



The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

March 25, 1980

You inquire whether the following purchases by your company (the "Airline"), which operates in Massachusetts solely as an interstate airline, are subject to Massachusetts sales or use taxes:

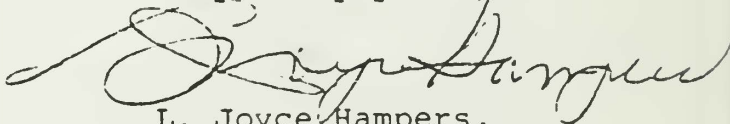
- (1) the Airline orders tangible personal property from a vendor located outside of Massachusetts, F.O.B. vendor's state. The property is shipped via a common carrier to Logan Airport in Boston and from there via the Airline on an Airline bill of lading to Minnesota or a foreign location. The Airline handles the property as any other freight shipment;
- (2) the Airline purchases property from a vendor located in Massachusetts, F.O.B. Massachusetts, with shipment and ultimate destination the same as in (1);
- (3) the Airline purchases property from a vendor located in Massachusetts, F.O.B. outside Massachusetts, with the ultimate destination the same as in (1).

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise upon sales at retail of tangible personal property in the Commonwealth by any vendor; Chapter 64I, Section 2 imposes an excise upon the storage, use or other consumption in the Commonwealth of tangible personal property purchased from any vendor for storage, use or other consumption within the Commonwealth. Under Chapter 64I, Section 1 (5), storage and use does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the Commonwealth for use thereafter solely outside the Commonwealth. Neither sales nor use tax applies to sales which the Commonwealth is prohibited from taxing under the Constitution or laws of the United States, nor to sales of tangible personal property in transit or stored at points of entry intended for export or import or which the vendor is obligated under the terms of any agreement to deliver to a purchaser outside the Commonwealth or to an interstate carrier for delivery to a purchaser outside the Commonwealth. Chapter 64H, Section 6(a), (b); Chapter 64I, Section 7(b).

Based on the foregoing, it is ruled that

- (1) transaction (1) is not subject to sales or use tax;
- (2) transaction (2) is subject to sales tax; and
- (3) transaction (3) is exempt from sales or use tax if the terms of any agreement require that the F.O.B. point be outside Massachusetts.

Very truly yours,



L. Joyce Hampers,
Commissioner of Revenue

LJH/JXD/jmcd

LR 80-14