
Opinion of the Tax Commissioner

Date Issued: March 29, 2007

Opinion No: 07-0001

Tax: Personal Property

XXXX
XXXX
XXXX

Subject: Real or Personal

This request for an opinion of the Tax Commissioner was received on January 23, 2007. It concerns the proper classification of assets at a golf course owned by XXX as either real property or personal property.

STATEMENT OF FACTS

XXX presented the following factual information in its opinion request and in subsequent clarifying information that included the submission of photographs:

XXX owns a golf course in northeastern Ohio. The amount of county real property and personal property taxes it pays is determined in part by the classification of various assets on the golf course as real property or personal property.

QUESTION FOR WHICH AN OPINION IS REQUESTED

What is the proper classification as real property or personal property of the following assets located on a golf course: paved cart paths; underground irrigation system, above-ground attached fixtures, and control boxes; practice greens; driving range; driving range mats and practice pins; restrooms; water coolers and associated wooden posts; waste disposal cans; yardage markers, out-of-bounds markers, and tee signs; greens; sand traps; man-made lakes, streams, other water hazards, and an irrigation pond; pole barns; a pole-constructed shelter; storage sheds; maintenance facility; machinery shed; canopies on barns and sheds; golf cart storage area; golf course clubhouse; scoreboard; gazebo; ball washers; clubhouse patio; and parking lots.

OPINION

The significance of the proper classification of property as either real or personal emanates from its impact on real property tax, personal property tax, and sales and use tax. Before addressing the substantive question, it is important to clarify that this Opinion addresses only the classification of the property listed in the opinion request as real property or personal property. This Opinion does not address the sales and use tax consequences of either classification. In the case of purchases of tangible personal property, Ohio sales or use tax will apply unless the taxpayer has some statutory claim of exemption. Transfers of real property are not subject to

Ohio sales or use tax, but construction contractors will have sales and use tax responsibility for any personal property or taxable services used in performing the construction contract.

Further, the Ohio sales and use taxes apply to certain specified services. For example, R.C. 5739.01(B)(3)(g) includes within the definition of a “sale” for sales and use tax purposes, landscaping and lawn care services. In transactions where such services are being provided, the service will be taxable regardless of the fact that the service results in an improvement to real property. Other services that are subject to sales and use tax include repair of tangible personal property, installation of tangible personal property, exterminating services, and private investigation and security services. This Opinion does not address the existence of any services that may be subject to sales and use tax.

With regard to the submitted question, Ohio case law and statutory law classifying assets as either real property or personal property begins with *Teaff v. Hewitt* (1853), 1 Ohio St. 511. The Ohio Supreme Court’s three-part test in that case to determine if an asset is properly classified as a fixture eventually served in 1992 as the basis for the definition of “business fixture” in R.C. 5701.03(B). That definition states in its entirety:

"Business fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. "Business fixture" includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. "Business fixture" does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises.

In order to apply the “business fixture” definition to any set of facts, the court explained in *Funtime, Inc. v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890, that the appropriate analysis includes consideration of the definitions of “building,” “fixture,” “improvement,” and “structure” in R.C. 5701.02. The court elaborated:

Reading the two statutes in pari material and harmonizing them to give effect to the language of both statutes, we find that the correct order of application is as follows: first, determine whether the item meets the requirements of one of the statutory definitions of

real property set forth in R.C. 5701.02. If the item does not, then it is personal property. If the item fits a statutory definition of real property in R.C. 5701.02, it is real property unless it is "otherwise specified" in R.C. 5701.03. If an item is "otherwise specified" under R.C. 5701.03, it is personal property. *Id.* at ¶33.

R.C. 5701.02 provides the following pertinent definitions:

(A) "Real property," "realty," and "land" include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto. "Real property" does not include a manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code or a mobile home, travel trailer, or park trailer, each as defined in section 4501.01 of the Revised Code, that is not a manufactured or mobile home building as defined in division (B)(2) of this section.

(B)(1) "Building" means a permanent fabrication or construction, attached or affixed to land, consisting of foundations, walls, columns, girders, beams, floors, and a roof, or some combination of these elemental parts, that is intended as a habitation or shelter for people or animals or a shelter for tangible personal property, and that has structural integrity independent of the tangible personal property, if any, it is designed to shelter. "Building" includes a manufactured or mobile home building as defined in division (B)(2) of this section; . . .

(C) "Fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

(D) "Improvement" means, with respect to a building or structure, a permanent addition, enlargement, or alteration that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure.

(E) "Structure" means a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. "Structure" includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls.

Applying the *Funtime* analysis to the property at issue, the subject property is properly classified as follows:

1. Paved cart paths are fixtures and, therefore, are properly classified as real property. Though currently used by golf carts and maintenance vehicles, it is clear the paths would be of benefit to a buyer of the land who engaged in another business, e.g., running paths in a park; connecting roads between buildings in an industrial park. The paths are not “otherwise specified” in R.C. 5701.03 because they do not have a use exclusive to a golf course and because they primarily benefit the realty and not the business.
2. Underground irrigation system, above-ground attached fixtures, and control boxes are business fixtures and, therefore, properly classified as personal property. Though meeting the definition of a fixture, these assets are “otherwise specified” in R.C. 5701.03 because keeping the golf course grounds properly watered and aesthetically pleasing is essential to the business of maintaining a golf course, thereby primarily benefiting the business conducted on the premises.
3. Practice greens are land itself and, therefore, properly classified as real property. As such, practice greens are not “otherwise specified” in R.C. 5701.03.
4. Driving ranges are land itself and, therefore, properly classified as real property. As such, driving ranges are not “otherwise specified” in R.C. 5701.03.
5. Driving range mats and practice pins are business fixtures and, therefore, properly classified as personal property. Though meeting the definition of a fixture if permanently attached to the underlying land, these assets are “otherwise specified” in R.C. 5701.03 because they serve a purpose exclusive to a golf course and primarily benefit the business conducted on the premises. If not permanently attached to the underlying land, they are tangible personal property.
6. Restrooms located throughout the golf course consisting of frame construction, metal siding, shingled roofs, a cement floor, ventilation, a commode, and a sink are buildings properly classified as real property. The restrooms are not “otherwise specified” in R.C. 5701.03 because they do not have a use exclusive to a golf course and because the restrooms could be used as such by a buyer of the land who engaged in another business, thereby benefiting the realty and not the business.
7. Water coolers and associated wooden posts are located throughout the golf course and, if permanently attached to the underlying land, are fixtures, but are “otherwise specified” in R.C. 5701.03 because they primarily benefit the business conducted on the premises and, therefore, are properly classified as personal property. If not permanently attached to the underlying land, they are tangible personal property.
8. Waste disposal cans do not meet any of the definitions in R.C. 5701.02 and are properly classified as tangible personal property.

9. Yardage markers, out-of-bounds markers, and tee signs are business fixtures and, therefore, properly classified as personal property. Though meeting the definition of a fixture, these assets are “otherwise specified” in R.C. 5701.03 because they primarily benefit the business conducted on the premises as signage peculiar to a golf course.

10. Greens are land itself and, therefore, properly classified as real property. As such, greens are not “otherwise specified” in R.C. 5701.03.

11. Sand traps come within that part of the definition of “real property,” “realty,” and “land” in R.C. 5701.02(A) that refers to “all things contained therein” and, therefore, are properly classified as real property. As such, sand traps are not “otherwise specified” in R.C. 5701.03. The sand itself, prior to incorporation into the sand trap, is properly classified as tangible personal property.

12. Man-made lakes, streams, other water hazards, and an irrigation pond come within that part of the definition of “real property,” “realty,” and “land” in R.C. 5701.02(A) that refers to “all things contained therein” and, therefore, are properly classified as real property. As such, they are not “otherwise specified” in R.C. 5701.03.

13. Pole barns used for storage and cookouts, consisting of shingled roofs with cement pad floors, are structures and, therefore, properly classified as real property. The pole barns are not “otherwise specified” in R.C. 5701.03 because they do not have a use exclusive to a golf course and could be used for innumerable purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

14. Pole-constructed shelter used for weather protection, open-sided on three sides with a shingled roof and gravel floor, is a structure and, therefore, properly classified as real property. The pole-constructed shelter is not “otherwise specified” in R.C. 5701.03 because it does not have a use exclusive to a golf course and could be used for similar or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

15. Storage sheds consisting of frame construction, metal siding, shingle roofs, and a cement floor are buildings and, therefore, properly classified as real property. The storage sheds are not “otherwise specified” in R.C. 5701.03 because they do not have a use exclusive to a golf course and could be used for similar or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

16. Maintenance facility used for storage and repair work consisting of pole construction, frame siding, shingle roof, and a cement floor is a building and, therefore, properly classified as real property. The maintenance facility is not “otherwise specified” in R.C. 5701.03 because it does not have a use exclusive to a golf course and could be used for similar or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

17. Machinery shed that houses the water pumps consisting of wood frame construction, metal siding, shingled roof, and a cement floor is a building and, therefore, properly classified as real property. The machinery shed is not “otherwise specified” in R.C. 5701.03 because it does not have a use exclusive to a golf course and could be used for similar or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

18. Canopies on barns and sheds constitute the shingled roofs on items of property that are either buildings or structures and, therefore, are properly classified as real property.

19. Golf cart storage area, which is connected to the rear basement of the clubhouse and consists of brick or cement block construction, shingled roof, and a cement floor, is a building and, therefore, properly classified as real property. The golf cart storage area is not “otherwise specified” in R.C. 5701.03 because it does not have a use exclusive to a golf course and could be used for storage or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

20. Golf course clubhouse consisting of what appears in the submitted photograph to be wood frame construction, shingled roof, and wood siding is a building and, therefore, properly classified as real property. The golf course clubhouse is not “otherwise specified” in R.C. 5701.03 because it does not have a use exclusive to a golf course and could be used as a personal residence, banquet facility, or for other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

21. Scoreboard consisting of wood construction, a shingled roof, and resting on what appears in the submitted photograph to be a raised platform is a business fixture and, therefore, properly classified as personal property. Though meeting the definition of a fixture if permanently attached to the underlying land, the scoreboard is “otherwise specified” in R.C. 5701.03 because posting the scores of golfers using the golf course is primarily benefiting the business conducted on the premises.

22. Gazebo consisting of wood construction, shingled roof, and a railing is a structure and, therefore, is properly classified as real property. The gazebo is not “otherwise specified” in R.C. 5701.03 because it does not have a use exclusive to a golf course and could be used for similar or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

23. Ball washers do not meet any of the definitions in R.C. 5701.02 and are properly classified as tangible personal property.

24. Clubhouse patio consisting of concrete construction is a structure and, therefore, properly classified as real property. The clubhouse patio is not “otherwise specified” in R.C. 5701.03 because it does not have a use exclusive to a golf course and could be used for similar or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

25. Parking lots consisting of asphalt construction are structures and, therefore, are properly classified as real property. Parking lots are not “otherwise specified” in R.C. 5701.03 because they do not have a use exclusive to a golf course and could be used for similar or other purposes by a buyer of the land who is engaged in another business, thereby benefiting the realty and not the business.

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

Richard A. Levin
Tax Commissioner