
Opinion of the Tax Commissioner

Date Issued: May 3, 1994

Opinion No: 93-0026

Tax: Sales

XXXX
XXXX
XXXX

Subject: Water Treatment

This request for an opinion of the Tax Commissioner was received on September 2, 1993.

FACTS PRESENTED

(1) XXXX (taxpayer) operates and maintains a water treatment facility owned by the city of XXXX (city) pursuant to a contract with the city.

(2) The water treatment facility is designed to treat raw groundwater to make it fit for human consumption using both physical and chemical processes.

(3) The physical processes used in treating water are aeration and filtration. Aeration is used to oxidize dissolved iron and manganese so they become insoluble. These elements are then removed by the filtration process.

(4) The chemical processes involved in water treatment are the addition of chlorine as a disinfectant and of fluoride which helps protect consumers' teeth.

(5) The treated water is sold by the city to consumers.

QUESTIONS FOR WHICH AN OPINION IS REQUESTED

(1) Is water treatment a refining process under the terms of section 5739.01(Q) of the Ohio Revised Code?

(2) May the taxpayer claim exemption for purchases of supplies and equipment it consumes in the water treatment operation?

OPINION

(1) Section 5739.01(Q) of the Revised Code (R.C.) defines "refining" as, "...removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes."

The taxpayer is separating potable water from raw groundwater by physical and chemical means. Therefore, the taxpayer's water treatment operation does constitute "refining" within the meaning of the statute.

(2) R.C. 5739.01(S) includes "refining" within the definition of a "manufacturing operation." Purchases of supplies and equipment for use, "...primarily in a manufacturing operation to produce tangible personal property for sale" are excluded from the definition of a "retail sale" by R.C. 5739.01(E)(9). A "sale" includes, "...production or fabrication of tangible personal property for a consideration for consumers who furnish ...the materials used in the production of fabrication work." (R.C. 5739.01(B)(5)) The taxpayer is processing water using a plant owned by the city pursuant to its contract.

Section (C) of rule 5703-9-20 of the Ohio Administrative Code provides, "A person engaged in production or fabrication of tangible personal property for consideration is deemed to be manufacturing for sale and subject to the provisions of rule 5703-9-21 of the Administrative Code." The taxpayer is engaged in a manufacturing operation for sale and may purchase supplies and equipment used primarily in that operation without payment of Ohio sales or use tax as provided in R.C. 5739.011 and rule 5703-9-21 of the Administrative Code.

The tax consequences stated in this opinion may be subject to change for any of the reasons stated in section 5703.53(C) of the Revised Code. It is the duty of the taxpayer to be aware of such changes.

Roger W. Tracy
Tax Commissioner