
Opinion of the Tax Commissioner

Date Issued: April 14, 1992

Opinion No: 90-0013

Tax: Sales/Use

XXXX
XXXX
XXXX

Subject: Resale

This request for an opinion of the Tax Commissioner was received on December 18, 1990. Specifically, it concerns the application of sales and use tax to items which are purchased and then leased by XXXX.

FACTUAL BACKGROUND

XXXX (hereinafter, Taxpayer) has submitted documentation outlining the following factual circumstances:

1. Taxpayer is a wholly-owned subsidiary of XXXX, formerly XXXX. This entity, in turn, is a wholly-owned subsidiary of XXXX.
2. XXXX provides next morning, door-to-door express delivery of packages weighing less than one hundred pounds throughout the United States as well as to and from some foreign countries. XXXX also acts as a domestic and international freight forwarder for shipments of any size.
3. In providing its services, XXXX uses the fleet of airplanes owned by XXXX to deliver all freight to the XXXX, which is owned by Taxpayer. Taxpayer has no employees; Taxpayer leases XXXX (the realty) and all tangible personal property located there to XXXX and several unrelated entities.
4. Taxpayer is the purchaser of all items of personalty used in the operation of the air park which are subsequently leased to and used by XXXX employees as well as others.

REQUEST FOR OPINION

Taxpayer requests an opinion of the Tax Commissioner finding that the items which it purchase and leases to XXXX qualify for exception from the sales tax pursuant to R.C. 5739.01(E)(1).

Ohio Revised Code section 5739.01(E) (1) excepts from the definition of the retail sale the purchase of items of personalty by a consumer engaged in business whose purpose at the time of purchase is to resell the thing transferred or benefit of the service provided in the same

form in which it was received. Thus, in order to be excused from the payment of the tax, the taxpayer needs to establish that the items purchased retain their classification as personalty, i.e., have not been incorporated into the realty; that at the time of purchase, the consumer intended to re-sell the item in its same form; and that the transfer of possession or title to the item or the benefit of the service provided was supported by consideration. R.C. 5739.01(B)

The taxpayer states generally that it is the purchaser of items which retain their status as personalty at all times. Taxpayer also states that it receives lease payments from XXXX for the rental of these items of personalty as well as the rental of the realty, consideration for which is separately stated, allegedly, in the lease documents.

Based on these facts it is the opinion of the Tax Commissioner that Taxpayer's lease of personalty to XXXX qualifies as a sale for resale, excepted from the sales tax pursuant to R.C. 5739.01(E) (1), the transactions are taxable.

This opinion applies only to this taxpayer and its property as it relates to leases to XXXX. The opinion, and any reliance placed upon 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 state in R.C. 5703.03(C). It is the duty of the taxpayer to be aware of such changes. R.C. 5703.53(E).

Roger W. Tracy
Tax Commissioner