

# *The Commonwealth of Massachusetts*



*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

L. JOYCE HAMPERS  
COMMISSIONER

July 13, 1982

("Partnership A") is a partnership of ("Father") and his son ("First Son"). The two partners intend to form a new partnership ("Partnership B") made up of the Father, the First Son, and a second son ("Second Son"). Partnership A will be dissolved, and Partnership B will carry on the business now conducted by Partnership A. As part of this restructuring of the family business, Partnership A proposes to transfer motor vehicles and equipment directly to Partnership B. You inquire whether the Massachusetts sales or use tax will apply to this transaction.

General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts. Chapter 64I, Section 2 imposes an excise on the storage, use or other consumption in Massachusetts of tangible personal property purchased for storage, use or other consumption in Massachusetts. "Sale" and "purchase" are generally defined as any transfer of title or possession of tangible personal property for a consideration, in any manner or by any means whatsoever (G.L. c. 64H, s. 1(12)(a); c. 64I, s. 1).

Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail are exempt from the sales tax (G.L. c. 64H, s. 6(c)), but casual and isolated sales of motor vehicles, trailers, boats and airplanes are generally subject to the use tax (G.L. c. 64H, s. 6(c); c. 64I, s. 7(b)).

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In Commissioner of Revenue v. SCA Disposal Services, Inc., 1981 Mass. Adv. Sh. 1337, 421 N.E. 2d 766, the Supreme Judicial Court held that a transfer of motor vehicles pursuant to a statutory merger of wholly-owned subsidiary corporations was not subject to the use tax.

Subdivision (9) (b) (1) of Sales and Use Tax Regulation 830 CMR 64H.02, as amended effective May 27, 1982, provides that the following transfers of motor vehicles are not subject to tax if the transferor has previously paid a sales or use tax on his purchase or use of the vehicle:

"a. The transfer of a motor vehicle pursuant to the formation of a partnership or corporate trust, or the organization of a corporation, solely in exchange for an ownership interest in the enterprise.

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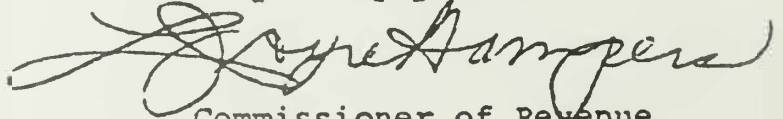
c. The transfer in kind of a motor vehicle to an owner of an enterprise, in exchange for his ownership interest, on the complete dissolution of a partnership or corporate trust or the complete liquidation of a corporation. (A transfer of a motor vehicle in exchange for cash or other consideration which is to be distributed on the dissolution of a partnership or corporate trust or the liquidation of a corporation is subject to the sales or use tax)."

Based on the foregoing, it is ruled that:

1. If it is established that a sales or use tax has previously been paid with respect to the motor vehicles, neither sales nor use tax will apply to their transfer from Partnership A, which is wholly owned by the Father and the First Son, to Partnership B, which will be wholly owned by the Father and the First and Second Sons, and which will carry on the business now conducted by Partnership A.

2. The transfer of equipment or other property not including motor vehicles, trailers, boats or airplanes will be exempt from sales or use tax as a casual or isolated sale.

Very truly yours,



Commissioner of Revenue