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Proposed Massachusetts Tax Regulations for Online Vendors Effective October 1, 2017

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In response to public comments issued on September 8, 2017 that won't be published in the Massachusetts Register until September 22, 2017, the Massachusetts Department of Revenue ("DOR") will require online vendors to collect Massachusetts sales tax if they have property interests in or use in-state apps and "cookies," effective October 1, 2017.

[Proposed regulation 830 CMR 64H.1.7](#) provides that a vendor engaged "in making taxable sales in the commonwealth or that sells taxable tangible personal property or services for use in the Commonwealth is subject to a sales or use tax collection duty when it is 'engaged in business in the Commonwealth'" under state law and meets U.S. constitutional requirements. Beginning on October 1, vendors must collect sales tax if they make 100 or more individual transactions and exceed \$500,000 worth of in-state sales in a year.

Similar to [Directive 17-1](#), which the Department of Revenue issued in April but withdrew in June, the proposed regulation assumes that online vendors have a physical presence in Massachusetts with software and "cookies" that consumers download onto phones, tablets, and computers to buy merchandise online.

"Cookies" are data files stored on your computer by a web browser and contain information about you such as recent products you might have researched online, your interests, and sometimes your name. Online vendors use this information gathered from browser data to *tailor* your internet experience. The DOR claims that like software, internet cookies constitute enough of a presence in the state to satisfy any constitutional prohibition. The U.S. Supreme Court's 1992 decision in [Quill Corp. v. North Dakota](#) prohibits states from imposing sales and use tax collection obligations on vendors without an in-state physical presence.

Directive 17-1 was issued in April 2017 but was rescinded by Directive 17-2 on June 28, 2017 – three days before it was to be implemented – after the DOR acknowledged, at least tacitly, that it could not legislate by promulgation. So, after requesting public comment and holding a hearing on its new regulation on August 24, 2017, the DOR sided with the arguments of brick-and-mortar retailers over those made by internet vendors. It doesn't hurt either that the

Commonwealth will collect additional sales tax revenue as a result of this new regulation.

The brick-and-mortar retailers told the DOR that they are at a disadvantage since online sellers are not required to collect sales tax despite Massachusetts law that requires purchasers to report those untaxed purchases and pay sales tax directly to the Commonwealth. Online retailers claim that they will be unable to comply with the new requirements because the required software and processes are not available.

In his September 8th [response to public comments](#), DOR Commissioner Christopher Harding stated that, “The Department finds the detailed comments of RAM and RILA [groups representing brick-and-mortar retailers], which were based primarily on their membership’s first-hand experience, more persuasive than those of TechNet [the group representing online retailers]. Therefore, the Department concludes, particularly given the policy considerations as referenced above, that no significant compliance burden exists, and that no postponement of the regulation is appropriate.”