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Letter Ruling 80-5: Transfer of Assets by Debtor in Possession; Tax Lien

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January 30, 1980

You ask whether a debtor in possession under Chapter 11 of the Bankruptcy Act is subject to the lien created under Chapter 62C, Section 51 in transferring its assets pursuant to court order.

[X] Inc., as debtor in possession was authorized by a federal Bankruptcy Court in New York to sell, assign and transfer to your client, [Y] Inc., all of its right, title and interest in certain realty leases, equipment leases and trade fixtures located in the Commonwealth.

Massachusetts General Laws Chapter 62C, Section 51 requires that prior to the sale or transfer of all or substantially all of a corporation's assets situated in the Commonwealth, the corporation must notify the Commissioner of the proposed transaction, file all corporation excise returns and pay all taxes due. Failure to comply with the above requirements prior to the transfer of the assets creates a three year lien against the assets of the corporation located in the Commonwealth to the extent necessary to pay taxes. The Commissioner may waive the lien and the other requirements of Section 51 prior to or after the date of the transfer. The statute specifically excludes from its requirements sales or transfers by receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy or public officers acting under judicial process.

Based on the foregoing it is ruled that no lien arises upon a court authorized sale or transfer by a debtor in possession under Chapter 11 of the Bankruptcy Act of substantially all of its assets situated in the Commonwealth, and that the transfer is exempt from the requirements of Chapter 62C, Section 51.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH/RSF/jmcd

LR 80-5

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