HOUSE DOCKET, NO. 1085 FILED ON: 1/19/2011

HOUSE . . . . . No. 1695

The Commonwealth of Massachusetts

PRESENTED BY:

Jay R. Kaufman and Richard T. Moore

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

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

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

PETITION OF:

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

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HOUSE . . . . . No. 1695

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

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

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

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

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

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

"Bundled transaction" is the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) 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 (c) Sellers shall use the full term of a service contract to determine if the taxable
44 products are 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 "Direct mail" means printed material delivered or distributed by United States mail or
106 other delivery service to a mass audience or to addressees on a mailing list provided by the
107 purchaser or at the direction of the purchaser when the cost of the items are not billed directly to
108 the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by
109 the purchaser to the direct mail seller for inclusion in the package containing the printed material.
110 "Direct mail" does not include multiple items of printed material delivered to a single address.

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

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

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

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

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

122 (a) Can withstand repeated use; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

186 (a) Lease or rental does not include:

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

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

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

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

197 (b) Lease or rental does include agreements covering motor vehicles and trailers
198 where the amount of consideration may be increased or decreased by reference to the amount
199 realized upon sale or disposition of the property as defined in 26 USC 770l(h)(1).

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

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

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

208 "Mobility enhancing equipment" means equipment including repair and replacement
209 parts to same which:

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

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

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

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

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

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

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

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

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

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

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

237 "Prepared food" means:

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

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

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

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

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

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

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

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

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

272 (a) Artificially replace a missing portion of the body;

273 (b) Prevent or correct physical deformity or malfunction; or

274 (c) Support a weak or deformed portion of the body.

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

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

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

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

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

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

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

301 "Sale" and "selling" include (i) any transfer of title or possession, or both, exchange,
302 barter, lease, rental, conditional or otherwise, of tangible personal property or the performance of
303 services for a consideration, in any manner or by any means whatsoever; (ii) the producing,
304 fabricating, processing, printing or imprinting of tangible personal property for a consideration
305 for consumers who furnish either directly or indirectly the materials used in the producing,
306 fabricating, processing, printing or imprinting; (iii) the furnishing and distributing of tangible
307 personal property or services for a consideration by social clubs and fraternal organizations to
308 their members or others; (iv) a transaction whereby the possession of property is transferred but
309 the seller retains the title as security for the payment of the price; (v) a transfer for a
310 consideration of the title or possession of tangible personal property which has been produced,
311 fabricated or printed to the special order of the customer, or of any publication; (vi) the
312 furnishing of information by printed, mimeographed or multigraphed matter, or by duplicating
313 written or printed matter in any other manner, including the services of collecting, compiling or
314 analyzing information of any kind or nature and furnishing reports thereof to other persons, but
315 excluding the furnishing of information which is personal or individual in nature and which is
316 not or may not be substantially incorporated in reports furnished to other persons, and excluding
317 the services of advertising or other agents, or other persons acting in a representative capacity,
318 and information services used by newspapers, radio broadcasters and television broadcasters in
319 the collection and dissemination of news and excluding the furnishing of information by
320 photocopy or other similar means by not for profit libraries which are recognized as exempt from
321 taxation under § 50l(c)(3) of the Federal Internal Revenue Code; (vii) the performance of

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

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

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

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

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

339 (d) Delivery charges;

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

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

343 (a) Installation charges;

344 "Sales price" shall not include:

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

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

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

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

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

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

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

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

361 D. One of the following criteria is met:

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

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

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

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

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

378 "Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners.
379 "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar
380 milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

381 "Sport or recreational equipment" means items designed for human use and worn in
382 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or

383 recreational equipment" are mutually exclusive of and may be taxed differently than apparel
384 within the definition of "clothing," "clothing accessories or equipment," and "protective
385 equipment."

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

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

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

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

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

397 SECTION 1A. Telecommunications and Related Services

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

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

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

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

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

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

414 “Interstate” means a “telecommunications service” that originates in one United States
415 state, or a United States territory or possession, and terminates in a different United States state
416 or a United States territory or possession.

417 “Intrastate” means a “telecommunications service” that originates in one United States
418 state or a United States territory or possession, and terminates in the same United States state or a
419 United States territory or possession.

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

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

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

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

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

440 C. Tangible personal property;

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

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

443 F. Internet access service;

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

450 H. "Ancillary services"; or

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

453 "800 service" means a "telecommunications service" that allows a caller to dial a toll-free
454 number without incurring a charge for the call. The service is typically marketed under the name
455 "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated
456 by the Federal Communications Commission.

457 "900 service" means an inbound toll "telecommunications service" purchased by a
458 subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded
459 announcement or live service. "900 service" does not include the charge for: collection services
460 provided by the seller of the "telecommunications services" to the subscriber, or service or
461 product sold by the subscriber to the subscriber's customer. The service is typically marketed
462 under the name "900" service, and any subsequent numbers designated by the Federal
463 Communications Commission.

464 "Fixed wireless service" means a "telecommunications service" that provides radio
465 communication between fixed points.

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

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

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

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

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

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

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

497 SECTION 1B. General Sourcing Rules.

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

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

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

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

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

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

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

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

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

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

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

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

549 (1) For a lease or rental that requires recurring payments, each periodic payment is
550 sourced to the primary property location. The primary property location shall be as indicated by
551 an address for the property provided by the lessee that is available to the lessor from its records

552 maintained in the ordinary course of business, when use of this address does not constitute bad
553 faith. This location shall not be altered by intermittent use at different locations.

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

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

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

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

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

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

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

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

579 SECTION 1C. Direct Mail Sourcing Rules.

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

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

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

592 (b) If the purchaser of direct mail does not have a direct pay permit and does not
593 provide the seller with either a Direct Mail Form or delivery information, as required by

594 subsection (a) of this section, the seller shall collect the tax according to section 1B, subsection
595 (a) 5. Nothing in this paragraph shall limit the purchaser's obligation for sales or use tax to any
596 state to which the direct mail is delivered.

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

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

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

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

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

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

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

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

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

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

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

628 c. Service for segments of a channel between two customer channel termination
629 points located indifferent jurisdictions and which segment of channel are separately charged is
630 sourced fifty percent in each level of jurisdiction in which the customer channel termination
631 points are located.

632 d. Service for segments of a channel located in more than one jurisdiction of levels
633 of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based

634 on the percentage determined by dividing the number of customer channel termination points in
635 such jurisdiction by the total number of customer channel termination points.

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

637 SECTION 1E. Telecommunications Sourcing Definitions. For the purpose of section
638 1D, the following definitions apply:

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

642 B. "Ancillary Services" means services that are associated with or incidental to the
643 provision of "telecommunications services," including but not limited to "detailed
644 telecommunications billing," "directory assistance," "vertical service,, and "voice mail services."

645 C. "Call-by-call Basis" means any method of charging for telecommunications
646 services where the price is measured by individual calls.

647 D. "Communications Channel" means a physical or virtual path of communications
648 over which signals are transmitted between or among customer channel termination points.

649 E. "Customer" means the person or entity that contracts with the seller of
650 telecommunications services. If the end user of telecommunications services is not the
651 contracting party, the end user of the telecommunications service is the customer of the
652 telecommunications service, but this sentence only applies for the purpose of sourcing sales of
653 telecommunication services under section 1C. "Customer" does not include a reseller of

654 telecommunications service or for mobile telecommunications service of a serving carrier under
655 an agreement to serve the customer outside the home service provider's licensed service area.

656 F. "Customer Channel Termination Point" means the location where the customer
657 either inputs or receives communications.

658 G. "End User" means the person who utilizes the telecommunication service. In the
659 case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

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

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

664 J. "Place of primary use" means the street address representative of where the
665 customer's use of the telecommunications service primarily occurs, which must be the residential
666 street address or the primary business street address of the customer. In the case of mobile
667 telecommunications services, "place of primary use" must be within the licensed service area of
668 the home service provider.

669 K. "Post-paid calling service" means the telecommunications service obtained by
670 making a payment on a call-by-call basis either through the use of a credit card or payment
671 mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a
672 telephone number which is not associated with the origination or termination of the
673 telecommunications service. A post-paid calling service includes a telecommunications service,

674 except a prepaid wireless calling service, that would be a prepaid calling service except it is not
675 exclusively a telecommunication service.

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

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

686 N. "Private communication service" means a telecommunication service that entitles
687 the customer to exclusive or priority use of a communications channel or group of channels
688 between or among termination points, regardless of the manner in which such channel or
689 channels are connected, and includes switching capacity, extension lines, stations, and any other
690 associated services that are provided in connection with the use of such channel of channels.

691 O. "Service address" means:

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

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

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

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

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

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

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

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

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

727 SECTION 6(b) is amended by striking everything following the word "import" and
728 adding a period following that word.

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

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

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

734 ,except alcoholic beverages for on-premises consumption.

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

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

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

743 (4) residential intrastate telecommunications services.

744 SECTION 6(k) is repealed in its entirely and replaced with the following:

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

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

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

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

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

754 (ff) Sales of "direct and cooperative direct mail promotional advertising materials"
755 defined as individual discount coupons, or advertising leaflets incorporating the coupons within

756 the promotional advertising materials no greater than 6 pages in length, and including any
757 accompanying envelopes and labels. In order to be exempt hereunder, the promotional
758 advertising materials shall be distributed as a part of a package of materials promoting 1 or more
759 than 1 business, each operated at separate and distinct locations, and directed in a single package
760 to potential customers, at no charge to the potential customer, of the businesses paying for the
761 delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail
762 promotional advertising materials" shall not include mail order catalogs, department store
763 catalogs, telephone directories, or similar printed advertising books, booklets or circulars greater
764 than 6 pages in total length.

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

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

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

772 in good faith

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

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

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

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

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

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

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

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

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

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

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

800 7A. Amnesty for Registration

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

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

817 7B. Monetary Allowances for Sales Tax Collection

818 (a) A monetary allowance shall be allowed to a Certified Service Provider under
819 Model 1 in accordance with the terms of the contracts between the Streamlined Sales Tax

820 Governing Board and the Certified Service Providers for a period not to exceed 24 months
821 following a voluntary seller's registration through the Streamlined Sales Tax Governing Board's
822 central registration process. The compensation shall be a percentage of tax revenue generated
823 for the commonwealth by the voluntary seller that does not have a requirement to register to
824 collect the tax.

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

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

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

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

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

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

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

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

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

862 (c) The certificate of exemption shall bear the name and address of the purchaser and
863 the purchaser's tax identification number or other identification number. If the certificate of

864 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's signature.
865 The certificate shall be in such form as the commissioner may prescribe or that has been
866 approved by the Streamlined Sales Tax Governing Board.

867 (d) If a purchaser who gives a certificate of exemption indicating that the purchase
868 was for resale in the regular course of business makes any use of the service or property other
869 than retention, demonstration or display while holding it for sale in the regular course of
870 business, the use shall be deemed a retail sale by the purchaser as of the time the service or
871 property is first used by him, and the cost of the service or property to him shall be deemed the
872 gross receipts from such retail sale. If the sole use of the property other than retention,
873 demonstration or display in the regular course of business is the rental of the property while
874 holding it for sale, the purchaser may elect to include in its gross receipts the amount of the
875 rental charge rather than the cost of the property to him.

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

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

884 (g) For purposes of this section, a certificate of exemption may be either in paper or
885 electronic format. The requirement of taking a certificate is satisfied if the seller otherwise

886 captures all required data elements of such a certificate in its books and records. The
887 commissioner may promulgate rules and regulations determining which services shall be deemed
888 purchased for resale under this section.

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

891 8A. Relief from Liability

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

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

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

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

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

905 For purposes of this section, erroneous data is limited to incorrect classification in the
906 taxability matrix of defined products as taxable or exempt, included or excluded from sales price,

907 or included or excluded from a defined product. For purposes of this section, relief from
908 liability includes liability for tax, interest and penalty.

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

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

922 Where a motor vehicle is returned to a seller pursuant to a recission of contract within
923 one hundred and eighty days of the date of sale and the entire amounts charged for the motor
924 vehicle, less the sellers' established handling fees, if any, for return of the property, are refunded
925 either in cash or credit, the purchaser may apply to the Commissioner for a refund of any tax
926 paid under this chapter or chapter 64I within the time limitations provided in chapter 62C,
927 section 37. In the case of a recission of contract for the sale of a motor vehicle, the seller's

928 established handling fees may include a reasonable allowance for the purchaser's use of the
929 vehicle.

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

932 Section 33: Bad Debts. Any seller who has paid to the commissioner an excise under
933 this chapter upon a sale for which credit is given to the purchaser and such account is later
934 determined to be a bad debt may deduct the amount of the bad debt on the return for the period
935 during which the bad debt is written off as uncollectable in the seller's books and records and is
936 eligible to be deducted for federal income tax purposes, whether or not the seller is required to
937 file a federal income tax return. For purposes of this section, (1) a seller entitled to a deduction
938 does not include an assignee or factor of such seller and (2) bad debt shall have the same
939 meaning as in 26 U.S.C. 166, but excluding financing charges or interest, sales or use taxes
940 charged on the purchase price, uncollectable amounts on property that remain in the possession
941 of the seller until the full purchase price is paid, expenses incurred in attempting to collect any
942 debt, and repossessed property. If a seller takes a deduction for a bad debt as provided in this
943 section and the debt is subsequently collected in whole or in part, the tax on the amount so
944 collected must be paid and reported on the return filed for the period in which the collection is
945 made. For purposes of reporting a payment received on a previously claimed bad debt, any
946 payments made on a debt or account shall be applied first proportionately to the taxable sales
947 price and tax and second to interest, service charges, and any other charges. If a bad debt
948 exceeds the amount of taxable sales for the period during which the bad debt is written off, an
949 application for abatement may be filed within the time limitations of G.L. c. 62C, § 37, provided
950 however that notwithstanding any provisions of G.L. c. 62C, § 37 to the contrary, the three year

951 time limitation shall be measured from the due date of the return on which the bad debt could
952 first be claimed. Where a seller has elected to utilize a Certified Service Provider, the Certified
953 Service Provider may claim, on behalf of the seller any bad debt allowance provided by this
954 section, provided that the Certified Service Provider credits or refunds the full amount of any bad
955 debt allowance or refund to the seller. In situations where the books and records of the seller
956 support an allocation of the bad debts among member states of the Streamlined Sales Tax
957 Governing Board, such an allocation is permitted.

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

960 Section 34: Demand for Return of Overpaid Tax

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

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

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

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

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

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

981 SECTION 15: Section 1 of Chapter 64I of the General Laws, as so appearing, is hereby
982 amended by adding in the second paragraph after the word "person" and before the word
983 "retailer", the following:

984 "purchaser',

985 Section 1 of Chapter 64I of the General Laws, as so appearing, is further amended by
986 striking the definition of "purchaser" in its entirety.

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

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

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

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

1000 SECTION 18: Section 8 of Chapter 64I of the General Laws, as so appearing, is hereby
1001 amended by striking the section in its entirely and replacing it with the following:

1002 (a) For the purpose of the proper administration of this chapter and to prevent evasion
1003 of the tax imposed hereunder, it shall be presumed that tangible personal property or services
1004 sold by any person for delivery in the commonwealth is sold for storage, use or other
1005 consumption in the commonwealth until the contrary is established. The burden of proving the
1006 contrary is upon the person who makes the sale unless he takes from the purchaser a certificate
1007 of exemption to the effect that the service or property is purchased for resale, or the service or
1008 property is exempt from the tax imposed by this chapter and such certificate of exemption is
1009 received not later than ninety days subsequent to the date of the sale. Where a certificate is not
1010 obtained within the foregoing time limit the seller is not relieved of its burden of proving that the
1011 sale was exempt or for resale and the seller must prove by other means, within one hundred
1012 twenty days subsequent to the date of notice from the commissioner, that the sale was not a retail
1013 sale subject to tax or produce a fully completed exemption certificate from the purchaser taken in
1014 good faith.

1015 (b) The certificate shall relieve the seller from the burden of proof and any liability
1016 for the tax if it is determined that the purchaser improperly claimed an exemption unless

1017 (1) the seller fraudulently fails to collect the tax, or

1018 (2) the seller solicits purchasers to participate in the unlawful claim of an exemption,
1019 or

1020 (3) a seller physically located within the commonwealth accepts an exemption
1021 certificate that claims an entity based exemption not contained in this chapter in a transaction
1022 involving a product received by the purchaser at a business location of the seller.

1023 (c) The certificate of exemption shall bear the name and address of the purchaser and
1024 the purchaser's tax identification number or other identification number. If the certificate of
1025 exemption is submitted in paper form by the purchaser, it shall bear the purchaser's signature.
1026 The certificate shall be in such form as the commissioner may prescribe or that has been
1027 approved by the Streamlined Sales Tax Governing Board.

1028 (d) If a purchaser who gives a certificate of exemption indicating that the purchase
1029 was for resale in the regular course of business makes any use of the service or property other
1030 than retention, demonstration or display while holding it for sale in the regular course of
1031 business, the storage or use is taxable as of as of the time the service or property is first so stored
1032 or used by him. If the sole use of the property other than retention, demonstration or display in
1033 the regular course of business is the rental of the property while holding it for sale, the purchaser
1034 may elect to include in its gross receipts the amount of the rental charge rather than the cost of
1035 the property to him.

1036 (e) If a purchaser who gives a certificate of exemption makes any use of the property
1037 inconsistent with the exemption claimed on the certificate, the use shall be deemed a retail sale
1038 by the purchaser as of the time the property is first so used and the cost of the property to the
1039 purchaser shall be deemed the gross receipts from such retail sale.

1040 (f) It shall be presumed that tangible personal property shipped or brought to the
1041 commonwealth by the purchaser was purchased from a retailer for storage, use, or other
1042 consumption in the commonwealth provided that such property was shipped or brought into the
1043 commonwealth within six months after its purchase.

1044 (g) It shall be presumed that services used within the commonwealth by the purchaser
1045 were purchased from the seller for use within the commonwealth provided such services were
1046 used within the commonwealth within six months after its purchase.

1047 (h) For purposes of this section, a certificate of exemption may be either in paper or
1048 electronic format. The requirement of taking a certificate is satisfied if the seller otherwise
1049 captures all required data elements of such a certificate in its books and records. The
1050 commissioner may promulgate rules and regulations determining which services shall be deemed
1051 purchased for resale under this section.

1052 SECTION 19: Section 34 of Chapter 64I of the General Laws, as so appearing, is hereby
1053 amended by striking it out in its entirely and inserting in its place the following new Section 34:

1054 Any seller who has paid to the commissioner an excise under this chapter upon a sale for
1055 which credit is given to the purchaser and such account is later determined to be a bad debt may
1056 deduct the amount of the bad debt as provided in G.L. c. 64H, section 33.

1057 SECTION 20 : Chapter 64I of the General Laws, as so appears, is amended by adding a
1058 new Section 35:

1059 Section 35: Demand for Return of Overpaid Tax

1060 (a) In the event a seller shall refuse to return a use tax collected by the seller upon
1061 request by the customer, the provisions of section thirty-four of chapter sixty-four H shall apply.

1062 SECTION 21 : Chapter 64I of the General Laws, as so appears, is amended by adding a
1063 new Section 36:

1064 Section 36: In the event of a rate change in section two of this chapter, the provisions of
1065 section thirty-five of chapter sixty-four H shall apply.

1066 SECTION 22: The commonwealth hereby adopts the Streamlined Sales and Use Tax
1067 Agreement as created on November 12, 2002 and as amended by the member states of the
1068 Streamlined Sales Tax Governing Board, Inc. The commissioner may promulgate rules and
1069 regulations consistent with the Streamlined Sales and Use Tax Agreement and any subsequent
1070 amendments or interpretations thereof adopted by the Streamlined Sales Tax Governing Board,
1071 Inc. to ensure that the commonwealth remains in compliance with that agreement, as amended.

1072 SECTION 23: The commissioner is authorized to petition the Streamlined Sales Tax
1073 Governing Board to allow the commonwealth to become an associate or full member of the
1074 Streamlined Sales Tax Governing Board and to pay the application fee and annual fees from
1075 sales and use taxes collected under chapters 64H and 64I. If accepted as an associate or full
1076 member, the commonwealth shall be represented at the Streamlined Sales Tax Governing Board
1077 meetings by a coalition of 3 delegates:

1078 a) 1 voting member from the Department of Revenue who is appointed by the
1079 commissioner, and

1080 b) 1 voting member from each chamber of the legislature appointed by the Speaker
1081 of the House and the President of the Senate, respectively.

1082 These 3 delegates shall together decide how the commonwealth's interests are best
1083 represented to the board, voting on issues as indicated above. Since each member state on the
1084 Governing Board is allowed only one vote, the commonwealth's single vote on an issue shall be
1085 determined by the majority opinion indicated by the votes of the delegates of the
1086 commonwealth's coalition. If the House delegate is absent, not voting, voting "present," or
1087 abstaining from the vote, that delegate's proxy shall automatically be given to the Senate
1088 delegate. If the Senate delegate is absent, not voting, voting "present," or abstaining from the
1089 vote, that delegate's proxy shall automatically be given to the House delegate. If the Department
1090 of Revenue delegate is absent, not voting, voting "present," or abstaining from the vote, that
1091 delegate's proxy shall be given to the legislative delegate of his/her choice.

1092 SECTION 24: Sections 1-22 of this bill shall be effective on the first day of the twelfth
1093 month following passage.

1094 SECTION 25: Section 23 of this bill shall be effective immediately upon passage.