

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building*

*100 Cambridge Street, Boston 02201*

IRA A. JACKSON  
COMMISSIONER

October 31, 1985

On August 15, 1983 you requested a ruling regarding the application of the sales tax to sales of propane gas by your client, a welding company. On March 5, 1984 I granted you a ruling, published as Letter Ruling 84-10 ("Letter Ruling 84-10") (copy attached). In the considered opinion of myself and my staff, I now find a portion of Letter Ruling 84-10 to be in error, and I hereby revoke that portion.

The second page of Letter Ruling 84-10 contained four rulings. Ruling No. 2 stated:

[s]ales of propane to roofers and welders are subject to the sales tax, unless the propane is to be used in the construction, reconstruction, alteration, remodeling, or repair of any building or structure owned by a governmental body or agency or by a tax-exempt organization as defined in I.R.C. § 501(c)(3) and unless the purchaser and the vendor comply with the requirements of Chapter 64H, Section 6(f).<sup>1</sup>

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<sup>1</sup> Section 6(f) of Chapter 64H exempts from the sales tax: "[s]ales of building materials and supplies to be used in the construction, reconstruction, alteration, remodeling or repair of (1) any building, structure, public highway, bridge or other public works owned by or held in trust for the benefit of any governmental body or agency mentioned in paragraph (d) and used exclusively for public purposes and (2) any building or structure owned by or held in trust for the benefit of any corporation, foundation, organization or institution described in paragraph (e) and used exclusively in the conduct of its religious, scientific, charitable

The Supreme Judicial Court stated in regard to Section 6(f) that "the exemption is explicitly defined and restricted, and we are not at liberty to revise it." S.J. Groves & Sons Co. v. State Tax Commission, 372 Mass. 140, 145 (1977). Consistent with this holding, the Department of Revenue has over the years interpreted Section 6(f) not to exempt sales of fuel used in governmental or charitable construction projects because fuels are not included in the text of the exemption.

Letter Ruling 81-52 (copy attached) dealt with sales of diesel fuel to contractors who used the fuel to run compressors and other stationary equipment used in a public works project. The former Commissioner ruled that such sales were not exempted under Section 6(f) of Chapter 64H.

"Building materials and supplies" is defined in Section 6(f) as including "all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling or repair [of the public work], as well as such materials and supplies physically incorporated therein.

By contrast, Section 6(r) of Chapter 64H, which relates to items used in manufacturing, exempts from tax certain sales of "materials, tools and fuel"....

Letter Ruling 81-52. Ruling No. 2 of Letter Ruling 84-10 contradicts Letter Ruling 81-52.

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or educational purposes; provided, however, that such governmental body or agency or such corporation, foundation, organization or institution shall have first obtained a certificate from the commissioner stating that it is entitled to such exemption and the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate. In this paragraph the words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling or repair of any building, structure, public highway, bridge or other such public work, as well as such materials and supplies physically incorporated therein. Said term shall also include rental charges for construction vehicles, equipment and machinery rented specifically for use on the site of any such tax exempt project or while being used exclusively for the transportation of materials for any such tax exempt project."

Letter Ruling 84-10 Ruling No. 2 was not intended to revoke Letter Ruling 81-52 or the Department's long-standing interpretation of Section 6(f). Ruling No. 2 is hereby revoked, and I rule that: sales of propane to roofers and welders are subject to tax. Sales of propane to be used in the construction, reconstruction, alteration, remodeling, or repair of any building or structure owned by a governmental body or agency or by a tax-exempt organization as defined in I.R.C. § 501(c)(3) are also subject to tax.

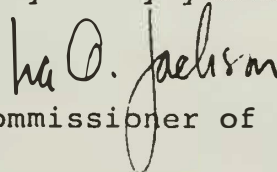
The State Tax Administration Regulation on Letter Rulings (copy enclosed) states that

[a] ruling found to be in error or not in accord with the current view of the Department may be modified or revoked. Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such ruling if (1) there has been no misstatement of fact or omission of material facts, (2) the facts subsequently developed are not materially different from the facts on which the ruling was based, (3) there has been no change in the applicable law, (4) the ruling was originally issued with respect to a prospective or proposed transaction, and (5) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to his detriment.

830 CMR 62C.03(8)(b).

The Department of Revenue will not apply the ruling retroactively against your client if your client can meet the requirements of the Regulation. No other taxpayer, however, may rely on this assurance.

Very truly yours,



Commissioner of Revenue

IAJ:JES:loc  
Enclosures

LR 85-67