



An update regarding Massachusetts sales tax

TAX AND BENEFITS CHALLENGES | APR 04, 2013

Transfer of medical equipment subject to sales tax

On March 13, 2013, the Massachusetts Department of Revenue ("DOR") ruled that the transfer of mobile medical laser eye equipment by a corporation to a medical service provider located in Massachusetts was a lease or rental of tangible personal property subject to sales tax instead of a nontaxable service requiring the use of the property by the service provider. The DOR also ruled that any services provided by the corporation's technicians to the physicians who operate the equipment are exempt from sales tax if separately stated on the invoice.

Massachusetts imposes a sales tax on any retail sales made in Massachusetts of tangible personal property. The definition of a "sale" includes any transfer of title or possession, or both, including a lease or rental of tangible personal property for consideration. The determination of whether the transaction is a taxable lease or rental of tangible personal property or a nontaxable service requiring the use of the property by the service provider depends upon whether possession of the property is transferred to the lessee. Possession is deemed to have passed to the lessee whenever the property is under the lessee's control or direction.

Even though the corporation provided a technician to provide certain services related to the equipment to the medical service provider, such as delivery, installation, calibration (before and after each use), disassembling, removal, and any other assistance requested by the physicians, the DOR determined that it was the physicians of the medical service provider who were responsible for using, directing and controlling the equipment in administering the laser procedures to patients, not the corporation's technicians. Therefore, the medical service provider satisfied the requirements for possession of the equipment, which caused the transaction to be classified as a lease or rental of tangible personal property subject to sales tax.

FREIGHT INSURANCE CHARGES SUBJECT TO SALES TAX

A multi-national supplier of test equipment and information technology solutions headquartered in Massachusetts requested a ruling from the Massachusetts Department of Revenue ("DOR") about whether separately stated freight insurance charges invoiced to a Massachusetts customer are subject to Massachusetts sales tax.

In this case, the ruling turned on whether a freight insurance charge is a transportation charge. The DOR's current policy is to exclude transportation charges from the sales price subject to the sales tax provided that the charge:

1. Reflects a cost of preparing and moving the goods to a location designated by the customer.
2. Is separately stated on the invoice to the customer.
3. Is set in good faith and reasonably reflects the actual costs incurred by the vendor.

On March 27, 2013, the DOR ruled that a freight insurance charge is not a transportation charge and is subject to Massachusetts sales tax. The DOR explained that freight insurance charges are not a component of preparing and moving the goods from the vendor to the customer. Instead, such charges protect against the economic loss resulting from the damage to or loss of the goods.