

# The Commonwealth of Massachusetts



DEPARTMENT OF REVENUE  
COMMISSIONER

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

February 12, 1981

("Company"), a registered Massachusetts vendor, is engaged in the business of manufacture, sale and service of printing presses and related items. You ask the following questions about the application of the Massachusetts sales and use taxes to the Company's activities:

(1) Are sales to newspaper publishers of printing presses and replacement parts subject to tax?

Massachusetts General Laws Chapter 64H, Section 6(s) exempts from tax sales of machinery and replacement parts thereof used directly and exclusively in an industrial plant in the actual manufacture, conversion or processing of tangible personal property to be sold, including the publishing of a newspaper.

Therefore, sales of printing presses and replacement parts thereof to newspaper publishers who will use them exclusively to print newspapers or other matter for sale are exempt from tax.

(2) Are sales of printing presses and replacement parts to other businesses, including advertising agencies, subject to tax?

Based on Chapter 64H, Section 6(s), sales of printing presses and replacement parts thereof are exempt from tax only where the purchaser will use the items purchased exclusively to produce printed matter to be sold. If a purchaser uses a press or replace-

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ment parts to produce printed matter to be distributed free of charge, or to produce printed matter for the purchaser's in-house use, the sale of the press or replacement parts is subject to tax.

In the transfer of printed matter to its clients, an advertising agency may or may not be acting as a vendor of tangible personal property. (See Division 1(b) of Sales and Use Tax Regulation 64H.05 ("Advertising Agencies: Service vs. sale transaction"), a copy of which is enclosed.) Sales to agencies of printing presses and replacement parts are exempt from tax only where the items will be used exclusively to produce printed matter with respect to which the agency will act as vendor.

(3) Are labor charges for servicing printing presses subject to tax?

Chapter 64H, Section 1(13)(c) provides that "sale at retail" does not include "personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made." On the other hand, the "sales price" on which the tax is based includes the amount paid for any services that are a part of a sale. Chapter 64H, Section 1(14)(b). Accordingly, if your Company services printing presses for a charge, and neither the presses nor any other tangible personal property is transferred as part of the transaction, no sales tax applies to the charge.

Where maintenance services are provided on a mandatory basis to a purchaser of printing presses or other tangible personal property, the charge for the services is taxable so long as the sale of the property is taxable, whether or not the service charge is separately stated. Where a purchaser has an option to acquire presses or other tangible personal property either with or without maintenance services, separately-stated charges for such services are not subject to tax, even if the charge for the property itself is taxable.

Contracts for service and maintenance of printing presses are subject to the rules governing service contracts generally, which are set forth in Sales and Use Tax Regulation 64H.03 ("Service Enterprises"), a copy of which is enclosed.

(4) Who must collect the tax on sales of presses shipped into Massachusetts in Company vehicles or by common carrier?

As a registered vendor engaged in business in Massachusetts, the Company must collect and pay over the sales tax on sales taking place in Massachusetts and the use tax in the case of out-

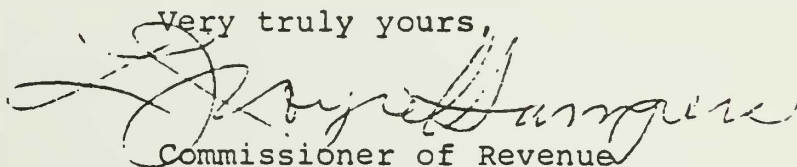
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of-state sales for storage, use, or other consumption in Massachusetts. Chapter 64H, Sections 2 and 3; Chapter 64I, Sections 2 and 4. It makes no difference for this purpose whether the property is shipped into Massachusetts by Company vehicle or by common carrier.

(5) What is the basis of tax where goods are shipped by common carrier?

In determining the "sales price" to which the tax applies, separately-stated transportation charges are excluded if the transportation occurs after the sale of the property is made. Chapter 64H, Section 1(14)(c)(v). This rule applies whether a common carrier or the vendor itself delivers the property.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joseph J. Langone".

Commissioner of Revenue

LJH:JXD:mf

Enclosures

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