



IRA A. JACKSON  
COMMISSIONER

# *The Commonwealth of Massachusetts*

*Department of Revenue*

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May 15, 1984

You inquire about the application of the Massachusetts sales and use tax laws to ("Company"), an "incentive marketing" firm located in New York City. The Company's clients are manufacturers who engage the Company to promote sales of their products by conducting sales contests; in the contests, the Company offers prizes such as cameras or watches to dealers and sales people who sell the clients' products in amounts exceeding a certain dollar threshold. The Company orders the prizes from suppliers who are registered Massachusetts vendors. Upon receipt of an order, the supplier ships the items directly to the winning sales persons and dealers, some of whom reside in Massachusetts. The supplier bills the Company for the prizes, and the Company then bills its client, at a price that includes the cost to it of the prizes plus a percentage for profit.

You state that the Company is now registered as a Massachusetts vendor, but that it is not in fact engaged in business in Massachusetts within the meaning of General Laws Chapter 64H, Section 1(5).

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,

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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)).

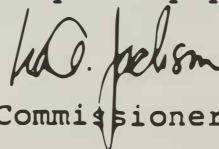
Except where a seller takes a resale certificate in good faith from a purchaser who is a registered Massachusetts vendor, it is presumed that all gross receipts of a vendor from Massachusetts sales are from sales subject to tax (G.L. c. 64H, § 8), and it is presumed that tangible personal property sold 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 as long as the Company is registered as a Massachusetts vendor, it must pay the Massachusetts sales or use tax with respect to its sales to clients of prizes that are shipped to Massachusetts recipients; in such case the Company may give its suppliers a Massachusetts resale certificate in lieu of paying the tax on its purchases of such prizes. If the Company is not engaged in business in Massachusetts, it may apply for cancellation of its Massachusetts vendor registration. From the date of such cancellation, the suppliers of prizes will be required to pay the sales or use tax with respect to their sales of prizes that they ship to Massachusetts recipients; the tax will be based on the selling price charged by the Company to its clients.

Very truly yours,



Commissioner of Revenue