

# The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204



JOYCE HAMPERS  
COMMISSIONER

January 21, 1981

You are the owner of The ("Store"), a business that sells cheese in large and small quantities. It also sells soup and sandwiches for consumption on the premises. The store is located at a shopping mall; it has a small counter for patrons, and it supplies them with eating utensils as needed.

The store may soon sell single-portion-size Italian entrees, such as lasagna and eggplant parmesan. The entrees will be fully cooked, but frozen or refrigerated prior to sale. They will be sold in waxed cardboard containers covered with a heavy shrink wrap. You intend to provide microwave ovens in the Store so that patrons may themselves heat the entrees after purchasing them. You inquire whether the sales tax on meals will apply to sales of the entrees.

Massachusetts General Laws Chapter 64H, Section 6(h) generally exempts from sales taxation sales of food products for human consumption. This exemption does not apply to sales of "meals" for consumption on or off the premises where sold. "Meals" is defined in Section 6(h) as

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"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."

"Restaurant" means any eating establishment where food, food products or beverages are provided and for which a charge is made, but a delicatessen, grocery, market or bakery is considered a restaurant only to the extent that a part of such a store engages in the sale of dinners, luncheons, barbecued chicken (unless sold whole and unsliced), sandwiches, snacks, pizzas and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters.

Based on the foregoing, it is ruled that sales of single-portion frozen or refrigerated entrees, by a store that provides eating facilities and microwave ovens in which customers may heat the entrees, are subject to the sales tax on meals.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gary Winters".

Commissioner of Revenue

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LR 81-11