



The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

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HOUSE No. 4115

The Commonwealth of Massachusetts

By Mr. Kaufman of Lexington, for the committee on Revenue, on House, No. 2732, a Bill to promote sales tax fairness for main street retailers (House, No. 4115). May 14, 2009.

An Act to promote sales tax fairness for main street retailers.

FOR THE COMMITTEE:

NAME:
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The Commonwealth of Massachusetts

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An Act to promote sales tax fairness for main street retailers.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to streamline and simplify the collection of sales tax in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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
2 hereby amended by striking it out in its entirety and inserting in its place the following new
3 section 1:

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

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

8 "Bundled transaction" is the retail sale of two or more products, except real property and
9 services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the
10 products are sold for one non-itemized price. A "bundled transaction" does not include the sale of
11 any products in which the "sales price" varies, or is negotiable, based on the selection by the
12 purchaser of the products included in the transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72 "Commissioner" means the commissioner of revenue.

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

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

77 "Delivered electronically" means delivered to the purchaser by means other than tangible
78 storage media.

79 "Delivery charges" means charges by the seller of personal property or services for
80 preparation and delivery to a location designated by the purchaser of personal property or services

81 including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

82 The term "delivery charges" does not include "delivery charges" for "direct mail."

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

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

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

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

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

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

94 1. A vitamin;

95 2. A mineral;

96 3. An herb or other botanical;

97 4. An amino acid;

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

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

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

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

107 "Direct mail" means printed material delivered or distributed by United States mail or other
108 delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or
109 at the direction of the purchaser when the cost of the items are not billed directly to the recipients.

110 "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to
111 the direct mail seller for inclusion in the package containing the printed material. "Direct mail"
112 does not include multiple items of printed material delivered to a single address.

113 "Drug" means a compound, substance or preparation, and any component of a compound,
114 substance or preparation, other than "food and food ingredients," "dietary supplements" or
115 "alcoholic beverages:"

116 (a) Recognized in the official United State Pharmacopoeia, official Homeopathic
117 Pharmacopoeia of the United States, or official National Formulary, and
118 supplement to any of them; or

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

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

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

124 (a) Can withstand repeated use; and

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

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

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

128 As used in this definition, “repair and replacement parts” does not include items which are for
129 single patient use only.

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

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

135 “Engaged in business in the commonwealth” means having a business location in the
136 commonwealth; regularly or systematically soliciting orders for the sale of services to be
137 performed within the commonwealth or for the sale of tangible personal property for
138 delivery to destinations in the commonwealth; otherwise exploiting the retail sales market
139 in the commonwealth through any means whatsoever, including, but not limited to,
140 salesmen, solicitors or representatives in the commonwealth, catalogs or other solicitation
141 materials sent through the mails or otherwise, billboards, advertising or solicitations in
142 newspapers, magazines, radio or television broadcasts, computer networks or in any other
143 communications medium; or regularly engaged in the delivery of property or the
144 performance of services in the commonwealth. A person shall be considered to have a
145 business location in the commonwealth only if such person (i) owns or leases real property
146 within the commonwealth; (ii) has one or more employees located in the commonwealth;

147 (iii) regularly maintains a stock of tangible personal property in the commonwealth for sale
148 in the ordinary course of business; or (iv) regularly leases out tangible personal property
149 for use in the commonwealth. For the purposes of this paragraph, property on
150 consignment in the hands of a consignee and offered for sale by the consignee on his own
151 account shall not be considered as stock maintained by the consignor; a person having a
152 business location in the commonwealth solely by reason of regularly leasing out tangible
153 personal property shall be considered to have a business location in the commonwealth
154 only with respect to such leased property; and an employee shall be considered to be
155 located in the commonwealth if (a) his service is performed entirely within the
156 commonwealth or (b) his service is performed both within and without the commonwealth
157 but in the performance of his services he regularly commences his activities at, and returns
158 to, a place within the commonwealth. "Within the commonwealth" means within the
159 exterior limits of the commonwealth of Massachusetts, and includes all territory within
160 said limits owned by, or leased or ceded to, the United States of America.

161 "Essential Clothing" means clothing with a sales price below \$175.

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

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

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

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

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

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

189 (a) Lease or rental does not include:

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

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

195 3. Providing tangible personal property along with an operator for a fixed or indeterminate
196 period of time. A condition of this exclusion is that the operator is necessary for the equipment to
197 perform as designed. For the purpose of this subsection, an operator must do more than maintain,
198 inspect, or set-up the tangible personal property.

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

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

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

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

210 "Mobility enhancing equipment" means equipment including repair and replacement parts to
211 same which:

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

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

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

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

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

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

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

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

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

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

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

241 "Prepared food" means:

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

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

244 or

245 (c) Food sold with eating utensils provided by the seller, including plates, knives, forks,

246 spoons, glasses, cups, napkins, or straws. A plate does not include a container or

247 packaging used to transport the food.

248 "Prepared food" in section (b) of this definition does not include food that is only cut, repackaged,
249 or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal
250 foods requiring cooking by the consumer as recommended by the Food and Drug Administration in
251 chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses. "Prepared food" does
252 not include the following if sold without eating utensils provided by the seller:

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

254 2. Bakery items including but not limited to bread, rolls, buns, biscuits, bagels, croissants,

255 pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, cookies or tortillas.

256 "Prescription" means an order, formula or recipe issued in any form of oral, written,

257 electronic, or other means of transmission by a duly licensed practitioner.

258 "Prewritten computer software" means "computer software," including prewritten upgrades,

259 which is not designed and developed by the author or other creator to the specifications of a

260 specific purchaser. The combining of two or more "prewritten computer software" programs or

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

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

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

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

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

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

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

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

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

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

304 "Sale" and "selling" include (i) any transfer of title or possession, or both, exchange,
305 barter, lease, rental, conditional or otherwise, of tangible personal property or the
306 performance of services for a consideration, in any manner or by any means whatsoever;
307 (ii) the producing, fabricating, processing, printing or imprinting of tangible personal
308 property for a consideration for consumers who furnish either directly or indirectly the

309 materials used in the producing, fabricating, processing, printing or imprinting; (iii) the
310 furnishing and distributing of tangible personal property or services for a consideration by
311 social clubs and fraternal organizations to their members or others; (iv) a transaction
312 whereby the possession of property is transferred but the seller retains the title as security
313 for the payment of the price; (v) a transfer for a consideration of the title or possession of
314 tangible personal property which has been produced, fabricated or printed to the special
315 order of the customer, or of any publication; (vi) the furnishing of information by printed,
316 mimeographed or multigraphed matter, or by duplicating written or printed matter in any
317 other manner, including the services of collecting, compiling or analyzing information of
318 any kind or nature and furnishing reports thereof to other persons, but excluding the
319 furnishing of information which is personal or individual in nature and which is not or may
320 not be substantially incorporated in reports furnished to other persons, and excluding the
321 services of advertising or other agents, or other persons acting in a representative capacity,
322 and information services used by newspapers, radio broadcasters and television
323 broadcasters in the collection and dissemination of news and excluding the furnishing of
324 information by photocopy or other similar means by not for profit libraries which are
325 recognized as exempt from taxation under § 501(c)(3) of the Federal Internal Revenue
326 Code; (vii) the performance of services for a consideration, excluding (a) services
327 performed by an employee for his employer whether compensated by salary, commission,
328 or otherwise, (b) services performed by a general partner for his partnership and
329 compensated by the receipt of distributive shares of income or loss from the partnership;
330 and (c) the performance of services for which the provider is compensated by means of an
331 honorarium, or fee paid to any person or entity registered under 15 USC 80b-3 or 15 USC

332 78q-1 for services the performance of which require such registration, for services related
333 thereto or for trust, custody, and related cash management and securities services of a trust
334 company as defined in chapter one hundred and seventy-two.

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

- 339 (a) The seller's cost of the property sold;
- 340 (b) The cost of materials used, labor or service cost, interest, losses, all costs of transportation
341 to the seller, all taxes imposed on the seller, and any other expense of the seller;
- 342 (c) Charges by the seller for any services necessary to complete the sale, other than
343 delivery and installation charges;
- 344 (d) Delivery charges;
- 345 (e) Credit for any trade-in, except as provided in sections 26 and 27A of this chapter;

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

- 348 (a) Installation charges;

349 "Sales price" shall not include:

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

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

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

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

359 “Sales price” shall include consideration received by the seller from third parties if:

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

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

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

366 D. One of the following criteria is met:

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

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

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

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

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

383 “Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners.

384 “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk
385 substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

386 “Sport or recreational equipment” means items designed for human use and worn in
387 conjunction with an athletic or recreational activity that are not suitable for general use. “Sport or
388 recreational equipment” are mutually exclusive of and may be taxed differently than apparel within
389 the definition of “clothing,” “clothing accessories or equipment,” and “protective equipment.”

390 “Tangible personal property” means personal property that can be seen, weighed,
391 measured, felt, or touched, or that is in any other manner perceptible to the senses.

392 “Tangible personal property” includes electricity, water, gas, steam, and prewritten
393 computer software. The term shall not include any products delivered electronically to a
394 purchaser except prewritten computer software.

395 “Tax” the excise tax imposed by this chapter.

396 “Taxpayer” any person required to make returns or pay the tax imposed by this chapter.

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

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

401 SECTION 1A. Telecommunications and Related Services

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

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

408 "Conference bridging service" means an "ancillary service" that links two or more
409 participants of an audio or video conference call and may include the provision of a
410 telephone number. "Conference bridging service" does not include the
411 "telecommunications services" used to reach the conference bridge.

412 "Detailed telecommunications billing service" means an "ancillary service" of separately
413 stating information pertaining to individual calls on a customer's billing statement.

414 "Directory assistance" means an "ancillary service" of providing telephone number information,
415 and/or address information.

416 "International" means a "telecommunications service" that originates or terminates in the
417 United States and terminates or originates outside the United States, respectively. United
418 States includes the District of Columbia or a U.S. territory or possession.

419 “Interstate” means a “telecommunications service” that originates in one United States
420 state, or a United States territory or possession, and terminates in a different United States
421 state or a United States territory or possession.

422

423 “Intrastate” means a “telecommunications service” that originates in one United States
424 state or a United States territory or possession, and terminates in the same United States
425 state or a United States territory or possession.

426

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

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

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

441 A. Data processing and information services that allow data to be generated, acquired,
442 stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where

443 such purchaser's primary purpose for the underlying transaction is the processed data or
444 information;

445 B. Installation or maintenance of wiring or equipment on a customer's premises;

446 C. Tangible personal property;

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

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

449 F. Internet access service;

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

456 H. "Ancillary services"; or

457 I. Digital products "delivered electronically", including but not limited to software, music,
458 4 video, reading materials or ring tones.

459 "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number
460 without incurring a charge for the call. The service is typically marketed under the name "800",
461 "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the
462 Federal Communications Commission.

463 "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that
464 allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live

465 service. “900 service” does not include the charge for: collection services provided by the seller of
466 the “telecommunications services” to the subscriber, or service or product sold by the subscriber to
467 the subscriber’s customer. The service is typically marketed under the name “900” service, and any
468 subsequent numbers designated by the Federal Communications Commission.

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

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

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

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

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

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

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

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

501 SECTION 1B. General Sourcing Rules.

502 (a) The provisions of this section apply regardless of the characterization of a product as
503 tangible personal property, a digital good, or a service. The provisions of this section only
504 apply to determine a seller's obligation to pay or collect and remit a sales or use tax with
505 respect to the seller's retail sale of a product under this chapter and chapter sixty-four I.
506 These provisions do not affect the obligation of a purchaser or lessee to remit tax on the
507 use of the product to the taxing jurisdictions of that use. The provisions of this section also
508 apply to watercraft, motor vehicles, trailers, and semi-trailers. The provisions of this
509 section do not apply to (i) direct mail, (ii) telecommunications services, except prepaid

510 calling services and prepaid wireless calling services, and (iii) ancillary services. So called
511 wire sales by florists, that is orders taken by a florist in the commonwealth and filled by
512 another florist in another state, are sourced to the business location of the florist in the
513 commonwealth in accordance with (b)(1) of this section.

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

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

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

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

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

529 (5) When none of the provisions of paragraphs (1), (2), (3) or (4) of subsection (b) apply,
530 including the circumstance in which the seller is without sufficient information to apply the
531 provisions of paragraphs (1), (2), (3) or (4) of subsection (b), then the location will be determined
532 by the address from which the tangible personal property was shipped, from which the digital good

533 or the computer software delivered electronically was first available for transmission by the seller,
534 or from which the service was provided (disregarding for these purposes any location that merely
535 provided the digital transfer of the product sold).

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

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

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

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

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

554 (1) For a lease or rental that requires recurring payments, each periodic payment is sourced
555 to the primary property location. The primary property location shall be as indicated by an address

556 for the property provided by the lessee that is available to the lessor from its records maintained in
557 the ordinary course of business, when use of this address does not constitute bad faith. This
558 location shall not be altered by intermittent use at different locations.

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

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

565 (e) The retail sale, including lease or rental, of transportation equipment shall be sourced the same
566 as a retail sale in accordance with the provisions of subsection (b), notwithstanding the exclusion of
567 lease or rental in subsection (b). "Transportation equipment" means any of the following:

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

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

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

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

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

584 SECTION 1C. Direct Mail Sourcing Rules.

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

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

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

598 (b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller
599 with either a Direct Mail Form or delivery information, as required by subsection (a) of this
600 section, the seller shall collect the tax according to section 1B, subsection (a) 5. Nothing in this

601 paragraph shall limit the purchaser's obligation for sales or use tax to any state to which the
602 direct mail is delivered.

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

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

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

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

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

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

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

623 3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in
624 accordance with section 1B of this chapter. Provided however, in the case of a sale of prepaid

625 wireless calling service, the rule provided in section 1B, subsection (b)(5) shall include as an option
626 the location associated with the mobile telephone number.

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

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

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

633 c. Service for segments of a channel between two customer channel termination points
634 located indifferent jurisdictions and which segment of channel are separately charged is
635 sourced fifty percent in each level of jurisdiction in which the customer channel
636 termination points are located.

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

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

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

645 A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47
646 CFR 22.99, in which common carriers are authorized to offer and provide radio
647 telecommunications service for hire to subscribers in aircraft.

- 648 B. “Ancillary Services” means services that are associated with or incidental to the provision of
649 “telecommunications services,” including but not limited to “detailed telecommunications
650 billing,” “directory assistance,” “vertical service,, and “voice mail services.”
- 651 C. “Call-by-call Basis” means any method of charging for telecommunications services where
652 the price is measured by individual calls.
- 653 D. “Communications Channel” means a physical or virtual path of communications over which
654 signals are transmitted between or among customer channel termination points.
- 655 E. “Customer” means the person or entity that contracts with the seller of telecommunications
656 services. If the end user of telecommunications services is not the contracting party, the end
657 user of the telecommunications service is the customer of the telecommunications service,
658 but this sentence only applies for the purpose of sourcing sales of telecommunication
659 services under section 1C. “Customer” does not include a reseller of telecommunications
660 service or for mobile telecommunications service of a serving carrier under an agreement to
661 serve the customer outside the home service provider’s licensed service area.
- 662 F. “Customer Channel Termination Point” means the location where the customer either inputs
663 or receives communications.
- 664 G. “End User” means the person who utilizes the telecommunication service. In the case of an
665 entity, “end user” means the individual who utilizes the service on behalf of the entity.
- 666 H. “Home service provider” means the same as that term is defined in section 124(5) of Public
667 Law 106-252 (Mobile Telecommunications Sourcing Act).
- 668 I. “Mobile telecommunications service” means the same as that term is defined in section
669 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 670 J. “Place of primary use” means the street address representative of where the customer’s use
671 of the telecommunications service primarily occurs, which must be the residential street
672 address or the primary business street address of the customer. In the case of mobile

673 telecommunications services, “place of primary use” must be within the licensed service area
674 of the home service provider.

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

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

686 M. “Prepaid wireless calling service” means a telecommunications service that provides the right
687 to utilize mobile wireless service as well as other non-telecommunications services,
688 including the download of digital products delivered electronically, content and ancillary
689 services, which much be paid for in advance that is sold in predetermined units or dollars of
690 which the number declines with use in a known amount.

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

697 O. “Service address” means:

698 1. The location of the telecommunications equipment to which a customer's call is charged
699 and from which the call originates or terminates, regardless of where the call is billed or
700 paid.

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

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

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

709 An excise is hereby imposed upon sales at retail sourced to the commonwealth under the applicable
710 rules in this chapter, by any seller, of tangible personal property, bundled transactions including a
711 taxable product, or services at the rate of five percent on all such sales of such property or services,
712 except as otherwise provided in this chapter, and not on a "service charge" or "tip" that is
713 distributed by a seller to service employees, wait staff employees or service bartenders as provided
714 in section 152A of chapter 149. In the case of a bundled transaction that includes
715 telecommunications services, ancillary services, internet access, or audio or video programming
716 service, if the price is attributable to products that are taxable and products that are nontaxable, the
717 portion of the price attributable to the nontaxable products may be subject to tax unless the seller
718 can identify by reasonable and verifiable standards such portion from its books and records that are
719 kept in the regular course of business for other purposes, including, but not limited to, non-tax
720 purposes. For purposes of reporting the sale or recharge of prepaid calling services or prepaid
721 wireless calling services, the sale is deemed to occur on the date of the transfer for consideration.

722 The excise shall be paid by the seller to the commissioner at the time provided for filing the return
723 required by section sixteen of chapter sixty-two C.

724 SECTION 4: Section 4 of Chapter 64H of the General Laws, as so appearing, is hereby
725 amended by striking it out in its entirety and inserting in its place the following new

726 Section 4:

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

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

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

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

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

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

741 ,except alcoholic beverages for on-premises consumption.

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

743 Sales of food and food ingredients including candy, soft drinks, or food sold through
744 vending machines with a sales price of less than \$3.50, but not alcoholic beverages for on-
745 premises consumption, dietary supplements, prepared food or tobacco. Prepared food sold

746 by a bed and breakfast establishment or bed and breakfast home as defined in chapter 64G
747 shall not be subject to tax under this chapter where the value of the breakfast served is
748 included in the rent for the room.

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

750 (4) residential intrastate telecommunications services.

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

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

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

755 Sales of the following on prescription: drugs and over-the-counter drugs for human use,
756 durable medical equipment for home use, mobility enhancing equipment, and prosthetic
757 devices.

758 SECTION 6(cc) is amended by striking the word “meal” each time it appears and
759 substituting “prepared food” and by striking the word “prepared by” in lines 353 and 357
760 and inserting “made by”.

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

762 (ff) Sales of "direct and cooperative direct mail promotional advertising materials" defined as
763 individual discount coupons, or advertising leaflets incorporating the coupons within the
764 promotional advertising materials no greater than 6 pages in length, and including any
765 accompanying envelopes and labels. In order to be exempt hereunder, the promotional advertising
766 materials shall be distributed as a part of a package of materials promoting 1 or more than 1
767 business, each operated at separate and distinct locations, and directed in a single package to
768 potential customers, at no charge to the potential customer, of the businesses paying for the

769 delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail
770 promotional advertising materials" shall not include mail order catalogs, department store catalogs,
771 telephone directories, or similar printed advertising books, booklets or circulars greater than 6
772 pages in total length.

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

774 (ll) Sales of gold or silver bullion or coins traded and sold according to their value as precious
775 metal, but not coins sold for their numismatic value. The word "bullion" shall not include
776 fabricated precious metal which has been processed or manufactured for industrial, professional or
777 artistic uses.

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

779 in good faith

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

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

782

783 SECTION 6: Section 7 of Chapter 64H of the General Laws, as so appearing, is hereby
784 amended by striking the section in its entirety and replacing it with the following:

785 No person shall do business in this commonwealth as a seller unless a registration shall have been
786 issued to him. For persons with business locations physically located in the commonwealth, a
787 registration shall be obtained for each place of business in the commonwealth in accordance with
788 section sixty-seven of chapter sixty-two C. A seller may select one of the following methods of
789 remittances:

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

- 794 B. Model 2, wherein a seller selects a Certified Automated System to use which calculates the
795 amount of tax due on a transaction, but retains responsibility for remitting the tax; or
- 796 C. Model 3, wherein a seller or an affiliated group of sellers utilizes its own proprietary automated
797 sales tax system that calculates the amount of tax due each jurisdiction and has been certified
798 as a Certified Automated System. A Model 3 seller must:
- 799 (1.) have sales in at least five member states of the Streamlined Sales Tax Governing Board, and
800 (2.) have total annual sales revenue of at least five hundred million dollars, and
801 (3.) enter into a performance agreement approved by the Streamlined Sales Tax Governing Board,
802 Inc.

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

805 7A. Amnesty for Registration

806 A seller that registers to collect and remit the tax imposed by this chapter and chapter 64I on or
807 after the date the commonwealth is accepted as a full member of the Streamlined Sales Tax
808 Governing Board, Inc. and for a period of one year thereafter, will be entitled to amnesty for
809 uncollected or unpaid sales or use tax, penalty and interest providing that the seller was not
810 registered in the commonwealth in the 12 month period preceding the date of such acceptance.
811 The amnesty provided by this section is not available to a seller with respect to any matter or
812 matters for which the seller received notice of the commencement of an audit or an audit
813 assessment, including any administrative or judicial appeals. The amnesty is also not available for
814 sales or use taxes already paid or remitted to the commonwealth or to taxes collected by the seller.
815 The amnesty is effective, absent the seller's fraud or intentional misrepresentation of a material
816 fact, as long as the seller continues registration and continues to pay or collect and remit applicable
817 sales or use taxes for a period of at least 36 months. The amnesty is applicable only to sales or use

818 taxes due from a seller in its capacity as a seller and not to sales or sue taxes due from a seller in its
819 capacity as a buyer.

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

822 7B. Monetary Allowances for Sales Tax Collection

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

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

836 (c) A seller that utilizes its own proprietary automated sales tax system that has been certified as a
837 Certified Automated System under Model 3 and all other sellers not covered under (a) or (b)
838 that voluntarily register through the Streamlined Sales Tax Governing Board's central
839 registration process may receive a monetary allowance to be determined by the Streamlined
840 Sales Tax Governing Board for a period not to exceed 24 months following the registration.
841 The compensation may be a percentage of tax revenue generated for the commonwealth by the
842 voluntary seller that does not have a requirement to register to collect the tax.

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

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

847 (a) It shall be presumed that all gross receipts of a seller from the sale of services or
848 tangible personal property are from sales subject to tax until the contrary is established.
849 The burden of proving that a sale of services or tangible personal property by any seller
850 is not subject to tax shall be upon such seller unless he takes from the purchaser a
851 certificate of exemption to the effect that the service or property is purchased for resale,
852 or the service or property is exempt from the tax imposed by this chapter and such
853 certificate of exemption is obtained by the seller not later than ninety days subsequent
854 to the date of the sale. Where a certificate is not obtained within the foregoing time
855 limit the seller is not relieved of its burden of proving that the sale was exempt or for
856 resale and the seller must prove by other means, within one hundred twenty days
857 subsequent to the date of notice from the commissioner, that the sale was not a retail
858 sale subject to tax or produce a fully completed exemption certificate from the
859 purchaser taken in good faith.

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

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

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

865 or

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

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

875 (d) If a purchaser who gives a certificate of exemption indicating that the purchase was for
876 resale in the regular course of business makes any use of the service or property other
877 than retention, demonstration or display while holding it for sale in the regular course
878 of business, the use shall be deemed a retail sale by the purchaser as of the time the
879 service or property is first used by him, and the cost of the service or property to him
880 shall be deemed the gross receipts from such retail sale. If the sole use of the property
881 other than retention, demonstration or display in the regular course of business is the
882 rental of the property while holding it for sale, the purchaser may elect to include in its
883 gross receipts the amount of the rental charge rather than the cost of the property to
884 him.

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

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

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

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

901 8A. Relief from Liability

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

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

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

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

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

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

919 C. Following certification to the Streamlined Sales Tax Governing Board that the commissioner
920 has reviewed the taxability of the product categories contained in software used by a Certified
921 Service Provider or a Certified Automated System, the Certified Service Provider or seller using
922 the Certified Automated System is relieved from liability for not collecting sales or use taxes
923 resulting from reliance on that certification. The relief from liability provided in this section shall
924 not be available where the Certified Service Provider or seller using a Certified Automated System
925 has incorrectly classified an item or transaction into a product category certified by the
926 commissioner. In the case of such a misclassification, the Certified Service Provider or seller
927 using a Certified Automated System shall be given 10 days to correct any such error, and following
928 that 10 day period, will be liable for the failure to collect the correct amount of sales or use taxes.

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

931 Where a motor vehicle is returned to a seller pursuant to a rescission of contract within one hundred
932 and eighty days of the date of sale and the entire amounts charged for the motor vehicle, less the
933 sellers' established handling fees, if any, for return of the property, are refunded either in cash or
934 credit, the purchaser may apply to the Commissioner for a refund of any tax paid under this chapter

935 or chapter 64I within the time limitations provided in chapter 62C, section 37. In the case of a
936 rescission of contract for the sale of a motor vehicle, the seller's established handling fees may
937 include a reasonable allowance for the purchaser's use of the vehicle.

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

940 Section 33: Bad Debts. Any seller who has paid to the commissioner an excise under this
941 chapter upon a sale for which credit is given to the purchaser and such account is later
942 determined to be a bad debt may deduct the amount of the bad debt on the return for the
943 period during which the bad debt is written off as uncollectable in the seller's books and
944 records and is eligible to be deducted for federal income tax purposes, whether or not the
945 seller is required to file a federal income tax return. For purposes of this section, (1) a
946 seller entitled to a deduction does not include an assignee or factor of such seller and (2)
947 bad debt shall have the same meaning as in 26 U.S.C. 166, but excluding financing charges
948 or interest, sales or use taxes charged on the purchase price, uncollectable amounts on
949 property that remain in the possession of the seller until the full purchase price is paid,
950 expenses incurred in attempting to collect any debt, and repossessed property. If a seller
951 takes a deduction for a bad debt as provided in this section and the debt is subsequently
952 collected in whole or in part, the tax on the amount so collected must be paid and reported
953 on the return filed for the period in which the collection is made. For purposes of reporting
954 a payment received on a previously claimed bad debt, any payments made on a debt or
955 account shall be applied first proportionately to the taxable sales price and tax and second
956 to interest, service charges, and any other charges. If a bad debt exceeds the amount of
957 taxable sales for the period during which the bad debt is written off, an application for

958 abatement may be filed within the time limitations of G.L. c. 62C, § 37, provided however
959 that notwithstanding any provisions of G.L. c. 62C, § 37 to the contrary, the three year
960 time limitation shall be measured from the due date of the return on which the bad debt
961 could first be claimed. Where a seller has elected to utilize a Certified Service Provider,
962 the Certified Service Provider may claim, on behalf of the seller any bad debt allowance
963 provided by this section, provided that the Certified Service Provider credits or refunds the
964 full amount of any bad debt allowance or refund to the seller. In situations where the
965 books and records of the seller support an allocation of the bad debts among member states
966 of the Streamlined Sales Tax Governing Board, such an allocation is permitted.

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

969 Section 34: Demand for Return of Overpaid Tax

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

975 (b) In connection with a customer's request for a return of overpaid sales taxes, a seller shall be
976 presumed to have a reasonable business practice if in the collection of sales taxes the seller (i)
977 uses either a provider or system, including a proprietary system, certified by the
978 commonwealth or the Streamlined Sales Tax Governing Board; and (ii) has remitted to the
979 commonwealth all taxes collected, less any deductions, credits, or collection allowances
980 permitted under this chapter.

981

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

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

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

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

991

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

995 “purchaser”,

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

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

1000 A vendor’s or seller’s obligation to pay or collect and remit a sales or use tax with respect to the
1001 seller’s retail sale of a product are subject to the sourcing of a sale provisions of chapter sixty-four
1002 H, which provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of
1003 the product to the taxing jurisdiction of that use.

1004 SECTION 17: Section 5 of Chapter 64I of the General Laws, as so appearing, is hereby
1005 amended by striking it out in its entirety and inserting in its place the following new

1006 Section 5:

1007 For the purpose of adding and collecting the tax imposed by this chapter to be paid to the
1008 commonwealth or to be reimbursed to the seller by the purchaser, the tax computation must be
1009 carried to the third decimal place, and it must be rounded to a whole cent, rounding up to the next

1010 cent whenever the third decimal place is greater than four. A seller may elect to compute the tax
1011 due on a transaction on an item or an invoice basis.

1012 SECTION 18: Section 8 of Chapter 64I of the General Laws, as so appearing, is hereby amended
1013 by striking the section in its entirety and replacing it with the following:

1014 (a) For the purpose of the proper administration of this chapter and to prevent evasion of
1015 the tax imposed hereunder, it shall be presumed that tangible personal property or
1016 services sold by any person for delivery in the commonwealth is sold for storage, use
1017 or other consumption in the commonwealth until the contrary is established. The
1018 burden of proving the contrary is upon the person who makes the sale unless he takes
1019 from the purchaser a certificate of exemption to the effect that the service or property is
1020 purchased for resale, or the service or property is exempt from the tax imposed by this
1021 chapter and such certificate of exemption is received not later than ninety days
1022 subsequent to the date of the sale. Where a certificate is not obtained within the
1023 foregoing time limit the seller is not relieved of its burden of proving that the sale was
1024 exempt or for resale and the seller must prove by other means, within one hundred
1025 twenty days subsequent to the date of notice from the commissioner, that the sale was
1026 not a retail sale subject to tax or produce a fully completed exemption certificate from
1027 the purchaser taken in good faith.

1028 (b) The certificate shall relieve the seller from the burden of proof and any liability for the
1029 tax if it is determined that the purchaser improperly claimed an exemption unless

1030 (1) the seller fraudulently fails to collect the tax, or

1031 (2) the seller solicits purchasers to participate in the unlawful claim of an exemption,

1032 or

1033 (3) a seller physically located within the commonwealth accepts an exemption
1034 certificate that claims an entity based exemption not contained in this chapter in a
1035 transaction involving a product received by the purchaser at a business location of
1036 the seller.

1037 (c) The certificate of exemption shall bear the name and address of the purchaser and the
1038 purchaser's tax identification number or other identification number. If the certificate
1039 of exemption is submitted in paper form by the purchaser, it shall bear the purchaser's
1040 signature. The certificate shall be in such form as the commissioner may prescribe or
1041 that has been approved by the Streamlined Sales Tax Governing Board.

1042 (d) If a purchaser who gives a certificate of exemption indicating that the purchase was for
1043 resale in the regular course of business makes any use of the service or property other
1044 than retention, demonstration or display while holding it for sale in the regular course
1045 of business, the storage or use is taxable as of as of the time the service or property is
1046 first so stored or used by him. If the sole use of the property other than retention,
1047 demonstration or display in the regular course of business is the rental of the property
1048 while holding it for sale, the purchaser may elect to include in its gross receipts the
1049 amount of the rental charge rather than the cost of the property to him.

1050 (e) If a purchaser who gives a certificate of exemption makes any use of the property
1051 inconsistent with the exemption claimed on the certificate, the use shall be deemed a
1052 retail sale by the purchaser as of the time the property is first so used and the cost of the
1053 property to the purchaser shall be deemed the gross receipts from such retail sale.

1054 (f) It shall be presumed that tangible personal property shipped or brought to the
1055 commonwealth by the purchaser was purchased from a retailer for storage, use, or

1056 other consumption in the commonwealth provided that such property was shipped or
1057 brought into the commonwealth within six months after its purchase.

1058 (g) It shall be presumed that services used within the commonwealth by the purchaser
1059 were purchased from the seller for use within the commonwealth provided such
1060 services were used within the commonwealth within six months after its purchase.

1061 (h) For purposes of this section, a certificate of exemption may be either in paper or
1062 electronic format. The requirement of taking a certificate is satisfied if the seller
1063 otherwise captures all required data elements of such a certificate in its books and
1064 records. The commissioner may promulgate rules and regulations determining which
1065 services shall be deemed purchased for resale under this section.

1066 SECTION 19: Section 34 of Chapter 64I of the General Laws, as so appearing, is hereby
1067 amended by striking it out in its entirety and inserting in its place the following new

1068 Section 34:

1069 Any seller who has paid to the commissioner an excise under this chapter upon a sale for which
1070 credit is given to the purchaser and such account is later determined to be a bad debt may deduct
1071 the amount of the bad debt as provided in G.L. c. 64H, section 33.

1072 SECTION 20 : Chapter 64I of the General Laws, as so appears, is amended by adding a new

1073 Section 35:

1074 Section 35: Demand for Return of Overpaid Tax

1075 (a) In the event a seller shall refuse to return a use tax collected by the seller upon request by
1076 the customer, the provisions of section thirty-four of chapter sixty-four H shall apply.

1077

1078 SECTION 21 : Chapter 64I of the General Laws, as so appears, is amended by adding a new
1079 Section 36:

1080 Section 36: In the event of a rate change in section two of this chapter, the provisions of section
1081 thirty-five of chapter sixty-four H shall apply.

1082

1083 SECTION 22: The commonwealth hereby adopts the Streamlined Sales and Use Tax Agreement
1084 as created on November 12, 2002 and as amended by the member states of the Streamlined Sales
1085 Tax Governing Board, Inc. The commissioner may promulgate rules and regulations consistent
1086 with the Streamlined Sales and Use Tax Agreement and any subsequent amendments or
1087 interpretations thereof adopted by the Streamlined Sales Tax Governing Board, Inc. to ensure that
1088 the commonwealth remains in compliance with that agreement, as amended.

1089

1090 SECTION 23: The commissioner is authorized to petition the Streamlined Sales Tax
1091 Governing Board to allow the commonwealth to become an associate or full member of
1092 the Streamlined Sales Tax Governing Board and to pay the application fee and annual fees
1093 from sales and use taxes collected under chapters 64H and 64I. If accepted as an associate
1094 or full member, the commonwealth shall be represented at the Streamlined Sales Tax
1095 Governing Board meetings by a coalition of 3 delegates:

1096 a) 1 voting member from the Department of Revenue who is appointed by the
1097 commissioner, and

1098 b) 1 voting member from each chamber of the legislature appointed by the
1099 Speaker of the House and the President of the Senate, respectively.

1100 These 3 delegates shall together decide how the commonwealth's interests are best
1101 represented to the board, voting on issues as indicated above. Since each member state on
1102 the Governing Board is allowed only one vote, the commonwealth's single vote on an
1103 issue shall be determined by the majority opinion indicated by the votes of the delegates of
1104 the commonwealth's coalition. If the House delegate is absent, not voting, voting
1105 "present," or abstaining from the vote, that delegate's proxy shall automatically be given to
1106 the Senate delegate. If the Senate delegate is absent, not voting, voting "present," or
1107 abstaining from the vote, that delegate's proxy shall automatically be given to the House
1108 delegate. If the Department of Revenue delegate is absent, not voting, voting "present," or
1109 abstaining from the vote, that delegate's proxy shall be given to the legislative delegate of
1110 his/her choice.

1111

1112 SECTION 24: Sections 1-22 of this bill shall be effective on the first day of the twelfth month
1113 following passage.

1114 SECTION 25: Section 23 of this bill shall be effective immediately upon passage.

