
Opinion of the Tax Commissioner

Date Issued: March 7, 1994

Opinion No: 93-0021

Tax: Sales

XXXX
XXXX
XXXXSubject: Services as Things
Transformed

The request for an Opinion of the Tax Commissioner was received on October 12, 1993. XXXX (taxpayer) is a manufacturer of sand cores for the foundry industry. The taxpayer obtains factory workers from an employment service provider. These workers operate manufacturing machinery and perform various production functions. The taxpayer requests an Opinion that the charges it pays for these employment services, as defined by section 5739.01(JJ) of the Revised Code (R. C.), are excepted from sales or use tax under the terms of R. C. 5739.01(E)(9). That section excludes from the definition of a retail sale those transactions where the purpose of the consumer is:

“To use 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.”

The question to be answered is whether employment services constitute a “thing transferred” that would qualify for exception.

The sales tax historically applied only to sales of tangible personal property. Since about 1980, the tax has been applied to a number of services. The services which are considered sales for sales tax purposes are listed in R. C. 5739.01(B)(3). R. C. 5739.01(E) defines “thing” to include service transactions found in divisions (a), (b), and (e) of R. C. 5739.01(B)(3). The listing of specific services to be included in the definition of the word “thing” evidences an intention by the General Assembly to exclude other services not listed. There is, however, no comparable restriction in the definition of “thing” on transactions involving tangible personal property. Therefore, “thing” includes any tangible personal property and the services of repair, installation and automatic data processing, computer services, and electronic information services. Employment services are found in division (k) of Section 5739.01(B)(3). Since employment services do not constitute a “thing”, they are not included in the exception found in R. C. 5739.01(E)(9).

The taxpayer cites the listing of items included in the term “thing transferred” found in R. C. 5739.011(B) to support its claim for exception. That section has eleven divisions, the first ten of which specifically refer to items of tangible personal property. Division (11) includes, “Parts, components, and repair and installation services for items described in division (B) of this section.” (Emphasis added.) This is consistent with the definition of “thing” in R. C. 5739.01(E). The taxpayer notes that since R. C. 5739.011(B) says, “the ‘thing transferred’ includes, but is not

limited to," (Emphasis added.) the items in divisions (1) through (11), other types of services are meant to be included. However, before something can be a "thing transferred" it must first be a "thing", and R. C. 5739.011(B) must be read in the light of R. C. 5739.01(E). It should be noted that the only services specifically mentioned in the definition of "things transferred" are also among those defined as "things" in R. C. 5739.01(E). Since employment services are not within the definition of "things", they cannot be considered "things transferred".

Therefore, it is the opinion of the Tax Commissioner that the employment services obtained by the taxpayer are not excepted from sales tax as under R. C. 5739.01(E)(9).

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.

Roger W. Tracy
Tax Commissioner