

August 2017

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## Upcoming Industry Events

**Boston Magazine - The Cue & Battle of the Burger**

August 15-16, 2017 | Cruiseport Boston | [www.bostonmagazine.com](http://www.bostonmagazine.com)

**Boston Magazine - Best New Restaurants**

October 2017 | [www.bostonmagazine.com](http://www.bostonmagazine.com)

*Kelly Caralis will be moderating at this event.*

**Taste of Boston**

November 2017 | [www.bostonmagazine.com](http://www.bostonmagazine.com)

## New Massachusetts DOR Enforcement Effort



Chris Agostino  
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### Enhanced Scrutiny for Underreporting of Cash Receipts

The Massachusetts Department of Revenue (DOR) has recently begun cross-checking 1099-K credit card receipt information against total reported revenue in order to investigate and uncover potential underreporting of cash receipts and thus potential underpayment of sales and/or income tax. After estimating potential cash income based on credit card receipt information reported to the IRS by payment processors (i.e. American Express, Pay Pal, etc.), the DOR is sending notice of any discrepancy to restaurants and retailers warning of potential under-reporting.

## New Massachusetts DOR Enforcement Effort (cont.)

Massachusetts restaurateurs should check their record-keeping procedures to ensure compliance in light of the DOR's interest in this particular subject. Pursuant to DOR Directive 16-1, a restaurant's POS system must provide enough detail to confirm the amount of tax potentially due and collected on each individual transaction via cash, credit card or otherwise. With the proliferation of alternative payment systems, new systems should be vetted to ensure compliance with specific state requirements.

To ensure compliance in Massachusetts, generally, each sale record must identify:

- individual item(s) sold,
- selling price,
- tax due,
- invoice number,
- date of sale,
- method of payment, and
- POS terminal number and POS transaction number.

Because 1099-K's report gross receipts, including tips and taxes, transaction records must be detailed enough to reconcile non-income related items. Large discrepancies may exist between gross receipts and reported income because of tips or other non-income related items; therefore, compliant POS records are important to document the source of any discrepancy. Pursuant to the Directive 16-1, records may be deemed inadequate if:

- they do not verify sales receipts,
- they do not verify whether those receipts are subject to sales tax,
- they do not provide details of each individual transaction (summary reports and daily summary or "Z" tapes are not sufficient),
- they do not verify the taxable status of purchases,
- they do not show that a business's purchases correlate to its sales,
- it is not possible to conduct a complete audit using those records,
- they are not made available to the auditor,
- they are not in a form that can be audited by DOR, or
- an evaluation of the accounting system utilized discloses that the system does not provide adequate internal control procedures which assure the accuracy and completeness of the transactions recorded in the books and records (e.g., the lack of sequentially numbered invoices or guest checks, or the lack of dates on receipts).

At a minimum, adequate POS records must be maintained for three years and longer if a taxpayer is under audit or otherwise subject to a request for information from the DOR or another agency. If you receive a notice from the DOR that identifies any reporting discrepancy contact your professional advisor(s). In the meantime, check with your POS vendor to ensure that your POS system is

## New Massachusetts DOR Enforcement Effort (cont.)

generating data in compliance with the Directive 16-1 that can be used to explain away any perceived reporting deficiencies.

*Our thanks to Philip R. Dardeno, CPA, MST and Lucien Gauthier, Esq., CPA of the Boston Tax Institute for alerting us to this issue.*

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## Alcohol Licensing Updates



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### **MA Court Rules in Favor of Retail Sales of Discounted Booze:**

In a case brought by retail superstore Total Wines which appealed a decision of the Alcoholic Beverages Control Commission ("ABCC"), a Boston judge ruled that state retailers can sell alcohol at steep discounts when they order in bulk. The ABCC issued a several day liquor license suspension against Total Wine for selling liquor below wholesale costs. The court determined that Total Wine was not engaged in predatory pricing, which would have been against state law, and was instead passing along savings to customers which derived from volume purchasing at the wholesale level. Massachusetts package stores are still prohibited from selling below

wholesale, unless they do so as a result of volume purchase discounts. (Source: Boston Globe, 07/26/2017: "Total Wine wins challenge on discount pricing").

### **Placement of Liquor License on State's 'Delinquent list' Doesn't Create Lien on License:**

Liquor wholesalers who caused a restaurant to be placed on the state's "delinquent list" did not create a lien or otherwise become priority creditors in the restaurant's Chapter 7 bankruptcy proceedings, a U.S. Bankruptcy Court judge decided. The court, while recognizing the right for a security interest in a liquor license under certain circumstances, noted that under M.G.L.c. 138 Section 25 there is no public notice requirement when a vendor is placed on the delinquent list "secret liens are not encouraged in our commercial jurisprudence." This decision provides a clearer path for liquidating a creditor's assets and assures license holders that being placed on the delinquent list will not prohibit the sale of a liquor license. (Source: Mass Lawyers Weekly, 06/01/2017: "'Delinquent list' doesn't create lien on license").

### **Push by Mass. Restaurant Liquor License Holders to Eliminate OUI Serving Data.**

Holders of M.G.L.c. 138 Section 12 pouring licenses are attempting to eliminate a state program that tracks where convicted drunk drivers had their last drinks before being arrested. The Massachusetts Restaurant Association has asked the state task force convened by Treasurer Deborah Goldberg

## Alcohol Licensing: Legal Updates and Insights (cont.)

(who is considering an overhaul of alcohol laws) to recommend that the state legislature eliminate the program. The push by restaurateurs is a result of what the industry says is unreliable and unverified information provided by defendants. Bars and restaurants do not have the ability to dispute or defend the defendant's statements and there is currently no process for a business to rebut the accusation or seek removal from the publicly available database. The treasurer's alcohol task force is expected to unveil suggested policy changes this fall. (Source: Boston Globe, 07/30/2017: "Mass. restaurants want OUI serving data eliminated").

### **Public Hearing Conducted for Boston's Plan to Add 152 New Liquor Licenses.**

The City Council Government Operations Committee held a public hearing on June 22, 2017 on the City of Boston's proposal to send a home rule petition to the State Legislature for the creation of 152 non-transferable liquor licenses. Advocates for the bill, including City Councilor Ayanna Pressley, said that while the petition focuses primarily on economically-disadvantaged neighborhoods like Mattapan and Dorchester, she hopes that it could be amended to include neighborhoods like Charlestown and West Roxbury that aren't economically disadvantaged and don't have a Main Streets program – but could still use more high-quality restaurants with liquor licenses. (Source: Charlestown Patriot-Bridge, 6/30/2017: "Public Hearing Held on Liquor License Expansion").

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## Marketing Corner



Howie Altholtz  
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### **Enforcing Minimums Sometimes Makes Minimal Sense**

My wife and I recently stopped by for a quick drink and apps at an outdoor café. (We dine there often but typically inside). Call it Café A. We were informed that there would be a, '2 app per person minimum'. The place was 70% empty. I couldn't (read, wouldn't), commit in advance to how much I might want to eat. We politely declined and went next door to Café B, which was literally 3 inches from Café A... separated only by a thin wrought iron fence.

We proceeded to eat and drink with abandon, and ended up spending MUCH more than we would have at Café A, even with their minimum... happily. Because it was by Choice, NOT Forced.

The moral: Even rules made for good reasons don't always need to be enforced.

## Industry Trends

### Generation X Could Be the Restaurant Industry's Best Hope

<http://www.foodandwine.com/news/generation-x-restaurant-business>

### State of the Industry: Healthy foods drive dining choices

<http://www.restaurant.org/News-Research/News/State-of-the-Industry-Healthy-foods-drive-dining-c>

## RIW Client News

Congratulations to RIW clients **Matt and Joanna O'Neil** on the opening of **Ledger** at its historic location in the nearly two century old Salem Savings Bank building in Salem, MA. The O'Neil's also own **the Blue Ox** in Lynn, MA. Check out the the Full Story and their recent feature on NESN's Dining Playbook.

<http://www.bostonmagazine.com/restaurants/blog/2017/06/16/first-look-ledger-salem/>

Congratulations to the many RIW clients who were named "Best of the North Shore" by *northshore magazine*.

Congratulations to the many RIW clients who were named "Best Restaurant" by *Boston Magazine* in its "Best of Boston 2017" Issue.

## RIW Events and Participation

RIW attorneys Stacey Friends and Kevin Freytag presented on the Basics of Trademark & Branding during a Lunch & Learn Event Series that RIW hosted at WeWork on June 13, 2017.





## RIW Events and Participation (cont.)

RIW was a sponsor of the 2017 Bay Cove Human Services Changing Lives Gala on June 14, 2017 at the Seaport Hotel & World Trade Center, honoring Alma Wahlberg.



Left photo - RIW table. Left to right; Chris Litterio, Dave Robinson, Rose Cortina, Cortina Business Management, Howie Altholtz, Patrick Renna, Wahlburgers, Stacey Friends, Michael Rosen, Kelly Caralis, Lou Katz and wife Jean, and Adam Barnosky.

Right photo - Joint table with Bay Cove & RIW client Cambridge Savings Bank (CSB). Left to right; Kathleen Kerr, wife of Kevin Kerr, VP and general counsel of Bay Cove Human Services, Jeri Foutter, Bay Cove, Steve Leonard, CSB, Jared Valyo, CSB, Brian Garrity, RIW, Lynn Schade, CSB, Doug Faithful, CSB, and Barbara Crystal, CSB.



RIW's Stacey Friends attended the Akal Chai Rum Investors & Owners Reception on June 20, 2017.

Left to right, Kiran Akal, Akal Chai Rum, Stacey Friends, and John Flemin, SMAKS Luxury Group Limited.

RIW's Howie Altholtz and Lou Katz attended a Red Sox game with RIW clients Mark Tosi, Owner, Les Zygomates, and Patrick Renna, CFO, Wahlburgers, on June 30, 2017.

Left to right; Mark Tosi, Lou Katz, Howie Altholtz, and Patrick Renna.



## RIW Events and Participation (cont.)



RIW's Adam Barnosky, Kelly Caralis and Bethany Grazio attended the Massachusetts Restaurant Association's Summer Gathering, which took place on July 10, 2017 at the Lookout Rooftop & Bar at The Envoy Hotel.

RIW's Howie Altholtz and Adam Barnosky attended the Massachusetts Lodging Association's "2018 Annual Lodging Industry Forecast" which took place on July 13, 2017 at the Boston Park Plaza Hotel.



RIW's Catherine B. Rossetti presented at the Reading-North Reading Chamber "After Hours at the Horseshoe Grill" networking event on July 12, 2017. RIW sponsored the event and Catherine spoke about personal estate planning and business succession planning and how they are intertwined for small business owners.



Left photo - Left to right; Catherine B. Rossetti, Lisa Egan, Executive Director of the Reading-North Reading Chamber of Commerce; Molly O'Neill, The Savings Bank.

Right photo - Left to right; Pat Lee, Owner of Horseshoe Grille, North Reading, Lisa Egan, Executive Director of the Reading-North Reading Chamber of Commerce, Catherine B. Rossetti.

Attorneys in RIW's Hospitality and Retail Services Group have provided legal services to industry clients for over 30 years. Our attorneys organize seminars, lecture, write articles, participate in trade associations, and serve on Boards of Advisors for retail, food and hospitality industry companies.

For a full description of our Hospitality and Retail Services Group, including a list of representative clients, please visit our website at [www.riw.com](http://www.riw.com).

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