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## Opinion of the Tax Commissioner

Date Issued: July 20, 2005

Opinion No: 05-0004

Tax: Sales

XXXX  
XXXX  
XXXX  
XXXX  
XXXX

Subject: Floor-Cleaning Equipment

Dear XXXX:

You submitted two separate letters on behalf of your company (XXXX) requesting an Opinion of the Tax Commissioner on the application of Ohio's exemption for manufacturing equipment. Since the letters were essentially identical, they will be consolidated into one Opinion.

### FACTS

The facts you presented in your May 27 letter are as follows:

Our company makes floor-cleaning equipment. This equipment includes motorized sweepers and scrubbers that can be ridden by the operator or manually moved throughout the area to be cleaned. These machines are displayed on our Internet website, XXXX.

Currently in the state of Ohio we have customers who are manufacturers or are engaged in industrial processing. These customers are claiming tax exemption on the products that they purchase from us under the manufacturing purpose exemption. We are not aware that the machines are being utilized in any way other than their intended use suggests.

In your May 31 letter, the facts are identical except that the customers are described as "food manufacturers or engaged in food processing."

### OPINION REQUESTED

Your May 27 letter asks:

Would your office please issue an opinion on whether equipment designed to clean floors fulfills the definition of manufacturing equipment under Ohio state law and is eligible for the manufacturing exemption?

Your May 31 letter asks:

Would your office please issue an opinion on whether equipment designed to clean floors fulfills the definition of a manufacturing equipment in a food-processing environment under Ohio state law and is eligible for the manufacturing exemption?

## **LAW**

Ohio applies its sales tax to all retail sales of tangible personal property and certain specified services in Ohio. See Ohio Revised Code (“R.C.”) section 5739.02(A). Under R.C. 5739.17, Ohio vendors are required to register and collect the Ohio sales tax. Use tax applies to the “storage, use, or consumption” of tangible personal property or the receipt of taxable services in Ohio. See R.C. 5741.02(A). Out-of-state sellers having nexus with Ohio are required to collect and remit the Ohio use tax on sales of tangible personal property delivered to, or taxable services received by, their Ohio consumers. See R.C. 5741.17.

In general, exemptions to the sales tax are found in R.C. 5739.02(B). These same exemptions apply to the Ohio use tax pursuant to the operation of R.C. 5741.02(C)(2). R.C. 5739.02(B)(43)(g) provides exemption for transactions where the purpose of the consumer is:

To use or consume the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale.

R.C. 5739.01(S) defines a “manufacturing operation” as follows:

"Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

R.C. 5739.011 expands on the sales tax exemption available to manufacturers. Division (C)(8) of that section indicates that the exemption does not apply to:

Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility.

R.C. 5739.02(B)(27) provides exemption for:

Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

- (a) To prepare food for human consumption for sale;
- (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;
- (c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

## **DISCUSSION**

Under Ohio law, manufacturing is the process of converting materials into a different state or form for sale. Only items that are part of the manufacturing process qualify for the manufacturing exemption. Floor cleaning would not be part of the actual production process for a manufacturing operation. Rather, it would be the cleaning of real property. R.C. 5739.011(C)(8), quoted above, specifically denies exemption to equipment used for this purpose. Therefore, floor cleaning equipment does not qualify for the manufacturing exemption of R.C. 5739.02(B)(43)(g). This would be true regardless of the product produced by the manufacturer.

As a general rule, food processors are manufacturers and entitled to the same exemption from sales tax as other manufacturers. As such, floor sweeping equipment would not be entitled to exemption at a food processing facility for the reasons stated in the paragraph above. However, R.C. 5739.02(B)(27) provides additional exemptions for certain purchases by a “food service operation” that is licensed pursuant to R.C. 3717.43. R.C. 3717.01(F) provides the following definition for a “food service operation”:

“Food service operation” means a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation.

Essentially, this definition limits the exemption of R.C. 5739.02(B)(27) to establishments that serve or sell foods in individual portions, not food processing facilities. Examples of a “food service operation” would include restaurants, caterers, or vending operations.

Even if the purchaser of floor cleaning equipment was a food service operation within the meaning of R.C. 3717.01(F), the equipment would not qualify for the exemption provided in R.C. 5739.02(B)(27). The floor sweeping equipment is not used to prepare or preserve food. Neither is it used to clean tangible personal property that is used to prepare or serve food. R.C. 5739.02(B)(27) does not provide exemption for equipment used to clean real property such as floors.

### **OPINION OF THE TAX COMMISSIONER**

Therefore, it is the Opinion of the Tax Commissioner that equipment designed to clean floors is not equipment that is used in a manufacturing operation that would be entitled to an exemption under R.C. 5739.02(B)(43)(g) or R.C. 5739.011. Furthermore, it is the Opinion of the Tax Commissioner that equipment designed to clean floors is not equipment that would qualify for exemption from Ohio sales or use tax under R.C. 5739.02(B)(27).

This Opinion is limited to the legal issue addressed in this Opinion. This Opinion only applies to the taxpayer and it may not be transferred or assigned. In addition, the tax consequences stated in this Opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the taxpayer to be aware of such changes. See R.C. 5703.53(E).

Sincerely,

William W. Wilkins  
Tax Commissioner