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## Letter Ruling 89-3: Sale of Videotaped Animation and Purchase of Production Equipment

May 11, 1989

You request a ruling regarding the application of the Massachusetts sales tax to sales of videotaped animation productions by \_\_\_\_\_ ("Company"). You also ask whether the Company is required to pay sales tax on the purchase of the videotape recorder, digital disk recorder, and computer it uses to produce the videotaped animation.

You state that each videotaped animation production is specifically commissioned by the buyer for use either as an end product or for resale. The Company uses a computer to create animated images. The computer-generated images are then transferred by means of computer interface to a digital disk recorder which records them on computer hard disks. The images are then transferred electronically from the digital disk recorder to the videotape recorder, which records them on videotape as they are transferred. The finished videotaped animation production is then delivered to the buyer. The videotape recorder, digital disk recorder, and computer are in a fixed location at the Company's plant where the entire production process takes place. None of the equipment is used for any purpose other than the production of the videotaped animation.

We rule that the Company's transfers of videotaped animation productions are sales of tangible personal property. We further rule that the Company's purchase of the videotape recorder, digital disk recorder, and computer are exempt from the sales tax.

### Sale of Videotaped Animation Productions

Chapter 64H, § 2 imposes a five percent sales tax on retail sales of tangible personal property. A sale is defined as any transfer of title to or possession of tangible personal property for consideration. G.L. c. 64H, § 1(12)(a). A sale is further defined as "[a] transfer for consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication." G.L. c. 64H § 1(12)(c). 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).

Chapter 64H, § 1(13)(c) excludes from the definition of a retail sale "professional, insurance or personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made." The Massachusetts Supreme Judicial Court set out the standard for determining whether or not a transaction is a service transaction in *Houghton Mifflin Co. v. State Tax Commission* (hereinafter *Houghton Mifflin I*):

"[T]he test is the object of the transaction. If the buyer's fundamental object is to obtain the item of personal property transferred to it, the sale of that property cannot reasonably be considered 'inconsequential' and the transaction cannot reasonably be considered one for personal service."

373 Mass. 772, 775 (1977).

The Court reiterated this standard in *Commissioner of Revenue v. Houghton Mifflin Co.* (*Houghton Mifflin II*):

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"Whether a particular transaction involving the transfer of property is a personal service transaction depends on the facts...[W]here the services and the property are inseparable, because of the integrated nature of the transaction, the character of the transaction must be analyzed to ascertain whether the buyer's basic purpose was to acquire the property which was sold to it, or to obtain the services."

396 Mass. 666, 670 (1986) (quoting Houghton Mifflin I, 373 Mass. at 774).

Where the object of a transaction is to provide a buyer with an item of tangible personal property, the transaction is a sale of tangible personal property, whether or not the item is produced to the special order of the buyer and regardless of how much creativity on the part of a professional it takes to produce it. See Letter Ruling 84-55 (transaction providing buyer with custom produced videotaped advertisement is a sale of tangible personal property); Letter Ruling 83-42 (transaction providing buyer with documentary film and slide show produced by the seller is a sale of tangible personal property); Letter Ruling 82-115 (transaction providing buyer with custom produced videotape of social event, wedding, or bar mitzvah is a sale of tangible personal property).

Under the facts as you state them, the object of the Company's buyers, who specifically commission videotaped animation productions, is to obtain the productions. The videotaped animation productions are items of tangible personal property. Letter Ruling 84-55 (videotapes of custom produced advertisements are tangible personal property); Letter Ruling 82-115 (videotapes of social events, weddings, and bar mitzvahs are tangible personal property); The Company's Transactions are, therefore, sales of tangible personal property. This is so even though the videotaped animation is custom designed and requires special creativity and professional training on the part of the Company to produce. Thus, we conclude that the Company's sales of videotaped animation productions to buyers who use them as end products are subject to the sales tax. Sales of videotaped animation productions to buyers who intend to use them for resale are not subject to the sales tax if the Company obtains a resale certificate from the buyer in good faith and in accordance with the requirements of Chapter 64H, § 8.

#### Purchase of Production Equipment

Chapter 64H, § 6(s) exempts from the sales tax "[s]ales of machinery...used directly and exclusively...in an industrial plant in the actual manufacture, conversion or processing of tangible personal property to be sold..." Machinery is deemed to be used directly and exclusively in the actual manufacture, conversion, or processing of tangible personal property to be sold "only where such machinery is used solely during a manufacturing, conversion, or processing operation to effect a direct and immediate physical change upon the tangible personal property to be sold...[or] to guide or measure a direct and immediate physical change upon such property where such function is an integral and essential part of tuning, verifying or aligning the component parts of such property." G.L. c. 64H, § 6(s). "Industrial plant" is defined as a factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business. *Id.*

Under the facts as you state them, we conclude that the videotape recorder effects a direct and immediate physical change upon the videotape. The digital disk recorder and computer guide a direct and immediate physical change upon the videotape. The company's facilities constitute an "industrial plant." The videotape recorder, digital disk recorder, and computer are used exclusively in the Company's industrial plant in the actual manufacture of the videotaped animation productions. Therefore, the Company's purchase of the videotape recorder, digital disk recorder, and computer are exempt from the sales tax.

You have not asked for and we make no ruling regarding the Company's eligibility for manufacturing corporation classification under Chapter 58, § 2 and Chapter 63, § 38C. Massachusetts law employs different standards to determine eligibility for manufacturing corporation classification and eligibility for the exemption afforded by Chapter 64H, § 6(s). The qualification of the Company's purchase of production equipment for the Section 6(s) exemption does not mean that the Company is eligible for manufacturing corporation classification. See *Southeastern Sand and Gravel, Inc v. Commissioner of Revenue*, 384 Mass. 794, 796 (1981).

Very Truly Yours  
/s/ Stephen W. Kidder  
Commissioner of Revenue  
May 11, 1989

LR 89-3

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