



IRA A. JACKSON  
COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
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November 15, 1983

("Manufacturer") is a Connecticut-based corporation that is registered as a Massachusetts vendor. It sells merchandise to a distributor ("Distributor") for resale to a Massachusetts customer ("Customer"). The Distributor is not registered as a Massachusetts vendor. The Manufacturer ships the merchandise directly to the Customer in Massachusetts. The Customer's order may be placed from within or without Massachusetts, and the merchandise may be shipped from within or without Massachusetts.

You inquire about the application of the Massachusetts sales and use taxes to such sales by the Manufacturer.

General Laws Chapter 64H, Section 2 imposes an excise on a vendor's gross receipts from sales at retail of tangible personal property in Massachusetts; "sale at retail" does not include sales for resale in the regular course of business (G.L. c. 64H, § 1(13)).

Chapter 64I, Section 2 imposes an excise on the storage, use or other consumption in Massachusetts of tangible personal property purchased from any vendor for storage, use or other consumption in Massachusetts; "storage, use or other consumption" does not include the sale of tangible personal property in the regular course of business or the retention of tangible personal property for sale in the regular course of business (G.L. c. 64I, § 1(4), (5)).

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Except where a seller takes a resale certificate in good faith from a purchaser who is a registered Massachusetts vendor, two presumptions arise: it is presumed that all gross receipts of a vendor are from sales subject to tax (G.L. c. 64H, § 8), and it is presumed that tangible personal property sold by any person for delivery in Massachusetts is sold for storage, use or other consumption in Massachusetts (G.L. c. 64I, § 8).

Section 1(13) of Chapter 64H provides:

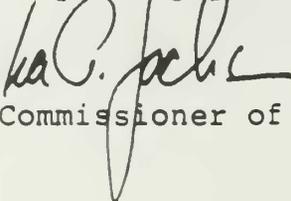
"The delivery in the commonwealth of tangible personal property by an owner or former owner thereof, or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the commonwealth, is a retail sale in the commonwealth by the person making the delivery. He shall include the retail selling price of the property in his gross receipts."

Based on the foregoing, it is ruled that:

1. If the Distributor is engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), it must register as a Massachusetts vendor and pay the sales or use tax, based on the Distributor's selling price, on its sale of the merchandise to the Customer; in such case the Distributor may give the Manufacturer a Massachusetts resale certificate in lieu of paying a tax on its purchase from the Manufacturer.

2. If the Distributor is not engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), the Manufacturer must pay the sales or use tax, based on the Distributor's selling price, on its sale of the merchandise. In this case the tax will be a debt from the Distributor to the Manufacturer, recoverable in the same manner as other debts (G.L. c. 64H, § 3; G.L. c. 64I, § 4).

Very truly yours,



Commissioner of Revenue

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