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## Opinion of the Tax Commissioner

Date Issued: November 15, 2007

Opinion No: 07-0005

Tax: Sales/Use

XXXX

Subject: Fulfillment for Direct Marketer

Attn: XXXX

XXXX

XXXX

XXXX ("Taxpayer"), through its counsel, has requested an Opinion of the Tax Commissioner ("Opinion") pursuant to Ohio Revised Code ("R.C.") section 5703.53.

### FACTS

Taxpayer provides fulfillment services for direct marketers and purchases items used primarily in storing, transporting, mailing or otherwise handling purchased sales inventory in a warehouse, distribution center or similar facility. The software utilized by Taxpayer is linked via the web site of the direct marketing company. Taxpayer is an inextricable part of the Client's direct marketing process. Taxpayer purchases warehouse equipment that it uses to perform its contracts with direct marketers.

### QUESTION

Whether the purchase of equipment by Taxpayer that is used to store, transport, mail, or otherwise handle items of purchased sales inventory in Taxpayer's warehouse, distribution center, or similar facility qualifies for exemption from Ohio sales and use tax under R.C. 5739.02(B)(42)(j).

### DISCUSSION

R.C. 5739.02(B)(42)(j) provides an exemption from Ohio sales tax and, by operation of R.C. 5741.02(C)(2), use tax for transactions in which the purpose of the consumer is:

To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in

division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B)(35) of this section.

R.C. 5739.02(B)(35) defines "direct marketing" as follows:

\*\*\* "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

Based on the facts as provided, Taxpayer does not operate retail stores and is not an affiliate of another person that operates retail stores to which the items stored in and shipped from Taxpayer's warehouse, distribution center or similar facility are sold. Nor does taxpayer, itself, engage in direct marketing. However, Taxpayer's clients are engaged in direct marketing and having their goods stored at and shipped to their customers from Taxpayer's facility.

Eliminating the references to goods delivered to retail stores, the language relevant of R.C. 5730.02(B)(42)(j) reads:

To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state \*\*\* by means of direct marketing.

The language of the statute does not specifically require that the operator of the warehouse, distribution center or other facility be the owner of the "purchased sales inventory" that it stores, transports, mails, or otherwise handles at that facility. [For purposes of this opinion, it is assumed that the inventory stored at Taxpayer's facility is actually "purchased sales inventory."] Likewise, the statute does not specifically require that the operator of the facility be the one actually engaged in direct marketing, only that the goods be distributed "by means of direct marketing." Since Taxpayer's clients are engaged in direct marketing, within the meaning of R.C. 5739.02(B)(35), the goods shipped by Taxpayer from its facility are distributed by means of direct marketing.

Since Taxpayer is engaged in storing, transporting, mailing, or otherwise handling its clients' purchased sales inventory that is being distributed primarily outside Ohio by means of direct marketing, it is entitled to claim exemption under R.C. 5739.02(B)(42)(j) for equipment used primarily in those storage, transportation, mailing, and handling functions. Since no ruling was requested, and no information was provided on the applicability of the exemption to specific

pieces of equipment, no opinion can be given on whether the exemption applies to any specific item.

#### OPINION

Therefore, it is the Opinion of the Tax Commissioner that the purchase of equipment by Taxpayer that is used to store, transport, mail, or otherwise handle items of purchased sales inventory in Taxpayer's warehouse, distribution center, or similar facility qualifies for exemption from Ohio sales and use tax under R.C. 5739.02(B)(42)(j) under the facts provided.

This Opinion is limited to the legal issue addressed in this Opinion. This Opinion applies only to Taxpayer and 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 Taxpayer to be aware of such changes. See R.C. 5703.53(E).

Sincerely,

Richard A. Levin  
Tax Commissioner

Cc: XXXX