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## Opinion of the Tax Commissioner

Date Issued: February 20, 2008

Opinion No: 08-0002

Tax: Sales

XXXX  
XXXX  
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XXXX  
XXXX

Subject: Supplying Compressed Air

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

### FACTS

We sell and distribute industrial air compressors and related parts, supplies and services \* \* \*.

We are introducing a new venture called “XXXX”, the supply of compressed air to our customer’s place of business. We anticipate the majority of these consumers to be manufacturers, who typically utilize compressed air to operate tools and production line equipment required for manufacturing of products for resale. Upon implementation of a ten year contract, we will install and maintain the equipment at our customer’s location; retaining full ownership and control of the compressor, spare parts, and accessories. Our customer will be invoiced a standard monthly fee for the delivery of the compressed air based upon an anticipated range of consumption. If the maximum contractual volume is exceeded, there will be a supplementary charge, calculated by a predetermined method.

### QUESTION FOR WHICH OPINION IS REQUESTED

Taxpayer requests an Opinion of the Tax Commissioner on how sales tax should be handled on the monthly fee, as well as the overage charges; whether the compressed air supply should be treated as tangible personal property or a service, and under what conditions it would be a taxable or an exempt transaction.

### 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. There is a presumption that all sales made in the state are subject to the tax until the contrary is established, R.C. 5739.02(C).

R.C. 5739.01(YY) defines “Tangible personal property” as:

\* \* \* personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, “tangible personal property” includes motor vehicles, electricity, water, gas, steam, and prewritten computer software.

Because compressed air can be weighed, measured and felt it falls within the definition of “tangible personal property” and is therefore a product that is sold by the Taxpayer to its customers. Accordingly, Ohio sales tax should be charged on the sale of the compressed air unless an exception to the tax applies. Tax should be charged regardless of whether the amount being invoiced is the standard charge or an overage charge for the purchase of additional air.

You indicate that you anticipate that your customers of the compressed air will be primarily manufacturers. R.C. 5739.02(B)(42)(g) provides an exemption for items, as described in R.C. 5739.011, primarily used in a manufacturing operation to produce tangible personal property for sale. R.C. 5739.011(B)(8) provides that “coke, gas, water, steam and similar substances used in the manufacturing operation” qualify for exemption. Therefore it is likely that you will have manufacturing customers that claim an exemption from sales tax on their purchase of the compressed air. Note that there is no status exemption for manufacturers; instead it is the use of the product being purchased that determines whether the purchased product is exempt from tax.

For any sale where a customer claims an exemption from sales tax, whether it be on the basis of the manufacturing exemption or some other exemption, you should obtain a fully completed exemption certificate as provided for in R.C. 5739.03(B)(1)(a). A vendor that obtains a fully completed exemption certificate from a customer is, in the absence of fraud or collusion, relieved of the liability for collecting tax on the sales covered by the certificate, R.C. 5739.03(B)(1)(b).

### **OPINION**

Based upon the forgoing, it is the Opinion of the Tax Commissioner that the compressed air sold by Taxpayer is the sale of tangible personal property. Sales tax is to be charged and collected from customers on the sales of such tangible personal property unless and exemption is applicable and the Taxpayer has obtained a certificate of exemption as provided for in R.C. 5739.03(B)(1)(b).

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(E).

Richard A. Levin  
Tax Commissioner