

Sales/Use/Indirect:

Massachusetts DOR Explains Position on 2023 Decision Invalidating Directive on Bundled Cell Phone Transactions

Technical Information Release, TIR 24-3, Mass. Dept. of Rev. (5/7/24). The Massachusetts Department of Revenue (Department) issued a technical information release (“TIR 24-3”) explaining its position on a 2023 Massachusetts Appeals Court ruling involving state sales tax collected in a transaction where the consumer purchases a discounted cell phone bundled with an agreement to use a carrier’s wireless services for a given period, which held that an administrative directive (Directive 11-2) assessing sales tax on such purchased phones based upon the higher of the phone’s wholesale cost to the carrier or the cash price the consumer actually pays is contrary to state law [see *State Tax Matters*, Issue 2023-26, for more details on this 2023 decision]. TIR 24-3 explains that as a result of this decision, both Directive 11-2 and Directive 93-9 are invalid, with the later invalid because it also requires the collection of tax on non-cash consideration tendered in bundled transactions. In contrast, TIR 24-3 explains that 830 CMR 64H.1.4 and Directive 94-2 remain valid and apply to all open tax periods. Accordingly, TIR 24-3 provides that the following rules continue to apply to bundled cell phone transactions:

URL: https://www.mass.gov/technical-information-release/tir-24-3-pixley-v-commissioner-of-revenue-taxable-sales-price-of-cell-phones-sold-in-bundled-transactions?utm_medium=email&utm_source=govdelivery

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230630_12.html

- Discounts on the price of a cell phone at the time of a sale must be excluded from the sales price of the phone; and
- If a phone is provided to a customer as part of bundled transaction at no cost, or for a nominal cost, the phone constitutes a “promotional item,” meaning the wireless service carrier or independent retailer is the consumer of the phone and is responsible for paying sales or use tax on the wholesale price of the phone; the wireless service carrier or independent retailer may collect sales tax from the retail customer on the nominal price of the phone, and if the carrier/retailer does collect tax from the retail customer, that collected tax amount may be credited against the tax the carrier/retailer would otherwise owe with respect to the wholesale charge.

TIR 24-3 also states that the Department will apply 830 CMR 64H.1.4 and Directive 94-2 to sales of cell phones sold at a discount in bundled or unbundled transactions prospectively, as well as retroactively to any open tax period. Moreover, “wireless service carriers and independent retailers who collected and remitted sales tax based on an amount higher than the retail price of a phone may seek an abatement for any open tax period.” Please contact us with any questions.

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