section
654 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

655 J. “Place of primary use” means the street address representative of where the customer’s
656 use of the telecommunications service primarily occurs, which must be the residential street
657 address or the primary business street address of the customer. In the case of mobile
658 telecommunications services, “place of primary use” must be within the licensed service area of
659 the home service provider.

660 K. “Post-paid calling service” means the telecommunications service obtained by making a
661 payment on a call-by-call basis either through the use of a credit card or payment mechanism
662 such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone
663 number which is not associated with the origination or termination of the telecommunications
664 service. A post-paid calling service includes a telecommunications service, except a prepaid
665 wireless calling service, that would be a prepaid calling service except it is not exclusively a
666 telecommunication service.

667 L. “Prepaid calling service” means the right to access exclusively telecommunications
668 services, which must be paid for in advance and which enables the origination of calls using an
669 access number or authorization code, whether manually or electronically dialed, and that is sold
670 in predetermined units or dollars of which the number declines with use in a known amount.

671 M. “Prepaid wireless calling service” means a telecommunications service that provides the
672 right to utilize mobile wireless service as well as other non-telecommunications services,

673 including the download of digital products delivered electronically, content and ancillary
674 services, which must be paid for in advance that is sold in predetermined units or dollars of
675 which the number declines with use in a known amount.

676 N. “Private communication service” means a telecommunication service that entitles the
677 customer to exclusive or priority use of a communications channel or group of channels between
678 or among termination points, regardless of the manner in which such channel or channels are
679 connected, and includes switching capacity, extension lines, stations, and any other associated
680 services that are provided in connection with the use of such channel or channels.

681 O. “Service address” means:

682 1. The location of the telecommunications equipment to which a customer’s call is charged
683 and from which the call originates or terminates, regardless of where the call is billed or paid.

684 2. If the location in subsection (O)(1) is not known, service address means the origination
685 point of the signal of the telecommunications services first identified by either the seller’s
686 telecommunications system or in information received by the seller from its service provider,
687 where the system used to transport such signal is not that of the seller.

688 3. If the location in section (O)(1) and subsection (O)(2) are not known, the service address
689 means the location of the customer’s place of primary use.

690 SECTION 3: Section 2 of Chapter 64H of the General laws, as so appearing, is hereby amended
691 by replacing it with the following:

692 An excise is hereby imposed upon sales at retail sourced to the commonwealth under the
693 applicable rules in this chapter, by any seller, of tangible personal property, bundled transactions

694 including a taxable product, or services at the rate of five percent on all such sales of such
695 property or services, except as otherwise provided in this chapter, and not on a “service charge”
696 or “tip” that is distributed by a seller to service employees, wait staff employees or service
697 bartenders as provided in section 152A of chapter 149. In the case of a bundled transaction that
698 includes telecommunications services, ancillary services, internet access, or audio or video
699 programming service, if the price is attributable to products that are taxable and products that are
700 nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax
701 unless the seller can identify by reasonable and verifiable standards such portion from its books
702 and records that are kept in the regular course of business for other purposes, including, but not
703 limited to, non-tax purposes. For purposes of reporting the sale or recharge of prepaid calling
704 services or prepaid wireless calling services, the sale is deemed to occur on the date of the
705 transfer for consideration. The excise shall be paid by the seller to the commissioner at the time
706 provided for filing the return required by section sixteen of chapter sixty-two C.

707 SECTION 4: Section 4 of Chapter 64H of the General Laws, as so appearing, is hereby
708 amended by striking it out in its entirety and inserting in its place the following new Section 4:
709 For the purpose of adding and collecting the tax imposed by this chapter to be reimbursed to the
710 seller by the purchaser, the tax computation must be carried to the third decimal place, and it
711 must be rounded to a whole cent, rounding up to the next cent whenever the third decimal place
712 is greater than four. A seller may elect to compute the tax due on a transaction on an item or an
713 invoice basis.

714 SECTION 5: Section 6 of Chapter 64H of the General Laws, as so appearing, is hereby
715 amended as follows:

716 SECTION 6(b) is amended by striking everything following the word “import” and adding a
717 period following that word.

718 SECTION 6(e) is amended by adding the following sentence at the end of the section:

719 A purchaser may also claim this exemption by use of a certificate in a form approved by the
720 Streamlined Sales Tax Governing Board.

721 SECTION 6(g) is amended by deleting the period at the end of the section and adding the
722 following:

723 ,except alcoholic beverages for on-premises consumption.

724 SECTION 6(h) is repealed in its entirety and replaced with the following:

725 Sales of food and food ingredients including candy, soft drinks, or food sold through vending
726 machines with a sales price of less than \$3.50, but not alcoholic beverages for on-premises
727 consumption, dietary supplements, prepared food or tobacco. Prepared food sold by a bed and
728 breakfast establishment or bed and breakfast home as defined in chapter 64G shall not be subject
729 to tax under this chapter where the value of the breakfast served is included in the rent for the
730 room.

731 SECTION 6(i) is amended by deleting clause (4) and inserting in its place the following:

732 (4) residential intrastate telecommunications services.

733 SECTION 6(k) is repealed in its entirety and replaced with the following:

734 Sales of essential clothing, not including clothing accessories, protective equipment, sport or
735 recreational equipment, or fur clothing as defined in this chapter.

736 SECTION 6(l) is repealed in its entirety and replaced with the following:

737 Sales of the following on prescription: drugs and over-the-counter drugs for human use, durable

738 medical equipment for home use, mobility enhancing equipment, and prosthetic devices.

739 SECTION 6(cc) is amended by striking the word “meal” each time it appears and substituting

740 “prepared food” and by striking the word “prepared by” in lines 353 and 357 and inserting

741 “made by”.

742 SECTION 6(ff) is repealed in its entirety and replaced with the following:

743 (ff) Sales of "direct and cooperative direct mail promotional advertising materials" defined as

744 individual discount coupons, or advertising leaflets incorporating the coupons within the

745 promotional advertising materials no greater than 6 pages in length, and including any

746 accompanying envelopes and labels. In order to be exempt hereunder, the promotional

747 advertising materials shall be distributed as a part of a package of materials promoting 1 or more

748 than 1 business, each operated at separate and distinct locations, and directed in a single package

749 to potential customers, at no charge to the potential customer, of the businesses paying for the

750 delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail

751 promotional advertising materials" shall not include mail order catalogs, department store

752 catalogs, telephone directories, or similar printed advertising books, booklets or circulars greater

753 than 6 pages in total length.

754 SECTION 6(ll) is amended by striking it and inserting the following in its place:

755 (ll) Sales of gold or silver bullion or coins traded and sold according to their value as precious

756 metal, but not coins sold for their numismatic value. The word "bullion" shall not include

757 fabricated precious metal which has been processed or manufactured for industrial, professional
758 or artistic uses.

759 SECTION 6(qq) is amended by deleting, in the last sentence of that section, the following words:

760 in good faith

761 The section is further amended by added the following new section 6(xx):

762 Sales of tickets for admissions to places of amusement and sports.

763 SECTION 6: Section 7 of Chapter 64H of the General Laws, as so appearing, is hereby

764 amended by striking the section in its entirety and replacing it with the following:

765 No person shall do business in this commonwealth as a seller unless a registration shall have

766 been issued to him. For persons with business locations physically located in the

767 commonwealth, a registration shall be obtained for each place of business in the commonwealth

768 in accordance with section sixty-seven of chapter sixty-two C. A seller may select one of the

769 following methods of remittances:

770 A. Model 1, wherein a seller selects a Certified Service Provider as an agent to perform all
771 of the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own
772 purchases. For purposes of this section, an agent is a person authorized in writing by a seller to
773 represent the seller before member states of the Streamlined Sales Tax Governing Board;

774 B. Model 2, wherein a seller selects a Certified Automated System to use which calculates
775 the amount of tax due on a transaction, but retains responsibility for remitting the tax; or

776 C. Model 3, wherein a seller or an affiliated group of sellers utilizes its own proprietary
777 automated sales tax system that calculates the amount of tax due each jurisdiction and has been
778 certified as a Certified Automated System. A Model 3 seller must:

779 (1.) have sales in at least five member states of the Streamlined Sales Tax Governing Board,
780 and

781 (2.) have total annual sales revenue of at least five hundred million dollars, and

782 (3.) enter into a performance agreement approved by the Streamlined Sales Tax Governing
783 Board, Inc.

784 SECTION 7: Chapter 64H of the General Laws, as so appearing, is hereby is amended by
785 adding after Section 7, the following new section 7A:

786 7A. Amnesty for Registration

787 A seller that registers to collect and remit the tax imposed by this chapter and chapter 64I on or
788 after the date the commonwealth is accepted as a full member of the Streamlined Sales Tax
789 Governing Board, Inc. and for a period of one year thereafter, will be entitled to amnesty for
790 uncollected or unpaid sales or use tax, penalty and interest providing that the seller was not
791 registered in the commonwealth in the 12 month period preceding the date of such acceptance.
792 The amnesty provided by this section is not available to a seller with respect to any matter or
793 matters for which the seller received notice of the commencement of an audit or an audit
794 assessment, including any administrative or judicial appeals. The amnesty is also not available
795 for sales or use taxes already paid or remitted to the commonwealth or to taxes collected by the
796 seller. The amnesty is effective, absent the seller's fraud or intentional misrepresentation of a

797 material fact, as long as the seller continues registration and continues to pay or collect and remit
798 applicable sales or use taxes for a period of at least 36 months. The amnesty is applicable only to
799 sales or use taxes due from a seller in its capacity as a seller and not to sales or sue taxes due
800 from a seller in its capacity as a buyer.

801 SECTION 8: Chapter 64H of the General Laws, as so appearing, is hereby is amended by
802 adding after Section 7A, the following new section 7B:

803 7B. Monetary Allowances for Sales Tax Collection

804 (a) A monetary allowance shall be allowed to a Certified Service Provider under Model 1 in
805 accordance with the terms of the contracts between the Streamlined Sales Tax Governing Board
806 and the Certified Service Providers for a period not to exceed 24 months following a voluntary
807 seller's registration through the Streamlined Sales Tax Governing Board's central registration
808 process. The compensation shall be a percentage of tax revenue generated for the
809 commonwealth by the voluntary seller that does not have a requirement to register to collect the
810 tax.

811 (b) A seller electing to use a Certified Automated System under Model 2 may receive a
812 monetary allowance to be determined by the Streamlined Sales Tax Project Governing Board for
813 a period not to exceed twenty four months following a voluntary seller's registration through the
814 Streamlined Sales Tax Governing Board's central registration process. The compensation may
815 be a percentage of tax revenue generated for the commonwealth by the voluntary seller that does
816 not have a requirement to register to collect the tax.

817 (c) A seller that utilizes its own proprietary automated sales tax system that has been
818 certified as a Certified Automated System under Model 3 and all other sellers not covered under

819 (a) or (b) that voluntarily register through the Streamlined Sales Tax Governing Board's central
820 registration process may receive a monetary allowance to be determined by the Streamlined
821 Sales Tax Governing Board for a period not to exceed 24 months following the registration. The
822 compensation may be a percentage of tax revenue generated for the commonwealth by the
823 voluntary seller that does not have a requirement to register to collect the tax.

824 (d) A seller may receive additional compensation as required by the Streamlined Sales and
825 Use Tax Agreement, as amended.

826 SECTION 9: Section 8 of Chapter 64H of the General Laws, as so appearing, is hereby
827 amended by striking the section in its entirety and replacing it with the following:

828 (a) It shall be presumed that all gross receipts of a seller from the sale of services or tangible
829 personal property are from sales subject to tax until the contrary is established. The burden of
830 proving that a sale of services or tangible personal property by any seller is not subject to tax
831 shall be upon such seller unless he takes from the purchaser a certificate of exemption to the
832 effect that the service or property is purchased for resale, or the service or property is exempt
833 from the tax imposed by this chapter and such certificate of exemption is obtained by the seller
834 not later than ninety days subsequent to the date of the sale. Where a certificate is not obtained
835 within the foregoing time limit the seller is not relieved of its burden of proving that the sale was
836 exempt or for resale and the seller must prove by other means, within one hundred twenty days
837 subsequent to the date of notice from the commissioner, that the sale was not a retail sale subject
838 to tax or produce a fully completed exemption certificate from the purchaser taken in good faith.

839 (b) The certificate of exemption shall relieve the seller from the burden of proof and any
840 liability for the tax if it is determined that the purchaser improperly claimed an exemption unless:

841 (1) the seller fraudulently fails to collect the tax, or
842 (2) the seller solicits purchasers to participate in the unlawful claim of an exemption, or
843 (3) a seller physically located within the commonwealth accepts an exemption certificate that
844 claims an entity based exemption not contained in this chapter in a transaction involving a
845 product received by the purchaser at a business location of the seller.

846 (c) The certificate of exemption shall bear the name and address of the purchaser and the
847 purchaser's tax identification number or other identification number. If the certificate of
848 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's signature.
849 The certificate shall be in such form as the commissioner may prescribe or that has been
850 approved by the Streamlined Sales Tax Governing Board.

851 (d) If a purchaser who gives a certificate of exemption indicating that the purchase was for
852 resale in the regular course of business makes any use of the service or property other than
853 retention, demonstration or display while holding it for sale in the regular course of business, the
854 use shall be deemed a retail sale by the purchaser as of the time the service or property is first
855 used by him, and the cost of the service or property to him shall be deemed the gross receipts
856 from such retail sale. If the sole use of the property other than retention, demonstration or display
857 in the regular course of business is the rental of the property while holding it for sale, the
858 purchaser may elect to include in its gross receipts the amount of the rental charge rather than the
859 cost of the property to him.

860 (e) If a purchaser who gives a certificate of exemption makes any use of the property
861 inconsistent with the exemption claimed on the certificate, the use shall be deemed a retail sale

862 by the purchaser as of the time the property is first so used and the cost of the property to the
863 purchaser shall be deemed the gross receipts from such retail sale.

864 (f) A seller may obtain a blanket exemption certificate from a purchaser with which the
865 seller has a recurring business relationship and will be relieved of liability as otherwise provided
866 in this section. For purposes of this section a recurring business relationship exists when a
867 period of no more than twelve months elapses between sales transactions.

868 (g) For purposes of this section, a certificate of exemption may be either in paper or
869 electronic format. The requirement of taking a certificate is satisfied if the seller otherwise
870 captures all required data elements of such a certificate in its books and records. The
871 commissioner may promulgate rules and regulations determining which services shall be deemed
872 purchased for resale under this section.

873 SECTION 10: Chapter 64H of the General Laws, as so appearing, is hereby is amended by
874 adding after Section 8, the following new section 8A:

875 8A. Relief from Liability

876 A. The commissioner shall publish a taxability matrix in the form and manner prescribed by the
877 Streamlined Sales Tax Governing Board, Inc. and shall relieve sellers and certified service
878 providers from liability for having charged and collected the incorrect amount of sales or use tax
879 resulting from the seller or certified service provider relying on erroneous data provided in the
880 taxability matrix.

881 B. A purchaser is relieved from liability for having failed to pay the correct amount of sales or
882 use tax in the following circumstances:

883 1. A purchaser's seller or CSP relied on erroneous data provided by the commissioner in the
884 taxability matrix;

885 2. A purchaser holding a direct pay permit relied on erroneous data provided by the
886 commissioner in the taxability matrix;

887 3. A purchaser relied on erroneous data provided by the commissioner in the taxability matrix.

888 For purposes of this section, erroneous data is limited to incorrect classification in the taxability
889 matrix of defined products as taxable or exempt, included or excluded from sales price, or
890 included or excluded from a defined product. For purposes of this section, relief from liability
891 includes liability for tax, interest and penalty.

892 C. Following certification to the Streamlined Sales Tax Governing Board that the commissioner
893 has reviewed the taxability of the product categories contained in software used by a Certified
894 Service Provider or a Certified Automated System, the Certified Service Provider or seller using
895 the Certified Automated System is relieved from liability for not collecting sales or use taxes
896 resulting from reliance on that certification. The relief from liability provided in this section
897 shall not be available where the Certified Service Provider or seller using a Certified Automated
898 System has incorrectly classified an item or transaction into a product category certified by the
899 commissioner. In the case of such a misclassification, the Certified Service Provider or seller
900 using a Certified Automated System shall be given 10 days to correct any such error, and
901 following that 10 day period, will be liable for the failure to collect the correct amount of sales or
902 use taxes.

903 SECTION 11: Section 26 of Chapter 64H of the General Laws, as so appearing, is amended by
904 adding the following at the end.

905 Where a motor vehicle is returned to a seller pursuant to a rescission of contract within one
906 hundred and eighty days of the date of sale and the entire amounts charged for the motor vehicle,
907 less the sellers' established handling fees, if any, for return of the property, are refunded either in
908 cash or credit, the purchaser may apply to the Commissioner for a refund of any tax paid under
909 this chapter or chapter 64I within the time limitations provided in chapter 62C, section 37. In
910 the case of a rescission of contract for the sale of a motor vehicle, the seller's established handling
911 fees may include a reasonable allowance for the purchaser's use of the vehicle.

912 SECTION 12: Section 33 of Chapter 64H of the General Laws, as so appearing, is hereby is
913 amended by striking the section in its entirety and replacing it with the following:

914 Section 33: Bad Debts. Any seller who has paid to the commissioner an excise under this
915 chapter upon a sale for which credit is given to the purchaser and such account is later
916 determined to be a bad debt may deduct the amount of the bad debt on the return for the period
917 during which the bad debt is written off as uncollectable in the seller's books and records and is
918 eligible to be deducted for federal income tax purposes, whether or not the seller is required to
919 file a federal income tax return. For purposes of this section, (1) a seller entitled to a deduction
920 does not include an assignee or factor of such seller and (2) bad debt shall have the same
921 meaning as in 26 U.S.C. 166, but excluding financing charges or interest, sales or use taxes
922 charged on the purchase price, uncollectable amounts on property that remain in the possession
923 of the seller until the full purchase price is paid, expenses incurred in attempting to collect any
924 debt, and repossessed property. If a seller takes a deduction for a bad debt as provided in this
925 section and the debt is subsequently collected in whole or in part, the tax on the amount so
926 collected must be paid and reported on the return filed for the period in which the collection is
927 made. For purposes of reporting a payment received on a previously claimed bad debt, any

928 payments made on a debt or account shall be applied first proportionately to the taxable sales
929 price and tax and second to interest, service charges, and any other charges. If a bad debt
930 exceeds the amount of taxable sales for the period during which the bad debt is written off, an
931 application for abatement may be filed within the time limitations of G.L. c. 62C, § 37, provided
932 however that notwithstanding any provisions of G.L. c. 62C, § 37 to the contrary, the three year
933 time limitation shall be measured from the due date of the return on which the bad debt could
934 first be claimed. Where a seller has elected to utilize a Certified Service Provider, the Certified
935 Service Provider may claim, on behalf of the seller any bad debt allowance provided by this
936 section, provided that the Certified Service Provider credits or refunds the full amount of any bad
937 debt allowance or refund to the seller. In situations where the books and records of the seller
938 support an allocation of the bad debts among member states of the Streamlined Sales Tax
939 Governing Board, such an allocation is permitted.

940 SECTION 13: Chapter 64H of the General Laws, as so appearing, is hereby is amended by
941 adding the following new section 34:

942 Section 34: Demand for Return of Overpaid Tax

943 (a) In the event a seller shall refuse to return a sales tax upon request by the customer, the
944 customer shall not have a cause of action against the seller until a written notice of demand is
945 made upon the seller and at least 60 days have elapsed since the time of the demand. Such
946 demand must contain sufficient information to allow the seller to determine the validity of the
947 request.

948 (b) In connection with a customer's request for a return of overpaid sales taxes, a seller shall
949 be presumed to have a reasonable business practice if in the collection of sales taxes the seller (i)

950 uses either a provider or system, including a proprietary system, certified by the commonwealth
951 or the Streamlined Sales Tax Governing Board; and (ii) has remitted to the commonwealth all
952 taxes collected, less any deductions, credits, or collection allowances permitted under this
953 chapter.

954 SECTION 14: Chapter 64H of the General Laws, as so appearing, is hereby is amended by
955 adding the following new section 35:

956 Section 35: In the event of a rate change in section two of this chapter, the effective date of rate
957 changes for services covering a period starting before and ending after the statutory effective
958 date shall be as follows:

959 A. For a rate increase, the new rate shall apply to the first billing period starting on or
960 after the effective date.

961 B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective
962 date.

963 SECTION 15: Section 1 of Chapter 64I of the General Laws, as so appearing, is hereby
964 amended by adding in the second paragraph after the word “person” and before the word
965 “retailer”, the following:

966 “purchaser”,

967 Section 1 of Chapter 64I of the General Laws, as so appearing, is further amended by striking the
968 definition of “purchaser” in its entirety.

969 SECTION 16: Section 4 of Chapter 64I of the General Laws, as so appearing, is hereby
970 amended by adding the following at the end of the first paragraph:

971 A vendor's or seller's obligation to pay or collect and remit a sales or use tax with respect to the
972 seller's retail sale of a product are subject to the sourcing of a sale provisions of chapter sixty-
973 four H, which provisions do not affect the obligation of a purchaser or lessee to remit tax on the
974 use of the product to the taxing jurisdiction of that use.

975 SECTION 17: Section 5 of Chapter 64I of the General Laws, as so appearing, is hereby
976 amended by striking it out in its entirety and inserting in its place the following new Section 5:

977 For the purpose of adding and collecting the tax imposed by this chapter to be paid to the
978 commonwealth or to be reimbursed to the seller by the purchaser, the tax computation must be
979 carried to the third decimal place, and it must be rounded to a whole cent, rounding up to the
980 next cent whenever the third decimal place is greater than four. A seller may elect to compute
981 the tax due on a transaction on an item or an invoice basis.

982 SECTION 18: Section 8 of Chapter 64I of the General Laws, as so appearing, is hereby
983 amended by striking the section in its entirety and replacing it with the following:

984 (a) For the purpose of the proper administration of this chapter and to prevent evasion of the
985 tax imposed hereunder, it shall be presumed that tangible personal property or services sold by
986 any person for delivery in the commonwealth is sold for storage, use or other consumption in the
987 commonwealth until the contrary is established. The burden of proving the contrary is upon the
988 person who makes the sale unless he takes from the purchaser a certificate of exemption to the
989 effect that the service or property is purchased for resale, or the service or property is exempt
990 from the tax imposed by this chapter and such certificate of exemption is received not later than
991 ninety days subsequent to the date of the sale. Where a certificate is not obtained within the
992 foregoing time limit the seller is not relieved of its burden of proving that the sale was exempt or

993 for resale and the seller must prove by other means, within one hundred twenty days subsequent
994 to the date of notice from the commissioner, that the sale was not a retail sale subject to tax or
995 produce a fully completed exemption certificate from the purchaser taken in good faith.

996 (b) The certificate shall relieve the seller from the burden of proof and any liability for the
997 tax if it is determined that the purchaser improperly claimed an exemption unless

998 (1) the seller fraudulently fails to collect the tax, or

999 (2) the seller solicits purchasers to participate in the unlawful claim of an exemption, or

1000 (3) a seller physically located within the commonwealth accepts an exemption certificate that
1001 claims an entity based exemption not contained in this chapter in a transaction involving a
1002 product received by the purchaser at a business location of the seller.

1003 (c) The certificate of exemption shall bear the name and address of the purchaser and the
1004 purchaser's tax identification number or other identification number. If the certificate of
1005 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's signature.
1006 The certificate shall be in such form as the commissioner may prescribe or that has been
1007 approved by the Streamlined Sales Tax Governing Board.

1008 (d) If a purchaser who gives a certificate of exemption indicating that the purchase was for
1009 resale in the regular course of business makes any use of the service or property other than
1010 retention, demonstration or display while holding it for sale in the regular course of business, the
1011 storage or use is taxable as of as of the time the service or property is first so stored or used by
1012 him. If the sole use of the property other than retention, demonstration or display in the regular
1013 course of business is the rental of the property while holding it for sale, the purchaser may elect

1014 to include in its gross receipts the amount of the rental charge rather than the cost of the property
1015 to him.

1016 (e) If a purchaser who gives a certificate of exemption makes any use of the property
1017 inconsistent with the exemption claimed on the certificate, the use shall be deemed a retail sale
1018 by the purchaser as of the time the property is first so used and the cost of the property to the
1019 purchaser shall be deemed the gross receipts from such retail sale.

1020 (f) It shall be presumed that tangible personal property shipped or brought to the
1021 commonwealth by the purchaser was purchased from a retailer for storage, use, or other
1022 consumption in the commonwealth provided that such property was shipped or brought into the
1023 commonwealth within six months after its purchase.

1024 (g) It shall be presumed that services used within the commonwealth by the purchaser were
1025 purchased from the seller for use within the commonwealth provided such services were used
1026 within the commonwealth within six months after its purchase.

1027 (h) For purposes of this section, a certificate of exemption may be either in paper or
1028 electronic format. The requirement of taking a certificate is satisfied if the seller otherwise
1029 captures all required data elements of such a certificate in its books and records. The
1030 commissioner may promulgate rules and regulations determining which services shall be deemed
1031 purchased for resale under this section.

1032 SECTION 19: Section 34 of Chapter 64I of the General Laws, as so appearing, is hereby
1033 amended by striking it out in its entirety and inserting in its place the following new Section 34:

1034 Any seller who has paid to the commissioner an excise under this chapter upon a sale for which
1035 credit is given to the purchaser and such account is later determined to be a bad debt may deduct
1036 the amount of the bad debt as provided in G.L. c. 64H, section 33.

1037 SECTION 20 : Chapter 64I of the General Laws, as so appears, is amended by adding a new
1038 Section 35:

1039 Section 35: Demand for Return of Overpaid Tax

1040 (a) In the event a seller shall refuse to return a use tax collected by the seller upon request by
1041 the customer, the provisions of section thirty-four of chapter sixty-four H shall apply.

1042 SECTION 21 : Chapter 64I of the General Laws, as so appears, is amended by adding a new
1043 Section 36:

1044 Section 36: In the event of a rate change in section two of this chapter, the provisions of section
1045 thirty-five of chapter sixty-four H shall apply.

1046 SECTION 22: The commonwealth hereby adopts the Streamlined Sales and Use Tax Agreement
1047 as created on November 12, 2002 and as amended by the member states of the Streamlined Sales
1048 Tax Governing Board, Inc. The commissioner may promulgate rules and regulations consistent
1049 with the Streamlined Sales and Use Tax Agreement and any subsequent amendments or
1050 interpretations thereof adopted by the Streamlined Sales Tax Governing Board, Inc. to ensure
1051 that the commonwealth remains in compliance with that agreement, as amended.

1052 SECTION 23: The commissioner is authorized to petition the Streamlined Sales Tax Governing
1053 Board to allow the commonwealth to become an associate or full member of the Streamlined
1054 Sales Tax Governing Board and to pay the application fee and annual fees from sales and use

1055 taxes collected under chapters 64H and 64I. If accepted as an associate or full member, the
1056 commonwealth shall be represented at the Streamlined Sales Tax Governing Board meetings by
1057 a coalition of 3 delegates:

1058 a) 1 voting member from the Department of Revenue who is appointed by the
1059 commissioner, and

1060 b) 1 voting member from each chamber of the legislature appointed by the Speaker of the
1061 House and the President of the Senate, respectively.

1062 These 3 delegates shall together decide how the commonwealth's interests are best represented
1063 to the board, voting on issues as indicated above. Since each member state on the Governing
1064 Board is allowed only one vote, the commonwealth's single vote on an issue shall be determined
1065 by the majority opinion indicated by the votes of the delegates of the commonwealth's coalition.
1066 If the House delegate is absent, not voting, voting "present," or abstaining from the vote, that
1067 delegate's proxy shall automatically be given to the Senate delegate. If the Senate delegate is
1068 absent, not voting, voting "present," or abstaining from the vote, that delegate's proxy shall
1069 automatically be given to the House delegate. If the Department of Revenue delegate is absent,
1070 not voting, voting "present," or abstaining from the vote, that delegate's proxy shall be given to
1071 the legislative delegate of his/her choice.

1072 SECTION 24: Sections 1-22 of this bill shall be effective on the first day of the twelfth month
1073 following passage.

1074 SECTION 25: Section 23 of this bill shall be effective immediately upon passage.