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## Opinion of the Tax Commissioner

Date Issued: September 26, 1991

Opinion No: 91-0013

Tax: Sales/Use

XXXX  
XXXX  
XXXX

Subject: Publications

The request for an opinion of the Tax Commissioner was received on May 23, 1991. Specifically, it concerns the application of the sales and use tax to its publications.

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

1.) The taxpayer sells its publications which provide vehicle valuations to Ohio customers, including but not limited to automobile dealerships, banks, libraries, and insurance companies.

2.) The publications, which are published at various frequencies, are sold on a subscription basis and are distributed by second class mail.

### QUESTIONS FOR WHICH OPINIONS ARE REQUESTED

1.) Do the taxpayer's sales of publications which are published at least quarterly and distributed by second-class mail qualify for the magazine exemption under R.C. 5739.02(B)(4) and Ohio Adm. Code 5703-9-28?

ANSWER: No. The taxpayer's sales of these publications are not "magazines" as defined in Ohio Adm. Code 5703-9-28(A)(3), which provides in part that a "magazine" \* \* \* contains articles, photographs, illustrations, news, advertisements, opinions, or similar information of interest to the general public or an identifiable portion of the general public. The Tax Commissioner has reviewed the publications at issue, and has determined that these items do not meet the content criteria of a magazine as provided by the administrative rule, regardless of how they are handled by the United States Post Office. The publications, instead, are "books" as defined in Ohio Adm. Code 5703-9-43, which provides that transactions which involve the transfer, for consideration, of title or possession of books, manuals, bulletins, lists or similar materials providing current information or data on a particular subject which are furnished and/or supplemented on a continuing basis pursuant to a contract are sales. (Emphasis added). The taxpayer's publications clearly fall within this definition since they provide timely data regarding average wholesale and retail values of used cars and trucks, older cars and trucks, and van conversions based upon various categories such as, year, make, and model.

Based upon the facts presented, it is the opinion of the Tax Commissioner that the sales of the publications in question are not exempt from the sales and use tax pursuant to R.C. 5739.02(B)(4).

2.) Do the taxpayer's sales of publications to motor vehicle dealers qualify as sales made to customers who use the publications directly in making retail sales so that they are excepted from taxation pursuant to R.C.5739.01(E)(2) and 5739.01(O)?

ANSWER: No. The use of these books occurs before the consummation of the sale, and thus is not a use directly in making retail sales. The dealer uses these volumes in formulating an offer, rather than in actually making the sale.

Based upon the facts presented, it is the opinion of the Tax Commissioner that the taxpayer's car dealer customers do not directly use the publications at issue in making retail sales under R.C. 5739.01(E)(2).

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