

Sales/Use/Indirect:

Massachusetts Appellate Court Invalidates Directive on Taxation of Cell Phones in Bundled Transactions

Case No. 21-P-805, Mass. App. Ct. (6/22/22). In a consumer class action lawsuit involving the Massachusetts sales tax that is collected in a transaction where the consumer purchases a discounted cell phone bundled with the consumer's agreement to use a carrier's wireless services for a period into the future, the Massachusetts Appeals Court held that a 2011 Massachusetts Department of Revenue (Department) directive (*i.e.*, Directive 11-2) that assessed sales tax on such purchased cell 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 the statutory definition of the price that is subject to sales tax under G. L. c. 64H, § 1 – thus agreeing with the plaintiffs that the directive causes consumers in such bundled transactions to pay a tax on more than the price they paid for the cell phone and the services. While the Department had conceded that a tax is assessed on more than the consumer pays in money under Directive 11-2, it claimed that it was justified under the theory that the cell phone and services contract have a taxable value apart from the money the consumer actually pays. Rejecting the Department's argument, the Court concluded that the tax must be on the total price that the consumer pays. Concurring and dissenting opinions follow. Please contact us with any questions.

URL: <https://www.mass.gov/files/documents/2023/06/22/f21P0805.pdf>

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