

IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building

100 Cambridge Street, Boston 02204

October 28, 1985

You request a ruling regarding the application of the Massachusetts sales and use taxes to purchases of "wireless" alarm systems by ("Company"). You state that the Company purchases the alarm systems from a corporation in another state and installs them in Massachusetts. The Company pays no sales tax on its purchases in the other state. You inquire whether the sales of the Company's alarm systems should be exempt from the sales tax because the alarm systems become affixed to the customers' homes.

The Company installs all alarm systems for its customers. Installation requires putting switches at all windows and doorways and wiring the switches to a transmitter six inches away. If a door or a window is opened, the transmitter emits a signal to the central receiving unit which sounds an alarm. Other accessory features require additional wiring.

1. Massachusetts General Laws Chapter 64H, Section 2 imposes a five percent sales tax on all retail sales of tangible personal property in Massachusetts, unless otherwise exempted. A retail sale is defined as a sale of tangible personal property for any purpose other than resale in the regular course of business. G.L. c. 64H, § 1(13).

The incident of sales taxation in the state of Rhode Island, as in Massachusetts, is a retail sale of tangible personal property. See R.I. Gen. Laws § 44-18-18, reprinted in R.I. St. Tax Rep. (CCH) ¶ 60-105. Rhode Island also defines a retail sale as a sale of tangible personal property for any purpose other than resale in the regular course of business. R.I. Gen. Laws § 44-18-8, reprinted in R.I. St. Tax Rep. (CCH) ¶ 60-064.

Since the Massachusetts sales and use taxes were enacted in 1966, the sales tax treatment of contractors and subcontractors in Massachusetts has closely followed the practice and policy in the state of Rhode Island. See Ace Heating Service, Inc. v. State Tax Commission, 371 Mass. 254, 257 n. 2(1976). Rhode Island's Regulation C - Contractors and Subcontractors distinguishes between a construction contractor who constructs, reconstructs, alters, improves, remodels, or repairs real property and a person who sells tangible personal property in the same manner as other retailers and who is required to install a complete unit of standard equipment that requires no further fabrication but simply installing, assembling, applying, or connecting services. A construction contractor is required in most instances to pay sales or use tax as a consumer. A contractor acting as a retailer is required to collect the sales tax on the sales price of the property. R.I. St. Tax. Rep. (CCH) ¶ 63-823. The practice and policy of the Massachusetts Department of Revenue in this particular area is in accord with Rhode Island's Regulation C.

Applying these principles to your business, we conclude that the Company is a retailer, not a construction contractor. Although some alarm systems may involve considerable alteration of real property to set in place, the "wireless" alarm systems sold by the Company are similar to alarm systems sold by other vendors and require only installing, assembling, applying, or connecting services. Therefore, the Company should collect the sales tax from its Massachusetts customers.

You suggest that the Company's sales of alarm systems should not be subject to sales tax because the systems become a part of real property. See generally G.L. c. 64H, §§ 1(15), 2 (the tax is imposed on tangible personal property). At the time of sale, the Company's alarm systems are tangible personal property. Subsequent installation of an alarm system in a customer's home does not change the system's character as tangible personal property. The Company's sales of alarm systems are subject to sales tax.

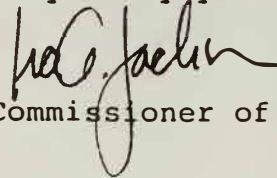
2. You also inquire whether the Company should register as a vendor.

A vendor is defined as "a retailer or other person selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the tax imposed by [Chapter 64H]." G.L. c. 64H, § 1(18); see also G.L. c. 64I, § 1(1). Section 7 of Chapter 64H provides that "[n]o person shall do business in this commonwealth as a vendor unless a registration shall have been issued to him for each place of business in accordance with Section 67 of Chapter 62C."

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The Company is a vendor as defined in Chapter 64H, Section 1(18). Therefore, the Company should register as a vendor.

Very truly yours,



Commissioner of Revenue

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