

TIR 06-13: The 2006 Massachusetts Sales Tax Holiday Weekend Sales and Use Tax

I. Introduction

A recently enacted statute provides for a Massachusetts "sales tax holiday weekend," *i.e.*, two consecutive days during which most purchases made by individuals for personal use will not be subject to Massachusetts sales or use taxes. St. 2006, c. xxx, §§ 1 - 5 ("the Act"). The Act provides that the sales tax holiday will occur on August 12 and 13, 2006 and on those days, non-business sales at retail of single items of tangible personal property costing \$2,500 or less are exempt from sales and use taxes, subject to certain exclusions. The following do not qualify for the sales tax holiday exemption and remain subject to tax: all motor vehicles, motorboats, meals, telecommunications services, gas, steam, electricity, tobacco products and any single item whose price is in excess of \$2,500. The Act charges the Commissioner of Revenue with issuing instructions or forms and rules and regulations necessary to carry out the purposes of the Act.

Two changes from the sales tax holiday of 2005 are the *exclusion* of prior sales and layaway sales from the holiday. The Act creating the 2006 sales tax holiday provides, "Eligible sales at retail of tangible personal property ... are restricted to those transactions occurring on August 12, 2006 and August 13, 2006. Transfer of possession or payment in full for the property shall occur on one of those days, and prior sales or layaway sales are ineligible." See further explanation in Sections III. G and III. H, below.

II. Purchases Qualifying for the Exemption

The exemption applies to sales of tangible personal property bought for personal use *only*. Purchases by corporations or other businesses and purchases by individuals for business use remain taxable. Purchases exempt from the sales tax under G. L. c. 64H are also exempt from use tax under G.L. c. 64I. Therefore, eligible items of tangible personal property purchased on the Massachusetts sales tax holiday from out-of-state retailers for use in Massachusetts are exempt from the Massachusetts use tax.

III. Specific Rules

The following rules are to be applied by retailers in administering the Massachusetts sales tax holiday exemption:

A. Non-Exempt Sales. All sales of motor vehicles,^[1] motorboats,^[2] meals,^[3] telecommunications services,^[4] gas,^[5] steam, electricity, tobacco products^[6] and of any single item whose price is in excess of \$2,500, do not qualify for the sales tax holiday exemption and remain subject to tax. *Id.*

B. Threshold. When the sales price of any single item is greater than \$2,500, sales or use tax is due on the entire price charged for the item. The sales price is not reduced by the threshold amount. For example, if an item is sold for \$3,000, the entire sales price of the item is taxable, not just the amount that exceeds \$2,500.

Exception: Under G.L. c. 64H, § 6(k) there is no sales tax on any article of clothing unless the sales price exceeds \$175; in that case, only the increment over \$175 is subject to tax. If, on the sales tax holiday, the price of an article of clothing exceeds the threshold, the first \$175 may be *deducted* from the amount subject to tax. The threshold amount is not increased by \$175.

Examples:

A customer buys a suit on the sales tax holiday for \$600. No tax is due.

A customer buys a wedding dress on the sales tax holiday for \$2,550. Tax is due on \$2,375 (\$2,550 - \$175).

C. Multiple Items on One Invoice. Where a customer is purchasing multiple items on the sales tax holiday, separate invoices do not need to be prepared. As long as each individual item is \$2,500 or less, there is no upper limit on the tax-free amount each customer may purchase.

Example: A customer purchases a television, a stereo receiver, and a computer. The three separate items costing \$1,500, \$1,200 and \$2,000 can be rung up together, all tax free.

D. Bundled Transactions. When several items are offered for sale at a single price, the entire package is exempt if the sales price of the package is \$2,500 or less. For example, a computer package including a CPU, keyboard, monitor, mouse, and printer with a single sales price of \$3,500 would not qualify for the sales tax holiday exemption because the single sales price of the package (\$3,500) is more than the sales tax holiday threshold amount of \$2,500. Items that are priced separately and are to be sold as separate articles will qualify for the sales tax holiday exemption if the price of each article is \$2,500 or less. For example, a customer purchases a personal computer for \$3,000, and a computer printer for \$200, each of which is priced separately. The purchase of the personal computer will not qualify for the exemption because the sales price (\$3,000) is in excess of the sales tax holiday threshold amount of \$2,500. However, since the sales price of the computer printer (\$200) is less than \$2,500, the printer would be exempt from tax.

E. Coupons and Discounts. If a store coupon or discount provided by a retailer or manufacturer reduces the sales price of the property, the discounted sales price determines whether the sales price is within the sales tax holiday price threshold of \$2,500 or less. If a store coupon or discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount on a pro rata basis to each article sold.

Example: A furniture store customer has a coupon for 20% off her entire bill. She purchases a dining room table for \$1,800, and a sofa for \$3,500. The total discount available is \$1,060 (\$5,300 x .20), of which \$360 is attributable to the table (\$1,800 x .20), and \$700 is attributable to the sofa (\$3,500 x .20). No tax is due on the sale of the table. Tax of \$140 is due on the sales price of the sofa, \$2,800 (\$3,500 - \$700), as even its discounted price exceeds the \$2,500 threshold.

F. Exchanges. Consistent with the Department's usual practice, if a customer purchases an item of eligible property during the sales tax holiday, but later exchanges the item for an identical or similar eligible item, for the same price ("an even exchange"), no tax is due even if the exchange is made after the sales tax holiday, see LR 03-8.

G. Layaway Sales. A layaway sale is a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and receives the property when the last payment is made. Layaway sales do not qualify for the sales tax holiday, even if the last required payment (or payments necessary to complete the transaction) are made on August 12 or 13, 2006.

H. Special Order Items; Transfer of Possession after Sales Tax Holiday. Special order items such as furniture are eligible for the sales tax holiday so long as they are ordered and paid in full on the sales tax holiday weekend, and the cost of each item is \$2,500 or less, even if delivery is made at a later date. Generally, a customer pays for an item when the seller receives cash, a credit card number, a debit authorization, a check, or a money order or the buyer and seller enter into financing arrangements with a third party, including an affiliated entity (but

excluding seller financing where the seller extends credit to the customer). A prior special order purchase with a deposit paid before August 12, 2006 will not qualify for the holiday, even if the retail customer pays the entire remaining balance due on August 12 or 13, 2006.

I. Rain checks. When a customer receives a rain check because an item on sale was not available, property bought with the use of the rain check will qualify for the exemption regardless of when the rain check was issued if the rain check is used on the sales tax holiday weekend. Issuance of a rain check during the sales tax holiday weekend will not qualify otherwise eligible property for the sales tax holiday exemption if the property is actually purchased after the sales tax holiday.

J. Rentals. Generally, rentals of tangible personal property except motor vehicles and motorboats are eligible for the sales tax holiday, even if the rental period covers days before or after the holiday, providing payment in full is made during the sales tax holiday weekend.

K. Rebates. A rebate is a refund of an amount of money by the manufacturer of a product to the retail purchaser of the product. If a vendor sells tangible personal property to a customer who applies a manufacturer's rebate to reduce the sales price at the time of the sale, the rebate is generally treated as a cash discount and is excluded from the sales price. The discounted sales price determines whether the sales price is within the sales tax holiday price threshold of \$2,500 or less.

If a vendor sells tangible personal property to a customer who will receive a rebate after the sale (e.g., by mailing a coupon to the manufacturer), the full purchase price of the property determines whether the sales price is within the sales tax holiday price threshold of \$2,500 or less, and tax must be charged on the full purchase price if it is over \$2,500.

If a vendor offers a customer a cash discount upon the purchase of tangible personal property and the customer also receives a rebate from the manufacturer of the property after the sale, only the cash discount given by the retailer is excluded from the sales price for purposes of the sales tax holiday exemption. The amount of the manufacturer's rebate is not deducted from the sales price.

L. Internet Sales. If a customer orders an item of eligible property over the Internet, the item is exempt if it is ordered and paid for on August 12 or 13, 2006, Eastern Daylight Time. Generally, a customer pays for an item when the seller receives a credit card number, a debit authorization, a check, or a money order. The actual delivery can occur after the holiday period. For example: a customer orders a computer over the Internet with a sales price of \$2,000 and charges the sale to his credit card at 1:00 p.m. (EDT) on August 12, 2006; the computer has a delivery date of September 1, 2006. The sale is exempt since the computer was ordered and paid for during the sales tax holiday.

M. Splitting of Items Normally Sold Together. Articles normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the sales tax holiday exemption.

N. Returns. Generally, sales tax may only be refunded to a retail customer on returns within 90 days of the sale. G.L. c. 64H, § 1. For the 90 day period following August 13, 2006, when a customer returns an item that could have qualified for the sales tax holiday exemption, the vendor may not credit or refund sales tax to the retail customer unless (1) the customer provides a receipt or invoice that shows the tax was paid or (2) the seller's records show that tax was paid. Sellers may set their own return policies. This requirement is not intended to change or extend a seller's return policy.

O. Erroneously Collected Taxes. Customers who were erroneously charged sales tax by a vendor for an exempt purchase should take their tax paid receipt to the vendor to obtain the

refund. If the vendor has previously remitted the erroneously collected tax to the Department, the vendor may file an application for abatement of the erroneously collected tax within 3 years upon satisfactory evidence that the vendor has credited or refunded the tax to the purchaser.

IV. Responsibilities of Retailers

A. Participation. All Massachusetts businesses normally making taxable sales of tangible personal property that are open on August 12 and 13, 2006 must participate in this sales tax holiday.

B. Erroneous Collection. Any sales or use tax erroneously or improperly collected by a retailer on August 12 and 13, 2006 must be remitted to the Department of Revenue.

C. Certification of Nonbusiness Use by Purchaser. Normal business records showing the date of sale, item(s) purchased and selling price must be kept by the retailer/vendor. However, when a retailer sells an item(s) exempt by virtue of the sales tax holiday, and the total transaction is \$1,000 or more, a retailer must also document the transaction by obtaining and keeping a Massachusetts Sales Tax Holiday Purchaser's Certification of Nonbusiness Use, signed by the purchaser of the exempt item(s). On-line or telephone retailers should similarly allow a purchaser to make a selection to confirm that items being purchased are for personal use rather than for business use. Retailers should keep this Certification for three years. The Certification is intended to protect retailers from any question as to whether the purchaser was actually buying the items for business use, subject to the retailer's good faith acceptance of the Certification as explained below. Retailers may use the Massachusetts Sales Tax Holiday Purchaser's Certification of Nonbusiness Use, which is available on the Department's website, at www.mass.gov/dor, or retailers may provide their own, which must include the following information: a statement by the purchaser affirming that the purchases are for personal use rather than for business use, the purchaser's address, the purchaser's signature or comparable confirmation for online or telephone transactions, and the purchaser's telephone number. The following is model language for the Certification:
"I, _____, certify that the item(s) listed on the attached receipt are being purchased for personal use and not for any business use."

Purchaser's Address

Purchaser's Signature

Purchaser's Telephone Number

Example: A customer buys twenty-five items, each costing \$40. Since the transaction totals \$1,000, the retailer must document the transaction by obtaining and keeping a Massachusetts Sales Tax Holiday Purchaser's Certification of Nonbusiness Use, signed by the purchaser of the items.

D. Acceptance of the Certification. It is presumed that all gross receipts of a vendor from the sale of tangible personal property are from sales subject to tax. G.L. c. 64H, § 8; G.L. c. 64I, § 8. The burden of proving that a particular sale made on the sales tax holiday is not a taxable sale is on the vendor. Acceptance of a Purchaser's Certification will relieve the vendor from the burden of proof only if taken in good faith from the person purchasing the property. A vendor would not be deemed to have accepted such a certification in good faith if the purchaser uses a business name or d/b/a/, or if other circumstances make it clear that the purchase is not for personal use. Purchasers paying for tangible personal property with business credit cards or checks must be charged tax on the items purchased.

E. Out-of-State Retailers. Out-of-state retailers registered to collect Massachusetts sales and use taxes must participate in this sales tax holiday. Such retailers should not collect sales/use tax for items ordered and paid for on August 12 and 13, 2006 in accordance with the rules of this

technical information release. The retailers must keep records sufficient to verify the date of sale, item(s) purchased, and selling price. In addition, out-of-state retailers must document sales by obtaining and keeping Purchaser's Certifications (see above).

F. Penalties. Retailers that back-date sales orders for sales occurring after August 12 and 13, 2006 in order to make them appear to qualify for the sales tax holiday or otherwise fail to follow the rules in the TIR in order to improperly avoid collecting and remitting sales or use tax may be subject to the tax evasion penalties of G.L. c. 62C, § 73, including a felony conviction, a fine of not more than \$100,000 or \$500,000 in the case of a corporation, or by imprisonment for not more than five years, or both, and may also be required to pay the costs of prosecution.

/s/Alan LeBovidge
Alan LeBovidge
Commissioner of Revenue

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[1] For sales tax purposes, the term "motor vehicle" means "a motorized, self-propelled vehicle which is constructed and designed for transportation or travel over a land surface; but not including mopeds, motorized bicycles, or vehicles incapable of speeds in excess of twelve (12) miles per hour [that] are used other than for transporting persons or property, and are either used exclusively for highway building, repair, or maintenance, or are especially designed for use other than on public highways." The term "motor vehicle" also means "snow vehicle" and "recreation vehicle" as defined in section 20 of chapter 90B. See 830 CMR 64H.25.1 and G.L. c. 64H, § 26. Rentals of motor vehicles are also not eligible for the holiday.

[2] Motorboats, including jet skis, are not exempt under the sales tax holiday. For purposes of the holiday, a motorboat is any vessel or watercraft propelled by machinery, such as an inboard or outboard motor, whether or not such machinery is the principal source of propulsion. See G.L. c. 90B, § 1. Rentals of motorboats are also excluded from the sales tax holiday. Generally, the sales tax holiday *will* apply to purchases of canoes, kayaks, rowboats, and other types of watercraft with no mechanical propulsion, provided that the sales price is \$2,500 or less.

[3] "Meals" are defined in c. 64H as "any food or beverage, or both, prepared for human consumption and provided by a restaurant, where the food or beverages is intended for consumption on or off the restaurant premises, and includes food or beverages sold on a 'take out' or 'to go' basis, whether or not they are packaged or wrapped and whether or not they are taken from the premises of the restaurant." G.L. c. 64H, § 6(h); 830 CMR 64H.6.5.

[4] "Telecommunications services" are defined in G.L. c. 64H as "any transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiberoptics, laser, microwave, radio, satellite or similar facilities but not including cable television." G.L. c. 64H, § 1. Sales of prepaid calling arrangements and cards are not eligible for the sales tax holiday. Telecommunications equipment, such as a telephone or cell phone purchased for nonbusiness use, is eligible for the sales tax holiday.

[5] The term "gas" here refers to natural gas; sales of gasoline are not subject to the sales tax under G.L. c. 64A.

[\[6\]](#) "Tobacco products" includes products subject to the excise under G.L. c. 64C such as cigarettes, cigars, and smoking and smokeless tobacco.