
Opinion of the Tax Commissioner

Date Issued: September 12, 1994

Opinion No: 94-0004

Tax: Sales

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Subject: Advertising Material

This request for an opinion of the Tax Commissioner was received on April 6, 1994. It concerns the application of sales tax to advertising material which prices and describes tangible personal property offered for retail sale.

FACTUAL BACKGROUND

- (1) The taxpayer operates retail outlets of the "convenience store" type throughout the state of Ohio.
- (2) The taxpayer effects sales by using various methods of promotion. Two methods of promotion, danglers and promotion posters, are at issue. Danglers are colorful cardboard shapes which are hung from the ceilings of the retail outlets. Promotion posters are posters hung on the walls or windows of the retail outlets.
- (3) Both the danglers and the promotion posters price and describe the items offered for sale at retail.
- (4) The taxpayer purchases danglers and promotion posters and distributes both from a central location to its retail outlets. Each retail outlet further distributes danglers and promotional posters throughout the outlet to their ultimate display location.

QUESTION FOR WHICH OPINION IS REQUESTED

Whether or not the distribution of danglers and promotion posters from a central outlet to individual retail outlets and, further distribution from receipt in the individual outlet to the ultimate display location meet the criteria for exemption established under R.C. 5739.01(O) and R.C. 5739.02(B)(37)(a)?

OPINION

The law, in pertinent part, is as follows:

Pursuant to R.C. 5739.01(O), "Making retail sales' does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed material which displays or describes and prices the item offered for sale" (Emphasis added.)

Pursuant to R.C. 5739.02(B)(37)(a), the sales and use tax does not apply to, "sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material which prices and describes tangible personal property offered for retail sale."

With the elimination of the "direct use in making retail sales" exemption in January of 1993, pursuant to Am. Sub. H.B. 904, there came a narrowing of the possible exemptions for advertising material which prices and describes tangible personal property offered for retail sale. Whereas, prior to January, 1993, the purchase of printed material that described and priced an item offered for sale may have been found exempt from sales tax because its display within the retail establishment was a direct use in making retail sales, this is no longer the law.

Today, in order for advertising material to be exempt, it must be used more narrowly, in "making retail sales" through "distribution of printed material which . . . describes and prices," pursuant to R.C. 5739.01(O). The taxpayer contends that it meets this "distribution" requirement, as it distributes the advertising materials from its central outlet to the individual stores and, within the store, the advertising materials are distributed to their ultimate display location. The taxpayer's argument is not well taken.

The "distribution of printed material" in R.C. 5739.01(O) contemplates distribution from the retailer to the potential customer. The specific examples of advertising materials, listed in R.C. 5739.02(B)(37)(a), support this position. Newspaper inserts, catalogues, coupons, flyers, and gift certificates are all distributed by retailers to potential customers. The goal is to give the consumer printed material which prices and describes the items offered for sale in order to stimulate the making of retail sales. The taxpayer does not fit within this definition of "distribution" since the printed material was not distributed from the retailer to the potential customer, rather, the taxpayer distributed the printed material among its own retail outlets. Therefore, the purchase of danglers and promotion posters are subject to sales tax.

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