

L. JOYCE HAMPERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

May 4, 1982

Studio ("Studio") is engaged in the business of portrait photography. The sale of yearbook and school year photographs of students represents a large part of its business. The Studio charges each student a four-dollar fee, which it characterizes as a "sitting fee," for each session during which the student is photographed. The fee applies whether or not the student decides to purchase prints of photographs taken at a session. When a student does order prints, the Studio does not credit the fee against the amount charged in connection with the order.

You inquire whether the Massachusetts sales tax applies to the "sitting fee." You do not state whether the Studio provides schools with photographs of students for use in the publishing of school yearbooks.

The Massachusetts sales tax is an excise on sales at retail of tangible personal property (G.L. c. 64H, s. 2). Any amount paid for any services that are a part of a sale of tangible personal property must be included in determining the sales price of the property on which the tax is based, and no deduction may be taken on account of the cost of materials used, labor or service cost, or other expenses (G.L. c. 64H, s. 1(14)).

General Laws Chapter 64H, Section 1(13)(c) excludes from the definition of "sale at retail" personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges

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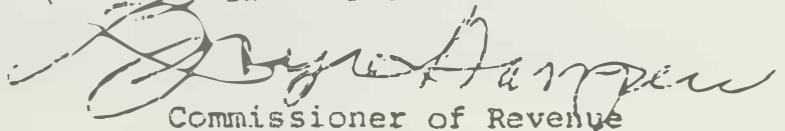
are made. The Massachusetts Supreme Judicial Court held in Houghton Mifflin Co. v. State Tax Commission, 373 Mass. 772 (1977), that the sale of reproduction proofs to a book publisher was a retail sale and not a personal service transaction exempt from sales tax under Chapter 64H, Section 1(13)(c).

Based on the foregoing, it is ruled that:

1. The "sitting fee" is part of the sales price of photographs sold by the Studio. The sales tax applies to the fee where a student orders prints, or where he orders no prints but the Studio transfers his photograph to his school for use in publishing the school's yearbook.

2. Where a "sitting fee" is imposed but no sale of photographs takes place, the fee is not subject to tax.

Very truly yours,



Commissioner of Revenue

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