

HOUSE No. 2732

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Promote Sales Tax Fairness for Main Street Retailers..

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 price" of the tangible personal property when making the fifty percent (50%) determination for a
54 transaction.

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

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

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

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

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

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

70 "Commissioner" means the commissioner of revenue.

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

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

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

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

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

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

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

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

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

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

92 1. A vitamin;

- 93 2. A mineral;
- 94 3. An herb or other botanical;
- 95 4. An amino acid;
- 96 5. A dietary substance for use by humans to supplement the diet by increasing the
97 total dietary intake; or
- 98 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
99 described in above; and

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

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

105 "Specified digital products" means electronically transferred:

106 (a) "Digital Audio-Visual Works" which means a series of related images which, when
107 shown in succession, impart an impression of motion, together with accompanying sounds, if
108 any,

109 (b) "Digital Audio Works" which means works that result from the fixation of a series of
110 musical, spoken, or other sounds, including ringtones, and

111 (c) "Digital Books" which means works that are generally recognized in the ordinary and
112 usual sense as "books".

113 For purposes of the definition of “digital audio works”, “ringtones” means digitized
114 sound files that are downloaded onto a device and that may be used to alert the customer with
115 respect to a communication. For purposes of the definitions of “specified digital products”,
116 “transferred electronically” means obtained by the purchaser by means other than tangible
117 storage media and “end user” means any person other than a person who receives by contract a
118 product transferred electronically for further commercial broadcast, rebroadcast, transmission,
119 retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in
120 whole or in part, to another person or persons.

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

127 "Drug" means a compound, substance or preparation, and any component of a compound,
128 substance or preparation, other than "food and food ingredients," "dietary supplements" or
129 "alcoholic beverages:"

130 (a) Recognized in the official United State Pharmacopoeia, official Homeopathic
131 Pharmacopoeia of the United States, or official National Formulary, and supplement to any of
132 them; or

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

135 Intended to affect the structure or any function of the body.

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

138 (a) Can withstand repeated use; and

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

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

141 Is not worn in or on the body.

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

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

146 "Engaged in business" means commencing, conducting or continuing in business, as well
147 as liquidating a business when the liquidator thereof holds himself out to the public as
148 conducting such a business.

149 "Engaged in business in the commonwealth" means having a business location in the
150 commonwealth; regularly or systematically soliciting orders for the sale of services to be
151 performed within the commonwealth or for the sale of tangible personal property for delivery to
152 destinations in the commonwealth; otherwise exploiting the retail sales market in the
153 commonwealth through any means whatsoever, including, but not limited to, salesmen, solicitors
154 or representatives in the commonwealth, catalogs or other solicitation materials sent through the

155 mails or otherwise, billboards, advertising or solicitations in newspapers, magazines, radio or
156 television broadcasts, computer networks or in any other communications medium; or regularly
157 engaged in the delivery of property or the performance of services in the commonwealth. A
158 person shall be considered to have a business location in the commonwealth only if such person
159 (i) owns or leases real property within the commonwealth; (ii) has one or more employees
160 located in the commonwealth; (iii) regularly maintains a stock of tangible personal property in
161 the commonwealth for sale in the ordinary course of business; or (iv) regularly leases out
162 tangible personal property for use in the commonwealth. For the purposes of this paragraph,
163 property on consignment in the hands of a consignee and offered for sale by the consignee on his
164 own account shall not be considered as stock maintained by the consignor; a person having a
165 business location in the commonwealth solely by reason of regularly leasing out tangible
166 personal property shall be considered to have a business location in the commonwealth only with
167 respect to such leased property; and an employee shall be considered to be located in the
168 commonwealth if (a) his service is performed entirely within the commonwealth or (b) his
169 service is performed both within and without the commonwealth but in the performance of his
170 services he regularly commences his activities at, and returns to, a place within the
171 commonwealth. "Within the commonwealth" means within the exterior limits of the
172 commonwealth of Massachusetts, and includes all territory within said limits owned by, or
173 leased or ceded to, the United States of America.

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

175 "Food and food ingredients" means substances, whether in liquid, concentrated, solid,
176 frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are
177 consumed for their taste or nutritional value. "Food and food ingredients" does not include

178 "alcoholic beverages", "candy", "dietary supplements", "soft drinks", or "tobacco", as those
179 terms are defined in this chapter.

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

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

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

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

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

202 Lease or rental does not include:

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

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

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

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

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

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

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

223 "Mobility enhancing equipment" means equipment including repair and replacement
224 parts to same which:

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

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

228 Does not include any motor vehicle or equipment on a motor vehicle normally provided
229 by a motor vehicle manufacturer.

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

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

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

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

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

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

239 "Prepared food" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

282 "Purchaser", a person who purchases tangible personal property or services the receipts
283 from the retail sale of which are taxable under this chapter and includes a buyer, vendee, lessee,
284 licensee, or grantee.

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

287 "Retailer" includes (i) every person engaged in the business of making sales at retail; (ii)
288 every person engaged in the making of retail sales at auction of tangible personal property
289 whether owned by such person or others; (iii) every person engaged in the business of making
290 sales for storage, use or other consumption, or in the business of making sales at auction of
291 tangible personal property whether owned by such person or others for storage, use or other
292 consumption; (iv) every salesman, representative, peddler or canvasser who, in the opinion of the
293 commissioner, it is necessary to regard for the efficient administration of this chapter as the agent
294 of the dealer, distributor, supervisor or employer under whom he operates or from whom he
295 obtains the tangible personal property sold by him, in which case the commissioner may treat
296 and regard such agent as the retailer jointly responsible with his principal, employer or
297 supervisor for the collection and payment of the tax imposed by this chapter; and (v) the
298 commonwealth, or any political subdivision thereof, or their respective agencies when such
299 entity is engaged in making sales at 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 than
303 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 performance of
306 services for a consideration, in any manner or by any means whatsoever; (ii) the producing,
307 fabricating, processing, printing or imprinting of tangible personal property for a consideration
308 for consumers who furnish either directly or indirectly the materials used in the producing,
309 fabricating, processing, printing or imprinting; (iii) the furnishing and distributing of tangible
310 personal property or services for a consideration by social clubs and fraternal organizations to
311 their members or others; (iv) a transaction whereby the possession of property is transferred but
312 the seller retains the title as security for the payment of the price; (v) a transfer for a
313 consideration of the title or possession of tangible personal property which has been produced,
314 fabricated or printed to the special order of the customer, or of any publication; (vi) the
315 furnishing of information by printed, mimeographed or multigraphed matter, or by duplicating
316 written or printed matter in any other manner, including the services of collecting, compiling or
317 analyzing information of any kind or nature and furnishing reports thereof to other persons, but
318 excluding the furnishing of information which is personal or individual in nature and which is
319 not or may not be substantially incorporated in reports furnished to other persons, and excluding
320 the services of advertising or other agents, or other persons acting in a representative capacity,
321 and information services used by newspapers, radio broadcasters and television broadcasters in
322 the collection and dissemination of news and excluding the furnishing of information by

323 photocopy or other similar means by not for profit libraries which are recognized as exempt from
324 taxation under § 501(c)(3) of the Federal Internal Revenue Code; (vii) the performance of
325 services for a consideration, excluding (a) services performed by an employee for his employer
326 whether compensated by salary, commission, or otherwise, (b) services performed by a general
327 partner for his partnership and compensated by the receipt of distributive shares of income or
328 loss from the partnership; and (c) the performance of services for which the provider is
329 compensated by means of an honorarium, or fee paid to any person or entity registered under 15
330 USC 80b-3 or 15 USC 78q-1 for services the performance of which require such registration, for
331 services related thereto or for trust, custody, and related cash management and securities services
332 of a trust company as defined in chapter one hundred and seventy-two.

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

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

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

346 (a) Installation charges;

347 "Sales price" shall not include:

348 Discounts, including cash, term, or coupons that are not reimbursed by a third party that
349 are allowed by a seller and taken by a purchaser on a sale;

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

353 Any taxes legally imposed directly on the consumer that are separately stated on the
354 invoice, billing, or similar document given to the purchaser; and

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

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

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

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

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

364 D. One of the following criteria is met:

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

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

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

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

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

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

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

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

389 "Tangible personal property" means personal property that can be seen, weighed,
390 measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible
391 personal property" includes electricity, water, gas, steam, and prewritten computer software.

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

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

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

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

398 SECTION 1A. Telecommunications and Related Services

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

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

404 “Conference bridging service” means an “ancillary service” that links two or more
405 participants of an audio or video conference call and may include the provision of a telephone
406 number. “Conference bridging service” does not include the “telecommunications services” used
407 to reach the conference bridge.

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

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

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

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

419 “Telecommunications service” means the electronic transmission, conveyance, or routing
420 of voice, data, audio, video, or any other information or signals to a point, or between or among
421 points. The term “telecommunications service” includes such transmission, conveyance, or
422 routing in which computer processing applications are used to act on the form, code or protocol
423 of the content for purposes of transmission, conveyance or routing without regard to whether
424 such service is referred to as voice over Internet protocol services or is classified by the Federal

425 Communications Commission as enhanced or value added. “Telecommunications service” does
426 not include:

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

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

432 C. Tangible personal property;

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

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

435 F. Internet access service;

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

442 H. “Ancillary services”; or

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

445 “800 service” means a “telecommunications service” that allows a caller to dial a toll-free
446 number without incurring a charge for the call. The service is typically marketed under the name
447 “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated
448 by the Federal Communications Commission.

449 “900 service” means an inbound toll “telecommunications service” purchased by a
450 subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded
451 announcement or live service. “900 service” does not include the charge for: collection services
452 provided by the seller of the “telecommunications services” to the subscriber, or service or
453 product sold by the subscriber to the subscriber’s customer. The service is typically marketed
454 under the name “900” service, and any subsequent numbers designated by the Federal
455 Communications Commission.

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

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

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

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

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

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

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

484 “Residential telecommunications service” means a “telecommunications service” or
485 “ancillary services” provided to an individual for personal use at a residential address, including
486 an individual dwelling unit such as an apartment. In the case of institutions where individuals

487 reside, such as schools or nursing homes, “telecommunications service” is considered residential
488 if it is provided to and paid for by an individual resident rather than the institution.

489 SECTION 1B. General Sourcing Rules.

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

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

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

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

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

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

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

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

524 (1) For a lease or rental that required recurring periodic payments, the first periodic
525 payment is sourced the same as a retail sale in accordance with the provisions of subsection (b).
526 Periodic payments made subsequent to the first payment are sourced to the primary property
527 location for each period covered by the payment. The primary property location shall be as
528 indicated by an address for the property provided by the lessee that is available to the lessor from

529 its records maintained in the ordinary course of business, when use of this address does not
530 constitute bad faith. The property location shall not be altered by intermittent use at different
531 locations, such as use of business property that accompanies employees on business trips and
532 service calls.

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

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

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

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

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

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

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

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

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

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

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

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

570 SECTION 1C. Direct Mail Sourcing Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

680 “Service address” means:

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

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

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

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

691 An excise is hereby imposed upon sales at retail sourced to the commonwealth under the
692 applicable rules in this chapter, by any seller, of tangible personal property, bundled transactions
693 including a taxable product, alcoholic beverages for on-premises consumption, or services at the
694 rate of five percent on all such sales of such property or services, except as otherwise provided in
695 this chapter, and not on a “service charge” or “tip” that is distributed by a seller to service

696 employees, wait staff employees or service bartenders as provided in section 152A of chapter
697 149. In the case of a bundled transaction that includes telecommunications services, ancillary
698 services, internet access, or audio or video programming service, if the price is attributable to
699 products that are taxable and products that are nontaxable, the portion of the price attributable to
700 the nontaxable products may be subject to tax unless the seller can identify by reasonable and
701 verifiable standards such portion from its books and records that are kept in the regular course of
702 business for other purposes, including, but not limited to, non-tax purposes. The excise shall be
703 paid by the seller to the commissioner at the time provided for filing the return required by
704 section sixteen of chapter sixty-two C.

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

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

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

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

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

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

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

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

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

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

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

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

733 (ff) Sales of "direct and cooperative direct mail promotional advertising materials"
734 defined as individual discount coupons, or advertising leaflets incorporating the coupons within
735 the promotional advertising materials no greater than 6 pages in length, and including any
736 accompanying envelopes and labels. In order to be exempt hereunder, the promotional
737 advertising materials shall be distributed as a part of a package of materials promoting 1 or more

738 than 1 business, each operated at separate and distinct locations, and directed in a single package
739 to potential customers, at no charge to the potential customer, of the businesses paying for the
740 delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail
741 promotional advertising materials" shall not include mail order catalogs, department store
742 catalogs, telephone directories, or similar printed advertising books, booklets or circulars greater
743 than 6 pages in total length.

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

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

746 The section is further amended by adding the following new section 6(yy):

747 Sales of "specified digital products," as defined in this chapter.

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

750 No person shall do business in this commonwealth as a seller unless a registration shall
751 have been issued to him. For persons with business locations physically located in the
752 commonwealth, a registration shall be obtained for each place of business in the commonwealth
753 in accordance with section sixty-seven of chapter sixty-two C. When registering, a seller may
754 select one of the following methods of remittances:

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

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

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

764 have sales in at least five member states of the Streamlined Sales Tax Governing Board,

765 and

766 have total annual sales revenue of at least five hundred million dollars, and

767 enter into a performance agreement approved by the Streamlined Sales Tax Governing

768 Board, Inc.

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

771 7A. Amnesty for Registration

772 A seller that registers to collect and remit the tax imposed by this chapter and chapter 64I

773 on or after the date the commonwealth is accepted as a full member of the Streamlined Sales Tax

774 Governing Board, Inc. and for a period of one year thereafter, will be entitled to amnesty for

775 uncollected or unpaid sales or use tax, penalty and interest providing that the seller was not

776 registered in the commonwealth in the 12 month period preceding the date of such acceptance.

777 The amnesty provided by this section is not available to a seller with respect to any matter or

778 matters for which the seller received notice of the commencement of an audit or an audit

779 assessment, including any administrative or judicial appeals. The amnesty is also not available

780 for sales or use taxes already paid or remitted to the commonwealth or to taxes collected by the
781 seller. The amnesty is effective, absent the seller's fraud or intentional misrepresentation of a
782 material fact, as long as the seller continues registration and continues to pay or collect and remit
783 applicable sales or use taxes for a period of at least 36 months. The amnesty is applicable only to
784 sales or use taxes due from a seller in its capacity as a seller and not to sales or sue taxes due
785 from a seller in its capacity as a buyer.

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

788 7B. Monetary Allowances for Sales Tax Collection

789 A monetary allowance shall be allowed to a Certified Service Provider under Model 1 in
790 accordance with the terms of the contracts between the Streamlined Sales Tax Governing Board
791 and the Certified Service Providers for a period not to exceed 24 months following a voluntary
792 seller's registration through the Streamlined Sales Tax Governing Board's central registration
793 process. The compensation shall be a percentage of tax revenue generated for the
794 commonwealth by the voluntary seller that does not have a requirement to register to collect the
795 tax.

796 A seller electing to use a Certified Automated System under Model 2 may receive a
797 monetary allowance to be determined by the Streamlined Sales Tax Project Governing Board for
798 a period not to exceed twenty four months following a voluntary seller's registration through the
799 Streamlined Sales Tax Governing Board's central registration process. The compensation may
800 be a percentage of tax revenue generated for the commonwealth by the voluntary seller that does
801 not have a requirement to register to collect the tax.

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

809 A seller may receive additional compensation as required by the Streamlined Sales and
810 Use Tax Agreement, as amended.

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

813 It shall be presumed that all gross receipts of a seller from the sale of services or tangible
814 personal property are from sales subject to tax until the contrary is established. The burden of
815 proving that a sale of services or tangible personal property by any seller is not subject to tax
816 shall be upon such seller unless he takes in good faith from the purchaser a certificate of
817 exemption to the effect that the service or property is purchased for resale, or the service or
818 property is exempt from the tax imposed by this chapter and such certificate of exemption is
819 obtained by the seller not later than ninety days subsequent to the date of the sale. Where a
820 certificate is not obtained within the foregoing time limit the seller is not relieved of its burden of
821 proving that the sale was exempt or for resale and the seller must prove by other means, within
822 one hundred twenty days subsequent to the date of notice from the commissioner, that the sale

823 was not a retail sale subject to tax or produce a fully completed exemption certificate from the
824 purchaser taken in good faith.

825 The certificate of exemption shall relieve the seller from the burden of proof and any
826 liability for the tax if it is determined that the purchaser improperly claimed an exemption unless:
827 the seller fraudulently fails to collect the tax, or
828 the seller solicits purchasers to participate in the unlawful claim of an exemption, or
829 a seller physically located within the commonwealth accepts an exemption certificate that
830 claims an entity based exemption not contained in this chapter in a transaction involving a
831 product received by the purchaser at a business location of the seller.

832 The certificate of exemption shall bear the name and address of the purchaser and the
833 purchaser's tax identification number or other identification number. If the certificate of
834 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's signature.
835 The certificate shall be in such form as the commissioner may prescribe.

836 If a purchaser who gives a certificate of exemption indicating that the purchase was for
837 resale in the regular course of business makes any use of the service or property other than
838 retention, demonstration or display while holding it for sale in the regular course of business, the
839 use shall be deemed a retail sale by the purchaser as of the time the service or property is first
840 used by him, and the cost of the service or property to him shall be deemed the gross receipts
841 from such retail sale. If the sole use of the property other than retention, demonstration or display
842 in the regular course of business is the rental of the property while holding it for sale, the

843 purchaser may elect to include in its gross receipts the amount of the rental charge rather than the
844 cost of the property to him.

845 If a purchaser who gives a certificate of exemption makes any use of the property
846 inconsistent with the exemption claimed on the certificate, the use shall be deemed a retail sale
847 by the purchaser as of the time the property is first so used and the cost of the property to the
848 purchaser shall be deemed the gross receipts from such retail sale.

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

853 For purposes of this section, a certificate of exemption may be either in paper or
854 electronic format. The requirement of taking a certificate is satisfied if the seller otherwise
855 captures all required data elements of such a certificate in its books and records. The
856 commissioner may promulgate rules and regulations determining which services shall be deemed
857 purchased for resale under this section.

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

860 8A. Relief from Liability

861 A. The commissioner shall publish a taxability matrix in the form and manner prescribed
862 by the Streamlined Sales Tax Governing Board, Inc. and shall relieve sellers and certified service
863 providers from liability for having charged and collected the incorrect amount of sales or use tax

864 resulting from the seller or certified service provider relying on erroneous data provided in the
865 taxability matrix.

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

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

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

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

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

878 C. Following certification to the Streamlined Sales Tax Governing Board that the
879 commissioner has reviewed the taxability of the product categories contained in software used by
880 a Certified Service Provider or a Certified Automated System, the Certified Service Provider or
881 seller using the Certified Automated System is relieved from liability for not collecting sales or
882 use taxes resulting from reliance on that certification. The relief from liability provided in this
883 section shall not be available where the Certified Service Provider or seller using a Certified
884 Automated System has incorrectly classified an item or transaction into a product category

885 certified by the commissioner. In the case of such a misclassification, the Certified Service
886 Provider or seller using a Certified Automated System shall be given 10 days to correct any such
887 error, and following that 10 day period, will be liable for the failure to collect the correct amount
888 of sales or use taxes.

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

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

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

901 Section 33: Bad Debts. Any seller who has paid to the commissioner an excise under
902 this chapter upon a sale for which credit is given to the purchaser and such account is later
903 determined to be a bad debt may deduct the amount of the bad debt on the return for the period
904 during which the bad debt is written off as uncollectable in the seller's books and records and is
905 eligible to be deducted for federal income tax purposes, whether or not the seller is required to
906 file a federal income tax return. For purposes of this section, (1) a seller entitled to a deduction

907 does not include an assignee or factor of such seller and (2) bad debt shall have the same
908 meaning as in 26 U.S.C. 166, but excluding financing charges or interest, sales or use taxes
909 charged on the purchase price, uncollectable amounts on property that remain in the possession
910 of the seller until the full purchase price is paid, expenses incurred in attempting to collect any
911 debt, and repossessed property. If a seller takes a deduction for a bad debt as provided in this
912 section and the debt is subsequently collected in whole or in part, the tax on the amount so
913 collected must be paid and reported on the return filed for the period in which the collection is
914 made. For purposes of reporting a payment received on a previously claimed bad debt, any
915 payments made on a debt or account shall be applied first proportionately to the taxable sales
916 price and tax and second to interest, service charges, and any other charges. If a bad debt
917 exceeds the amount of taxable sales for the period during which the bad debt is written off, an
918 application for abatement may be filed within the time limitations of G.L. c. 62C, § 37, provided
919 however that notwithstanding any provisions of G.L. c. 62C, § 37 to the contrary, the three year
920 time limitation shall be measured from the due date of the return on which the bad debt could
921 first be claimed. Where a seller has elected to utilize a Certified Service Provider, the Certified
922 Service Provider may claim, on behalf of the seller any bad debt allowance provided by this
923 section, provided that the Certified Service Provider credits or refunds the full amount of any bad
924 debt allowance or refund to the seller. In situations where the books and records of the seller
925 support an allocation of the bad debts among member states of the Streamlined Sales Tax
926 Governing Board, such an allocation is permitted.

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

929 Section 34: Demand for Return of Overpaid Tax

930 In the event a seller shall refuse to return a sales tax upon request by the customer,
931 whether directly in the case of rescissions under section one, or indirectly through the abatement
932 process under section thirty-seven of chapter sixty-two C, the customer shall not have a cause of
933 action against the seller until a written notice of demand is made upon the seller and at least 60
934 days have elapsed since the time of the demand. Such demand must contain sufficient
935 information to allow the seller to determine the validity of the request.

936 In connection with a customer's request for a return of overpaid sales taxes, a seller shall
937 be presumed to have a reasonable business practice if in the collection of sale taxes the seller (I)
938 uses either a provider or system, including a proprietary system, certified by the state; and (ii)
939 has remitted to the state all taxes collected, less any established handling fee permitted under G.L.
940 c. 64H, § 1.

941 SECTION 14: Section 5 of Chapter 64I of the General Laws, as so appearing, is hereby
942 amended by striking it out in its entirety and inserting in its place the following new Section 5:

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

948 SECTION 15: Section 8 of Chapter 64I of the General Laws, as so appearing, is hereby
949 amended by striking the section in its entirety and replacing it with the following:

950 For the purpose of the proper administration of this chapter and to prevent evasion of the
951 tax imposed hereunder, it shall be presumed that tangible personal property or services sold by

952 any person for delivery in the commonwealth is sold for storage, use or other consumption in the
953 commonwealth until the contrary is established. The burden of proving the contrary is upon the
954 person who makes the sale unless he takes in good faith from the purchaser a certificate of
955 exemption to the effect that the service or property is purchased for resale, or the service or
956 property is exempt from the tax imposed by this chapter and such certificate of exemption is
957 received not later than ninety days subsequent to the date of the sale. Where a certificate is not
958 obtained within the foregoing time limit the seller is not relieved of its burden of proving that the
959 sale was exempt or for resale and the seller must prove by other means, within one hundred
960 twenty days subsequent to the date of notice from the commissioner, that the sale was not a retail
961 sale subject to tax or produce a fully completed exemption certificate from the purchaser taken in
962 good faith.

963 The certificate shall relieve the seller from the burden of proof and any liability for the
964 tax if it is determined that the purchaser improperly claimed an exemption unless

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

966 the seller solicits purchasers to participate in the unlawful claim of an exemption, or

967 a seller physically located within the commonwealth accepts an exemption certificate that
968 claims an entity based exemption not contained in this chapter in a transaction involving a
969 product received by the purchaser at a business location of the seller.

970 The certificate of exemption shall bear the name and address of the purchaser and the
971 purchaser's tax identification number or other identification number. If the certificate of
972 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's signature.

973 The certificate shall be in such form as the commissioner may prescribe.

974 If a purchaser who gives a certificate of exemption indicating that the purchase was for
975 resale in the regular course of business makes any use of the service or property other than
976 retention, demonstration or display while holding it for sale in the regular course of business, the
977 storage or use is taxable as of as of the time the service or property is first so stored or used by
978 him. If the sole use of the property other than retention, demonstration or display in the regular
979 course of business is the rental of the property while holding it for sale, the purchaser may elect
980 to include in its gross receipts the amount of the rental charge rather than the cost of the property
981 to him.

982 If a purchaser who gives a certificate of exemption makes any use of the property
983 inconsistent with the exemption claimed on the certificate, the use shall be deemed a retail sale
984 by the purchaser as of the time the property is first so used and the cost of the property to the
985 purchaser shall be deemed the gross receipts from such retail sale.

986 It shall be presumed that tangible personal property shipped or brought to the
987 commonwealth by the purchaser was purchased from a retailer for storage, use, or other
988 consumption in the commonwealth provided that such property was shipped or brought into the
989 commonwealth within six months after its purchase.

990 It shall be presumed that services used within the commonwealth by the purchaser were
991 purchased from the seller for use within the commonwealth provided such services were used
992 within the commonwealth within six months after its purchase.

993 For purposes of this section, a certificate of exemption may be either in paper or
994 electronic format. The requirement of taking a certificate is satisfied if the seller otherwise
995 captures all required data elements of such a certificate in its books and records. The

996 commissioner may promulgate rules and regulations determining which services shall be deemed
997 purchased for resale under this section.

998 SECTION 16: Section 34 of Chapter 64I of the General Laws, as so appearing, is hereby
999 amended by striking it out in its entirety and inserting in its place the following new Section 34:

1000 Any seller who has paid to the commissioner an excise under this chapter upon a sale for
1001 which credit is given to the purchaser and such account is later determined to be a bad debt may
1002 deduct the amount of the bad debt as provided in G.L. c. 64H, section 33.

1003 SECTION 17: The commonwealth hereby adopts the Streamlined Sales and Use Tax
1004 Agreement as created on November 12, 2002 and as amended by the member states of the
1005 Streamlined Sales Tax Governing Board, Inc. The commissioner may promulgate rules and
1006 regulations consistent with the Streamlined Sales and Use Tax Agreement and any subsequent
1007 amendments or interpretations thereof adopted by the Streamlined Sales Tax Governing Board,
1008 Inc. to ensure that the commonwealth remains in compliance with that agreement, as amended.

1009 SECTION 18: The commissioner is authorized to petition the Streamlined Sales Tax
1010 Governing Board to allow the commonwealth to become an associate or full member of the
1011 Streamlined Sales Tax Governing Board and to pay the application fee and annual fees from
1012 sales and use taxes collected under chapters 64H and 64I. If accepted as an associate or full
1013 member, the commonwealth shall be represented at the Streamlined Sales Tax Governing Board
1014 meetings by a coalition of 3 delegates:

1015 1 voting member from the Department of Revenue who is appointed by the
1016 commissioner, and

1017 1 voting member from each chamber of the legislature appointed by the Speaker of the
1018 House and the President of the Senate, respectively.

1019 These 3 delegates shall together decide how the commonwealth’s interests are best
1020 represented to the board, voting on issues as indicated above. Since each member state on the
1021 Governing Board is allowed only one vote, the commonwealth’s single vote on an issue shall be
1022 determined by the majority opinion indicated by the votes of the delegates of the
1023 commonwealth’s coalition. If the House delegate is absent, not voting, voting “present,” or
1024 abstaining from the vote, that delegate’s proxy shall automatically be given to the Senate
1025 delegate. If the Senate delegate is absent, not voting, voting “present,” or abstaining from the
1026 vote, that delegate’s proxy shall automatically be given to the House delegate. If the Department
1027 of Revenue delegate is absent, not voting, voting “present,” or abstaining from the vote, that
1028 delegate’s proxy shall be given to the legislative delegate of his/her choice.

1029 SECTION 19: Sections 1-16 of this bill shall be effective on the first day of the twelfth
1030 month following passage.

1031 SECTION 20: Sections 17 and 18 of this bill shall be effective immediately following
1032 passage.