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Letter Ruling 79-43: Drop Shipments

October 25, 1979

Your inquiry, dated October 3, 1979, sets forth the following circumstances:

Your company (Company A), which is located outside Massachusetts but registered as a Massachusetts vendor, sells merchandise to a non-Massachusetts retailer registered as a vendor in its own state but not in Massachusetts (Company B). Company B takes legal title to the merchandise, but Company A delivers the merchandise directly to a customer of Company B located in Massachusetts (Company C).

The principal question you raise is whether the sale from Company A to Company B is exempt from Massachusetts sales tax.

Under Massachusetts General Laws Chapter 64H, Section 8(a), the burden of proving that a sale of tangible personal property by any vendor is not a sale at retail is upon the vendor unless he takes from the purchaser a certificate to the effect that the property is purchased for resale. Furthermore, Section 1(13) of Chapter 64H provides:

"The delivery in the commonwealth of tangible personal property by an owner or former owner thereof, or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the commonwealth, is a retail sale in the commonwealth by the person making the delivery. He shall include the retail selling price of the property in his gross receipts."

Based on the foregoing, Company A is required to collect a Massachusetts sales tax from Company B based on the price charged Company C, unless Company B registers as a vendor with the Massachusetts Department of Revenue, furnishes Company A with a resale certificate covering its purchase, and collects the Massachusetts sales tax from Company C.

You also ask what constitutes a valid resale certificate in Massachusetts.

The certificate must be taken in good faith by the vendor from a person who--

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(a) is engaged in the business of selling tangible personal property;

(b) is a registered vendor under the provisions of Chapter 64H, Section 7; and

(c) intends, at the time of purchase, to sell tangible personal property in the regular course of business or is unable to ascertain at such time whether the property will be sold or used for some other purpose. If the certificate is not taken by the vendor in good faith, sales of goods there-under shall be considered sales at retail upon which the sales tax shall be due.

Form ST-4, a copy thereof, or a certificate similar in format and wording must be used for the resale certificate. It must in all cases be signed by the purchaser, bear his name, address and registration number, and indicate the general character of the property sold by the purchaser in the regular course of his business.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH/JD/jmcd

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