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## Opinion of the Tax Commissioner

Date Issued: August 26, 1993

Opinion No: 93-0004

Tax: Sales/Use

XXXX  
XXXX  
XXXX

Subject: Agriculture

This request for an opinion of the Tax Commissioner was received on February 9, 1993 from XXXX, on behalf of XXXX (hereinafter referred to as "Taxpayer"). Specifically, Taxpayer wishes to know whether or not Ohio sales or use tax is applicable to certain items used in its agriculture and horticulture business.

### Taxpayer's Description of Transactions in Question:

Taxpayer grows vegetables which are sold to restaurants. To produce the vegetables, Taxpayer purchases the following items and questions the taxability of such purchases under Ohio Adm. Code 5703-9-23 and Ohio Revised Code 5739.01(E)(2).

- seed
- soil
- fertilizer
- pesticides
- botanical pesticides, i.e. ladybugs [sic]
- plastic containers used to contain soil and seeds while seed grow to seedlings
- hand tools to cultivate soil
- hand tiller to cultivate soil
- water hoses to water vegetables
- electric fencing surrounding vegetables to protect vegetables
- in the ground irrigation pipes to water vegetables
- fabric placed on top of vegetables as insect barrier
- plastic used for greenhouse to amplify sunlight
- shadecloth placed on top of vegetables for shading vegetables
- fabric placed around vegetables for weed barrier
- artificial lights to supplement light in winter
- cardboard containers to store and transport vegetables
- plastic bags to store and transport vegetables
- table and chair used by workers to plant seeds and sort lettuce
- filing cabinets for recordkeeping
- refrigerator used to keep seeds cool

Tax Commissioner's Analysis:

Ohio Revised Code 5739.01(E) (2) exempts from sales and use tax tangible personal property that is used in farming, horticulture or agriculture. Ohio Adm. Code 5703-9-23 further expounds on this provision by defining these terms and the various activities that are not subject to the tax. Agriculture is defined as the cultivation of the soil for the purpose of producing vegetables and fruits and includes gardening or horticulture. Horticulture is defined as the production of vegetables, vegetable plants, fruits, or nursery stock for sale as a business and includes the operation of commercial vegetable greenhouses or nurseries. Clearly, Taxpayer is engaged in horticulture within the meaning of the Administrative Code provision.

Sales of articles of tangible personal property to horticulturists for use or consumption directly in producing tangible personal property for sale by horticulture are not subject to the tax. Similarly, sales of articles to be used or consumed directly in the production of tangible personal property which will in turn be used directly in the production of products for sale by horticulture are not subject to the tax. Sales of articles to be used or consumed in the conditioning or holding of products produced for sale, or produced for further use in production for sale by horticulture are not subject to the tax. However, any item which is incorporated into realty is subject to the tax. Thus, sales of materials such as lumber, nails, glass and similar items used in the construction or repair of a building are taxable items.

Nearly all of the items listed above are exempt under the various applicable provisions. This discussion is hereafter limited to those items which are taxable. The electric fencing and irrigation pipes constitute items that are incorporated into realty; therefore, the acquisition of these materials is subject to the tax. The table and chair used by workers to plant seeds and sort lettuce and the filing cabinets are not items that are incorporated in the products being produced for sale, nor are they used or consumed directly in producing the items for sale. Mere use of an item during a horticultural activity does not necessarily mean that it is used directly in producing an item for sale. Direct use means that the purchased item directly acts upon the product being produced for sale. For example, the fertilizer purchased by Taxpayer directly acts upon the product being produced for sale and, hence, is a nontaxable purchase.

This opinion applies to Taxpayer and its property 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 Taxpayer to be aware of such changes. R.C. 5703.53(E).

Roger W. Tracy  
Tax Commissioner