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Letter Ruling 88-3: Sales Promotion Package

February 22, 1988

You request a ruling on behalf of ("Company"). You ask about the application of the sales and use taxes to a sales promotion program to be undertaken by the Company. Under the program the Company's sales promotion package consists of a coal or wood stove plus a "Stove Owner's Package" ("SOP"). The Company will sell the sales promotion package for the retail price of the stove plus \$1.00. The SOP ordinarily retails for \$120.00. The Company will offer the sales promotion package for a limited time in the Spring.

For the reasons stated below, we make the following rulings:

1. The Company may give a resale certificate to its vendors in lieu of paying sales tax on the items included in the sales promotion package.
2. The "sales price" upon which the sales tax is imposed is the consideration paid by the Company's retail customers for the sales promotion package.
3. The Company must pay sales tax on its sales of the sales promotion package delivered to its retail customers in Massachusetts, except for any sales that are exempt from taxation under G.L. c. 64H, § 6(b).

Facts

The Company represents that the relevant facts are as follows. This ruling is conditioned on the continued existence and accuracy of all facts which the Company represents.

The Company is a Massachusetts corporation engaged in the sale of wood and coal stoves and related accessories and parts. It is registered with Massachusetts as a vendor pursuant to G.L. c. 64H, § 7. The Company's sales of stoves and related accessories take place in and out of Massachusetts. Sales are made through the Company's direct mail catalogue operation and through its retail showroom in, Massachusetts. The bulk of the Company's merchandise is purchased from companies located outside of Massachusetts.

The Company plans a sales promotion program. Under the program any customer that orders a coal or wood stove by a specified date in the Spring will receive the stove plus the SOP (together, the "sales promotion package"). The consideration paid for the sales promotion package is the retail price of the stove plus \$1.00. The SOP includes safety gloves, a log tote, and similar items that ease the use of the stove. In the past, the Company has sold the SOP by itself through its catalogue for approximately \$120.00. The Company plans to sell the SOP by itself for approximately \$120.00 after the sales promotion program ends. The Company's cost for the items included in the SOP is approximately \$19.00.

Discussion

1. The Company may give a resale certificate to its vendors in lieu of paying sales tax on its purchases of the items included in the sales promotion program.
A sales tax is imposed on the sale or use of tangible personal property in Massachusetts. G.L. c. 64H, § 2; c. 64I, § 2, respectively. Sales of tangible personal property exempt under Chapter 64H

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are also exempt from the use tax. G.L. c. 64I, § 7(b). A registered Massachusetts vendor may give a resale certificate (DOR Form ST-4) in lieu of paying the sales tax if, at the time of purchase, the vendor intends to sell the tangible personal property in the regular course of its business. G.L. c. 64H, § 8(b). A sale for resale in the regular course of business requires a determination of the "inherent nature of the business" purchasing the tangible personal property for resale. See *Clark Franklin Press Corp. v. State Tax Commission*, 364 Mass. 598, 602 (1974). The Company's vendors may accept a resale certificate only if the items in the sales promotion package are ordinarily sold by the Company. See *id.*

The inherent nature of the Company's business is the retail sale of coal and wood stoves and related accessories. The items included in the sales promotion package are ordinarily sold by the Company as part of its retail business. Thus the Company's purchases of stoves and of items included in the SOP will be for resale in the regular course of its business. Accordingly, the Company may give its vendors a resale certificate.

2. The "sales price" upon which the sales tax is imposed is the consideration paid by the Company's retail customers for the sales promotion package.

The sales tax is imposed on the sales price of the sales promotion package. In Massachusetts a vendor's gross receipts from all retail sales of tangible personal property, not otherwise exempt from taxation, are taxed at a rate of five percent. G.L. c. 64H, § 2. "Gross receipts" are defined as the total sales price received by vendors as consideration for retail sales. G.L. c. 64H, § 1(6). "Sales price" is the total amount paid (valued in money or otherwise) by a purchaser to a vendor as consideration for a retail sale. G.L. c. 64H, § 14. In determining the "sales price," cash discounts allowed or taken on sales are excluded. *Id.* at § 14(c)(i); see also 830 CMR 64H.1.4(1).

Under the sales promotion program the Company plans to sell coal and wood stoves plus the SOP for the listed price of the stove plus \$1.00. The sale of the stove and SOP is one transaction. The total consideration paid by the Company's retail customers for the stove and the SOP is the amount upon which the Company must collect and pay sales tax. For example, if during the sales promotion program the Company sells its wood stoves for \$300.00, it must collect and pay sales tax on the total sales price of the sales promotion package, \$301.00. This ruling applies only to sales of the sales promotion package, and not to sales of the SOP by itself.

3. The Company must pay sales tax on its sales of the sales promotion package in Massachusetts, except for any sales that are exempt from taxation under G.L. c. 64H, § 6(b).

The Company must pay sales tax on the total consideration paid by its retail customers for the sales promotion package delivered to its customers in Massachusetts. Sales of tangible personal property are exempt from sales taxes if the vendor is obligated under the terms of any agreement to deliver the sales promotion package (1) to a purchaser, or the purchaser's designee, outside of Massachusetts or (2) to an interstate carrier for delivery to a purchaser, or the purchaser's designee, outside of Massachusetts. G.L. c. 64H, § 6(b).

Very truly yours,
Stephen W. Kidder
Commissioner of Revenue
February 22, 1988
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