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830 CMR 62C.16.2: Sales and Use Tax Returns and Payments

DATE:

03/20/1998

ORGANIZATION:

[Massachusetts Department of Revenue](/orgs/massachusetts-department-of-revenue) (</orgs/massachusetts-department-of-revenue>)

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830 CMR: DEPARTMENT OF REVENUE

830 CMR 62C.00: STATE TAX ADMINISTRATION

830 CMR 62C.00 is hereby repealed and replaced with the following:

830 CMR 62C.16.2: Sales and Use Tax Returns and Payments

TABLE OF CONTENTS

(1) Statement of Purpose; Effective Date; Outline of Topics

(#-1-statement-of-purpose-effective-date-outline-of-topics)

(2) Definitions (#-2-definitions)

(3) General Rule (#-3-general-rule)

(4) Filing and Payment Schedule for Vendors

(#-4-filing-and-payment-schedule-for-vendors)

(5) Filing and Payment Schedule for Use Tax on Purchases

(#-5-filing-and-payment-schedule-for-use-tax-on-purchases)

(6) Administrative Provisions (#-6-administrative-provisions)

(7) Sales tax filing and payment schedule for certain vendors during COVID-19

State of Emergency

(#-7-sales-tax-filing-and-payment-schedule-for-certain-vendors-during-covid-19-state-of-emergency)

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(1) Statement of Purpose; Effective Date; Outline of Topics

(a) Statement of Purpose. The purpose of 830 CMR 62C.16.2 is to explain the procedures prescribed by the Commissioner, pursuant to M.G.L. c. 62C, §§ 16(h) and (i), for payment of sales and use tax liabilities imposed by M.G.L. c. 64H and M.G.L. c. 64I.

(b) Effective Date. 830 CMR 62C.16.2 will be effective upon promulgation.

(c) Outline of Topics. The following sections are contained in 830 CMR 62C.16.2.

- (1) Statement of Purpose, Effective Date, Outline of Topics.
- (2) Definitions.
- (3) General Rule.
- (4) Filing and Payment Schedule for Vendors.
- (5) Filing and Payment Schedule for Use Tax on Purchases.
- (6) Administrative Provisions.

(2) Definitions

For the purpose of 830 CMR 62C.16.2, the following terms shall have the following meanings:

Commissioner, the Commissioner of Revenue or the Commissioner's duly authorized representative.

Person, an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee, or referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals acting as a unit.

Purchaser, a person who purchases or uses tangible personal property or taxable services sold at retail, including a buyer, vendee, lessee, licensee, or grantee.

Retail sale, a sale as defined in M.G.L. c. 64H, § 1 and M.G.L. c. 64I, § 1. In general, a retail sale is a sale for any purpose other than resale in the regular course of business.

Tangible personal property, personal property of any nature consisting of any produce, goods, wares, merchandise and commodities brought into, produced, manufactured or being within the commonwealth, but does not include rights and credits, insurance policies, bills of exchange, stocks, bonds, and similar evidence of indebtedness or ownership. For purposes of M.G.L. c. 64H and c. 64I, tangible personal property includes gas, electricity and steam.

Tax, the excise imposed under M.G.L. c. 64H or c. 64I.

Taxable period, any period for which a sales and use or use tax return is due under 830 CMR 62C.16.2.

Taxable services, any service subject to tax under M.G.L. c. 64H or M.G.L. c. 64I.

Use, the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business; and enjoyment of the benefit of a service, except that it does not include the sale of services in the regular course of business.

Vendor, a retailer or other person selling tangible personal property or taxable services, the gross receipts from the retail sale of which are required to be included in the measure of the tax imposed by M.G.L. c. 64H or c. 64I.

Vendor of meals, a retailer or other person selling meals, as defined under M.G.L. c. 64H, § 6(h).

(3) General Rule

The Massachusetts sales tax is an excise on retail sales of tangible personal property or taxable services in Massachusetts. M.G.L. c. 64H, § 2. A complementary use tax is imposed on tangible personal property or taxable services purchased for storage, use or consumption in Massachusetts. M.G.L. c. 64I, § 2. The sale of tangible personal property or taxable services by any person to be delivered, shipped, or brought into Massachusetts within six months after purchase is presumed to be sold for use, storage, or other consumption in Massachusetts until the contrary is established. Tangible personal property or taxable services need not be used exclusively within Massachusetts or even primarily in Massachusetts for the use tax to apply. The use tax does not apply where sales tax has been collected or where the transaction is exempt from sales or use tax by statute.

Generally the sales tax is collected by the vendor from the purchaser, and the vendor then remits the sales tax to the Commissioner. Certain out-of-state vendors are required to collect the Massachusetts sales or use tax. Some out-of-state vendors, although not so required, collect and remit the Massachusetts tax as a convenience to Massachusetts customers. Sales and use taxes collected are reported together using the Form ST-9 series of returns. The filing and payment schedule for such vendors is provided in 830 CMR 62C.16.2(4), below.

If the Massachusetts sales or use tax due is not collected by the vendor, a purchaser owes use tax on the storage, use or consumption of the tangible personal property in Massachusetts and must pay this directly to the Commissioner. If the purchaser is a vendor reporting sales and/or use taxes collected, the vendor reports any use tax due resulting from its own purchases on that same sales and use tax return. If the purchaser is not a vendor reporting sales/use tax collected, purchases are reported on a separate return as provided in 830 CMR 62C.16.2(5), below.

(4) Filing and Payment Schedule for Vendors

(a) General. As of January 1, 1998, every vendor required to file a sales and use tax return under M.G.L. c. 62C, § 16(h), must file a return and pay the tax due on an annual, quarterly or monthly basis.

(b) Annual returns. Every vendor whose sales and use tax liability (exclusive of the sales tax on meals) is reasonably estimated to be \$100 or less for the calendar year must file a sales and use tax return and pay the tax due on an annual basis. The sales and use tax return and payment for the period of January 1st to December 31st, inclusive, is due on or before the following January 20th.

(c) Quarterly returns. Every vendor whose sales and use tax liability (exclusive of the sales tax on meals) is reasonably estimated to be more than \$100 but not more than \$1,200 for the calendar year must file a sales and use tax return and pay the tax due for each calendar quarter on or before the twentieth day of the month following the close of that calendar quarter.

(d) Monthly returns. Every vendor whose sales and use tax liability (exclusive of the sales tax on meals) is reasonably estimated to be more than \$1,200 for the calendar year must file a sales and use tax return and pay the tax due for each calendar month on or before the twentieth day of the following calendar month.

(e) Reducing filing frequency. The filing schedule chosen at the time the vendor's first sales and use tax return is due must be followed for the entire calendar year. If a vendor pays more or less sales and use tax over the course of the calendar year than was originally estimated to be due, the Commissioner will change the vendor's filing frequency to the correct schedule in the following year. Vendors may not change their filing frequency on their own at any time during the course of the calendar year.

(f) Sales tax on meals.

1. Monthly returns. As of January 1, 1998, every vendor of meals must file a sales tax on meals return (Form ST-MAB-4) and pay the tax due for each calendar month on or before the twentieth day of the following calendar month.

2. Other taxable sales. If a vendor of meals makes sales in the regular course of its business, other than sales of meals, that are subject to the sales tax, the vendor of meals must file a sales and use tax return and pay the tax due on those sales according to the rules set out in 830 CMR 62C.16.2(4)(a) - (d), above. A vendor of meals must file a separate return for sales tax due for sales of meals. Filing a return for sales tax due for sales of meals is not considered a filing for sales and/or use tax due on the sale or purchase of other tangible personal property or services. A separate sales and use tax return must be filed for sales and/or use tax due on the sale or purchase of other tangible personal property or services.

(5) Filing and Payment Schedule for Use Tax on Purchases

(a) General. Every purchaser required to file a use tax return under M.G.L. c. 62C, § 16(i) must file a return and pay the use tax due on an annual basis, or otherwise, as specified below. A purchaser's presentation of a receipt from a registered vendor for the payment of the sales tax or use tax in the manner and form prescribed by the Commissioner relieves the purchaser from further liability for the use tax for the period or transaction to which the receipt refers.

(b) Special rule for boats and airplanes. Every purchaser of a boat or airplane, for which sales tax has not been paid, must file a use tax return and pay the use tax on the twentieth day of the month following the first use, storage, or other consumption of such boat or airplane within Massachusetts.

(c) Special rule for motor vehicles, trailers or other vehicles. Every purchaser of a motor vehicle, trailer or other vehicle who is required to register or title the vehicle in Massachusetts must file Form RMV-1 and pay a sales or use tax to the Registrar of Motor Vehicles within ten days following the date of purchase, transfer or use of such vehicle within Massachusetts. Every purchaser of a vehicle who is not required to register or title the vehicle in Massachusetts must file a completed Sales Tax Payment Form (Form ST-7R) and pay the tax to the Commissioner on the twentieth day of the month following the month of purchase, transfer or use in Massachusetts. See the Motor Vehicles regulation, 830 CMR 64H.25.1(4), for more detailed information.

(d) Fuel purchasers. If a purchaser of fuel, as defined under M.G.L. c. 64A, § 1(d), special fuels, as defined under M.G.L. c. 64E, § 1(d), or aircraft (jet) fuel, as defined under M.G.L. c. 64J, § 1(a), has paid tax due under those chapters and consumes the fuel in a manner not taxable under those chapters, the purchaser is entitled to a refund of the fuel excise, but the fuel purchase may be subject to sales or use tax. Sales or use tax due, for fuel upon which a fuel excise has been paid, must be paid with the purchaser's application for refund of the fuel excise. Generally, the sales and/or use tax due is deducted from the amount of the fuel excise refund.

(e) Individual purchasers. If no Massachusetts sales tax is paid, an individual purchaser of taxable services or tangible personal property (other than boats, airplanes, motor vehicles, trailers or other vehicles, fuels, special fuels, and aircraft (jet) fuel for which fuel excise has

been paid) must file a use tax return (Form ST-11) and pay the tax due on such services or property on an annual basis, regardless of the amount of the use tax liability. The use tax return and payment is due on or before April 15 of the calendar year following purchase.

(f) Business purchasers who are not registered vendors and are not required to be registered vendors. If no Massachusetts sales tax is paid, a business purchaser of taxable services or tangible personal property (other than boats, airplanes, motor vehicles, trailers or other vehicles, fuels, special fuels, and aircraft (jet) fuel for which fuel excise has been paid) who is not registered or required to register as a vendor with the Commissioner pursuant to M.G.L. c. 62C, § 67, must file a use tax return (Form ST-10) and pay the tax due on such services or property on an annual basis, regardless of the amount of the use tax liability. The use tax return and payment is due on or before April 15 of the calendar year following purchase. A business purchaser is not required to register as a use tax purchaser with the Commissioner for use tax purposes but may do so, using Form TA-1. Whether or not registered as a purchaser, such purchaser's use tax is due April 15 of the calendar year following purchase.

(g) Business purchasers who are registered vendors. Every purchaser who is registered as a vendor, or who is required to be registered as a vendor with the Commissioner pursuant to M.G.L. c. 62C, § 67, must report any use tax due on its purchases on its sales and use tax return and pay the tax due according to a reporting schedule based upon the vendor's combined sales and use tax liability, as explained in 830 CMR 62C.16.2(4), above.

(h) Business purchasers who are vendors of meals. Often a vendor of meals will also be a vendor of other tangible personal property or taxable services. If this is the case, use tax due on purchases must be reported on and paid with the vendor's sales and use tax return. If the vendor of meals files only a sales tax on meals return, and not a sales and use tax return, use tax due on its purchases must be reported on Form ST-10, due April 15 of the calendar year following purchase. See 830 CMR 62C.16.2(4)(f)2., above.

(6) Administrative Provisions

(a) Penalties.

1. Penalty for failure to file timely. A penalty is imposed for failure to file a sales or use tax return on or before the due date of the sales or use tax return or within any extension of time for payment granted by the Commissioner. The penalty is 1% of the amount of tax required to be shown on the return, computed for each month or fraction of a month during which the failure continues, not exceeding in the aggregate 25% of that amount. In computing the penalty for failure to file timely, the amount of tax required to be shown on the return will be reduced by the amount of any part of the tax which was paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

2. Penalty for failure to pay timely. A penalty is imposed for failure to pay a sales or use tax on or before the due date of the sales or use tax return or within any extension of time for payment granted by the Commissioner. The penalty is $\frac{1}{2}$ of 1% of the amount of unpaid tax shown on the return, for each month or fraction of a month during which the failure continues, not exceeding in the aggregate 25% of that amount. In computing the penalty for failure to pay timely, the amount of tax shown on the return will be reduced by the amount of any part of the tax which is paid before the beginning of that month.

3. Penalty for failure to pay assessment timely. A penalty is imposed for failure to pay an assessment of sales or use tax not reported on a sales or use tax return, within thirty days following the date of the Notice of Assessment by the Commissioner. The penalty is $\frac{1}{2}$ of 1% of the amount of the unpaid assessed tax for each month or fraction of a month during which the failure continues, not exceeding in the aggregate 25% of that amount.

(b) Interest. Any portion of the sales or use tax that is not paid on or before the due date of a sales or use tax return will have added to it, interest from the due date of the return to the date the tax is paid at a rate prescribed by M.G.L. c. 62C, § 32.

(c) Revocation of authority to file annually, quarterly or monthly. The authorization to file a return and to pay the tax due on an annual, quarterly or monthly basis may be revoked by the Commissioner if:

1. The vendor or purchaser is delinquent in filing a return or paying the tax due;
2. The vendor's or purchaser's tax liability exceeds the designated amounts of \$100 or \$1,200 for any calendar year, as the case may be; or
3. The Commissioner determines that the annual, quarterly or monthly filing of returns and payment of tax due unduly jeopardizes the proper administration of the tax law. Upon such revocation, the vendor or purchaser will be required to file a return and to pay the tax due on such basis as the Commissioner shall determine.

(7) Sales tax filing and payment schedule for certain vendors during COVID-19 State of Emergency

Notwithstanding 830 CMR 62C.16.2(3)-(6), with respect to sales by vendors whose cumulative liability in the 12-month period ending February 29, 2020 for returns required to be filed under M.G.L. c. 62C, § 16(h) is less than \$150,000, the sales and use tax filing and payment schedule during the COVID-19 State of Emergency declared by the Governor shall be as follows. Returns and payments due during the period beginning March 20, 2020 and ending May 31, 2020, inclusive, shall be suspended. All such returns and payments shall be due on June 20, 2020. This suspension does not apply to marijuana retailers as defined in M.G.L. c. 94G, § 1, marketplace facilitators or vendors selling motor vehicles. Such vendors shall continue to file returns and make payments in accordance with the rules set forth in 830 CMR 62C.16.2(3)-(6).

REGULATORY HISTORY

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Amended: 4/2/81

Amended: 9/3/81

New Regulation Promulgated: 12/27/96

New Regulation Promulgated: 3/20/98 - Effective 1/1/98

Emergency Amendment Promulgated 3/19/2020 - New Section (7) added

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