
Opinion of the Tax Commissioner

Date: Issued: March 22, 2006

Opinion No: 05-0008

Tax: Sales

XXXX
XXXX
XXXX

Subject: Sales to Exempt Organizations

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

QUESTIONS PRESENTED

Taxpayer’s request for an Opinion asks the following:

XXXX is respectfully requesting a formal opinion of the Tax Commissioner on the issue of a properly executed exemption certificate for an exempt 501(c)(3) organization, Political Subdivision, or a Governmental Agency. We have been unable to locate a clear direction for accepting an exemption certificate in “good faith” from an exempt organization in the statutes for the below issues.

1. Does an exemption from sales tax only apply to direct purchases of tangible personal property by an exempt organization only if it is paid directly from the organization’s funds?

A direct purchase being one that is billed directly to the exempt organization and is paid for with the organization’s funds (organizational check or credit card).

2. Can we the retail seller accept a properly completed exemption certificate in good faith if the purchase is made by the employee of the exempt organization with their personal credit card, check or cash, and assume the employee is later reimbursed the expense by the exempt organization?
3. Assuming that we cannot accept a certificate in “good faith” if it is paid for by the employee’s personal funds as in scenario #2 above, do we as a retail seller need to keep proof of payment from the organization’s funds (a copy of the organization’s credit card or check) with properly executed exemption

certificate as part of our records to substantiate our exempt sales in a sales tax audit?

DISCUSSION AND OPINION

R.C. 5739.02(B)(12) provides an exemption for the sale of tangible personal property and services made to churches, to organizations that qualify as section 501(c)(3) organizations under the Internal Revenue Code of 1986, and to other organizations operated exclusively for charitable purposes as defined in the second paragraph of R.C. 5739.02(B)(12). The exemption is not transferable to an individual employee of the organization. The exemption applies when the sale is made to and paid for by the exempt organization. The same is true for sales made to the state or any of its political subdivisions, but no exemption certificate is required. See R.C. 5739.02(B)(1).

In order for Taxpayer to apply an exemption certificate in good faith, Taxpayer must reasonably believe that the sale is being made to the organization covered by the certificate. Since the organization is not an individual, the question naturally arises whether an individual purporting to make a purchase on behalf of the organization is in fact making the purchase in that capacity. This question is not limited to a claim of tax exemption. Vendors generally record the purchaser's name in a manner consistent with the consideration tendered for the purchase in order to ensure that the consideration is valid and to provide recourse if it is not. If Taxpayer follows such sound business practice, a valid exemption certificate for an organization recorded as the purchaser will be deemed to have been applied in good faith. Thus, in order to qualify, the sale must be recorded as being made to the organization as shown on the exemption certificate.

Turning to the specific questions posed, with regard to the first question, the sale must be made directly to the exempt organization and recorded as such on Taxpayer's normal business records. If the sale is not recorded on Taxpayer's records as a sale to the organization, an exemption certificate for the organization cannot be applied in good faith with regard to such sale.

With regard to the second question, a purchase made by the employee and recorded as such on Taxpayer's records does not qualify for exemption under the organization's certificate, whether paid for by personal check, credit card, or cash. Pursuant to R.C. 5739.02(C) all sales are presumed taxable until the contrary is established, and the exemption applies only to the organization and not to any individuals or employees. Therefore, if an individual makes a purchase by check or credit card that is solely in the name of the individual and does not clearly indicate the exempt organization's name on the check or credit card, the individual has not shown that the purchase is by the exempt organization, and accordingly any applicable tax must be charged. If the individual tenders cash and Taxpayer is convinced that the individual is making the purchase on behalf of the exempt organization and records the sale on Taxpayer's records as made directly to the organization, a valid exemption certificate for the organization

may be applied in good faith as long as Taxpayer also records information to identify and locate the individual in case the sale subsequently is found to be taxable.

With regard to the third question, no particular proof of payment is required. Whatever documentation Taxpayer retains in the normal course of its business to match the consideration received on a sale with the purchaser recorded for such sale will be sufficient to retain in addition to the valid exemption certificates.

In summary, it is the opinion of the Tax Commissioner that the exemption applies only to the exempt organization or governmental agency. The exemption is not transferable to an employee or other person who is making the purchase with personal funds. When a sale is claimed to be an exempt sale to a 501(c)(3) organization, Taxpayer should obtain a certificate of exemption from the organization claiming the exemption as required by R.C. 5739.03(B) that matches the purchaser recorded on Taxpayer's records. Taxpayer should maintain the records of its sales as required by R.C. 5739.11.

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