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[State Online Services](#)

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Individuals and Families

For
Businesses

For
Local Officials

For
Tax Professionals

[Home](#) > [Businesses](#) > [Help & Resources](#) > [Legal Library](#) > [Letter Rulings](#) > [Letter Rulings - By Year\(s\)](#) > [\(1985-1989\) Rulings](#) >

Letter Ruling 88-5: Sale Building Materials and Supplies Under G.L. c. 64H, s. 6 (e) and (f)

March 10, 1988

You request a ruling that building materials and supplies purchased by ("Contractor") and used in renovation of office space for the ("Corporation") are exempt from sales and use taxes under G.L. c. 64H, § 6(f). ¹ In the alternative, the Corporation claims that the building materials and supplies purchased by the Contractor as agent for the Corporation are exempt from sales and use taxes under G.L. c. 64H, § 6(e). For the reasons stated below, we rule that the tax exemptions under Section 6(f) and Section 6(e) are not applicable in the circumstances described. Accordingly, the Contractor is liable for sales and use taxes on materials purchased and used in the renovation of office space for the Corporation.

Facts

The Corporation operates the ("Hospital"), an acute care teaching hospital located in Boston, Massachusetts. The Corporation is organized as a charitable corporation under Chapter 180 of the General Laws, and is recognized by the IRS as a Section 501(c)(3) organization.

Effective December 30, 1986, the Corporation entered into a lease ("Lease") with Limited Partnership ("Partnership") for the use of office and laboratory space in Building in Boston. The Corporation has also leased parking spaces located in Building in Boston. The Partnership is a lessee of Building and the accompanying land under an eighty year ground lease from the Agency, which is a municipal agency ("Agency"). The office and laboratory space ("Premises") consist of approximately 380,500 square feet and include all or part of seven floors of a ten story building.

Under the Lease the Partnership is required to renovate the Premises according to plans prepared by the Corporation. The cost of renovation will be borne by the Partnership. The Lease states that these construction costs will be recovered through the Corporation's rent payments over the term of the Lease. The Corporation's scheduled rent payments may be adjusted if the cost of construction exceeds an agreed upon amount. The Partnership is responsible for obtaining construction financing and for paying the Contractor.

The Partnership has entered into a separate agreement with the Contractor for the construction work. Under the agreement the Contractor is responsible for purchasing the building materials needed to prepare the Premises according to the Corporation's plans.

The Corporation has the right to the use and possession of the Premises as described in the Lease for a term possibly as long as twenty years. It has an option to purchase all or a portion of the Partnership's interest in the Premises.

Discussion

1. The Premises are not "owned by" the Corporation at the time building materials and supplies will be purchased and used in the remodeling project for the Corporation.

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Section 6(f) of G.L. c. 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... (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 or educational purposes...." Paragraph (e) refers to organizations exempt from federal taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code. The Corporation is an organization of the type mentioned in paragraph (e). Also, it appears that the Premises will be used exclusively in the conduct of the Corporation's scientific and educational purposes. However, the Premises are not "owned by" the Corporation. Therefore, the sales tax exemption provided by Section 6(f) does not apply here. 2

The Corporation does not have title to the Premises. The Supreme Judicial Court has determined that when the words "owned by" are used in distinction to the words "held in trust for the benefit of," the reference to legal ownership was intended. See *Northgate Construction Co., Inc. v. State Tax Commission*, 377 Mass. 205, 208 (1979). The Corporation must have legal title outright or an equity of redemption in order to "own" the Premises for purposes of 6(f). See Letter Ruling 87-16. Here where the Corporation holds only a leasehold estate in the Premises, the Premises are not "owned by" the Corporation within the meaning of Section 6(f). Accordingly, the sales of building materials and supplies used in the Premises are not exempt from sales and use taxes under G.L. c. 64H, § 6(f).

2. The sales of building materials and supplies to the Contractor acting as agent for the Corporation does not exempt the Contractor from the payment of sales and use taxes.

Section 6(e) of G.L. c. 64H exempts from sales tax "[s]ales to any corporation, ..., which is exempt from taxation under the provisions of section five hundred and one (c)(3) of the Federal Internal Revenue Code, as amended, and in effect for the applicable period;... "The Corporation is a Section 501(c)(3) organization. It argues that since the sales of building materials and supplies directly to the Corporation would be exempt from sales taxes under Section 6(e) the sales of building materials and supplies to the Contractor acting as agent for the Corporation also are exempt from sales taxes under Section 6(e). We disagree.

Section 6(e) exempts from sales tax the sale of tangible personal property directly to a Section 501(c)(3) organization. The plain words of the statute limit the exemption to sales made to a Section 501(c)(3) organization. No words in Section 6(e) support the Corporation's expansive agency argument, and we cannot give the statute such an expansive interpretation. See *Children's Hospital Center v. Board of Assessors of Boston*, 388 Mass. 832 (1983) (exemption from taxation by statute strictly construed). Moreover, to adopt the Corporation's interpretation of Section 6(e) would make Section 6(f) meaningless. See *School Committee of Brockton v. Teacher's Retirement Board*, 393 Mass. 256 (1984) (every statutory provision given effect and no provision is inoperative or superfluous). Accordingly, sales of building materials and supplies to the Contractor are not exempt from sales and use taxes under G.L. c. 64H, § 6(e).

3. The Contractor will be liable for sales and use taxes on materials purchased and used in the renovation and construction of the Premises for the Corporation.

A five percent excise is imposed upon the sale or use of tangible personal property in Massachusetts, unless otherwise exempted. G.L. c. 64H, § 2, and c. 64I, § 2 respectively. Sales of tangible personal property exempt under Chapter 64H are also exempt from the use tax. G.L. c. 64I, § 7(b). For the reasons stated above, the sales of building materials and supplies to the Contractor are not exempt from sales and use taxes under G.L. c. 64H, §§ 6(e) and 6(f), respectively.

Furthermore, the Contractor is not considered a purchaser for resale. See G.L. c. 64H, § 8. A contractor who purchases materials from a retailer for use in building construction is considered the consumer of the materials. See *Seltzer and Co., Inc. v. State Tax Commission*, ATB Docket Nos. 68886, 68887 (1975), *aff'd sub. nom. Ace Heating Service, Inc. v. State Tax Commission*, 371 Mass. 254 (1976). Although the legal incidence of the tax falls upon the vendor, the payment of the tax falls upon the purchaser. See G.L. c. 64H, §§ 2 and 3(a), respectively; see also *Harvard Business School Association of Boston V. Department of Revenue*, ATB Docket No. 144464 (1986). Accordingly, the Contractor is liable for the payment of sales and use taxes on the building materials and supplies purchased and used in the remodeling of the Premises under the Lease.

Very truly yours,
Stephen W. Kidder,
Commissioner of Revenue
March 10, 1988

LR 88-5

Footnotes:

1 The Corporation itself requests the ruling, presumably on behalf of the Contractor, the party that will purchase the building materials and supplies.

2 The Corporation does not argue that the Premises are "held in trust" for its benefit. Accordingly, we have not ruled on this issue.