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## Opinion of the Tax Commissioner

Date Issued: October 8, 1991

Opinion No: 90-0014

Tax: Sales/Use

XXXX  
XXXX  
XXXX

Subject: Public Utility Service

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 the purchase of airplanes, aircraft deicing units, ground support equipment, including refuelers not licensed to operate on the public highways, aircraft loaders and mobile cargo handling equipment, aircraft maintenance and test equipment, crash, fire, and rescue equipment, air navigational equipment and aids, and portable runway snow removal equipment by XXXX.

### FACTUAL BACKGROUND

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

1. Taxpayer, formerly XXXX, 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 Taxpayer to deliver all freight to XXXX which is owned by XXXX, a wholly-owned subsidiary of Taxpayer.
4. Taxpayer's personnel sort the packages and freight at the XXXX central sorting facility and reload the items for shipment to the appropriate destinations.
5. None of the corporate entities are regulated by the Public Utilities Commission of Ohio; nevertheless, Taxpayer and XXXX are subject to regulation and certification by other federal and state departments.

### REQUEST FOR OPINION

Taxpayer requests an opinion of the Tax Commissioner finding that its purchases of certain items, which are listed in their entirety above, are used directly in the rendition of a public utility service within the meaning of R.C. 5739.01(P).

Ohio Revised Code section 5739.01(E)(2) excepts from the definition of a retail sale the purchase of items by a consumer whose purpose is to use or consume the item directly in the rendition of a public utility service. R.C. 5739.01(P) further defines the perimeters of the exception by defining those items used directly as:

"...property which is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and which retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation or distribution system, including only such motor vehicles as are specially designed and equipped for such use."

Thus, in order to qualify for the exception, Taxpayer must be the consumer of the tangible personal property and the tangible personal property must become part of its transportation system and retain the classification as personalty; be fuel or power used in the system; or be used for repair and maintenance of the system.

Based on the facts and representations of Taxpayer, it is the opinion of the Tax Commissioner that the purchase of aircraft which are used primarily in Taxpayer's express cargo delivery service, the loaders and mobile cargo handling equipment which are used in the sorting and loading of packages onto or off of the airplanes, and the navigation equipment and aids used to relay information necessary to take-off and landing of aircraft are not taxable since they are incorporated in Taxpayer's transportation system. The information regarding the control tower is inconclusive, and the Tax Commissioner declines to issue an opinion on this item at this time.

Items used to test and maintain the aircraft are not subject to the tax; however, auxiliary items such as test stands are subject to the tax. Taxpayer's information states that these stands support the testing apparatus, the aircraft part, or personnel (elevating personnel for access to the aircraft). The items themselves do not provide a repair or maintenance function.

Taxpayer represents that the deicing units are trucks which carry tanks containing a solution that is sprayed onto the aircraft to remove ice and prevent its formation. The trucks contain a heating apparatus and the spray hose and pump. Where this is the situation, the deicing units are excepted from the tax on the basis that they are maintenance items. Taxpayer's classification "ground support equipment" lacks the specificity required by Ohio Adm. Code 5703-1-12; nevertheless, items which are used to provide repair parts or services or deliver operating supplies to the aircraft are not taxable. Vehicles, generally, may be subject to the tax and need to be evaluated as to whether they are employed in maintaining or repairing the distribution system and are specially designed and equipped for such use. Cincinnati Gas & Electric Co. v. Lindley (April 21, 1987), B.T.A. No.84-A-1066; East Ohio Gas Co. v. Limbach (1991), 61 Ohio St. 3d 363.

The evidence submitted to the Tax Commissioner regarding the refuelers indicates that Taxpayer purchases these items and then either sells them or gives them to one of its wholly-owned subsidiaries. Thus, the taxable status of these purchases is dependent upon the identification of the ultimate consumer and the purpose of that consumer at the time of the purchase. Therefore, the Tax Commissioner declines to issue an opinion at this time. Ohio Adm. Code 5703-1-12(D).

Based on the rationale of Firelands Electric Cooperative, Inc. v. Lindley (Feb. 22, 1985), B.T.A. No. 81-A-643 and Cardinal Operating Co. v. Limbach (May 21, 1987), B.T.A. No. 84-C-831, the portable runway snow removal equipment is used to maintain the distribution system and is excepted from tax.

Taxpayer requests that the Tax Commissioner deem crash, fire, and rescue equipment, which is also used to extinguish engine fires, as maintenance equipment. These items are used to limit incidences of damage to either the property or to personnel. They do not perform a repair or maintenance function; these activities necessarily occur prior to or after damage occurs. As safety items, this equipment is taxable since there is no provision in either the statute or the regulatory guidelines of the Ohio Administrative Code which extends exception or exemption from the sales tax to safety items used in the public utility service area.

This opinion applies to this taxpayer and its property only. As noted in Ohio Adm. Code 5703-1-12(G), this opinion does not bind the Tax Commissioner as to any transaction arising prior to the issuance of the opinion. 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 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).

Roger W. Tracy  
Tax Commissioner