
Opinion of the Tax Commissioner

Date Issued: June 18, 1992

Opinion No: 92-0010

Tax: Sales

XXXX
XXXX
XXXX

Subject: Charities

This request for an opinion of the Tax Commissioner was received on April 13, 1992. Specifically, it concerns an interpretation of R.C. 5739.02(B)(12) as it relates to sales to churches and nonprofit organizations operated exclusively for charitable purposes.

XXXX (hereinafter taxpayer) is a construction contractor engaged in the business of erecting structures using products manufactured by the taxpayer at its plant in Ohio.

QUESTION FOR WHICH AN OPINION IS REQUESTED

1. Is the exemption from tax under the aforementioned section applicable to both churches and nonprofit organizations operated exclusively for charitable purposes, regardless of where the churches and nonprofit organizations are located, or is it required that nonprofit organizations operated exclusively for charitable purposes be located within the state of Ohio?

OPINION

Sales to churches, regardless of where they are located, are exempt under R.C. 5739.02(B)(12); however, it is required that the nonprofit organizations operated exclusively for charitable purposes be located within the state of Ohio in order to qualify for the statutory exemption. The exemption for these sales is enunciated in R.C. 5739.02(B)(12), which provides that an exemption exists for

“Sales of tangible personal property or services to churches and to nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation, and sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code.” (Emphasis added.)

It is important to note that the key phrase “within this state” relates to the location of non profit organizations and not to the location of churches. Hence, sales made to churches located outside of Ohio and sales made to Ohio qualify for the exemption under the statute. It must be recognized, however, that nonprofit organizations operated exclusively for charitable purposes in

order to qualify for the exception. This definition is also delineated in R.C. 5739.02(B)(12).

Although sales to nonprofit organizations located outside of Ohio are taxable under R.C. 5739.02(B)(12), the taxpayer may be able to claim an exemption under R.C. 5739.02(B)(13) which excepts sales of tangible personal property purchased or delivered in Ohio and later incorporated into realty outside of Ohio; however, these sales must have occurred prior to August 1, 1991. Up to that date, R.C. 5739.02(B)(13) provided an exemption for

“*** building materials and services sold to a construction contractor for incorporation into a structure or improvement to real property outside of this state***.”

This statute was changed in 1991 to eliminate the above language, so that currently no exemption exists for construction materials delivered to a contractor in Ohio and later incorporated into a structure located and owned by a charity outside of Ohio. Nevertheless, the Ohio legislature, aware of the problem facing contractors who wish to purchase materials in Ohio for such contracts to be performed outside of Ohio has enacted new language which will exempt

“*** building and construction materials and services sold to a construction contractor for incorporation into real property outside of this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state***.”

It should be noted, however, that this exemption has a delayed effective date; it will not be in effect until July 1, 1993. The current state of the law as stated above, is that there is no exemption for purchases of materials to be incorporated into a structure or improvement for a charitable organization located outside of Ohio.

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