

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204



IRA A. JACKSON
COMMISSIONER

March 23, 1983

You are a professional photographer who sells photographs to manufacturers for use in producing brochures and "data sheets" describing industrial products. A data sheet is a printed sheet of paper containing a photograph of an industrial product and a list of its technical specifications. The manufacturers distribute the brochures and data sheets to prospective customers for no charge. You inquire about the Massachusetts sales tax treatment of your sales of photographs for such purposes.

On your bills to the manufacturers, you break out a separate charge, based on a daily rate, for services rendered in producing the photographs.

General Laws Chapter 64H, Section 2 imposes the sales tax on sales at retail of tangible personal property.

Section 1(14) of Chapter 64H provides that any amount paid for any services that are a part of a sale must be included in determining the sales price of property on which the sales tax is based, and that no deduction may be taken on account of the cost of materials used, labor or service cost, or other expenses.

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Section 1(13)(c) of Chapter 64H 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 are made. The Massachusetts Supreme Judicial Court held in Houghton Mifflin Co. v. State Tax Commission that the sale of reproduction proofs to a publisher for use in producing books was a taxable retail sale of tangible personal property and not a personal service transaction exempt from sales tax under Chapter 64H, Section 1(13). The Court declared that

"the cost of labor is often a major cost of producing an object for sale. That circumstance is not the significant factor, however, in determining whether sale is an inconsequential element of a personal service transaction...The test is the object of the transaction. If the buyer's fundamental object is to obtain the item of personal property transferred to it, the sale of that property cannot reasonably be considered 'inconsequential' and the transaction cannot reasonably be considered one for personal service." (373 Mass. 772, 775 (1977).)

Based on the foregoing, it is ruled that the sales tax applies to your sales of photographs to manufacturers for use in producing the brochures and data sheets. The sales price of the photographs on which the tax is based is the entire amount charged therefor, including any amount broken out for services rendered in producing the photographs.

Very truly yours,



Commissioner of Revenue

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