
Opinion of the Tax Commissioner

Date Issued: April 11, 1991

Opinion No: 91-0008

Tax: Sales

XXXX
XXXX
XXXX

Subject: Consumer

This request for an opinion of the Tax Commissioner was received on March 20, 1991. Specifically, it concerns the application of the sales tax to XXXX purchases of gas for heating apartment complex units.

XXXX (hereinafter referred to as taxpayer) has submitted the following factual information:

- 1.) The taxpayer is the owner and lessor of apartments located in an apartment complex which consists of many separate buildings.
- 2.) The taxpayer purchases gas from both public utilities and private suppliers. The non-utility suppliers charge the taxpayer sales tax on its purchases of gas.
- 3.) The taxpayer is charged for its gas purchases by measurement of the gas through a master meter. Subsequently, the gas is piped into the separate buildings and is metered again at that point.
- 4.) The taxpayer passes the cost of the gas on to its tenants by assessing each tenant his or her share of the gas used in their particular building based upon the percentage of floor space rented.

The taxpayer requests an opinion of the Tax Commissioner which addresses the following issue: is it proper for the taxpayer to include amounts of sales tax charged by its private gas suppliers in the gas charges that it passes on to its tenants? If the above-mentioned method is not proper, must the taxpayer issue exemption certificates to its private gas suppliers utilizing the "sale for resale" exemption and in turn, collect sales tax on the amounts of gas paid for by each tenant?

For purposes of the sales tax, the taxpayer is the consumer of the gas purchases under R.C. 5739.01(D). A part of the cost of renting real property is supplying heat, and purchases of gas can be viewed as an overhead expense of the taxpayer. Thus, the method of paying sales tax as described above is proper since the taxpayer is the actual consumer of the gas and is the correct party charged sales tax under the facts presented. It is also appropriate for the taxpayer to pass on the cost of the sales tax as a portion of the actual charges for gas by its private suppliers

if it chooses to do so. Therefore, it is not necessary for the taxpayer to issue exemption certificates to its private gas suppliers stating that its purchases are entitled to the "sale for resale" exemption.

Based upon the facts presented, it is the opinion of the Tax Commissioner that the taxpayer's method of paying sales tax for its gas purchases and passing the cost on to its tenants is proper.

This opinion applies to the taxpayer and its property only. 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