

Opinion of the Tax Commissioner

Opinion No: 21-0001

Date Issued: November 9, 2021

Tax: Sales/Use

Subject: Business Fixture

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This letter is in response to your request for a Tax Commissioner Opinion dated January 18, 2021. The request concerns the classification of XXXXXXXXXXX (“Taxpayer”) video board and message displays (collectively, “Video Display Systems”) as business fixtures for purposes of Ohio sales and use tax¹.

QUESTION

Are the Video Display Systems manufactured and installed by Taxpayer business fixtures upon their attachment to the underlying real property so that Taxpayer must collect Ohio sales tax?

FACTS PRESENTED BY THE TAXPAYER

The Video Display Systems are installed in sports stadiums/arenas, as digital billboards, on the façade of buildings, as signs by entrances to businesses, and on the interior of buildings.

Taxpayer’s Video Display Systems are used primarily to display videos or messages, acting as a large digital sign or television used to broadcast messages to patrons visiting or passing by the particular business. The Video Display Systems are comprised of video cabinets permanently attached or affixed to a building or structure, as defined in R.C. 5701.02. The larger Video Display Systems may include hundreds of video cabinets installed and interconnected to function as a single, seamless video display. The smaller Video Display Systems may be comprised of a single video cabinet used to display messages, such as those installed at the entrance of a business. The

¹ Although this request is made with respect to future projects, Taxpayer provided representative examples of video boards installed by Taxpayer in Ohio. Additionally, Taxpayer may provide additional components or services with the Video Display Systems’ installation, such as electrical/fiber optic wire installation, software, training, and other professional services, which are separately stated in the project bid documents. This request is limited to classification of the Video Display Systems only.

video cabinets are attached by either being welded to the building's or structure's beams, or anchored to the building or structure. The Video Display Systems, themselves, are not specialized to any particular industry or business. The same types of Video Display Systems are installed for many different purposes, but are controlled by software which is tailored to the specific use or business. For example, by simply changing the software used to control a professional sports scoreboard, the Display could be converted from playing in-game highlights and displaying statistics, to playing a movie or video games. Nonetheless, the Video Display Systems are designed and installed based upon the particular customer's planned use thereof.

The Video Display Systems are immovable — they cannot be removed, transported, and installed at a subsequent site without significantly damaging the video cabinets and the real property to which it is attached. Removal would damage the video cabinets such that they would not function properly, substantially reducing their utility so that it is rarely worthwhile to move them. Accordingly, Taxpayer's permanent Video Display Systems are not likely to be used at any location other than where originally installed.

DISCUSSION

R.C. 5701.02 is the section of the Ohio Revised Code that provides for different definitions relating to real property. It begins with the definition of real property as including "land itself and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto." R.C. 5701.02(A).

That section continues with definitions of other terms related to real property. Three of the definitions, "building," "improvement," and "structure," cover objects that are never considered tangible personal property, even before the component parts are attached to the land. These items are described as "fabrications or constructions" to stress the fact that they are formed upon the land, itself, and not tangible personal property that is merely attached to the land. These items are usually composed of bricks, mortar, beams, cement, boards, etc. Buildings, improvements, and structures are constructed upon the realty in which they are situated and have no existence until they are constructed on site.

R.C. 5701.02 also considers tangible personal property that is attached to the land. A "fixture" is defined by R.C. 5701.02(C) as "an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises." Fixtures exist as tangible personal property until they are delivered and permanently attached to the land. A fixture is an existing article of tangible personal property that may be assembled and affixed to the land or realty.

R.C. 5701.03 describes and defines personal property. Business fixtures retain their status as tangible personal property and are defined in R.C. 5701.03(B) as "tangible personal property that

has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty." The section includes examples of business fixtures as "machinery, equipment, signs, storage bins and tanks, *** and broadcasting, transportation, transmission, and distribution systems***."

Based upon the above, the Video Display Systems are a business fixture. Video Display Systems are composed of separate pieces of tangible personal property, and are assembled on site. In addition, the video display cabinets match the description of the specific items listed in R.C. 5701.03(B) as perfect examples of business fixtures. The Video Display Systems are akin to "equipment," "signs," or a "broadcasting system," all of which are specifically listed in R.C. 5701.03(B) as examples of business fixtures. Therefore, Taxpayer's Video Display Systems meet the statutory definition of business fixtures and should not be treated as real property.

The definition of business fixture includes "permanently attached or affixed to the land or building." The fact that the Video Display Systems were permanently attached to the building or structure does not change the fact that the display boards are business fixtures. The items at issue are pieces of tangible personal property that were assembled at the business' building or structure for convenience. The Video Display Systems are "signs" or part of a "broadcasting system" that was clearly intended to benefit the business conducted on the premises.

In *Polaris Amphitheater Concerts, Inc. v. Del. County Bd of Revision*, BTA No. 2004-V-1294; 2007 WL 283010 (Jan. 26, 2007), the Board of Tax Appeals included a quote from an appraiser hired by the Board of Education of the Olentangy Local Schools that describes the property. In that quote, the appraiser described many of the structures and buildings at issue. The description of one of the buildings included "several video projection screens." However, when making the determination that the "brick and mortar buildings, improvements and structures" failed to constitute items of personal property, the Board listed the specific items that should be considered real property:

The amphitheater stage, loading docks, attached wings, concession facilities, merchandising facilities, restroom facilities, storage facilities, video production facilities, administrative offices, VIP lounges, outdoor lounges, storage facilities, maintenance facilities, cafeteria, hospitality facility, first aid and public safety facilities, paved parking lots and walkways, and the like all constitute buildings, improvements, and/or structures as defined by R.C. 5701.02, as they are all of "permanent fabrication or construction," affixed to the land, intended as "habitation for people, animals or a shelter for tangible personal property" ***.

The Board did not include video displays in the long list of property that was found to be real property. In fact, the Board concluded that the items were buildings, improvements and structures and made no mention of fixtures at all. Clearly, the Board did not include the video

projection screens in its finding that the property located at Polaris Amphitheater was real property.

In addition, the Board was aware of the definition of "business fixture" in R.C. 5701.03(B) and included the definition in its conclusion that the buildings and structures were realty:

The buildings, improvements, and structures before us are borne from permanent fabrication and construction upon the property (e.g., brick and mortar construction 'consisting of foundations, walls, columns, girders, beams, floors, and a roof'), rather than items(s) of personal property (e.g., 'machinery, equipment, signs, storage bins and tanks, *** broadcasting, transportation, transmission, and distribution systems') that have been otherwise delivered and permanently attached to the land.

The Board made the distinction that signs and broadcasting systems are not permanent fabrications and constructions; therefore the decision of the Board of Tax Appeals in *Polaris* cannot be used to support the contention that the Video Display Systems at issue here should be treated as real property.

OPINION

Based solely upon the information you provided, Video Display Systems meet the statutory definition of "business fixture" contained within R.C. 5701.03(B). As such, they retained their status as tangible personal property when they were affixed to sports stadiums/arenas, as digital billboards, on the façade of buildings, as signs by entrances to businesses, and on the interior of buildings.

This Opinion is limited to the legal issue addressed in this Opinion. This Opinion applies only to Taxpayer and 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. See R.C. 5703.53(E).

Jeffrey A. McClain
Tax Commissioner