
Opinion of the Tax Commissioner

Date Issued: July 30, 2007

Opinion No: 06-0012

Tax: Sales/Use

XXXX
XXXX
XXXX
XXXX

Subject: Motion Picture Films

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

FACTS

The taxpayer produces motion picture films for public exhibition across the United States. The films are manufactured in various locations both overseas and domestic and are shipped to a third-party depot located in the State of Ohio. The films undergo various finishing processes at the depot and are then shipped from the depot to theaters across the country for exhibition (including exhibition in Ohio).

[The taxpayer] grants to each theater a license to exhibit the motion picture(s). At the conclusion of the run of a particular film (which is normally a period of one to three weeks), the theater will ship the film back to the depot. Theaters do not retain the films. Once the films have arrived back at the depot, they are put into storage at the depot.

After the films are placed in storage at the depot, most of the films are destroyed shortly thereafter, in order to mitigate storage costs. Films that will be destroyed are shipped from the depot to a third-party location in a state outside of Ohio. This facility maintains the necessary federal and state permits that are necessary in order to comply with certain federal regulations relating to proper disposal of the film, and a certificate of destruction is presented to [the taxpayer].

Of the films that are not sent out of Ohio for disposal, a portion of the reels are reviewed by depot employees in order to determine which reels are of a high enough quality to be suited for rejuvenation for the international market. Reels that are selected for rejuvenation are subjected to various chemicals and other processes to prepare them for sale to theaters for exhibition overseas. Once shipped overseas, these reels typically do not re-enter the United States.

Other reels are stored at the depot for exhibition at subsequent points (such as films with annual seasonal interest), and some reels are stored to ensure that a minimum number of copies of each film are maintained for possible future use.

QUESTION FOR WHICH OPINION IS REQUESTED

[The taxpayer] requests an Opinion on the proper sales and use tax treatment of the above transaction involving motion picture films used for public exhibition.

DISCUSSION

Pursuant to R.C. 5739.02, 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.

R.C. 5739.01(B)(8)¹ provides that “sale” includes “. . . [t]he transfer of copyrighted motion picture films used solely for advertising purposes, except that the transfer of such films for exhibition purposes is not a sale.” Accordingly, the transfer of the copyrighted motion pictures for exhibition purposes is not subject to sales/use tax in Ohio.

Further, R.C. 5741.02(A) levies the Ohio use tax on any storage, use or other consumption of tangible personal property or the receipt of the benefit of a taxable service in Ohio. A “consumer” is defined in R.C. 5741.01(F) as “any person who has purchased tangible personal property. . . .” The definition of “purchase” in R.C. 5741.01(D) “. . . includes production. . . .” However, this section also provides that “[t]he transfer of copyrighted motion picture films for exhibition purposes is not a purchase. . . .”

OPINION

A “consumer” for use tax purposes does not include a person who has received (purchased/produced) copyrighted motion picture films for exhibition purposes. Accordingly, based on the facts you have presented, the use tax does not apply to the taxpayer’s use in Ohio of the films in the factual situation you present.

However, the taxpayer is responsible for the payment of tax on amounts charged by the third party for storage of the films. Pursuant to R.C. 5739.01(B)(9) “sale” includes “[o]n or after August 1, 2003, all transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business.” (Emphasis added) Since the transfer of the copyrighted motion picture films is not a “sale”, the

¹ Previously R.C. 5739.01(B)(9).

films cannot be “property that the consumer of the storage holds for sale in the regular course of business.” Accordingly, the charges for the storage of the films are subject to Ohio sales/use tax. Any other charges incurred by the taxpayer in Ohio for tangible personal property or taxable services concerning the copyrighted films also would be subject to Ohio sales/use tax since the films are not sold when they are transferred for exhibition.

This Opinion applies only to copyrighted motion picture films used for exhibition purposes and is limited to the legal issue addressed. 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(E).

Richard A. Levin
Tax Commissioner