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Letter Ruling 79-38: Sales for Resale and Casual and Isolated Sales, Distinguished

October 16, 1979

You have requested a ruling as to the Massachusetts sales tax results of the following facts.

Company A is leasing computer equipment to Company B. The lease contains a purchase option clause under which a portion of each rental payment is applied against a predetermined option price.

Company C, a seller and lessor of computer equipment requests that Company B exercise the purchase option with Company A and resell the equipment to C.

Company B may or may not be registered with Massachusetts as a sales tax vendor but is not regularly engaged in selling computer equipment.

Company B states that they will resell the equipment to C and requests that Company A not charge a sales tax to B.

Massachusetts General Laws Chapter 64H, Section 8(b) provides that a resale certificate may be taken in good faith from a person engaged in the business of selling tangible personal property who holds a vendor's registration and intends to sell the property in the regular course of business.

Section 6(c) of Chapter 64H and Sales Tax Regulation Number 4, promulgated thereunder, exempt from taxation casual and isolated sales of tangible personal property not sold in the regular course of business engaged in by the seller.

Based on the foregoing it is ruled:

1) Company B may not give a resale certificate to Company A on the purchase of the computer equipment. The purchase is subject to sales tax and Company A cannot accept a resale certificate in good faith from B, knowing that B, whether or not registered as a sales tax vendor, is not engaged in selling such equipment in the regular course of its business.

2) Since Company B is not selling the computer equipment in the regular course of its business, the sale to Company C is exempt from sales tax as a casual and isolated sale.

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3) Since the rental payments from Company B to Company A are already subject to sales tax, the sales tax on the exercise of the purchase option will be computed on the amount of the additional payment due from Company B to Company A.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH/JJW/jmcd

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