
Opinion of the Tax Commissioner

Date Issued: March 30, 2001

Opinion No.: 00-0004

Tax: Sales/Use

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Subject: Popcorn Conditioning Bins

This request concerns whether XXXX, d.b.a. XXXX ("XXXX") purchases of conditioning bins and parts, components, and repair and installation services directly attributable to the conditioning bins are exempt from Ohio sales and use tax.

TAXPAYER'S STATEMENT OF FACTS

- (1) XXXX is principally engaged in the business of purchasing "popping corn" from farmers, which it manufactures and sells as "popcorn" to its customers.
- (2) XXXX intends to purchase additional popcorn conditioning bins for use at its facility located in XXXX ("XXXX Plant").
- (3) The process of transforming "popping corn" to the salable end product, popcorn, begins when XXXX receives popping corn from the farmers.
- (4) When the popcorn kernels are accepted at the XXXX Plant, they are graded for moisture, damage, foreign material, and kernel size and thereafter segregated into the conditioning bins based on their unique characteristics.
- (5) The conditioning bins lower the internal moisture of the popcorn kernels from an initial 15 to 17 percent to the optimal internal moisture of 13 to 14.3 percent.
- (6) Once popcorn kernels leave the conditioning bins, they go through a number of additional processing steps before packaging and distribution to XXXX's customers.
- (7) The last step in the manufacturing process is the metal detector through which the popcorn kernels pass.

QUESTIONS FOR WHICH OPINION IS REQUESTED

- (1) Are the conditioning bins exempt from Ohio sales and use tax under R.C. 5739.01(E)(9) and (S)?
- (2) If so, are the parts, components, and repair and installation services attributable to the conditioning bins exempt from Ohio sales and use tax?

ANSWER

The conditioning bins and parts, components, and repair and installation services attributable to those bins are exempt from Ohio sales and use tax because the conditioning bins are used primarily in a manufacturing operation to produce tangible personal property for sale. See R.C. 5739.02; R.C. 5739.01(E)(9) and (S); R.C. 5709.011(B)(1) and (11); Ohio Adm. Code 5703-9-21.

R.C. 5739.02 levies an excise tax upon each retail sale made in Ohio. R.C. 5739.01(E) excludes certain transactions from the definition of "retail sale" and, in part, provides:

- (E) 'Retail sale' and 'sales at retail' include all sales except those in which the purpose of the consumer is:

* * *

- (9) 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.¹

R.C. 5739.01(S) defines "manufacturing operation" as:

[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.

See, also, Ohio Adm. Code 5703-9-21(B)(1).

Based on the taxpayer's statement of facts, XXXX is engaged in manufacturing within the meaning of R.C. 5739.01(S). The Board of Tax Appeals reached this decision in *Wyandot Popcorn Co. v. Lindley* (Apr. 19, 1978), BTA No. E-1907, unreported.

¹ The exemptions in the sales tax code are specifically incorporated by reference in the use tax code by R.C. 5741.02(C)(2).

R.C. 5739.011 addresses the definition of "thing transferred" and provides in pertinent part:

- (B) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the 'thing transferred' includes, but is not limited to, any of the following:
 - (1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation.

* * *

- (11) Parts, components, and repair and installation services for items in division (B) of this section.

Ohio Adm. Code 5703-9-21(C)(1) defines production machinery as: "the equipment that actually changes the state or form of the product, that is, the tangible personal property being manufactured for resale." Ohio Adm. Code 5703-9-21(C)(1).

The conditioning bins are production machinery within the meaning of Ohio Adm. Code 5703-9-21(C)(1) because they are used in the removal of "moisture from within the desired and selected kernels of popcorn product for sale, which has the effect of making a significant change in the ultimate popping quality of the popcorn product which is sold," *Wyandot Popcorn Co. v. Lindley* (Apr. 19, 1978), BTA No. E-1907, unreported, and are therefore "thing[s] transferred" within the meaning of R.C. 5739.011.

Ohio Adm. Code 5703-9-21(B)(1) provides a detailed description of when the manufacturing operation is deemed to begin:

* * *

The manufacturing operation begins when raw materials or parts are committed to the manufacturing process. ... [T]he point of commitment is where the materials handling from such initial storage has ceased or the point where the materials or parts have been mixed, measured, blended, heated, cleaned or otherwise treated or prepared for the manufacturing process, whichever first occurs.

Accordingly, because the manufacturing operation begins at or before the point at which the conditioning bins are used, and the conditioning bins are used during and in the manufacturing process, the conditioning bins are not taxable. Because the conditioning bins are primarily used in a manufacturing operation to produce tangible personal property for sale, the parts, components, and repair and installation services attributable to the conditioning bins are likewise exempt from tax. See R.C. 5739.011(B)(11); Ohio Adm. Code 5703-9-21, example 38.

This Opinion applies to the taxpayer 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).

Thomas M. Zaino
Tax Commissioner

cc: XXXX
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