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## Opinion of the Tax Commissioner

Date Issued: June 14, 1991

Opinion No: 91-0012

Tax: Sales

XXXX  
XXXX  
XXXX

Subject: Refinancing Lease

This request for an opinion of the Tax Commissioner was received on 15 May 1991. Specifically, it concerns the application of the sales tax to transactions entered into by the above named entity.

XXXX has alleged the following factual circumstances:

- 1) A customer purchases tangible personal property, usually office furniture and equipment, for use in Ohio and pays the applicable sales tax. At a later date, the customer decides to finance the acquisition and approaches XXXX to provide financing.
- 2) The vehicle used for the financing is called a Refinancing Lease. The transaction then occurs as follows. The customer executes a bill of sale which transfers title to the property to XXXX. Possession of the property always remains with the customer. The bill of sale provides that it is given as a grant of a security interest in the property to secure a finance arrangement. Concurrently, the parties enter into a Refinancing Lease, whereby XXXX agrees to purchase the property and lease it back to the customer. The typical lease features a monthly payment for a fixed period with a purchase option at the expiration of the agreement. The parties also execute a rider to the Lease which grants to the customer the option to repurchase the property for the sum of \$1.00.
- 3) XXXX requires the customer to certify that all applicable sales tax was paid by the customer on its initial acquisition or that the acquisition was exempt from the sales tax. XXXX does not claim any ownership interest in the property for tax or accounting purposes. The transaction is filed with the Secretary of State as a security interest.

**QUESTIONS FOR WHICH  
OPINIONS ARE REQUESTED**

- 1) Is the transfer of title only from the customer to XXXX a transaction subject to Ohio sales tax?

ANSWER The transfer of title in this circumstance does not constitute a taxable sale. It is a sale; however, the sale is exempt from the sales tax because XXXX is purchasing the property with the intention of reselling the property in the same condition in which it was purchased.

- 2) Is the Refinancing Lease entered into between the customer and XXXX a taxable transaction?

ANSWER Yes, the lease arrangement constitutes a taxable sale between XXXX and the customer. Ohio R.C. 5739.01(B) defines "sale" to include rentals. This transaction involves the rental of tangible personal property, and it is thus subject to the sales tax.

- 3) Is the customer required to pay sales tax to XXXX on the monthly payments under the Refinancing Lease?

ANSWER Yes. Under Commissioner's rule 5703-9-17, since this is a lease which does not constitute a conditional sale, then sales tax should be collected on each monthly installment.

Roger W. Tracy  
Tax Commissioner