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Directive 92-1: Gift Baskets - Sales Tax on Tangible Personal Property When Combined with Tax Exempt Food

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ISSUE: Does the sales tax apply to gift baskets, cheeseboards, fruit baskets or other tangible personal property when combined and sold with tax exempt food?

DIRECTIVE: When the sale at retail of a gift basket or other gift package comprises both taxable tangible personal property and tax exempt food, the vendor should separately state the portion of the sales price which pertains to the taxable tangible personal property and collect the sales tax on that portion of the sales price. If the vendor does not separately state the portion of the sales price which pertains to the property, the entire package shall be taxable unless the sales price of the taxable property is less than ten percent of the total sales price. For purposes of this Directive, the portion of the sales price which pertains to the taxable tangible personal property, or the separately stated price of such property, must reasonably reflect its value to the value of the entire package in the same proportion as its cost bears to the cost of the entire package.

DISCUSSION OF LAW:

Massachusetts law imposes a sales tax on sales at retail of tangible personal property, unless otherwise exempt. G.L. c. 64H, § 2. The sale of food for human consumption, excluding "meals," is exempt from the sales tax. G.L. c. 64H, § 6(h).

A question arises as to what portion, if any, of gift baskets or other gift packages which contain both taxable tangible personal property and tax exempt food are taxable. A vendor must adhere to the following rules in applying the sales tax to packages containing taxable property:

Sale of Gift Basket Taxable: The sale of taxable tangible personal property combined with tax exempt food is taxable if the portion of the sales price which pertains to the taxable property is ten percent or more of the total sales price and the sales price of the taxable property is not separately stated.

Sale of Gift Basket Exempt: The sale of taxable tangible personal property combined with tax exempt food is not taxable if the portion of the sales price which pertains to the taxable property is less than ten percent of the total sales price and the sales price of the taxable property is not separately stated.

Property/Food Separately Stated: If the sales price of the taxable tangible personal property is separately stated from the tax exempt food, then only the taxable property is subject to tax.

Examples:

An Easter basket with a large stuffed bunny and chocolate eggs is sold for \$20.00. The vendor does not separately state the \$15.00 portion of the sales price which pertains to the basket and stuffed bunny and which reasonably reflects the value of the basket and bunny to the entire package. The entire Easter basket sales price of \$20.00 is subject to the sales tax.

A basket with fruit is sold for \$50.00. The vendor does not separately state the \$4.00 portion of the sales price which pertains to the basket and which reasonably reflects its value to the entire package. The entire gift basket sales price of \$50.00 is exempt from the sales tax.

A package of gourmet cheese on a cheeseboard is sold for \$30.00. The vendor separately states the \$20.00 portion of the sales price which pertains to the cheeseboard and which reasonably reflects its value to the entire package. The sales tax is imposed on the \$20.00 portion of the sales price.

/s/Mitchell Adams
Mitchell Adams
Commissioner of Revenue

DOR-D 92-1

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