

SENATE No. 1338

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to local excise tax on charges of meals served to the public..

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. Chapter 64B of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended after Chapter 64K by adding the following new Chapter: --

3 Chapter 64L. Section 1. Notwithstanding the provisions of any specific or general law to
4 the contrary, any city or town which accepts the provisions of this section shall be authorized to
5 impose a local excise tax upon the sale of meals served to the public by any vendor located
6 within such city or town at a rate of one per cent of the total amount of the sales price of said
7 meal. The vendor shall pay the local excise tax imposed under the provisions of this section to
8 the commissioner at the same time and in the same manner as the excise tax due the
9 commonwealth. All sums received by the commissioner under this section as excise, penalties or
10 forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid
11 by the state treasurer upon certification of the commissioner to each city or town that has adopted
12 the provisions of this section in proportion to the amount of such sums received from the sale of
13 meals to the public in each such city or town.

14 For the purposes of this chapter, all words herein shall have the same definitions as set
15 forth in Chapter64H. This section shall only take effect in a city or town accepting the
16 provisions of this section by a majority vote of the city council with the approval of the mayor, in
17 the case of a city with a Plan A, Plan B, or Plan F charter; by a majority vote of the city council,
18 in the case of a city with a Plan C, Plan D, or Plan E charter; by a majority vote of the annual
19 town meeting or a special meeting called for the purpose, in the case of a municipality with a
20 town meeting form of government; or by a majority vote of the town council, in the case of a
21 municipality with a town council form of government. The provisions of this section shall take
22 effect on the first day of the calendar quarter following thirty days after such acceptance, or on
23 the first day of such later calendar quarter as the city or town may designate. The city or town, in
24 accepting the provisions of this section, may not revoke or otherwise amend the applicable local
25 tax rate more often than once in any twelve month period. The commissioner of the department
26 of revenue shall make available to any city or town requesting such information the total amount
27 of local excise tax on the sale of meals to the public collected in the preceding fiscal year in the
28 city or town requesting the information.

29 Section 2. The following sales and the gross receipts therefore shall be exempt from the
30 tax imposed by this chapter: (a) Sales which the commonwealth is prohibited from taxing under
31 the constitution or laws of the United States; (b) Sales of tangible personal property in transit or
32 stored at points of entry intended for export or import or which the vendor is obligated under the
33 terms of any agreement to deliver (i) to a purchaser outside the commonwealth or to a designee
34 outside the commonwealth of a purchaser outside the commonwealth or (ii) to an interstate
35 carrier for delivery to a purchaser outside the commonwealth or to a designee outside the
36 commonwealth of a purchaser outside the commonwealth; (c) Casual and isolated sales by a

37 vendor who is not regularly engaged in the business of making sales at retail; (d) Sales to the
38 United States, the commonwealth or any political subdivision thereof, or their respective
39 agencies; (e) Sales to any corporation, foundation, organization or institution, which is exempt
40 from taxation under the provisions of section five hundred and one (c)(3) of the Federal Internal
41 Revenue Code, as amended, and in effect for the applicable period; provided, however, that such
42 sales shall not be exempt unless (i) the tangible personal property or services which are the
43 subject of such sales is used in the conduct of such religious, charitable, educational or scientific
44 enterprise, (ii) such corporation, foundation, organization or institution shall have first obtained a
45 certification from the commissioner stating that it is entitled to such exemption, and (iii) the
46 vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the
47 date of each such separate sale, and the number of such certificate. The certificate of exemption
48 issued by the commissioner under clause (ii) shall be effective for a period of five years from the
49 date of its issuance or until January first, two thousand twelve, whichever shall last expire
50 provided that ninety days prior to said date the commissioner shall notify such corporation,
51 foundation, organization or institution of the expiration date of said certificate. Such corporation,
52 foundation, organization or institution must obtain from the commission era renewal of such
53 certificate in order to be entitled to a continuance of such exemption beyond the expiration date
54 of any existing certificate.

55 (f) Sales of food products for human consumption. "Food products" includes cereals and
56 cereal products, flour and flour products, milk and milk products, including ice cream,
57 oleomargarine, meat and meat products, fish and fish products, eggs and egg products,
58 vegetables and vegetable products, fruit and fruit products, soft drinks, herbs, spices and salt,
59 sugar and sugar products, candy and confectionery; coffee and coffee substitutes, tea, cocoa and

60 cocoa products; and ice when used for household consumption. "Food products" does not include
61 alcoholic beverages as defined in chapter one hundred and thirty-eight except as hereinafter
62 provided, medicines, tonics and preparations in liquid, powdered, granular, tablet, capsule,
63 lozenge and pill form sold as dietary supplements or adjuncts. "Food products" does not include
64 meals consisting of any of the items defined as food products in this paragraph for consumption
65 on or off the premises where sold. "Honor snack tray", any vending arrangement in which only
66 candy or snacks are available in an open tray for the benefit of employees in an establishment
67 that normally does not sell food or food products and for which payment is made on the honor
68 system. "Meals" shall mean any food or beverage, or both, prepared for human consumption and
69 provided by a restaurant, where the food or beverages is intended for consumption on or off the
70 restaurant premises, and includes food or beverages sold on a "take out" or "to go" basis, whether
71 or not they are packaged or wrapped and whether or not they are taken from the premises of the
72 restaurant. "Restaurant", shall mean any eating establishment where food, food products, or
73 beverages are provided and for which a charge is made, including but not limited to, a cafe,
74 lunch counter, private or social club, cocktail lounge, hotel dining room, catering business,
75 tavern, diner, snack bar, dining room, vending machine, and any other place or establishment
76 where food or beverages are provided, whether stationary or mobile, temporary or permanent;
77 provided, however, that delicatessen, grocery, market or bakery stores shall not be considered
78 eating establishments within the meaning of this chapter except for any part of such a store
79 which engages, in the sale of dinners, luncheons, barbecued chicken, other than barbecued
80 chicken sold whole and unsliced, sandwiches, snacks, pizzas, and other similar items which are
81 commonly sold at snack bars, coffee shops or luncheon counters; provided, further, that such
82 stores shall not be deemed to be restaurants under this chapter based solely on the preparation

83 and sale of prepared meat, poultry and fish items if such sales constitute less than a major portion
84 of the total sale of such stores; and provided, further, that a vending machine or honor snack tray
85 shall not be considered an eating establishment within the meaning of this chapter in the instance
86 in which it sells only snacks or candy with a sales price of less than \$5.00; and, provided further,
87 that a bed and breakfast establishment or bed and breakfast home, as defined in chapter sixty-
88 four G, shall not be considered an eating establishment within the meaning of this chapter where
89 the value of a breakfast served is included in the rent subject to tax under said chapter sixty-four
90 G. The following food or beverages sold by a restaurant for consumption off the restaurant
91 premises shall not be deemed to be a meal for the purposes of this chapter:-- (a) Food sold by
92 weight, liquid or dry measure, count, or in unopened original containers or packages, including,
93 but not limited to, meat, bread, milk, specialty foods, cream and ice cream; provided, that such
94 foods are commonly sold in such manner in a retail food store which is not a restaurant;
95 (b)Beverages in unopened original containers or packages when sold as a unit having a capacity
96 of at least twenty-six fluid ounces; and (c) Bakery products including but not limited to
97 doughnuts, muffins, bagels, and similar items sold in units of six or more. Prepared meals,
98 snacks, sandwiches, food platters, poultry, fish or meat items, or other food combinations, to the
99 extent that such items are sold by a restaurant whose principal business is the preparation or sale
100 of such items in such form as to be available for immediate consumption without further
101 significant preparation, whether for on or off premise consumption, shall not be excluded under
102 clause (a), (b), or (c). (g) (i) Sales of livestock and poultry of a kind which ordinarily constitute
103 food for human consumption; (ii) sales of feed, including the bags in which the feed is
104 customarily contained, for livestock and poultry of a kind which ordinarily constitute food for
105 human consumption or are to be sold in the regular course of business or for animals produced

106 for research, testing, or other purposes relating to the promotion or maintenance of the health,
107 safety or well being of human beings or animals or for fur-bearing animals, the pelts of which are
108 sold in the regular course of business; (iii) sales of fertilizer, including ground limestone,
109 hydrated lime, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones,
110 as well as other substances commonly regarded in the same category and for the same use; and
111 (iv) sales of plants, including parts of plants, suitable for planting to produce food for human
112 consumption or when such plants, including parts thereof or the produce thereof, are to be sold in
113 the regular course of business, including such items as seed potatoes, onion sets, asparagus roots,
114 berry plants or bushes, and fruit trees. (h) meals prepared by employees thereof and served in any
115 hospital, sanatorium, convalescent or nursing home, or boarding home for the aged licensed
116 under section seventy-one of chapter one hundred and eleven or in any institution or private
117 house licensed under section twenty-nine of chapter nineteen; meals prepared by the members
118 thereof and served on its premises by any church or synagogue or by any church or synagogue
119 organization to any organization of such church or synagogue the proceeds of which are to be
120 used for religious or charitable purposes; meals served to a resident in a facility providing
121 continuing care to an individual which facility must provide a disclosure statement to a
122 prospective resident as required by section seventy-six of chapter ninety-three, meals served in
123 an assisted living residence certified pursuant to the provisions of chapter nineteen D; meals
124 furnished by any person while transporting passengers for hire by air to or from any place within
125 the commonwealth, meals furnished to any organization in which membership is limited to
126 persons sixty years of age or over or to elderly or handicapped persons residing in a housing
127 project qualifying under section thirty-eight to forty, inclusive, of chapter one hundred and
128 twenty-one B and said organization has previously filed with the commissioner, on a form

129 approved by the commissioner, satisfactory proof of its eligibility hereunder; and meals
130 furnished to students by an educational institution which normally maintains a regular faculty
131 and curriculum and normally has a regularly enrolled body of pupils or students in attendance at
132 the place where its educational activities are regularly carried on; and meals served by summer
133 camps for children eighteen years of age or under or developmentally disabled individuals;
134 provided, however, that such summer camp which offers its facilities off-season to individuals
135 sixty years of age or over for a period not to exceed thirty days in any calendar year shall not lose
136 its exemption hereunder; and meals furnished through programs established under section one L
137 of chapter fifteen.

138 For the purposes of this section a developmentally disabled individual shall mean an
139 individual who has a severe chronic disability which:

140 (A) is attributable to a mental or physical impairment or combination of mental and
141 physical impairments;

142 (B) is likely to continue indefinitely;

143 (C) results in substantial functional limitations in three or more of the following areas of
144 major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv)
145 mobility; (v) self-direction;(vi) capacity for independent living; and (vii) economic self-
146 sufficiency; and

147 (D) reflects the individual's need for a combination and sequence of special,
148 interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended
149 duration and are individually planned and coordinated.

150 (i) sales of tangible personal property and meals as defined by this chapter and purchased
151 with federal food stamps and not otherwise exempt under this chapter.

152 (j) sales of tangible personal property or meals as defined by this chapter and purchased
153 by any person 65 years of age or older if such purchase of tangible personal property or meals is
154 offered by the vendor at a specially reduced price for persons 65 years of age or older.

155 SECTION 3. This Act shall take effect upon passage.