



TaxNewsFlash

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Massachusetts: Advance payments required for sales and use tax, room occupancy tax, and certain other taxes in April 2021

Certain vendors collecting Massachusetts sales and use tax and certain other taxes need to make their first advance tax payment by April 25, 2021.

All taxpayers whose cumulative tax liability as reflected in the returns for certain taxes in the previous calendar year was \$150,000 or more are required to make the advance payment. The advance payment requirement applies to sales and use tax, sales tax on telecommunications services, meals tax, room occupancy excise tax, and marijuana retail taxes.

Effective April 1, 2021, vendors and operators (including marketplace facilitators and room occupancy intermediaries) must make their monthly tax remittances in two installments:

- By the 25th of April (and each month thereafter), the vendor must remit the “tax collected” on gross receipts from sales during the first 21 days of the month. The term “tax collected” is defined generally as the gross receipts from taxable sales for the first 21 days times the applicable tax rate (6.25% in the case of sales tax), plus local taxes if applicable.
- Tax collections for the remainder of the month will be due by the 30th day of the month following the filing period (i.e., by May 30 for the April filing period). The due date for all sales and use, room occupancy and other affected taxes was moved from the 20th day of the month following the filing period to the 30th day of the following month, effective with the April 2021 filing period. This applies to vendors and operators subject to the advance payment as well as those that are not subject to this payment requirement.

Penalty

A vendor or operator required to make an advance payment may be subject to a penalty of 5% of any underpayment (unless the underpayment is due to reasonable cause) if the advance payment made by the 25th day of the month is not at least equal to:

- The “tax collected” on sales for the first 21 days of the month; or
- 70% of the total tax due for the month as reflected on the return filed by the 30th day of the following month

Guidance

The Department of Revenue has released three guidance documents on the advance payment:

- [Working draft technical information release on the “Tax Provisions in the Fiscal Year 2021 Budget”](#) (dated February 12, 2021)
- A set of [frequently asked questions \(FAQs\)](#) (originally issued on March 19, 2021 and updated March 23, 2021)
- [New advance payment requirement for vendors and operators in G.L. c. 62C, § 16B](#) (undated)

Information included in these documents and guidance includes:

- The \$150,000 threshold will be determined separately for each type of affected return filed by the taxpayer. A vendor is to consider all amounts reported on its calendar year 2020 returns (except the use tax on purchases for purposes of the sales tax and the sales tax on telecommunications services) in determining whether it meets the \$150,000 threshold requiring an advance payment.
- The amount of use tax due on purchases will not be included in determining the amount of the advance payment for sales tax and sales tax on telecommunications. Instead, the advance payment will be based on gross receipts from taxable sales only in the first 21 days of the filing period. The advance payment for marketplace facilitators will be based on both direct sales and facilitated sales. The amounts to be considered in calculating the advance payment for the other tax types are listed in the [New advance payment requirement for vendors and operators in G.L. c. 62C, § 16B](#) document.

KPMG observation

Despite the clear declaration that use tax on purchases is not included in calculating the amount of the advance payment, the guidance does not clearly state that use tax due on purchases is not included in determining whether the advance payment made on the 25th day is equal to 70% of the tax due for the filing period (for penalty protection purposes). However, despite the lack of clear language, it would be incongruous to exclude use tax on purchases in computing the amount of the advance payment, but include such amounts in determining whether a penalty applied.

The FAQs explain that there is no return or voucher to be submitted with the advance payment. The payment is considered a “Return Payment” and is to be identified as such in the Department’s electronic payment system. Currently, the affected tax returns have not been modified to include a line to reflect the advance payment. Taxpayers are instructed to deduct the advance payment from the amount shown to be due on the return and submit a payment for the difference when filing the monthly return. Finally, the FAQs clarify that taxpayers are to use their current method of accounting when determining the amount of the advance payment—that is, an accrual basis taxpayer that reflects tax when the customer is billed (rather than when the customer makes a payment) is to determine the amount of tax accrued on billings over the first 21 days of the month in calculating its advance payment.

KPMG observation

Massachusetts will not be providing a safe harbor based on a prior year's known-amount for penalty protection. In addition, many taxpayers do not have access to tax receipts on a daily basis, on either a real-time or retrospective basis. This creates challenges in determining the appropriate advance payment each month and may require use of a modeling and estimating process.

- If a taxpayer has access to some or all daily collections on a real-time (or nearly so) basis, there are methods to bring together data from various sales channels and to evaluate this data for accuracy and sufficiency to help avoid a possible penalty.
- If a taxpayer has access to daily collections or receipts on a retrospective basis, other methods can assist in analyzing this data to help use it in arriving at a possible estimate for the advance payment on a monthly basis. This would include examining historical receipts for the first 21 days compared to liability for the entire filing period, potential adjustments for changes in business operations, and economic conditions as well as other relevant factors that might influence an estimate or projection that is otherwise based on historical data.
- If a taxpayer has no visibility into the daily flow of tax receipts (current or historical), potential advance payment amounts may be projected or estimated based on a modeling exercise that examines prior Massachusetts liabilities by month with adjustments for business operations and economic conditions. Various "comfort factors" to protect against possible penalty assessments could also be evaluated.

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