
By Mr. Olver, a petition (accompanied by bill, Senate, No. 1755) of John W. Olver for legislation to restrict exemptions under the sales and use tax. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-four.

AN ACT RESTRICTING EXEMPTIONS UNDER THE SALES AND USE TAX.

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

1 SECTION 1. Section 1 of Chapter 64H of the General Laws
2 as most recently amended by chapter five hundred fifty-seven
3 of the acts of nineteen hundred and eighty, is hereby further
4 amended by striking out clause (f) of paragraph (12) and in-
5 serting in place thereof the following clause: —

6 (f) The furnishing of information by printed, mimeo-
7 graphed or multigraphed matter or by duplicating written
8 or printed matter in any other manner, including the services
9 of collecting, compiling or analyzing information of any kind
10 or nature, furnishing reports thereof to other persons, the
11 fabrication of media from data for a consumer by a service
12 bureau or in a time-sharing arrangement, and the providing
13 of media upon which operational computer programs are re-
14 corded, whether such programs are sold independently or as
15 part of a sale which includes computer hardware.

1 SECTION 2. Said section 1 of said Chapter 64H is hereby
2 further amended by striking out paragraph (15) and inserting
3 in place thereof the following new paragraph:

4 (15) "Tangible personal property" is personal property of
5 any nature consisting of any produce, goods, wares, merchan-
6 dise and commodities whatsoever, including programs fabri-
7 cated pursuant to a time-sharing arrangement, and pre-writ-
8 ten or custom computer programs, whether any such pro-
9 grams are human or machine-readable regardless of the
10 media upon which recorded, provided such programs are
11 brought into, and produced, manufactured or being within

12 the Commonwealth. Tangible, personal property shall not in-
13 clude rights and credits, insurance policies, bills of exchange,
14 stocks and bonds and similar evidence of indebtedness or
15 ownership.

1 SECTION 3. Chapter 64H of the general laws is hereby
2 amended by striking out section 6 and inserting in place there-
3 of the following new section: —

4 *Section 6.* The following sales and the gross receipts there-
5 from shall be exempt from the tax imposed by this chapter:—

6 (a) Sales which the commonwealth is prohibited from tax-
7 ing under the constitution or laws of the United States.

8 (b) Sales of tangible personal property in transit or stored
9 at points of entry intended for export or import or which the
10 vendor is obligated under the terms of any agreement to de-
11 liver to a purchaser outside the commonwealth or to an inter-
12 state carrier for delivery to a purchaser outside the common-
13 wealth.

14 (c) Casual and isolated sales by a vendor who is not reg-
15 ularly engaged in the business of making sales at retail; pro-
16 vided, however, that nothing contained in this paragraph shall
17 be construed to exempt any such sale of a motor vehicle or
18 trailer, as defined in section one of chapter ninety, or any such
19 sale of a boat or airplane from the tax imposed under chapter
20 sixty-four I.

21 (d) Sales to the United States, the commonwealth or any
22 political subdivision thereof, or their respective agencies.

23 (e) Sales of building materials and supplies to be used in
24 the construction, reconstruction, alteration, remodeling or re-
25 pair of (1) any building structure, public highway, bridge or
26 other public works owned by or held in trust for the benefit of
27 any governmental body or agency mentioned in paragraph (d)
28 and used exclusively for public purposes; provided, however,
29 that such governmental body or agency shall have first ob-
30 tained a certificate from the commissioner stating that it is
31 entitled to such exemption and the vendor keeps a record of
32 the sales price of each such separate sale, the name of the
33 purchaser, the date of each such separate sale and the num-
34 ber of such certificate. In this paragraph the words "building
35 materials and supplies" shall include all materials and supplies

36 consumed, employed or expended in the construction, recon-
37 struction, alteration, remodeling, or repair of any building,
38 structure, public highway, bridges or other such public work,
39 as well as such materials and supplies physically incorporated
40 therein. Said terms shall not include rental charges for con-
41 struction vehicles, equipment and machinery rented specifical-
42 ly for use on the site of any such tax exempt project nor while
43 being used exclusively for the transportation of materials for
44 any such tax exempt project.

45 (f) Sales of tangible personal property includable in the
46 measure of the excises levied under the provisions of chapters
47 sixty-four A, sixty-four E, and sixty-four F.

48 (g) Sales of food products for human consumption. "Food
49 products" includes cereals and cereal products, flour and flour
50 products, milk and milk products, including oleomargarine,
51 meat and meat products, fish and fish products, eggs and egg
52 products, vegetables and vegetable products, fruit and fruit
53 products, herbs, spices and salt, sugar and sugar products, cof-
54 fee and coffee substitutes, tea, cocoa and cocoa products. "Food
55 products" does not include alcoholic beverages as defined in
56 chapter one hundred and thirty-eight except as hereinafter
57 provided, ice cream, soft drinks, candy or confectionery,
58 medicines, tonics and preparations in liquid, powdered, granu-
59 lar, tablet, capsule, lozenge and pill form sold as dietary sup-
60 plements or adjuncts.

61 "Food products" does not include meals consisting of any
62 of the items defined as food products in this paragraph for
63 consumption on or off the premises where sold.

64 "Meals" shall mean any food or beverage, or both, prepared
65 for human consumption and provided by a restaurant, where
66 the food or beverages is intended for consumption on or off
67 the restaurant premises, and includes food or beverages sold
68 on a "take out" or "to go" basis, whether or not they are
69 packaged or wrapped and whether or not they are taken from
70 the premises of the restaurant.

71 "Restaurant," shall mean any eating establishment where
72 food, food products, or beverages are provided and for which
73 a charge is made including but not limited to, a cafe, lunch
74 counter, private or social club, cocktail lounge, hotel dining

75 room, catering business, tavern, diner, snack bar, dining room,
76 vending machine, and any other place or establishment where
77 food or beverages are provided, whether stationary or mobile,
78 temporary or permanent, provided, however, that delicatessen,
79 grocery, market or bakery stores shall not be considered eat-
80 ing establishment within the meaning of this chapter except
81 for any part of such a store which engages, in the sale of
82 dinners, luncheons, barbecued chicken, other than barbecued
83 chicken sold whole and unsliced, sandwiches, snacks, pizzas,
84 and other similar items which are commonly sold at snack
85 bars, coffee shops or luncheon counters; provided, further, that
86 such stores shall not be deemed to be restaurants under this
87 chapter based solely on the preparation and sale of prepared
88 meat, poultry and fish items if such sales constitute less than a
89 major portion of the total sale of such stores.

90 The following food or beverages sold by a restaurant for
91 consumption off the restaurant premises shall not be deemed
92 to be a meal for the purposes of this chapter: —

93 (a) Food sold by weight, liquid or dry measure, count, or
94 in unopened original containers or packages, including, but not
95 limited to, meat, bread, milk, specialty foods, and cream; pro-
96 vided, that such foods are commonly sold in such manner in a
97 retail food store which is not a restaurant;

98 (b) Beverages other than soft drinks in unopened original
99 containers or packages when sold as a unit having a capacity
100 of at least twenty-six fluid ounces; and

101 (c) Bakery products including but not limited to doughnuts,
102 muffins, bagels, and similar items sold in units of six or more.
103 Prepared meals, snacks, sandwiches, food platters, poultry, fish
104 or meat items, or other food combinations, to the extent that
105 such items are sold by a restaurant whose principal business is
106 the preparation or sale of such items in such form as to be
107 available for immediate consumption without further signif-
108 icant preparation, whether for on or off premise consumption,
109 shall not be excluded under clause (a), (b), or (c).

110 (h) The sales involving the furnishing of gas, water, elec-
111 tricity or steam to residential property only.

112 (i) Sales of fuel used for heating purposes, in residential
113 property only.

114 (j) Sales of articles of clothing, including footwear, intend-
115 ed to be worn or carried on or about the human body up to
116 seventy-five dollars of the sales price on any article of cloth-
117 ing. For the purposes of this section clothing or footwear
118 shall not include special clothing or footwear primarily de-
119 signed for athletic activity or protective use and which is not
120 normally worn except when so used.

121 (k) (1) Sales of livestock and poultry of a kind which or-
122 dinarily constitute food for human consumption;

123 (2) sales of feed for livestock and poultry of a kind which
124 ordinarily constitute food for human consumption or are to be
125 sold in the regular course of business;

126 (3) sales of fertilizer, including ground limestone, hydrated
127 lime, insecticides, fungicides, seed inoculants, seed disinfect-
128 ants and plant hormones, as well as other substances common-
129 ly regarded in the same category and used in the regular
130 course of business.

131 (l) Sales of tangible personal property through coin op-
132 erated vending machines at ten cents or less, provided the re-
133 tailer is primarily engaged in making such sales and keeps
134 records satisfactory to the commissioner.

135 (m) Meals prepared by employees thereof and served to pa-
136 tients in any hospital, sanatorium, convalescent or nursing
137 home, or boarding home for the aged licensed under section
138 seventy-one of chapter one hundred and eleven or in any insti-
139 tution or private house licensed under section twenty-nine of
140 chapter nineteen; meals prepared by the members thereof and
141 served on its premises by any church or synagogue or by any
142 church or synagogue organization to any organization of such
143 church or synagogue the proceeds of which are to be used
144 for religious or charitable purposes; meals furnished by any
145 person while transporting passengers for hire by air to and
146 from any place within the commonwealth, meals furnished
147 to any organization in which membership is limited to per-
148 sons sixty years of age or over and said organization has pre-
149 viously filed with the commissioner, on a form approved by
150 the commissioner, satisfactory proof of its eligibility here-
151 under; and meals furnished to students by an educational in-
152 stitution which normally maintains a regular faculty and

153 curriculum and normally has a regularly enrolled body of
154 pupils or students in attendance at the place where its educa-
155 tional activities are regularly carried on; and, meals furnished
156 through programs established under section one (1) of chap-
157 ter fifteen.

158 (n) Meals prepared by employees thereof and served to pa-
159 tients in any hospital, sanatorium, convalescent or nursing
160 home, or boarding home for the aged licensed under section
161 seventy-one of chapter one hundred and eleven or in any insti-
162 tution or private house licensed under section twenty-nine of
163 chapter nineteen; meals prepared by the members thereof and
164 served on its premises by any church or synagogue or by any
165 church or synagogue organization to any organization of such
166 church or synagogue the proceeds of which are to be used for
167 religious or charitable purposes; meals furnished by any person
168 while transporting passengers for hire by air to or from any
169 place within the commonwealth, meals furnished to any or-
170 ganization in which membership is limited to persons sixty
171 years of age or over or to elderly or handicapped persons
172 residing in a housing project qualifying under section thirty-
173 eight to forty, inclusive, of chapter one hundred and twenty-
174 one B and said organization has previously filed with the
175 commissioner, on a form approved by the commissioner, satis-
176 factory proof of its eligibility hereunder; and meals furnished
177 to students by public and private non-profit primary and
178 secondary schools; and, meals furnished through programs
179 established under section one (1) of chapter fifteen.

1 SECTION 4. Said chapter 64H is hereby amended by strik-
2 ing out sections 26 and 27.

1 SECTION 5. Chapter 64I of the General Laws as last
2 amended by chapter five hundred fifty-seven of the acts of
3 nineteen hundred and eighty is hereby further amended by
4 striking out sections 27 and 28.

1 SECTION 6. The commissioner of revenue is hereby au-
2 thorized and directed to revoke all current exemption certifi-
3 cates or registration certificates necessary for compliance
4 with the provisions of section 6 of chapter 64H as amended by
5 this act.



