

# The Commonwealth of Massachusetts



Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

JOYCE HAMPERS  
COMMISSIONER

May 27, 1982

Pursuant to an order of the United States Bankruptcy Court for the District of Massachusetts, Company ("Auctioneer"), a Maine-based company, will be conducting an auction in Massachusetts of the personal property of the bankrupt estate of Inc. ("Company"). The Company was a Massachusetts corporation which was adjudicated bankrupt. You inquire whether the Auctioneer will be subject to the Massachusetts sales tax on these sales.

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts by any vendor. "Vendor" is defined in Chapter 64H, Section 1(18) as "a retailer or other person selling tangible personal property..." Section 1(9)(b) defines "retailer" as including "every person engaged in the making of retail sales at auction of tangible personal property whether owned by such person or others."

Section 3 of Chapter 64H requires vendors to collect the sales tax from purchasers, and Section 2 requires them to pay over the tax to the Commissioner. However, Chapter 64H, Section 3(c) provides that the sales tax imposed upon motor vehicles is paid by the purchaser to the Registrar of Motor Vehicles.

Chapter 64H, Section 6(a) exempts from tax sales which the Commonwealth is prohibited from taxing under the Constitution or laws of the United States.

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State taxes imposed upon sales of tangible personal property made by a trustee in the liquidation of a bankrupt pursuant to a United States bankruptcy court order have been held to be an impermissible burden on the bankruptcy process. (See California State Board of Equalization v. Goggin, 245 F.2d 44 (9th Cir. 1957), cert. denied, 353 U.S. 961 (1957) and State Board of Equalization v. Boteler, 131 F.2d 386 (9th Cir. 1942). However, where the legal incidence of the sales tax is imposed on the purchaser and the trustee is merely a collecting agent of the tax, the imposition of the tax has been upheld. (See In Re Hatfield Construction Company, 494 F.2d 1179 (5th Cir. 1974) and In Re Leahy, 85 F.2d 25 (2d Cir. 1936)).

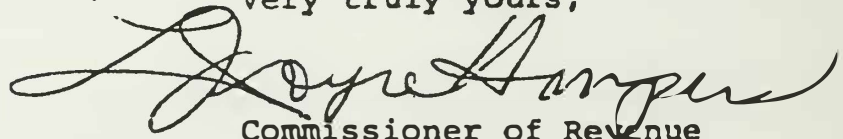
The legal incidence of the Massachusetts sales tax is on the vendor. First Agricultural National Bank v. State Tax Commission, 353 Mass. 172 (1967) (reversed on other grounds, 392 U.S. 339 (1968)). However, the legal incidence of the sales tax imposed upon motor vehicles is on the purchaser (G.L. c. 64H, s. 3(c)).

Based on the foregoing, it is ruled that:

1. The Auctioneer is not subject to sales taxes on auction sales which he makes pursuant to an order of the United States Bankruptcy Court.

2. Purchasers who acquire motor vehicles and trailers from the Auctioneer must pay sales taxes upon registration of the vehicles.

Very truly yours,

  
Commissioner of Revenue

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