

---

## Opinion of the Tax Commissioner

Date Issued: March 7, 1994

Opinion No: 93-0019

Tax: Sales

XXXX  
XXXX  
XXXX

Subject: Affiliated Group

This request for an opinion of the Tax Commissioner was received October 12, 1993. This request concerns whether XXXX ("A"), XXXX ("B"), XXXX ("C") and XXXX ("D") are members of the same "affiliated group" as defined by section 5739.01(B)(3)(e) of the Ohio Revised Code and thus excluded from Ohio sales tax for employment services provided between each other.

The Taxpayer has alleged the following factual circumstances.

1. A is a XXXX corporation with its principal place of business in XXXX.
2. A owns 100% of the common stock with voting rights of B, a XXXX corporation in the business of providing services to other business entities.
3. B in turn owns 100% of common stock with voting rights of D, an Ohio corporation engaged in the XXXX business.
4. A also owns 100% of the common stock with voting rights of C, an XXXX corporation engaged in XXXX.
5. B has executed a personal service contract with A whereby B has agreed to provide all personnel necessary for A to operate its insurance business and A has agreed to pay a semi-monthly fee to B.
6. B has executed similar contracts with both C and D.

### QUESTIONS FOR WHICH AN OPINION IS REQUESTED

Are the services that B renders to A, D and C excluded from the definition of employment services because such services qualify as transactions between members of an "affiliated group" pursuant to section 5739.01(JJ)(4) of the Revised Code and as defined in section 5703.01(B)(3)(e) of the Revised Code?

## OPINION

Pursuant to section 5739.01(B)(3)(k) of the Revised Code the providing of employment services is a taxable sale. However, the definition of "employment services" provides that employment services do not include "[t]ransactions between members of an affiliated group, as defined in division (b)(3)(e) of this section", R.C. 5739.01(JJ)(4). An "affiliated group" as defined by R.C.5739.01(B)(3)(e) means

"two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights."

Because A owns more than fifty percent of B's common stock with voting rights, pursuant to R.C. 5739.01(B)(3)(e) they are members of an affiliated group and no sales tax is due on payments to B for employment services. Likewise, because B owns more than fifty percent of the common stock with voting rights of D, they are members of an affiliated group and employment service transactions between them are not taxable. Finally, the employment service transactions which occur between B and C are also not subject to sales tax. A's ownership of more than fifty percent of the voting common stock of both B and C fulfills the statutory requirement that "one person [A] own or controls the business operation of another member of the group", R.C. 5739.01(B)(3)(e).

This opinion applies to A and the affiliates noted above 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 these changes. R.C. 5703.53(E).

Roger W. Tracy  
Tax Commissioner