



L. JOYCE HAMPERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

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February 26, 1982

("Corporation") transfers data processing terminals under agreements denominated "leases." You inquire whether the transfers are leases or installment sales for purposes of the Massachusetts sales tax.

Each agreement gives the "lessee" two options:

- (1) an option to purchase the terminals upon expiration of the original "lease" term or during any renewal for the "original purchase price" less 50 per cent of the payments made during the original term; and
- (2) an option to purchase the terminals after the first six monthly payments have been received, for the original purchase price less 50 per cent of the payments made prior to the exercise of the option, not including the first six payments.

It is assumed for purposes of this ruling that the original purchase price, the monthly payment, and the "lease" term are such that the purchase price at the expiration of the original term is more than a nominal sum.

For Massachusetts sales and use tax purposes, "sale" includes "any transfer of title or possession, or both, ... conditional or otherwise, of tangible personal property for a consideration, in any manner or by any means whatsoever;" leases and rentals are specifically included in the definition of sales (G.L. c. 64H, s. 1(12)(a)).

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A lessor of tangible personal property must collect the tax on each lease payment as it comes due, and his gross receipts subject to tax for a given period are those amounts coming due during that period by the terms of the governing agreements. (The lessor remains liable for the sales tax whether or not the lessee reimburses him.)

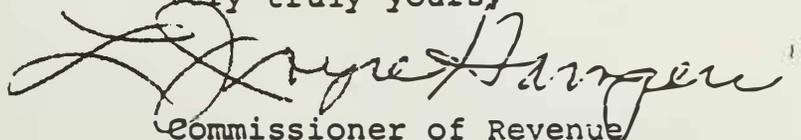
In the case of installment sales, the vendor's gross receipts subject to tax for a given period are measured by the total sales price for all sales made during the period.

Whether a transaction is a lease or an installment sale depends upon all the facts and circumstances in each case, including the good faith of the taxpayer; the taxpayer's characterization of the transaction is not determinative of its substance. However, a transaction is more likely to be regarded as an installment sale rather than a lease if, at the end of the term of the agreement under which property is transferred:

- (a) title to the property vests in the transferee;
- (b) the transferee has the option to purchase the property for a nominal sum; or
- (c) the fair market value of the property will be nominal because of obsolescence, depreciation or any other reason, and the transferor has the express option to abandon the property instead of retaking possession of it. (See Subsection (2) of Sales and Use Tax Regulation 830 CMR 64H.06 ("Automatic Data Processing")).

Based on the foregoing, it is ruled that the Corporation's transfers of data terminals under the agreements are leases, not installment sales. The lease payments coming due each month are subject to sales tax. When a lessee exercises either purchase option, he must also pay a sales tax on his purchase of the terminals, based on the net purchase price, that is, the original purchase price less the applicable credit for lease payments made.

Very truly yours,



Wayne Hanger

Commissioner of Revenue

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