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## Directive 04-6: Sales Tax Treatment of Restaurant Meals that are Resold by Restaurant Meal Delivery Companies

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#### Introduction:

This Directive clarifies the application of the Massachusetts sales tax to sales of restaurant meals that are purchased and resold by restaurant meal delivery companies. This Directive does not apply to restaurants that provide delivery services with their own employees or to others who do not resell meals but only provide delivery services.

Restaurant meal delivery companies purchase meals from restaurants and resell and deliver them to locations designated by the purchaser. The companies purchase the meals from restaurants generally at a discounted price. The delivery companies do not have inventories or kitchen facilities of their own. To place an order, customers choose a restaurant in their area, select menu items, and call the restaurant meal delivery company dispatcher. The delivery company calls the restaurant, places the order, and then notifies a driver to pickup and deliver the order. Typically, there is a separate delivery fee charged per order, and the drivers keep the delivery charge and any tips. The restaurant meal delivery company retains the marked-up price of the meal.

#### Issue 1:

What are the sales tax obligations of Massachusetts restaurants that sell meals to restaurant meal delivery companies?

#### Directive 1:

A restaurant that sells meals to a restaurant meal delivery company is required to accept a Massachusetts Form ST-4, Sales Tax Resale Certificate, from that restaurant meal delivery company. Once the form is accepted, the restaurant is not required to collect and remit the sales tax on meals to the Commonwealth. G.L. c. 64H, § 8(a), (b).

#### Issue 2:

What are the sales tax obligations of restaurant meal delivery companies that purchase meals from restaurants and resell and deliver such meals to their customers?

#### Directive 2:

A restaurant meal delivery company is a vendor of meals purchased from restaurants for resale and delivery. The restaurant meal delivery company is required to provide Form ST-4, Sales Tax Resale Certificate, to all restaurants on all purchases of meals that it resells and delivers to its customers. In addition, the restaurant meal delivery company is required to register with the Department of Revenue, collect the five percent sales tax on the sales price paid by the retail customer for the meals (excluding separately stated delivery charges and tips) and remit the tax to the Commissioner of Revenue.

#### Discussion:

The Massachusetts sales tax is imposed on retail sales of meals by a restaurant. The tax is levied on the sales price of the meal. G.L. c. 64H, §§ 1, 2; 830 CMR 64H.6.5(1). Massachusetts General

Laws chapter 64H, section 6 exempts sales of food products for human consumption; however, exempt food products do not include meals.

A “meal” is defined in section 6 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.” A “restaurant” is defined, in relevant part, as “any eating establishment where food, food products, or beverages are provided and for which a charge is made, including but not limited to, a café, lunch counter, private or social club, cocktail lounge, hotel dining room, catering business, tavern, diner, snack bar, dining room, vending machine, and any other place or establishment where food or beverages are provided, whether stationary or mobile, temporary or permanent....” G.L. c. 64H, § 6(h). Under the facts in this Directive, the restaurant meal delivery company is a “restaurant” for purposes of the sales tax on meals.

Chapter 64H, section 2 imposes a five percent sales tax on all sales at retail of tangible personal property in Massachusetts by any vendor. However, a “sale at retail” is defined as “a sale of tangible personal property for any purpose other than resale in the regular course of business.” A “vendor” is defined as “a retailer or other person selling tangible personal property ... of a kind the gross receipts from the retail sale of which are required to be included in the measure of the tax imposed by [chapter 64H].” G.L. c. 64H, § 1.

Every vendor engaged in business in Massachusetts is required to register with the Department of Revenue and collect sales tax, in accordance with chapter 64H, section 7 and chapter 62C, section 67. The vendor has the burden of proving that its sales are not subject to sales tax.

A restaurant that sells meals to a restaurant meal delivery company is required to accept a Massachusetts Form ST-4, Sales Tax Resale Certificate, from the restaurant meal delivery company. The rules governing resale certificates are found in G.L. c. 64H, § 8, and 830 CMR 64H.8.1. The sales tax resale certificate must be signed by and bear the name and address of the purchaser (the restaurant meal delivery company), indicating that the company holds a valid Massachusetts vendor’s registration, that it is in the business of selling meals as stated on the certificate, and that it intends to sell such meals in the regular course of business. G.L. c. 64H, § 8. The restaurant is relieved of the burden of proving that its sales to the restaurant meal delivery company are not subject to sales tax by taking Form ST-4, Sales Tax Resale Certificate, from the delivery company.

The restaurant meal delivery company is a vendor of meals purchased from restaurants for resale and delivery. As a vendor, the restaurant meal delivery company is required to provide Form ST-4, Sales Tax Resale Certificate, to all restaurants on all purchases of meals that it resells and delivers to its customers. The restaurant meal delivery company also is required to register with the Department of Revenue, collect the five percent sales tax on the sales price paid by the retail customer for the meals (excluding separately stated delivery charges) and remit the tax to the Commissioner of Revenue.

/s/ Alan LeBovidge

Alan LeBovidge,

Commissioner of Revenue

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