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Letter Ruling 93-10: Sales Tax Treatment of Building Materials and Supplies Used in the Construction of a Memorial by a Veterans Group

July 8, 1993

You request a letter ruling on behalf of ***** (hereinafter "Committee"). The Committee plans to construct a memorial to ***** War veterans at the ***** Yard. You claim that the purchases of "building materials and supplies" to be used in the construction of the memorial are exempt from Massachusetts sales tax. We rule that such purchases are exempt from Massachusetts sales tax under G.L. c. 64H, § 6(f), in accordance with this letter ruling.

I. Facts

The Committee is a non-profit corporation organized under Massachusetts General Laws, as provided by G.L. c. 180, § 1 et seq. The Internal Revenue Service has determined that the Committee is exempt from federal taxation under § 501(a) of the Internal Revenue Code ("Code"), as a corporation described under § 501(c)(19)[1] of the Code.

The Committee's primary purpose is the construction of a memorial to the Massachusetts members of the United States armed forces who died or who are listed as missing in action in services during the ***** War. The memorial will be built on the grounds of the ***** Yard. The Committee has commenced a public fundraising drive to pay for the construction of the memorial. The Massachusetts Legislature has authorized matching state funds up to a specified ceiling (\$ 175,000.00) toward the cost of the memorial, and the Treasurer of the Commonwealth has paid these matching funds over to the Committee.

Legal title to the ***** Yard is in the ***** (hereinafter "Agency") by virtue of a quitclaim deed from the United States Government, which requires the Agency to use and maintain the property "exclusively for public purposes." The Agency is an agency of the City ***** . The Agency and the Committee have entered into a license agreement whereby the Agency has approved the construction of the memorial by the Committee on the grounds of the ***** Yard. At all times during the construction of the memorial, and thereafter, the memorial will be owned by the Agency.

II. Discussion

In Massachusetts, an excise is imposed upon the retail sale of tangible personal property in the Commonwealth by any vendor, unless otherwise exempt. See G.L. c. 64H, § 2. Chapter 64H,

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section 6(f), of the General Laws exempts "[s]ales of building materials and supplies to be used in the construction of any building structure ... owned by ... any governmental body or agency mentioned in G.L. c. 64H, § 6(d)^[2] and used exclusively for public purposes." Id.

For purposes of section 6(f), the term "building materials and supplies" is limited to materials and supplies that are "physically incorporated" in the structure; or, if not physically incorporated, if they are "consumed, employed or expended" in the construction of the memorial. See S.J. Groves & Sons Co. v. State Tax Commission, 373 Mass. 140, 140-45 (1977); see also Letter Rulings 79-36, 81-44, 81-52, 83-15 and 91-7. The term "building materials and supplies" also includes 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. Id.

Also for purposes of section 6(f), the "building materials and supplies" purchased for construction must be used in a "building structure ... owned by" any governmental agency exempt from sales tax under G.L. c. 64H, § 6(d), and "used exclusively for public purposes." G.L. c. 64H, § 6(f) (emphasis added). The term "owned by" means that the governmental agency must have legal title to the "building structure" at the time of purchase of the "building materials and supplies" in question. See Northgate Construction Co. v. State Tax Commission, 377 Mass. 205, 208 ((1977); see also Letter Rulings 87-16, 88-5.

At all times during the construction of the memorial, and thereafter, the memorial will be "owned by" the Agency. The Agency is an agency of the City ***** , which is a political subdivision of the Commonwealth, and, therefore, it is an "agency" within the meaning of G.L. c. 64H, § 6(d). See First Agricultural National Bank v. State Tax Commission, 353 Mass. at 175-76. The memorial will be built on land in the ***** Yard, which is used and maintained by the Agency "exclusively for public purposes." Accordingly, the purchase "building materials and supplies" used in the construction of the memorial will be exempt from Massachusetts sales tax under G.L. c. 64H, § 6(f).^[3]

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:sfr

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^[1] Code section 501(c)(19), describes a post or organization of which 75% of its members are past or present members of the armed forces. I.R.C. § 501(c)(19). Such an organization is exempt from federal taxation, as provided by I.R.C. § 501(a).

^[2] Section 6(d), exempts "[s]ales to the United States, the commonwealth or any political subdivision thereof, or their respective agencies." G.L. c. 64H, § 6(d).

^[3] In order to make exempt purchases of "building materials and supplies" under G.L. c. 64H, § 6(f), the Committee, or its contractor, must first obtain a copy of the Agency's DOR Form ST-2, Certificate of Exemption, and present it along with a completed DOR Form ST-5C, Contractor's Exempt Purchaser Certificate, to its vendors for each purchase. See Administrative Procedures 101.1.3.