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## Opinion of the Tax Commissioner

Date Issued: October 25, 1993

Opinion No: 93-0017

Tax: Personal Property

XXXX  
XXXX  
XXXX

Subject: Foreign Trade Zone

This request for an Opinion of the Tax Commissioner was received on July 26, 1993. The request concerns the exemption provided by R.C. 5709.44 from the Ohio personal property tax for "tangible personal property" located in an expansion to a foreign-trade zone, specifically, whether the proposed expansion of the XXXX Port Authority Foreign-Trade Zone, a general purpose foreign-trade zone located at XXXX in XXXX, and the proposed operations by XXXX ("Taxpayer") within the expanded zone, will permit Taxpayer's inventory located within the Zone to qualify for the subject exemption.

Taxpayer's request in pertinent part reads as follows:

Pursuant to R.C. §5703.53 and O.A.C. §5703-1-12, written request is hereby made for an "Opinion of the Tax Commissioner" with regard to the following facts and issue:

### FACTS

The XXXX Port Authority (hereinafter "XXXX") has filed an application to expand its existing general purpose Foreign Trade Zone at XXXX. The permit for foreign trade zone status for the XXXX Foreign Trade Zone was granted on XXXX, 198X. The expansion area is located immediately across State Route XXXX from the existing XXXX Foreign Trade Zone. It is shown as the dotted area on the plot plan, marked "Exhibit A", attached hereto and incorporated herein by this reference.

XXXX Corporation intends to locate a facility entirely within the foregoing expansion of the existing XXXX Foreign Trade Zone. XXXX intends to select a developer to construct a building in the expanded zone according to XXXX specifications. The developer will lease the property to XXXX, which will carry on a business activity thereon consisting of warehousing and distribution.

XXXX's tangible personal property within the expanded XXXX Foreign Trade Zone, within the meaning of the term "tangible personal property" as defined in R.C. §5709.44(A)(1), will consist, in part, of products manufactured by it and will come from existing XXXX facilities in the United States and from

its North American facilities outside the United States (that is, Canada and Mexico), as well as from its facilities, or those of its affiliates, in Europe and South America. In addition, such property will consist, in part, of items purchased by XXXX for resale to others.

## **ISSUE**

Based upon the facts related above, if the Foreign Trade Zone expansion request for the XXXX is granted, will XXXX's tangible personal property in the expanded Foreign Trade Zone, within the meaning of the term "tangible personal property" as defined in R.C. §5709.44(A)(1), be entitled to the exemption from personal property taxation provided in R.C. §5709.44(B)?

## **DISCUSSION**

As amended effective March 16, 1993, R.C. 5709.44 provides as follows:

(A) As used in this section:

(1) "Tangible personal property" means the personal property of a merchant that is required to be returned on the average basis as provided in section 5711.15 of the Revised Code, and the average value of all articles purchased, received, or otherwise held by a manufacturer for the purpose of being used in manufacturing, combining, rectifying, or refining, and the average value of all articles that were at any time manufactured or changed in any way by the taxpayer, either by combining, rectifying, or refining, or adding thereto;

(2) "Foreign trade zone" means a general purpose foreign trade zone or a special purpose subzone for which, pursuant to the "Act of June 18, 1934," 48 Stat. 998, 19 U.S.C.A. 81a, as amended, a permit for foreign trade zone status was granted before January 1, 1992, including expansions of and additions to such a zone that are adjacent to the zone as it existed on January 1, 1992, but excluding special purpose subzones for which a permit is granted on or after such date.

(B) Tangible personal property, including such property when used solely for display or demonstration purposes, shall be considered to be in the stream of foreign commerce and shall be exempt from personal property taxation while held in a foreign trade zone.

According to the facts, the Zone was granted a permit on XXXX, 198X for status as a general purpose foreign-trade zone, and the proposed expansion of the zone appears to be "adjacent" to the Zone as it existed on January 1, 1992. The facts state that it will be "located immediately across State Route XXXX from the existing XXXX Foreign Trade Zone." The term "adjacent" is not defined in the Ohio Revised Code, for purposes of R.C. 5709.44 or any other purpose. In Loichot v. Allstate Dev. Corp. (1963), 33 Ohio App. 2d 121, the second headnote states:

2. Adjacent, as used in R.C. 519.24 means lying near, close or contiguous.

It is a relative term, and its meaning must be determined in connection with the manner in which it is used.

15 C.F.R. 400.21, effective October 8, 1991, provides pertinent part:

- (b) *Location of zones and subzones—port any entry adjacency requirements.*
  - (1) The Act provides that the Board may approve “zones in or adjacent to ports of entry” (19 U.S.C. 81b).
  - (2) The “adjacency” requirement is satisfied if:
    - (i) A general-purpose zone is located within the 60 statute miles or 90 minutes’ driving time from the outer limits of a port of entry:\*\*\*

If the proposed expansion of the Zone is approved as a general expansion or addition to the Zone and not as a special purpose subzone, it will qualify as a “foreign trade zone” within the meaning of R.C. 5709.44 (A)(2).

Although XXXX Port Authority is the grantee of the Zone, the facts state that the Taxpayer’s property will be at a privately owned facility in the Zone. Under 19 U.S.C.A. 81m and 15 C.F.R. 400.28(a)(8), private ownership of zone land facilities is permitted if the zone grantee retains sufficient control to implement the project.

### **CONCLUSION**

Based upon the facts submitted, it is the Opinion of the Tax Commissioner that if the federal Foreign Trade Zone Board approves the subject proposed expansion as a general expansion of or addition to the XXXX Port Authority Foreign-Trade Zone, and XXXX Port Authority retains sufficient control of any privately owed land and facilities to comply with 19 U.S.C.A. 81m and 15 C.F.R. 400.28(a)(8), Taxpayer’s “tangible personal property” as defined in R.C. 5709.44(A)(1) will be exempt under R.C. 5709.44(B) from personal property tax while held at the proposed facility in the expanded zone.

This opinion applies to Taxpayer and its property. It may not be transferred or assigned.

In addition, the tax consequences resulting from this opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of Taxpayer to be aware of such changes. R.C. 5703.53(E).

Roger W. Tracy  
Tax Commissioner