

# The Commonwealth of Massachusetts

Department of Revenue

Levett Saltonstall Building,

100 Cambridge Street, Boston 02204

October 27, 1980



L. JOYCE HAMPERS  
COMMISSIONER

intends to purchase computer equipment from ("Equipment Company") ("Manufacturer"), a Massachusetts registered vendor. It will purchase the equipment for the sole purpose of reselling it to a wholesale grocer ("Wholesale Grocer"), which will purchase the equipment for the sole purpose of reselling it in turn to a retail grocer in Massachusetts ("Retail Grocer").

The equipment will be delivered by the Manufacturer directly to the Retail Grocer in Massachusetts.

The Equipment Company is organized out-of-state, has no place of business in Massachusetts, and is not registered as a Massachusetts vendor. The Wholesale Grocer may or may not be located in Massachusetts and registered as a Massachusetts vendor.

The Equipment Company is owned by the Wholesale Grocer and other similar companies. The Wholesale Grocer is owned by the Retail Grocer and other similar companies.

You inquire whether the Equipment Company must register as a Massachusetts vendor and give a Massachusetts resale certificate to the Manufacturer, and if not, what other documentation it can submit to the Manufacturer to relieve the Manufacturer of liability for collecting and remitting Massachusetts sales tax.

Massachusetts General Laws Chapter 64H, Section 7 requires every person doing business in Massachusetts as a vendor to register with the Department of Revenue. Chapter 64H, Section 8 states:

"It shall be presumed that all gross receipts of a vendor from the sale of tangible personal property are from sales subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property by any vendor is not a sale at retail shall be upon such vendor unless he takes from the purchaser a certificate to the effect that the property is purchased for resale."

Section 8 further provides that the certificate shall relieve the vendor from the burden of proof only if taken in good faith from a registered vendor.

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, it is ruled that:

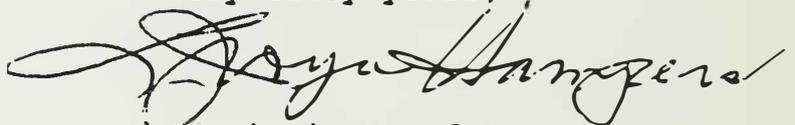
(1) If the Wholesale Grocer is not engaged in business in the Commonwealth within the meaning of Chapter 64H, Section 1(5), the Manufacturer must include the selling price of the equipment in its Massachusetts gross receipts.

(2) If the Wholesale Grocer is engaged in business in the Commonwealth within the meaning of Chapter 64H, Section 1(5), it must register as a Massachusetts vendor and collect the Massachusetts sales tax from the Retail Grocer; in this case,

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the Equipment Company must also register as a Massachusetts vendor, and must furnish a Massachusetts resale certificate to the Manufacturer.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joyce Winters". The signature is written in black ink and is positioned above the typed name of the Commissioner of Revenue.

Commissioner of Revenue

LJH:JXD:mf