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## Massachusetts Issues Proposed Regulations Requiring Remote Sellers to Collect Sales Tax

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### Introduction

We previously reported to you that the Massachusetts Department of Revenue (DOR) had revoked Directive 17-1 requiring the collection of Massachusetts sales and use taxes by Internet vendors that meet certain sales thresholds in Massachusetts. The DOR has now issued proposed regulations substantially similar to Directive 17-1. Please see our previous Client Alerts for more information about the [directive](#) and its [revocation](#).

If promulgated, the regulation will require an Internet vendor that has made more than \$500,000 in annual sales to Massachusetts customers in 100 or more transactions to register with the DOR and to collect and remit sales and use taxes beginning October 1, 2017. For the period October 1, 2017, to December 31, 2017, the annual sales and transaction thresholds will be applied to a vendor's sales activity during the preceding 12 months, October 1, 2016, to September 30, 2017. For subsequent periods, the thresholds will be applied to a vendor's sales activity during the preceding calendar year.

### Differences Between the Proposed Regulation and Directive 17-1

Although the proposed regulation is similar in substance to the directive, there are some differences. Unlike Directive 17-1, the proposed regulation defines the term "Internet vendor": it applies only to vendors that actually derive sales from transactions consummated over the Internet. There is also an explicit exception for a vendor that does not have any of the contacts enumerated in the regulation, i.e., (i) does not own an interest in or use in-state software applications and ancillary data (e.g. "cookies"), (ii) has no contracts or relationships with content distribution networks to use in-state servers or other services, and (iii) has no contracts or relationships with online marketplace facilitators or delivery companies involving services rendered in Massachusetts. For example, the regulation states that merely maintaining a website (on an out-of-state server) that is accessible to Massachusetts customers over the Internet does not by itself cause a vendor to be subject to tax under the regulation.

In addition, likely in response to comments and questions on Directive 17-1, the proposed regulation resolves some ambiguities that existed in Directive 17-1. For example, the proposed regulation provides clarity regarding the application of the annual sales threshold by specifying that the term “sales” includes sales that qualify for a sales tax exemption, but that sales of services include only those treated as services under G.L. c. 64H, § 1 (i.e., telecommunications services). The regulation also clarifies that, in determining the application of the regulation to a vendor, a provider of Internet access service or online services is not deemed the agent of such vendor based solely on the fact that the vendor's website is hosted or orders are processed on the provider's out-of-state computer servers.

A public hearing on the proposed regulation will be held on August 24, 2017. While litigation continues, challenging the regulation on constitutional grounds, as well as under the Internet Tax Freedom Act, out-of-state Internet vendors should be prepared to comply with the regulation as of October 1, 2017 or rigorously challenge its application.

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