



SS. R1.7: 96-5

# Sales and Use Tax DOR Directive 96-5

MASSACHUSETTS  
GOVERNMENT DOCUMENTS  
Department of  
Revenue  
COLLECTION

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## Inclusion or Exclusion of Transportation Charges from Sales Price for Sales and Use Tax Purposes

University of Massachusetts  
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### Summary:

Under G.L. c. 64H, § 1, transportation charges associated with the sale and delivery of tangible personal property are excluded from the taxable "sales price" if the charges are separately stated and the transportation occurs after the retail sale. This Directive states that for purposes of determining the taxability of transportation charges, the sale generally occurs when title passes.<sup>1</sup> Uniform Commercial Code (UCC) passage of title rules are referred to when determining passage of title. The Directive applies only to situations where the vendor charges the purchaser for delivery of the property; it does not apply to situations where the purchaser pays the carrier directly for delivery of the property. This Directive is effective as of the date of issue.

### Issue:

When does the sale occur for purposes of determining whether transportation charges associated with the sale of tangible personal property are included in the measure of tax?

### Directive:

1. When a written<sup>2</sup> sales agreement specifies when title to the property passes, title passes in accordance with the agreement. See G.L. c. 106, § 2-319. (a) If the agreement specifies that title passes when the property is delivered to the purchaser, the sale occurs when title passes. The transportation occurs prior to the sale and the costs of transportation are included in the sales price. (b) If the agreement specifies that title passes at a time prior to transportation of the property for delivery, the sale occurs at that time. The transportation occurs after the sale and separately stated transportation charges are not included in the sales price.

2. When a written sales agreement is silent on the passage of title, title passes in accordance with the mode of delivery. See

G.L. c. 106, § 2-401. (a) If delivery is made by the vendor,<sup>3</sup> title passes and the sale occurs when the property is delivered to the purchaser. The transportation occurs prior to the sale and the costs of transportation are included in the sales price. (b) If delivery is made by common carrier, the sale occurs when the common carrier takes possession of the property from the vendor. The transportation occurs after the sale, and separately stated transportation charges are not included in the sales price.

3. In situations involving a written lease or rental agreement covering tangible personal property,<sup>4</sup> unless the agreement specifies when the sale occurs,<sup>5</sup> the sale occurs upon delivery of the property to the lessee, regardless of the mode of delivery. The transportation occurs prior to the sale, and the costs of transportation are included in the sales price.

4. Transportation charges that are not separately stated in writing are included in the sales price regardless of when the sale occurs.

### Discussion of Law:

An excise is imposed upon retail sales in the commonwealth by any vendor of tangible personal property at the rate of five percent of the vendor's gross receipts from such sales. G.L. c. 64H, § 2. A complementary use tax is imposed upon the storage, use or other consumption in the commonwealth of tangible personal property purchased from any vendor for such use within the commonwealth at the rate of five percent of the sales price of the property. G.L. c. 64I, § 2. For purposes of the use tax, it is presumed that tangible personal property sold by any person for delivery in the commonwealth is sold for storage, use or other consumption in the commonwealth; the burden of proving the contrary is upon the person who makes the sale. G.L. c. 64I, § 8.

1. This Directive assumes that passage of title and possession occurs at the same time, or that passage of title precedes transfer of possession. If transfer of possession precedes passage of title, possession determines when the sale occurs, notwithstanding UCC title rules or any agreement to the contrary.

2. Because an oral agreement will always result in transportation charges being included in the sales price (only charges that are "separately stated" and that occur after the sale are excluded), this Directive only applies to written agreements.

3. As used in this Directive, vendor delivery includes situations where the property is delivered to the purchaser on behalf of the vendor by any entity that is not a common carrier.

4. In this context, we distinguish a "lease" or "rental" from a "sale" involving a transfer of title. A "lease" or "rental" does not include a "conditional sale." See Letter Ruling 80-31.

5. In the case of leases or rentals, the retail sale typically occurs upon transfer of possession of the leased property. However, for purposes of determining whether transportation precedes a retail sale in a lease or rental transaction, the Department will treat transfer of the right to immediate possession of tangible property as a transfer of "title" if the transfer of the right to immediate possession is accompanied by the lessee's simultaneous assumption of the risk of loss of the leased property. If a written contract provides that the right of immediate possession along with the simultaneous risk of loss related to leased tangible personal property are transferred before actual possession transfers, separately stated charges for transportation occurring after such transfer and before actual possession transfers may be excluded from the sales price.

"Gross receipts" is defined as the total sales price received by a vendor as consideration for a retail sale. G.L. c. 64H, § 1; G.L. c. 64I, § 1. When determining the "sales price," no deduction shall be taken on account of the cost of transportation of the property prior to its sale at retail, but separately stated transportation charges, if the transportation occurs after the sale of the property, are excluded from the sales price. *Id.* The definition of "sale" includes any transfer of title or possession, or both, as well as leases and rentals. *Id.* "Purchaser(s)" includes lessees. *Id.* As used in this Directive, a purchaser includes any designee of the buyer of the property.

The Department will follow the Uniform Commercial Code passage of title rules where applicable for determining when the sale occurs in the determination of taxation of transportation charges. See the Out-of-State Sales and Delivery Regulation, 830 CMR 64H.6.7., where UCC title rules are used to determine when the sale occurs in situations involving out of state sales and deliveries. See also Letter Rulings 82-6, 82-48, 82-99 and 83-62; and 81-104, 80-16, 81-14, 83-68 and 85-42.

### Examples:

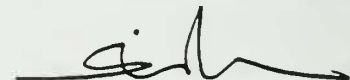
1. The vendor and the purchaser agree in writing in a sales contract that a common carrier will deliver the property to the purchaser. The agreement states that title will pass when the property is delivered by the common carrier to the purchaser. The sale occurs when the common carrier delivers the property to the purchaser. Since the delivery occurs before the sale, transportation charges are included in the sales price whether or not they are separately stated.

2. The vendor and the purchaser agree in writing in a sales contract that a common carrier will deliver the property to the purchaser's designee. The agreement is silent with regard to the passage of title. The sale occurs when the common carrier takes possession of the property. Separately stated transportation charges are not included in the sales price since the delivery occurs after the sale.

3. A written lease agreement provides that the right to possession and the risk of loss of tangible personal property transfer at the vendor's premises. The agreement states that the property will be delivered to the lessee by the vendor. The delivery occurs after the "sale." Separately stated transportation charges are not included in the sales price.

4. A written lease agreement is silent regarding when the right to possession and the risk of loss transfer. The agreement provides that the vendor will deliver the property to a common carrier for delivery to the lessee. The "sale" occurs when the property is delivered to the lessee. Transportation charges are included in the sales price, whether or not they are separately stated since the transportation occurs before the "sale."

5. A purchaser buys an item of tangible personal property outside the commonwealth with the intent to use the item in the commonwealth. The written agreement between the purchaser and the vendor states that the sale occurs at the seller's premises. The agreement also states that the vendor will deliver the item to the purchaser in the commonwealth. The purchaser is liable for payment of use tax to the commissioner. G.L. c. 64I, § 3. If the purchaser pays a tax on the sale to the vendor under the laws of any other state or territory of the United States, the sale is exempt from Massachusetts use taxation, unless such tax is imposed at a higher rate; in that case, the use tax shall apply to the extent of the difference. G.L. c. 64I, § 7. For purposes of Massachusetts use taxation, the "sales price" subject to use taxation does not include separately stated transportation charges since delivery occurs after the sale.



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