
Opinion of the Tax Commissioner

Date Issued: December 14, 2005

Opinion No: 05-0009

Tax: Sales

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Subject: Commercial Kitchen Equipment

XXXX (“Taxpayer”) has requested an Opinion of the Tax Commissioner (“Opinion”) pursuant to Ohio Revised Code (“R.C.”) section 5703.53.

FACTS

Taxpayer is in the business of selling commercial cooking equipment and supplies. Taxpayer requests a written opinion on whether it should continue to charge sales tax on its sales of certain commercial kitchen equipment. The equipment in question consists of exhaust hoods installed over cooking areas that trap heat, smoke and grease; ventilation equipment (exhaust ductwork and fans) that transfer the heat and contaminated air out of the building; and fire suppression equipment attached to the hoods and ductwork to detect and automatically suppress fires. The Taxpayer indicates that this equipment is generally sold together as a complete system to persons licensed to conduct a food service operation. The exhaust hood, ventilation equipment and fire suppression system are listed and priced separately on invoices to customers. The equipment at issue is not of a type used for general area ventilation.

DISCUSSION AND OPINION

Pursuant to R.C. 5739.02(A), the Ohio sales tax applies to all retail sales in this state. R.C. 5739.01(B) defines “sale” for Ohio sales tax purposes to include any transfer of title, possession, or a right to use tangible personal property in this state or the provision of a designated taxable service in this state for a consideration. However, there are exceptions and exemptions to the tax; see for instances R.C. 5739.01(E) and 5739.02(B). One of the specified exemptions is the sale of certain equipment made to persons licensed to conduct a food service operation. R.C. 5739.02(B)(27) provides:

(B) The tax does not apply to the following:

* * *

(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

- (a) To prepare food for human consumption for sale:
- (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;
- (c) To clean tangible personal property used to prepare or serve food for human consumption for sale

After review of the evidence, it is the opinion of the Tax Commissioner that the exhaust hood over a cooking area and ventilation equipment connected to the exhaust hood is used in the preparation of food. Accordingly, a licensed food service operator may claim exemption on its purchase of this equipment when it is used in the preparation of food for human consumption for sale. A customer claiming this exemption must provide a certificate of exemption to Taxpayer, and Taxpayer must obtain such certificate of exemption from the customer, pursuant to R.C. 5739.03(B).

The fire suppression equipment is taxable. This equipment, although attached to the exhaust hood and ventilation equipment, is not used in food preparation. Instead, it is there for use in the event of a fire. The exemption found in R.C. 5739.02(B)(27) does not extend to this equipment.

In summary, it is the opinion of the Tax Commissioner that exhaust hoods and ventilation equipment are used in the preparation of food, and that a licensed food service operator may claim exemption on its purchase of this equipment under R.C. 5739.02(B)(27)(a). However, the fire suppression equipment is not used in the preparation of food and accordingly does not qualify for exemption under R.C. 5739.02(B)(27).

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