
Opinion of the Tax Commissioner

Date Issued: May 19, 1994

Opinion No: 94-0002

Tax: Corporate Franchise

XXXX
XXXX
XXXX

Subject: Original Cost

Dear XXXX:

This request for an opinion of the Tax Commissioner was received on March 14, 1994. For the reasons set forth below, it is the opinion of the Tax Commissioner that for purposes of determining the property factor described in Ohio Revised Code (“ORC”) section 5733.05(B)(2)(a), XXXX (“XXXX”) must use the original cost of property purchased with proceeds traceable to financial incentives provided by state development authorities and private entities. XXXX cannot use the zero basis of such property determined in accordance with Internal Revenue Code (“IRC”) section 362(c)(2).

Facts

XXXX’s correspondence states the following:

- XXXX is currently considering the construction of a new manufacturing facility, the location of which has not yet been decided.
- Development authorities and private entities of a number of states have offered financial incentives to XXXX to locate its facility in one of those states. The incentives will be used to purchase property for the plant facility (i.e., buildings and equipment).
- XXXX will be the legal owner of such property.
- The property acquired with the financial incentives will have a zero basis.¹

Discussion

ORC section 5733.05(B)(2)(a)(i) states that for purposes of calculating the apportionment factor used to apportion income, property is valued “at its original cost” (emphasis added). The Ohio Revised Code does not contain a definition of the word “cost” as used in ORC section

¹ IRC section 362(c)(2) states that “*** if money is received by a corporation, on or after June 22, 1954, as a contribution to capital and [if such money] is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution.***”

5733.05(B)(2)(a)(i). However, ORC section 5733.04(J) states, “Any term used in this chapter has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required.” U.S. Treasury regulation section 1.1012-1 states, “The cost is the amount paid for such property in cash or other property.”

IRC section 1012 states, “The basis of property shall be the cost of such property, except as otherwise provided in this chapter and subchapters C ***.” IRC section 362(c)(2), located within IRC Chapter C, requires that the basis of acquired property shall be reduced by non-shareholder contributions where such contributions are utilized to purchase the property within the 12-month period beginning on the day on which the corporation receives the contribution. Thus, the Internal Revenue Code clearly contemplates that “cost” and “basis” are not the same.

Since ORC section 5733.05(B)(2)(a)(i) uses the word “cost” rather than “basis” and since “cost” and “basis” are not synonymous, for purposes of determining the ORC section 5733.05(B)(2)(a)(i) property factor, XXXX must use the original cost of all its property – even if under IRC section 362(c) some (or all) of that property has a zero basis.

This opinion does not discuss whether under ORC section 5733.05(B)(2)(d), the cost of such property should be included in the property factor in any event.

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

Roger W. Tracy
Tax Commissioner