



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

November 23, 1983

You represent a Michigan manufacturer ("Manufacturer") that is registered as a Massachusetts vendor. The Manufacturer sells tangible personal property to distributors for resale to Massachusetts customers. Some of the distributors are engaged in business in Massachusetts within the meaning of General Laws Chapter 64H, Section 1(5); some are not. The Manufacturer ships the property directly to the distributors' customers in 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 sales at retail of tangible personal property in Massachusetts by any vendor; "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)).

Except where a seller takes a resale certificate in good faith from a purchaser who is a registered Massachusetts vendor, it is presumed that all gross receipts of a vendor are from sales subject to tax (G.L. c. 64H, § 8), and it

November 23, 1983

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:

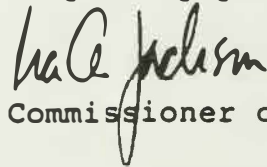
"The delivery in the commonwealth of tangible personal property by an owner or former owner thereof, or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in 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 a distributor is engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), it is liable for the sales or use tax on its sale of the property to its 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 a distributor is not engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), the Manufacturer is liable for the sales or use tax, based on the distributor's selling price.

Very truly yours,



Commissioner of Revenue

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LR 83-97