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TIR 05-1: Convention Center Financing Surcharges

TIR 03-24 is revoked and replaced by TIR 05-1.

I. Introduction-

The Convention Center Act provides for construction and financing of convention centers in the Commonwealth. St. 1997, c. 152. The legislation imposes a convention center financing (CCF) fee^[1] and three CCF surcharges, all effective January 1, 1998. The legislature recently granted authority to the Commissioner to administer the CCF surcharges as though they were taxes and makes them subject to all the tax administration provisions of chapter 62C. St. 1999, c. 68, Â§ 13; G.L. c. 62C, Â§ 86. The purpose of this Technical Information Release is to explain the application of the CCF surcharges. These surcharges are:

- (1) a 5% CCF surcharge on the purchase price of a ticket for any water-based sightseeing, tourist venue or entertainment cruise or tour, and for any land-based sightseeing, tourist venue or trolley tour, conducted partly or entirely within Boston;
- (2) a \$10 CCF surcharge on each vehicle rental contract in Boston; and

(3) a \$2 (per day) CCF surcharge on any vehicle that parks in any parking facility built in Boston, Springfield or Worcester in conjunction with the projects authorized by this legislation.

St. 1997, c. 152, Â§ 9(d), (e) and (f).

II. 5% CCF Surcharge on Tours and Cruises in Boston

A. Statutory Authority

There shall be a surcharge of five percent of the purchase price imposed on the price of any ticket purchased for any water-based sightseeing, tourist venue or entertainment cruise or tour and for any land-based sightseeing, tourist venue or trolley tour, originating or located in the commonwealth and conducted partly or entirely within the city of Boston; provided, however, that no such surcharge shall be imposed on children's tickets, so-called, if said ticket is \$6 or less; and provided, further, that no such surcharge shall be imposed for such tours or cruises on tickets sold to an organized school or youth group and adults accompanying such group. For purposes of this paragraph, a ticket shall include any individual or group admission charge for said tour or cruise, whether or not evidenced by a written agreement, and a water-based entertainment cruise shall include any cruise of 24 hours duration or less, conducted partly or entirely within the city of Boston, whose primary purpose is not transportation, but shall not include bare-boat charters so-called.

St. 1999, c. 68, Â§ 17, amending St. 1997, c. 152, Â§ 9(d).

B. Ticket

The 5% CCF surcharge is imposed on the purchase price of a ticket purchased for certain tours and cruises. For purposes of the 5% CCF surcharge, a ticket includes any individual or group admission charge to gain entry to a tour or cruise, whether or not evidenced by a written agreement.

Example: The entry point for a guided tour of Boston is in close proximity to the facility for collecting the admission charge. The operator allows a participant to pay the admission charge and proceed directly to join the tour without issuance of a printed ticket. Payment of the admission charge to gain entry to the tour or cruise is a ticket and is subject to the 5% CCF surcharge.

Example: The leader of a tour group makes an oral agreement with the operator of a trolley tour of Boston for a group admission charge. Payment of the group admission charge is a ticket and is subject to the 5% CCF surcharge.

Example: A company enters into a contract with the operator of an entertainment cruise for a number of individuals to participate in an evening cruise in Boston Harbor. Payment of the group admission charge under the terms of the contract is a ticket and is subject to the 5% CCF surcharge.

C. Tourist venue tour or tourist venue cruise

1. A tourist venue tour or tourist venue cruise is a service provided to the general public or an organized group that, with or without a guide, takes tour customers from place to place wholly or partly within Boston (including Boston Harbor) and provides information on sightseeing or points of special interest, such as historical, cultural, educational, artistic, literary, or entertainment attractions.
2. A guided tour of Boston conducted by walking or traveling from place to place is a tourist venue tour, and a ticket issued for such a tour is subject to the 5% CCF surcharge. However, a tour of a single building or complex such as an art museum is not a tourist venue tour and is not subject to the 5% CCF

surcharge, whether or not the tour is guided.

3. A charge paid by a tour company for the services of step-on guide on a tour bus is not subject to the 5% CCF surcharge.

D. Conducted partly or entirely within the city of Boston

1. *Land-based* The 5% CCF surcharge applies to a land-based tourist venue tour or trolley tour where the tour destination is Boston or Boston is part of the tour activities. However, if Boston is not a destination, or if Boston is not included in the tour activities, the tour is not subject to the 5% CCF surcharge. A land-based service whose primary purpose is transportation of passengers is not subject to the 5% CCF surcharge.

Example: A bus tour of Boston, Lexington, and Cambridge is subject to the 5% CCF surcharge because Boston is included in the tour.

Example: Transportation not subject to the 5% CCF surcharge includes, but is not limited to, the following:

- Commuter bus service
- Taxi
- Shuttle bus

2. *Water-based* In general, a water-based tour or cruise whose primary purpose is not transportation is subject to the 5% CCF surcharge so long as it is conducted partly or wholly in Boston (including Boston Harbor). However, an entertainment cruise is not subject to the 5% CCF surcharge if the duration of the tour or cruise exceeds twenty-four hours. In addition, the charge for a bare-boat charter where the customers have exclusive possession and control of the boat for a specified period of time is not subject to the 5% CCF surcharge.

Examples: Water-based tours or cruises and entertainment cruises subject to the 5% CCF surcharge include, but are not limited to, the following:

- Whale watching tour or cruise
- Lunch or dinner cruise
- Evening cruise (public invited)
- Evening cruise (private)
- Cruise of Boston Harbor and/or the Charles River
- Sightseeing tour of Boston Harbor and/or the Charles River
- Wedding charter

provided that the tour, cruise or charter is conducted partly or wholly in Boston (including Boston Harbor).

Example: A weekend entertainment cruise that departs from Boston, cruises in the North Atlantic for two days with no set destination, and then returns to Boston, is not subject to the 5% CCF surcharge because the duration of the cruise exceeds twenty-four hours.

Example: Transportation not subject to the 5% CCF surcharge includes, but is not limited to, the following:

- Commuter boat

Water taxi
Ferry service
Water shuttle service

E. Boston Tour and Entertainment Cruise Packages

A tour or entertainment cruise package is an arrangement for a tour or cruise that includes various components such as meals, lodging, and admission charges or tickets for entry to museums, theatre performances, sporting events, *etc.* In the case of a package, the portion

of the ticket price reasonably attributable to the fair market value of the tour or entertainment cruise is the amount subject to the 5% CCF surcharge. The fair market value of a tour or entertainment cruise is the amount that an operator would charge for an equivalent sightseeing tour or entertainment cruise without meals, lodging, and other package components. The various charges need not be separately stated on the ticket for this rule to apply.

The Convention Center Act does not change the law of the sales tax on meals, and the rules stated herein have no impact on the amount of the sales tax imposed on the sales of meals.

Example: A ticket for a dinner cruise in Boston Harbor includes admission to the cruise, a multi-course dinner and hors d'oeuvres, nonalcoholic beverages, and live entertainment. Dinner is always included in the price of a ticket and the price of the meal is not separately stated. The ticket price of \$80 does not include taxes, fees, or gratuities, which are in addition to the ticket price.

Sales Tax. Meals and beverages (alcoholic and non-alcoholic) sold by a restaurant are subject to sales tax. G.L. c. 64H, Â§Â§ 1, 2, 6(h). The statute defines restaurant as any place or establishment where food or beverages are provided and for which a charge is made; a "restaurant" may be stationary or mobile, temporary or permanent. The Department's regulation on Sales Tax on Meals at 830 CMR 64H.6.5 contains the general rules for vendors of meals. The sales price of a taxable meal includes the total amount paid by a purchaser to a vendor as consideration for the sale of the meal, including any amount paid for services that are a part of the sale. G.L. c. 64H, Â§ 1("sales price").

The sales tax is imposed upon admission charges collected by a place of entertainment where food, alcoholic beverages, or both are sold, unless all the following requirements are met: (1) a ticket is sold and collected as evidence of the admission charge, (2) the patron is not required to purchase any food or beverages, (3) the charge is for admission only and does not include any payment for food or beverages; and (4) the admission charges are segregated from other receipts in the books and records of the place of entertainment. *See* 830 CMR 64H.6.5(7)(d). In this case, a sales tax is imposed upon the total ticket or admission charge collected by the taxpayer because the charge for a dinner cruise includes the cost of a meal and beverages and payment for the meal is required; patrons are purchasing the meal and beverages with the purchase of the ticket, whether or not they want them or consume them.^[2] Failure to meet each of the requirements listed under the regulation results in a fully taxable sale.

5% CCF Surcharge. In this example, the fair market value of a ticket for a comparable entertainment cruise with no dinner included is \$35. For purposes of calculating the 5% CCF surcharge, the operator allocates \$35 of the price of the ticket to the entertainment cruise, resulting in a 5% CCF surcharge of \$1.75.

III. \$10 CCF Surcharge on Vehicle Rental Contracts in Boston

A. Statutory Authority

There shall be an additional surcharge of \$10 imposed upon each vehicular rental transaction contract in the city of Boston

St. 1997, c. 152, Â§ 9(e).

B. "Vehicular Rental Transaction Contract"

The \$10 CCF surcharge is imposed upon each vehicular rental transaction contract in Boston. The term "vehicular rental transaction contract" includes any written agreement setting forth the terms and conditions governing the use of a vehicle provided by a rental company for thirty continuous days or less, except as provided in Subsection III. D of this TIR. *See generally* G.L. c. 90, Â§ 32E Â½. A written agreement may be executed upon tangible media or electronically, such as through the Internet.

Vendors must collect the \$10 CCF surcharge on each vehicle rental contract in Boston. A vehicle rental contract is â€œin Bostonâ€ (1) when the vehicle is received by the customer at a business location of the rental company in Boston or (2) when the vehicle is not received by the customer at a business location of the rental company, if the vehicle is received by the customer in Boston. Types of vehicles subject to the surcharge include, but are not limited to the following:

Passenger car

Truck

Van

Trailer (but the surcharge is not imposed on rental of a trailer hitch).

C. \$10 CCF Surcharge Imposed Separately from Sales Tax

The \$10 CCF surcharge on a vehicle rental contract in Boston is imposed separately and in addition to the existing 5% sales tax imposed under G.L. c. 64H, Â§ 2. The \$10 CCF surcharge on a vehicle rental contract in Boston is not part of the sales price subject to Massachusetts sales tax. For billing purposes, the \$10 CCF surcharge must be stated separately from the sales price and the sales tax. *See* Letter Ruling 99-6.

D. Multiple Vehicle Contract

In applying the \$10 CCF surcharge on a vehicle rental contract in Boston where multiple vehicles are provided under the terms of a single contract, only one \$10 CCF surcharge is imposed. A monthly or annual membership contract in a Car Sharing Organization (â€œCSOâ€) is subject to the CCF surcharge upon the first reservation and use of a vehicle â€œin Boston,â€ as defined in Section III B of this TIR. The \$10 CCF surcharge is imposed only once during the term of the contract. If the contract is renewable, the \$10 CCF surcharge is imposed once upon each renewal period in which a vehicle is received in Boston. For purposes of TIR 05-1, a CSO is a membership-based entity with a distributed fleet of private motor vehicles that are made available to its members primarily for hourly or other short term use through a self-service fully automated reservation system. A CSO periodically charges a membership fee separate from any use-based fees relating to a specific vehicle. - A CSO does not include any arrangement where a separate written agreement is entered into each time a vehicle is transferred from a rental company to its customer.

IV. \$2 CCF Surcharge on Parking at a Convention Center Facility

A. Statutory Authority

There shall be a surcharge of \$2 per day imposed upon any vehicle which parks in any parking facility

built in conjunction with or as part of the projects authorized by this act in the cities of Boston, Springfield and Worcester.

St. 1997, c. 152, Â§ 9(f).

B. â€œ\$2 per dayâ€

The \$2 CCF surcharge on parking in a convention center facility in Boston, Springfield or Worcester is imposed once each twenty-four hour period. If a person pays a monthly charge for the right to park a vehicle in a convention center facility, the \$2 CCF surcharge is imposed on each twenty-four hour period that the vehicle is actually parked in the facility.

Example: A vehicle is parked at a convention center facility from 10 p.m. until 2 a.m. the next morning. The total \$2 CCF surcharge imposed on parking is \$2 since the vehicle was parked for less than twenty-four hours.

V. Exemptions from Convention Center Financing Surcharges

A. Exemptions from all three CCF surcharges

1. All sales and transactions that Massachusetts is prohibited from taxing under the constitution or laws of the United States are exempt from the CCF surcharges.
2. Agencies of the United States or its political subdivisions are exempt from all CCF surcharges. In the case of the \$2 CCF surcharge on parking in a convention center facility, the exemption applies if the vehicle is owned, rented or leased by the United States government or its political subdivisions.
3. To the extent that a foreign diplomat or consular employee is exempt from sales tax pursuant to Administrative Procedures 102 and 621, the diplomat is likewise exempt from all CCF surcharges. In the case of the \$2 CCF surcharge on parking in a convention center facility, the exemption applies if the vehicle is owned, rented or leased by the diplomat or consular employee.

B. Additional exemptions from the 5% CCF surcharge

1. There is an exemption from the 5% CCF surcharge on tickets for Boston tours and cruises for organized school or youth groups and adults accompanying such groups. This exemption applies to school and youth groups of high school age or younger. If the youth group is not associated with a school, the exemption applies to youth groups age 18 or younger. This exemption does not apply to colleges or universities.
2. There is an exemption from the 5% CCF surcharge on tickets for Boston tours and cruises for childrenâ€™s tickets costing \$6 or less.
3. Some tour tickets may be exempt from the 5% CCF surcharge under a federal law affecting the taxation of passengers traveling in interstate commerce by motor carrier. *See* 49 U.S.C. Â§ 14505, as added by the Interstate Commerce Commission Termination Act of 1995, Public Law 104-88. To the extent not exempt under federal law, tour tickets are subject to the 5% CCF surcharge.

C. Not Exempt

1. There is no exemption from the CCF surcharges for sales or purchases by religious, scientific, charitable or educational organizations exempt from federal income taxation under Internal Revenue

Code Â§ 501(c)(3). Similarly, there is no exemption from the CCF surcharges for sales or purchases by organizations exempt from federal income tax under any other section of the Internal Revenue Code.

2. There is no exemption from the CCF surcharges for purchases by agencies of the Commonwealth of Massachusetts or its political subdivisions.

VI. Returns and Record Retention Requirements

A. Statutory Authority

The administration of the convention center financing surcharges imposed under subsections (d), (e), and (f) of section 9 of chapter 152 of the acts of 1997 is vested in the commissioner. All provisions of [chapter 62C] relative to assessment, collection, payment, abatement, verification and administration, including penalties and interest, shall, so far as pertinent, be applicable to the convention center financing surcharges as though they were taxes enumerated in [chapter 62C] section 2. . . .

St, 1999, c. 68, Â§ 13, amending G.L. c. 62C by adding new Â§ 86.

B. 5% CCF Surcharge Return

1. The 5% CCF surcharge imposed by St. 1997, c. 152, Â§ 9(d) must be collected and paid by the operator of any tour or cruise and remitted to the Department on a quarterly basis on Form CCF-ST. St. 1999, c. 68, Â§ 13, amending G.L. c. 62C, adding new Â§ 86(a). The return is due on or before the 20th day of the month following the close of each calendar quarter.

2. The operator of a tour or cruise includes any tour broker, cruise broker, travel agent or travel packager who issues a tour or cruise ticket.

C. \$10 CCF Surcharge Return

1. The \$10 CCF surcharge imposed by St. 1997, c. 152, Â§ 9(e) must be collected and paid by the vendor operating a vehicle rental establishment and remitted to the Department on a quarterly basis on Form CCF-VR. St. 1999, c. 68, Â§ 13, amending G.L. c. 62C, adding new Â§ 86(b). The return is due on or before the 20th day of the month following the close of each calendar quarter.

2. The \$10 CCF surcharge must be remitted separately from the 5% sales tax.

D. \$2 CCF Surcharge Return

The \$2 CCF surcharge imposed by St. 1997, c. 152, Â§ 9(f) must be collected and paid by the operator of a parking facility built in conjunction with a convention center facility in Boston, Springfield, and Worcester and remitted to the Department on a quarterly basis on Form CCF-PF. St. 1999, c. 68, Â§ 13, amending G.L. c. 62C, adding new Â§ 86(c). The return is due on or before the 20th day of the month following the close of each calendar quarter.

E. Record Retention

1. Any person required to collect and remit the 5% CCF surcharge, the \$10 CCF surcharge, or the \$2 CCF surcharge, must maintain permanent books of account or records of all sales of tickets, vehicle rentals, and parking subject to the Convention Center Act. Records must be sufficiently accurate and complete to establish the amount of CCF surcharge due under the provisions of St. 1997, c. 152, Â§ 9, as

amended.

2. Such persons shall retain copies of CCF surcharge returns filed together with supporting data to indicate how the amount of CCF surcharge reported in the returns was calculated.

/s/Alan LeBovidge

Alan LeBovidge

Commissioner of Revenue

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TIR 05-1

[1] Under the Convention Center Act, a 2.75% CCF fee is also imposed on the transfer of room occupancy by any operator of a hotel, motel or other lodging establishment in Boston, Cambridge, Springfield, or Worcester. St. 1997, c. 152, Â§ 9(a). The 2.75% CCF fee, effective January 1, 1998, is in addition to the state room occupancy tax of 5.7% and the local option room occupancy tax of 4% in effect for those cities. The Convention Center Act authorizes the Department to administer the 2.75% CCF fee as a tax under the provisions of chapter 64G, the room occupancy excise. St. 1997, c. 152, Â§ 9(b). Thus, the 2.75% CCF fee is to be collected and remitted in the same manner and at the same time as the current room occupancy excises. *See* 830 CMR 62C.16.1 (1998). Beginning on October 1, 2001, the 2.75% CCF fee was extended to the transfer of room occupancy by any operator of a hotel, motel or other lodging establishment in West Springfield or Chicopee. St. 2001, c. 45, Â§Â§ 2-4, amending St. 1997, c. 152, Â§ 9(a) and (b). *See* TIR 01-15.

[2] In some cases, a mandatory gratuity imposed on the purchase of a dinner cruise ticket is included in the sales price subject to tax. *See* 830 CMR 64H.6.5(7)(a); *Chatham Bars Inn, Inc. v. Commissioner of Revenue*, ATB Docket No. F225093 (April 29, 1998).

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