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## Opinion of the Tax Commissioner

Date Issued: July 20, 2005

Opinion No: 05-0005

Tax: Sales

XXXX  
XXXX  
XXXX  
XXXX

Subject: Electronic Information

Dear XXXX:

This Opinion of the Tax Commissioner is being issued pursuant to the provisions of Ohio Revised Code (“R.C.”) section 5703.53. It is in response to your letter of April 25, 2005 to Merlinda Baker of the Toledo Taxpayer Service Center in which you request an “official opinion” confirming advice you received on the application of Ohio sales tax [to] your company’s business.

### FACTS

In your letter, you provide the following facts:

TAXPAYER is an investment company that sells subscriptions to the information contained on our website. The information provided to us comes from other sources and we, in turn, provide that information to our subscribers. That information cannot be manipulated by our subscribers, however, they are being educated by our website on how to interpret and use that information. We do not, therefore, need a vendor’s license or need to collect sales tax.

We are not currently selling any products, such as books, CD’s, or software programs. If we choose to do so in the future, we understand that we will need a vendor’s license and will have to collect sales tax at that time. If however, we choose to give such items for free to attendees of our seminar, it is our understanding that we will not need a vendor’s license and won’t have to collect sales tax.

### QUESTION

Whether, under the facts presented, TAXPAYER would be required to obtain an Ohio vendor’s license and collect Ohio sales tax on sales made in Ohio.

## **LAW**

The Ohio sales tax applies to all retail sales of tangible personal property and certain specified services. Among the services Ohio taxes are electronic information services. Ohio Revised Code (“R.C.”) section 5739.01(B)(3)(e) defines “sale,” for sales tax purposes, to include:

Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental.

R.C. 5739.01(Y)(1)(c) defines an “electronic information service” as:

\*\*\*providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

- (i) Examining or acquiring data stored in or accessible to the computer equipment;
- (ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

R.C. 5739.01(F) defines “business” as follows:

"Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds.

## **DISCUSSION**

As it is described, the service provided by TAXPAYER would appear to entail it granting its subscribers access to its computer equipment to examine or acquire information stored in or accessible to the computer equipment. If any of those subscribers are using this service for business purposes, the service would be a taxable electronic information service. In such a case, TAXPAYER would be required to register as a vendor and collect tax on sales to Ohio customers.

However, [with regard to] those TAXPAYER’S subscribers that are individuals using the information to manage their own investments (non-business use), the subscribers would not be obtaining the service for use in “business” as that term is defined in R.C. 5739.01(F). In such a case, the transactions with such subscribers would not be a taxable “sale” under R.C. 5739.01(B)(3)(e).

Books, CD's, software programs or other materials distributed free to attendees at seminars would not be taxable sales on which TAXPAYER would be required to collect Ohio sales tax. Since there would be no consideration paid by the attendees for the items being distributed, there would be no "sale" to tax. Admission to a seminar is not a taxable transaction in Ohio, assuming the materials would be considered to be an incidental part of the seminar. TAXPAYER would owe Ohio tax as a consumer on any such materials it purchased or used (which includes distribution to others free of charge) in Ohio in putting on a seminar.

As noted in the request for an Opinion, if TAXPAYER actually sells such items, by making a separate charge for them or selling them separately from attendance at a seminar, TAXPAYER would be required to collect and remit Ohio tax on such sales.

### **OPINION OF THE TAX COMMISSIONER**

Therefore, it is the Opinion of the Tax Commissioners that TAXPAYER'S services of providing information on a website is a taxable electronic information service if the consumer is using the service in business. If the consumer is using the service for personal investment or other personal purposes, the service is not subject to Ohio tax.

Furthermore, it is the Opinion of the Tax Commissioner that materials TAXPAYER provides free to attendees at seminars in Ohio are not being sold to the attendees and TAXPAYER would not be required to collect Ohio sales tax on such items if such materials are incidental to the seminar. TAXPAYER would, on the other hand, owe Ohio sales or use tax on its acquisition of such materials.

This Opinion is limited to the legal issue addressed in this 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