

Changes and Reporting Rules Effective August 1, 2009
Sales and Meals Tax

On June 29, 2009, Governor Deval Patrick signed into law the budget bill for FY2010 and a new set of sales-related tax rates are set to take effect. Beginning *August 1st*, the sales tax and the meals tax will increase from 5 percent to 6.25 percent. This new rate will also apply to the sale of automobiles. Also on August 1st, the sales tax exemption currently in effect for beer, wine and alcohol sold in package stores will be lifted and those items will be taxed as well at 6.25 percent.

There are new local option meals and rooms tax rates as well that will take effect October 1st if enacted. Deciding whether to enact these new rates is a decision left to each individual city and town governing body. The new local option taxes are an increase of .75% for meals and up to a two percent increase in the rooms' tax. Communities that enact either or both of these new rates will garner the revenue collected from these higher rates. To enact these new rates in time for October 1st implementation, cities and towns must approve the new rate(s) not later than August 31st, and then inform the Department of Revenue's Division of Local Services immediately to ensure that revenue collected from the new local option taxes is properly credited to each city and town. For the first time, the Commonwealth will collect a five percent gross receipts tax on receipts of satellite television providers from subscriptions. This is also set to take effect on August 1st.

Reporting Rules for Quarterly and Annual Filers after Rate Changes in the Sales/Use Taxes

I. Background

Newly enacted legislation changes the rate of sales/use tax from 5 percent to 6.25 percent on sales at retail of tangible personal property, including alcoholic beverages, and telecommunications services effective August 1, 2009. See TIR 09-11. As a result of this change, and of certain transition rules applicable to it, a vendor who reports on a quarterly or annual return will be required to file a sales/use tax return for a period that will include both sales before and sales after the change in sales/use tax rates.

II. Reporting

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. 830 CMR 62C.16.2, (4)(b).

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. Id.§ (4)(c).

This TIR deals with the reporting requirements for the quarterly return for the period July 1, 2009 through September 30, 2009, and the annual return for the period January 1, 2009 through December 31, 2009.

Sales/use tax vendors who file on a quarterly or annual basis for the periods set out above are instructed to make an adjustment of 20% on line 2 of their sales and use tax return for those gross sales reported on line 1 of the form that are properly taxed at 5%, i.e., sales made before August 1, 2009.

Business purchasers of tangible personal property reporting use tax obligations on property subject to the 5% rate should list the purchase price of this property at 80% of the actual cost, either on line 5 on their Sales and Use Tax Return, or on line 2 of the ST-10 (Business Use Tax Return), whichever form is applicable. Individual purchasers filing Form ST-11 (Individual Use Tax Return) should similarly adjust their returns.

Examples:

1. A vendor with a quarterly filing requirement has gross receipts of \$100.00. Of these gross receipts, \$20.00 is taxable at the 5% rate. The vendor reports the \$100.00 gross receipts on line 1, and takes an adjustment of 20% ($\$20.00 \times .2 = \4.00) on line 2. Tax is reported at $\$96.00 \times .0625 = \6.00 . This is equivalent to reporting \$80.00 at .0625% (\$5.00) + \$20.00 at .05 (\$1.00).

2. A corporation purchases \$800.00 of materials subject to use tax, \$100.00 of which is taxable at the 5% rate. The corporation should report taxable purchases of \$780. ($\$700.00 + (\$100.00 \times .8)$), taxable at 6.5%, or \$48.75. This is the equivalent of $\$700.00 \times .0625\%$ (\$43.75) + $\$100.00 \times .05\%$ (\$5.00).

III. Recordkeeping

Vendors must maintain normal business records showing the date of sale, item(s) purchased and selling price in a manner sufficient to determine whether the proper amount of tax has been paid. These records must be kept for the amount of time specified in the Record Retention Regulation, 830 CMR 62C.25.1, and must be produced for review by the Department in the course of an audit of the vendor.

A vendor that back-dates contracts or other documents on or after August 1, 2009 in order to improperly avoid collecting and remitting sales or use tax at the 6.25% rate may be subject to the tax evasion penalties of G.L. c. 62C, § 73, including a felony conviction, a fine of not more than \$100,000 or \$500,000 in the case of a corporation, or by imprisonment for not more than five years, or both, and may also be required to pay the costs of prosecution.

This information was provided by the Massachusetts Department of Revenue - TIR 09-12: Reporting Rules for Quarterly and Annual Filers after Rate Changes in the Sales/Use Taxes.