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## Opinion of the Tax Commissioner

Date Issued: March 2, 1993

Opinion No: 92-0016

Tax: Sales/Use

XXXX  
XXXX  
XXXX

Subject: Property Management

This request for an opinion of the Tax Commissioner was received on August 4, 1992. Specifically, it concerns the application of the sales and use tax to the services provided by the XXXX.

XXXX has alleged the following factual circumstances. XXXX enters into contracts with owners of real property (hereinafter "Property Owners") to manage their various properties. This management includes not only repair and maintenance activities, but also landscaping and security services, administrative services, and the collection of rents and of a fee known as the "common area maintenance" ("CAM") charge which in some circumstances includes landscaping and security services. XXXX uses its own employees in providing landscaping services and hires security service companies to provide all needed security services. XXXX pays Ohio sales and use taxes on its purchases of these security services.

Pursuant to the contracts, each Property Owner pays a fixed fee for XXXX's services. This fee is not itemized and does not separately state the charges attributable to the landscaping and security services. CAM charges separately state a charge for security services, but not for landscaping services.

### QUESTIONS FOR WHICH OPINIONS ARE REQUESTED

(1) Are XXXX's sales of property management services to Property Owners nontaxable sales of services? If so, are the nonitemized property management service fees attributable to the landscaping and security services subject to sales and use tax?

ANSWER The taxability of these transactions is governed by Ohio Revised Code section 5739.01(B)(3)(g) and (h) and 5739.01(D). R.C. 5739.01(B)(3)(g) and (h) provides that landscaping and lawn care services and security services are taxable sales. The primary issue raised here is who the consumer of these services is. R.C. 5739.01(D) provides that "a person who performs a facility management or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract. . . . The purchase of such property and services is not subject to the exception for resale." It is the opinion of the Tax Commissioner that the petitioner is a facility manager under R.C. 5739.01(D) and as such it is the consumer of all services purchased to fulfill its contract. Thus, when XXXX hires security services, it is the consumer of those security services and must pay tax on its purchase.

Since XXXX performs its own landscaping services, there is no taxable transaction for which it would be the consumer. Since it does not charge separately for this service, it is not a vendor. It must also be noted that under the provisions of R.C. 5739.01(D), XXXX cannot claim that it is reselling the services purchased to fulfill its contract for managing the properties in question nor claim as exempt any equipment used in rendering such services.

(2) Does the Property Owner's billing of the CAM charges to the tenants constitute a taxable sale of landscaping and security services by the Property Owners to the tenants?

ANSWER Under the analysis used to answer question number one, since XXXX is the consumer of the aforementioned services, the fact that there is an itemization in the bill between the Property Owner and the tenants does not change the nature of the transactions involved.

This opinion applies to the taxpayer and its property and contracts 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