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Letter Ruling 80-52: Situs of Sale; Machinery Used in Manufacturing Name

July 17, 1980

***** (the "Seller"), a Massachusetts registered vendor, sold certain parts for machinery to a Massachusetts corporation with its principal office in Worcester (the "Purchaser"). The Seller delivered the parts to the Purchaser in Worcester, and the Purchaser subsequently transported them in its own truck to its Georgia plant for use in Georgia. The Purchaser is taking the position that it need not reimburse the Seller for the Massachusetts sales tax on the grounds that the sale did not take place in Massachusetts. Furthermore, although it did not give the Seller an exempt use certificate pursuant to the sale, the Purchaser has subsequently raised the possibility that the sale fell within the exemption under Massachusetts General Laws Chapter 64H, Section 6(s) for sales of certain machinery and replacement parts used in manufacturing.

You inquire whether the sale of the parts was subject to the Massachusetts sales tax, and if so, whether the Purchaser must reimburse the Seller therefor.

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise upon sales at retail of tangible personal property in the Commonwealth by any vendor. The sales tax does not apply 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).

Section 3 of Chapter 64H requires the purchaser to reimburse the vendor for the sales tax, and provides that the tax when added to the sales price is a debt from the purchaser to the vendor recoverable at law in the same manner as other debts.

Under Chapter 64H, Section 8(a), all gross receipts of a vendor from the sale of tangible personal property are presumed to be from sales subject to tax until the contrary is established. Section 8(f) provides that the vendor is relieved from further liability for the tax if the purchaser will use the property sold in a manner which exempts it from the tax, and if the purchaser gives the vendor an exempt use certificate certifying that the property being purchased will be so used.

Based on the foregoing, it is ruled that the sale of the parts took place in Massachusetts and is presumed to have been subject to tax. The Purchaser must reimburse the Seller for the tax, but if

the Purchaser can prove that the sale was exempt under Section 6(s), the Seller, or the Purchaser acting under power of attorney from the Seller, may apply for an abatement of the tax.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH:JXD:mf

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