
Opinion of the Tax Commissioner

Date Issued: December 14, 2005

Opinion No: 05-0010

Tax: Commercial Activity

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Subject: Foreign Trade Zone

This request for an Opinion of the Tax Commissioner was received on November 4, 2005. The request concerns issues associated with the commercial activity tax (CAT) levied under R.C. Chapter 5751. Specifically, XXXX (Taxpayer) requests an Opinion related to issues associated with the temporary exemption from the CAT for qualified foreign trade zone (FTZ) activities pursuant to Section 557.09.09 of Am. Sub. H.B. 66 of the 126th General Assembly (H.B. 66).

QUESTIONS FOR WHICH OPINION IS REQUESTED

1. Is our customer's facility at LOCATION located within the Rickenbacker FTZ?
2. Is our customer required to activate its facility as an FTZ in order for the CAT exclusion to apply?
3. If our customer's facility is within the Rickenbacker FTZ and our customer is qualified to take advantage of FTZ status, are shipments by Taxpayer to our customer at that facility exempt from the CAT?

TAXPAYER'S STATEMENT OF FACTS

Taxpayer is a manufacturer of TYPE-OF-PRODUCT products. One of Taxpayer's wholesale customers resells the products to TYPE-OF-RETAILER and other retailers. The customer has a national logistics center located at LOCATION (the NLC). Essentially, the NLC is a warehouse that is used as a central receiving point for TYPE-OF-PRODUCT products sold to the customer. At the NLC, the customer breaks down these shipments for further distribution along the TYPE-OF-PRODUCT supply chain, including smaller shipments to retailers or to other facilities owned by the customer. The Taxpayer has indicated that utilization of the customer's NLC brings efficiencies to Taxpayer's fulfillment of the customer product orders by allowing the Taxpayer to ship into one central, national location, rather than many regional sites.

ANALYSIS

Section 557.09.09 of H.B. 66 provides that receipts from shipments into or out of a facility located both within one mile of an international airport and within a qualified FTZ area are excluded from gross receipts that are subject to the CAT. Section 606.03 of H.B. 66 provides that this exclusion will expire on June 30, 2007.

The requirements necessary to qualify for this exemption are set out in proposed Adm. Rule 5703-29-07, which requires that the FTZ area must have commenced the construction of a qualified intermodal facility as defined in uncodified section 557.09.09(B). Information obtained by this Department indicates that the Rickenbacker FTZ commenced construction of a qualified intermodal facility on July 25, 2005. Additionally, the rule requires that the shipments are to or from a warehouse or facility that is located within one mile of an international airport, and that the facility is located, in whole or in part, within an FTZ as defined in R.C. 5709.44, which provides, in part, as follows:

(A) As used in this section:

(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 January 1, 1992, including expansions of and additions to such a zone that are adjacent to the zone as it existed on January 1, 1992, but excluding special purpose subzones for which a permit is granted on or after such date.

A prior Opinion of the Tax Commissioner addressed the issue of "activation." In that Opinion, the Commissioner concluded 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." Since the CAT exemption is based on the FTZ definition in R.C. 5709.44, the conclusion in that Opinion is equally applicable to the CAT exemption.

The NLC is located in Zone 138 of the Rickenbacker FTZ, which was approved by the Foreign-Trade Zones Board on March 13, 1987. The NLC is also within one mile of an international airport. Therefore, beginning July 25, 2005, the NLC meets the requisite requirements necessary to qualify for the CAT exemption pursuant to Section 557.09.09 of H.B. 66, R.C. 5709.44, and proposed Adm. Rule 5703-29-07.

ANSWERS

1. The requirements necessary to qualify as an FTZ for purposes of the CAT are set forth in proposed Adm. Rule 5709-29-07. Rickenbacker became a qualifying FTZ at the time construction of the intermodal facility commenced on July 25, 2005. The NLC is located both within that FTZ and within one mile of an international airport. Therefore, the NLC

meets the requirements under Section 557.09.09 of H.B. 66, R.C. 5709.44, and proposed Adm. Rule 5703-29-07 to qualify for the CAT exemption beginning July 25, 2005.

2. Neither Section 557.09.09 of H.B. 66, R.C. 5709.44, nor proposed Adm. Rule 5703-29-07 mandate that an FTZ be activated in order to qualify for the CAT exemption. Therefore, the fact that the customer has not initiated activation of its FTZ does not prevent Taxpayer, for purposes of calculating its tax liability, from excluding gross receipts generated from its shipments to the customer at the NLC.
3. Under current law, any gross receipts from shipments by Taxpayer to the customer at the NLC are exempt from the CAT from July 25, 2005 until June 30, 2007.

This Opinion applies only to the location of the NLC as presented by the Taxpayer. If the customer in the future relocates the NLC to an area not presently part of the aforementioned qualified FTZ, this opinion shall not extend to such different location. Furthermore, if the Foreign Trade Zones Board eliminates the FTZ status of the Rickenbacker FTZ, or if there no longer remains an international airport within one mile of the NLC, the exemption pursuant to Section 557.09.09 of H.B. 66, R.C. 5709.44, and proposed Adm. Rule 5703-29-07 would no longer apply, and shipments to the customer at the NLC would no longer qualify for exemption.

This Opinion applies to 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 Taxpayer to be aware of such changes pursuant to R.C. 5703.53(E).

Sincerely,

William W. Wilkins
Tax Commissioner