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COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

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100 Cambridge Street, Boston 02204

March 5, 1984

You ask several questions about the application of the Massachusetts sales and use tax laws to the activities of your client ("Parent").

The Parent is a corporation whose lines of business include magazine publishing and the production and leasing of microfilm cassettes containing specialized information. The Parent intends to form a wholly-owned subsidiary ("Subsidiary") that will take over from the Parent the leasing of the cassettes. The Subsidiary will have its own offices and its own employees in various states. The Parent will buy blank cassettes, record the information on them, and sell or lease them to the Subsidiary. The Subsidiary will lease the cassettes to customers under subscription agreements requiring the customer periodically to return the cassettes in exchange for ones on which new information has been recorded.

1. You inquire whether the Subsidiary is liable for Massachusetts sales or use taxes on its leases of cassettes to Massachusetts customers.

Every person engaged in business in Massachusetts as a vendor must register as a Massachusetts vendor and pay Massachusetts sales and use taxes with respect to his sales in Massachusetts and his sales outside Massachusetts for use in Massachusetts. G.L. c. 64H, §§ 2, 7; G.L. c. 64I, §§ 2, 4, 9. "Engaged in business in Massachusetts" is defined for sales and use tax purposes as:

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"having a business location in the commonwealth; regularly soliciting orders for the sale of tangible personal property by salesmen, solicitors, or representatives in the commonwealth, unless such activity consists solely of solicitation by direct mail or advertising via newspapers, radio or television; or regularly engaging in the delivery of property in the commonwealth other than by common carrier or United States mail. A person shall be considered to have a business location in the commonwealth only if such person (a) owns or leases real property within the commonwealth; (b) has one or more employees located in the commonwealth; (c) regularly maintains a stock of tangible personal property in the commonwealth for sale in the ordinary course of business; or (d) regularly leases out tangible personal property for use in the commonwealth." G.L. c. 64H, § 1(5).

Based on the foregoing, it is ruled that the Subsidiary is liable for sales or use taxes on its leases of cassettes to Massachusetts customers.

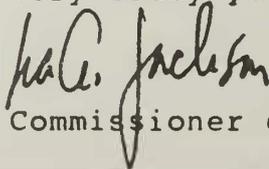
2. You state that the Parent may sell goods other than magazines to Massachusetts customers. You inquire whether the Parent will be required to pay the Massachusetts sales and use taxes with respect to such sales, in light of the Subsidiary's activities in Massachusetts. You state that the Parent may ship cassettes directly to Massachusetts customers of the Subsidiary, by mail or common carrier.

Based on the statutes previously cited, and assuming that the Parent will have no contacts with Massachusetts other than the shipment of goods to Massachusetts customers by mail or common carrier, it is ruled that the Parent will not be required to register as a Massachusetts vendor and pay Massachusetts sales and use taxes, notwithstanding the Subsidiary's activities in Massachusetts.

3. You inquire whether magazine subscriptions are subject to the Massachusetts sales or use tax.

Sales of newspapers and magazines, by subscription or otherwise, are exempt from the Massachusetts sales and use taxes (G.L. c. 64H, § 6(m)).

Very truly yours,



Commissioner of Revenue