
Opinion of the Tax Commissioner

Date Issued: June 2, 2006

Opinion No.: 06-0002

Tax: Sales

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Subject: Electronic exemption certificates

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

FACTS

In support of its request for an Opinion Taxpayer provided the following facts:

Taxpayer is a seller of products that serve the lifestyle needs of rural communities, including products for agricultural use. Taxpayer operates a number of retail stores in various states, including Ohio. Taxpayer maintains an extensive customer base that includes farmers and ranchers, state and local government agencies, and nonprofit organizations. Pursuant to Section 5739.02(B)(17) of the Ohio Revised Code, Taxpayer’s sales of its products to farmers and ranchers to be used for agricultural purposes are not taxable “retail sales” and are therefore exempt from the sales tax. Pursuant to Section 5739.02(B)(1) of the Ohio Revised Code, Taxpayer’s sales of its products to the state and any of its political subdivisions are not taxable “retail sales” and are therefore exempt from the sales tax. Pursuant to Section 5739.02(B)(12) of the Ohio Revised Code, Taxpayer’s sales of its products to nonprofit organizations operated exclusively charitable purposes in the state are not taxable “retail sales” and are therefore exempt from the sales tax.

In addition, Taxpayer engages in a number of sale for resale transactions. Pursuant to Section 5739.01(E), sales in which the purpose of the consumer is to resell the item in the same form in which it was received are excepted from “retail sales.”

Consequently, Taxpayer does not collect tax on sales to farmers and ranchers, state and local government agencies, and nonprofit organizations, as well as on sales to purchasers for resale (hereinafter, collectively “tax exempt customers”).

So as to comply with Rule 5703-9-03 of the Ohio Admin. Code, which requires that an exemption certificate be obtained from the consumer claiming a sales tax exemption or resale exception, Taxpayer engages in the following two steps with respect to each of its tax exempt customers:

(1) When a tax exempt customer enters Taxpayer's store for the first time, Taxpayer collects the customer's information, which is then input into its computer system.

(2) As part of the initial transaction, and all transactions thereafter, with a tax exempt customer, Taxpayer directs the customer to read an electronic affidavit displayed on the keypad located at the checkout line and to provide a signature on such keypad. The affidavit is an attestation by the customer that his purchase is exempt from sales tax pursuant to the applicable statutory exemption or exception. The customer's signature is then stored in Taxpayer's computer system along with the customer's information.

As a result of the aforementioned steps, Taxpayer has an electronic database containing all of the data required to be present in a valid exemption certificate. At any time, the Taxpayer may generate an exemption certificate from its computer system what will identify Taxpayer and state that the sale is exempt from sales tax. In addition, the customer's electronic signature stored at the time of the sale, the date of the sale, and an image of the customer's sales receipt will be included on the exemption certificate. Although, the customer does not actually sign a paper certificate at the time of the sale, pursuant to Sales and Use Tax Information Release ST2005-02, no signature is required on electronic certificates. Consequently, after a sale to a tax exempt customer, all required data elements are stored electronically and may be presented in paper form at any time thereafter.

QUESTION FOR WHICH OPINION IS REQUESTED

Whether, under the facts presented, Taxpayer retains properly executed exemption certificates for each of its sales to tax exempt customers?

DISCUSSION AND OPINION

Answer: From the facts presented, Taxpayer does retain properly executed exemption certificates for each of its sales made to tax exempt customers.

R.C. 5739.03(B)(1)(a) provides that:

If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11) or (28) of section 5739.02 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. The certificate shall be in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner prescribes.

Certificates of exemption may be provided, and maintained, in electronic format. As long as the information maintained is such that the certificate is “fully completed,” as required by R.C. 5739.03(B)(1)(b), the fact that the certificate is not in hard copy form does not disqualify it from being valid. R.C. 5739.03(B)(1)(b) provides that:

A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] or Chapter 5741 of the Revised Code. Relief under this division from liability does not apply to any of the following:

- (i) A vendor that fraudulently fails to collect tax;
- (ii) A vendor that solicits consumers to participate in the unlawful claim of an exemption;
- (iii) A vendor that accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service, when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state;
- (iv) A vendor that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (B) of section 5739.033 [5739.03.3] of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software.

Taxpayer's collection of information from customers claiming an exemption which it enters and stores in its computer system is sufficient as long as the information obtained is such that the electronic certificate can be deemed "fully completed." Although signatures are required on hard copy certificates of exemption, an actual signature of the tax exempt customer is not required on electronic certificates maintained by Taxpayer.

The Ohio Revised Code also requires that a vendor maintain records, including exemption certificates, of all sales on which customers have claimed a tax exemption, and provide these records to the Tax Commissioner upon his request. R.C. 5739.03(B)(2). In other words, all certificates of exemption including those maintained in electronic format must be available for review by the Tax Commissioner's agents in an audit situation.

The facts presented by Taxpayer indicate that it may, at any time, generate an exemption certificate from its computer system that will identify the customer and the exemption claimed. This satisfies R.C. 5739.03(B)(2).

In summary, it is the opinion of the Tax Commissioner that the electronic records of certificates of exemption collected, maintained and retrievable from Taxpayer's computer system are fully completed, properly executed certificates of exemption for sales made to tax exempt customers.

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