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The Commonwealth of Massachusetts
Department of Revenue
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You request a ruling as to the application of the Massachusetts sales tax to the purchase of motor vehicles for resale in Europe. You state that you intend to buy motor vehicles in Massachusetts and other states and take them to a freight forwarder in New Jersey or New York. From there the vehicles would be shipped to Europe where you intend to sell them.

General Laws Chapter 64H, Section 2 imposes a five percent sales tax on all retail sales of tangible personal property in Massachusetts, unless otherwise exempted. A retail sale is any sale of tangible personal property for any purpose other than resale in the regular course of business. (G.L. c. 64H, § 1(13)). All sales are presumed to be retail sales until the contrary is established. (G.L. c. 64H, § 8(a)).

The sales tax imposed on sales of motor vehicles is not collected by the vendor, but is instead collected upon registration of the motor vehicle. (G.L. c. 64H, § 3(c)). Every transfer of the registration of a motor vehicle is presumed to be a taxable retail sale, and no certificate of registration can be issued by the Registrar of Motor Vehicles until the owner furnishes evidence that any sales tax due has been paid. (G.L. c. 64H, § 25).

The Massachusetts Sales and Use Tax Regulation on Motor Vehicles provides that a sale of a motor vehicle to a dealer holding a valid Massachusetts vendor's registration is exempt from the sales tax if the dealer has purchased the motor vehicle for the exclusive purpose of reselling it in the ordinary course of business. To qualify for the exemption, the dealer must execute a Resale Certificate (Form ST-4).

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The certificate "(1) indicates that the purchaser holds a valid Massachusetts vendor's registration, (2) describes the property to be purchased, and (3) certifies that at the time of purchase he intends to sell or lease it in the regular course of business." (830 CMR 64H.02(5)(a)).

A vendor is defined as any person selling tangible personal property the sales of which are taxable. (G.L. c. 64H, § 1(18)). No person may do business in Massachusetts as a vendor unless a registration has been issued to him for each place of business in accordance with the requirements of Chapter 62C, Section 67. (G.L. c. 64H, § 7).

To obtain a vendor's registration, the applicant should file Form TA-1 with the Department of Revenue and pay the \$10.00 registration fee for each place of business. Upon registration, the vendor should receive from the Department of Revenue a Form ST-1, the Sales and Use Tax Registration Certificate. (See 4 ABCs of Massachusetts Taxes 5 (1980)).

Section 5 of Chapter 90 provides for a special registration procedure for motor vehicles owned or controlled by dealers. A dealer may make application to the Registrar of Motor Vehicles for a general distinguishing number or mark. If the Registrar approves the application, all motor vehicles owned or controlled by the dealer are considered registered under the assigned general distinguishing number or mark until they are sold. (G.L. c. 90, § 5).

A dealer is defined as "any person who is engaged principally in the business of buying, selling, or exchanging motor vehicles or trailers or motor vehicle bodies or tops." (G.L. c. 90, § 1). Chapter 140, Section 57 requires that anyone engaged in the business of buying, selling, exchanging, or assembling secondhand motor vehicles must obtain a license as provided under Section 59 of Chapter 140.

Chapter 140, Section 58 describes three classes of licenses for the buying and selling of motor vehicles. Class 1 applies to the recognized agents of automobile manufacturers, who sell new motor vehicles. Class 1 license-holders may buy and sell secondhand motor vehicles as an incidental part of the selling of new motor vehicles, but must conform to the requirements of Chapter 140, Section 57 when buying and selling secondhand motor vehicles. Class 2 applies to persons whose principal business is the buying and selling of secondhand motor vehicles. Class 3, a motor vehicle junk license, applies to persons whose principal

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business is the buying of used motor vehicles to remodel or disassemble them. You would need a Class 2 license to engage in the purchase of secondhand motor vehicles for resale in Europe.

Chapter 140, Section 59 provides that the licensing authority of each city or town may grant dealers' licenses. Any person aggrieved by any action of his city or town licensing authority may appeal to the Superior Court of his county within ten days of the action. (G.L. c. 140, § 59).

Based on the foregoing, it is ruled that purchases of motor vehicles for resale are not subject to the sales tax if the purchaser holds a valid Massachusetts vendor's license and executes a Resale Certificate for each vehicle. However, Chapter 140, Section 57 of the General Laws requires that you also obtain a dealer's license to engage legally in the business of buying and selling motor vehicles.

Very truly yours,



Commissioner of Revenue

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