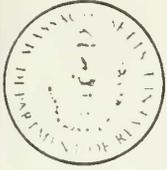


MASSACHUSETTS DEPARTMENT OF REVENUE
SALES AND USE TAX
CASUAL AND ISOLATED SALES;
YARD SALES CONDUCTED BY AN INTERMEDIARY



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FACTS: Adams conducts yard or tag sales for homeowners on their premises. She advertises each sale in local newspapers, and assembles, cleans, prices and displays the items to be sold. The goods never leave the premises and the owner may withdraw an item from sale at any time. The owner, not Adams, is responsible for any losses. Adams conducts several sales each year, but never more than one for any seller.

Adams is not required to be licensed as a vendor and does not make sales at auction as defined in G.L. c. 100, § 1.

ISSUE: What are the sales tax consequences of these yard sales?

DISCUSSION: Massachusetts imposes an excise upon retail sales of tangible personal property by any vendor. Unless the sale is otherwise exempt, the vendor must collect and pay over the sales tax. G.L. c. 64H, § 2.

In any given sales situation, the identity of the vendor is a question of fact. Here, the owner of the household goods rather than Adams will be considered the vendor because the goods never leave the owner's premises, they may be withdrawn from sale by the owner at any time and the owner is responsible for any loss.

Under G.L. c. 64H, § 6(c), the owner of goods originally acquired for personal or household use may sell those goods without incurring sales tax liability. Such sales are considered exempt as "casual and isolated." See 830 CMR 64H.6.1. The use of a service intermediary or agent to aid in the sale of those goods will not render the transaction taxable unless the intermediary is a retailer and becomes the vendor of the goods. See *Sherman v. Commissioner of Revenue*, 24 Mass. App. 64 (1987). In this situation, Adams is not the vendor; instead, the vendor/owner is making a casual and isolated sale. There is therefore no sales tax liability and Adams should not collect a sales tax.

DIRECTIVE: Since Adams is not the vendor of the goods, she is not required to collect a sales tax from customers at yard sales she conducts; since the owner/vendor is making a "casual and isolated" sale, no tax is due.

REFERENCE: G.L. c. 64H, §§ 2, 6(c); G.L. c. 100, § 1; *Sherman v. Commissioner of Revenue*, 24 Mass. App. 64 (1987); 830 CMR 64H.6.1.

September 30, 1988

Stephen W. Kidder
Commissioner of Revenue

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This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C 01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.