
Opinion of the Tax Commissioner

Date Issued: June 7, 1993

Opinion No: 93-0002

Tax: Sales

XXXX
XXXX
XXXX

Subject: Food Premises

This request for an opinion of the Tax Commissioner was received on February 1, 1993. It concerns the application of sales tax on the food sales within the zoo park.

FACTUAL BACKGROUND

- (1) The taxpayer, a non-profit corporation, operates a zoo near XXXX, Ohio.
- (2) The zoo is operated on land owned by the City of XXXX and XXXX County. A long term lease was entered into between the taxpayer and the City of XXXX and XXXX County for the use of the land.
- (3) The buildings on the zoo grounds are the property of the City of XXXX; while the taxpayer is the owner of all leasehold improvements and equipment situated within the zoo.
- (4) Fast food items, candy and beverages for human consumption are sold throughout the zoo from six (6) permanent concession stands, as well as mobile food carts. Limited seating at picnic tables is provided near the permanent stands.
- (5) The majority of the food purchased is consumed within the zoo ground.

QUESTION FOR WHICH OPINION IS REQUESTED

Whether or not the sales of food for human consumption made on the actual zoo grounds are "on the premises" where sold and thus subject to sales tax?

OPINION

The Ohio sales and use tax law for determining tax treatment of sales of food is defined in R.C.5739.02(B)(2) and R.C. 5739.01(K). In pertinent part, such definitions are: R.C. 5739.02(B) (2) exempts from sales tax sales of food for human consumption off the premises where sold.

R.C. 5739.01(K) further defines "premises" as "* * * any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person."

The taxpayer cites Cleveland Stadium Corporation v. Limbach (1983) BTA 83-C-407 and contends that the factual situation in that case is very similar to its situation. In the case cited above, the Board ruled that food was sold "off premises" and declared all sales exempt from sales tax since the only "premises" of Cleveland Stadium Corporation were the concession stands themselves. Cleveland Stadium Corporation did not have sufficient right or control of the stadium seating or passages to be considered as part of the "premises" because those areas had been leased to professional sports teams.

In our present situation, the entire zoo ground is leased to the taxpayer and it possesses full control of the leased property. Since the taxpayer has full control of the zoo ground, the entire zoo ground is properly considered its premises. Consequently, all sales of food consumed within the zoo are within the premises and therefore subject to sales tax.

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).

Roger W. Tracy
Tax Commissioner