
Opinion of the Tax Commissioner

Date Issued: July 6, 1990

Opinion No: 90-0006

Tax: Personal Property

XXXX
XXXX
XXXX

Subject: Foreign Trade Zone

This request for an opinion of the Tax Commissioner was received on May 24, 1990. Specifically, it concerns the application of the personal property tax on inventory to be located in the foreign trade zone of the XXXX (hereinafter XXXX).

XXXX (hereinafter taxpayer) has submitted documentary evidence supporting the following factual circumstances:

- 1) The XXXX received a Grant to Establish, Operate and Maintain a Foreign Trade Zone on XXXX in compliance with the applicable federal law for a XXXX acre tract.
- 2) The foreign trade zone at the XXXX meets the definition of a foreign trade zone found in R.C. 5709.44 (A) (2), in that the foreign trade zone was established prior to January 1, 1990.
- 3) No part of the XXXX foreign trade zone has been "activated", i.e., specifically designated under the U.S. Customs laws for duty-free import of foreign merchandise.

R.C. 5709.44 provides:

(A) As used in this section:

- (1) "Tangible personal property" means the personal property of a merchant that is required to be returned on the average basis as provided in section 5711.15 of the Revised Code, and the average value of all articles purchased, received, or otherwise held by a manufacturer for the purpose of being used in manufacturing, combining, rectifying, or refining, and the average value of all articles that were at any time manufactured or changed in any way by the taxpayer, either by combining, rectifying, or refining, or adding thereto;
- (2) "Foreign Trade Zone" means a general purpose foreign trade zone or a special purpose subzone for which, pursuant to the "Act of June 18, 1934," 48 Stat. 998, 19 U.S.C.A. 81a, as amended, a permit for foreign trade zone status was granted before the effective date of this amendment, including expansions of and

additions to such a zone that are adjacent to the zone as it existed on the effective date of this amendment, but excluding special purpose subzones for which a permit is granted on or after such date.

- (A) Tangible personal property, including such property when used solely for display or demonstration purposes, shall be considered to be in the stream of foreign commerce and shall be exempt from personal property taxation while held in a foreign trade zone.

Accordingly, it is the opinion of the Tax Commissioner that a foreign trade zone, within the meaning of R.C. 5709.44 (A) (2), is in existence at the XXXX. It is also the opinion of the Tax Commissioner that any “tangible personal property” (not including that property properly listed on Schedules 2 and 4 of an Ohio personal property tax return) as defined in R.C. 5709.44(A) (1) and which is located within the XXXX foreign trade zone is exempt from the Ohio personal property tax. Therefore, only property commonly reported as “inventory” for personal property tax purposes qualifies for exemption under R.C. 5709.44. “Tangible personal property” includes all “inventory” of a merchant and a manufacturer whether imported into Ohio, held for export from Ohio, or manufactured in Ohio. All other tangible personal property used in business by the applicant in the Foreign Trade Zone shall be taxable as otherwise provided in Title 57 of the Revised Code.

Finally, it is the opinion of the Tax Commissioner that R.C. 5709.44 does not mandate that a foreign trade zone be activated in order to qualify inventory exempt from the personal property tax. Therefore, any inventory of the taxpayer within the foreign trade zone at the XXXX is exempt from the Ohio personal property tax.

If the taxpayer should in the future locate its inventory in an area not presently a part of the XXXX foreign trade zone or the XXXX should sell or otherwise transfer the portion of the foreign trade zone where taxpayer has inventory, this opinion shall not extend to such portion of the zone. Furthermore, should the Foreign Trade Zones Board withdraw the grant of the XXXX foreign trade zone, the exemption provided by R.C. 5709.44 will expire, and inventory located in the Zone shall become taxable as of the first tax lien date following such withdrawal with the value of such inventory measured by the average value of inventory on hand for the twelve months preceding that lien date.

This opinion applies to the taxpayer and its property only. 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. R.C. 5703.53 (E).

Joanne Limbach
Tax Commissioner