
Opinion of the Tax Commissioner

Date Issued: December 8, 2004

Opinion No: 04-0003

Tax: Sales

XXXX
XXXX
XXXX

Subject: Salvage Vehicles

Dear XXXX:

This is an Opinion of the Tax Commissioner requested by letter dated June 30, 2004 pursuant to Ohio Revised Code (“R.C.”) section 5703.53. There was no request that the Opinion of the Tax Commissioner be held confidential, so it will be publicly available in redacted form.

FACTS

The following facts were provided in the request:

The Taxpayer provides automobile insurance to drivers in the state of Ohio. In the course of this business, the Taxpayer acquires salvage title to vehicles that have been involved in “total loss” claims. The Taxpayer then sells these salvage vehicles to third parties.

On XXXX, the Taxpayer and Company A and its subsidiaries entered into a Salvage Purchase Agreement (the “Agreement”) pursuant to which the Taxpayer identifies certain salvage vehicles it wishes to sell to Company A. Company A, which holds a valid Ohio salvage motor vehicle dealer license, picks up the salvage vehicles and stores them while the Taxpayer obtains salvage title to the vehicles in its name and then transfers title to Company A. After receipt of the salvage title and upon final instructions from the Taxpayer, Company A dismantles the vehicles to obtain marketable car parts. Company A then offers for sale the resulting parts to third party customers for a period of up to 270 days. On certain remittance dates during this period, Company A remits to the Taxpayer a specified percentage of the sales revenue Company A generates from the sale of these parts less reimbursement of certain expenses incurred by Company A, such as towing, storage, etc. The percentage increases based on a progressive rate schedule as more revenue is generated from each vehicle. At the conclusion of the 270 day period, Company A retains the remaining parts and owes nothing further to the Taxpayer.

Section 5 of the Agreement states, “No consignment or bailment is intended by this Agreement; and the Taxpayer shall not participate as principal or otherwise in Company A’s sale of Salvage Vehicle parts as described and provided for in Sections 7 and 8 of this Agreement.” Thus, both parties intend the transfer of

salvage vehicles from the Taxpayer to Company A to be a complete sale of the transferred vehicles. Although the purchase price paid by Company A to the Taxpayer for such vehicles is a function of the revenue Company A earns on its sale of resulting parts, the Taxpayer does not participate in the sale of parts by Company A.

OPINION REQUESTED

The following opinion was requested:

No sales or use tax is owed on the sale of by the Taxpayer of salvage vehicles to a salvage vehicle dismantler that dismantles the vehicles and sells the resulting parts, even though the purchase price paid to the Taxpayer for the vehicles is determined as a percentage of the total revenue obtained from the parts sales.

DISCUSSION

The Taxpayer acquires salvage title to a vehicle that it insures when the vehicle has been involved in a “total loss” claim. It then transfers the salvage title to Company A, a salvage motor vehicle dealer. Company A pays consideration for that transfer in the form of a percentage of the revenue Company A receives on its sale of the parts it obtains from the vehicle. These facts constitute a “sale” of the vehicle from the Taxpayer to Company A within the meaning of R.C. 5739.01(B)(1).

Salvage motor vehicle dealers are sellers of parts that they recover from salvage vehicles. Ohio has recognized that salvage motor vehicle dealers have a resale claim of exemption under R.C. 5739.01(E) on their purchases of salvage vehicles from which they obtain parts for sale.

OPINION OF THE TAX COMMISSIONER

It is the opinion of the Tax Commissioner that, under the facts presented by the Taxpayer, a salvage motor vehicle dealer that purchases a vehicle from the Taxpayer on a salvage title may claim resale on that purchase. This is true regardless of whether the consideration for the sale is paid at the time of the transfer or is determined as a percentage of the consideration the salvage motor vehicle dealer receives on the sale of parts recovered from the vehicle.

This Opinion is limited to the legal issues addressed in the 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