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PP 2007-01 and RP 2007-01 - Classification of Certain Business Assets as Real or Personal Property - Issued September 2007; Revised January 2008

This information release is a replacement for release PP 2007-01 and RP 2007-01 issued September 2007. It is being issued to correct the classification of certain types of property used for storage. The corrections are found in items 24 and 30, below.

The purpose of this information release is to provide guidance regarding the proper classification of certain business assets. With the phase-out of the personal property tax in Ohio, the classification of what constitutes personal property or real property has been heightened in importance. While this release is being issued to address some types of property, this information release is not meant to, and it should not be construed to, encompass all types of property potentially subject to personal or real property taxation in Ohio. This information can also be found in Amended County Auditor Bulletin No. 290, issued December 18, 2007.

The Department of Taxation recently has reviewed the county auditor bulletins that classify assets as either real property or personal property. In light of recent case law and statutory amendments, many of these bulletins were found to be obsolete or unnecessary. In order to align the property classifications reflected in these bulletins with current law, the Tax Commissioner has rescinded them pursuant to Amended Bulletin No. 288 (Bulletins 33, 70, 74, 77, 80, 85, 110, 135, 154, 166, 247, and 284) issued September 7, 2007 and is replacing them with this bulletin.

The classifications set forth below are not intended to alter the sales/use tax consequences of the purchase or installation of real or personal property. In the case of purchases of personal property, Ohio sales/use tax will apply unless the taxpayer has some statutory claim of exemption. While transfers of real property are

not normally subject to Ohio sales/use tax, construction contractors continue to have sales/use tax responsibilities for any personal property or taxable services used in performing a construction contract.

Further, Ohio's sales/use taxes apply to certain enumerated services. For example, R.C. 5739.01(B)(3)(g) includes landscaping and lawn care services within the definition of a "sale" for sales/use tax purposes. In transactions where such services are being provided, the service may be taxable regardless of the fact that the service results in an improvement to real property. Other services that are subject to sales/use tax (not inclusive) include the repair of personal property, installation of personal property, exterminating services, and private investigation and security services. This bulletin does not address the existence of any services that may be subject to sales/use tax at the issuance or after the issuance of this bulletin.

The following classifications of certain business property are intended to supplement, expound upon, and comport with the definitions set forth in R.C. 5701.02 and 5701.03, and the classifications set forth in Ohio Adm. Code 5703-3-01. This bulletin does not address the classification of assets on residential property. In addition, property classified in this bulletin as "real property" still may be deemed to be personal property if it meets the definition of a "business fixture" and/or the property does not meet the definition of a "fixture" (e.g., certain property subject to an operating lease).

The following business property is properly classified as personal property:

1. Air conditioning systems that utilize specialized cooling equipment to maintain specific environmental conditions in computer rooms, manufacturing areas, research areas, storage areas, or other areas that require specific environmental conditions for the business that is conducted on the premises. But, see 26 below.
2. Amusement park rides.
3. Bank vault doors unless an integral part of the building and the removal of which would damage the structural integrity of the building. Also, see 13 below.
4. Boilers and ancillary equipment such as, but not limited to, feed water heaters, pumps, steam traps, steam lines, and return water storage tanks, that are used for any purpose other than environmental control for buildings or structures housing people or animals. But, see 26 below.
5. Chemical lines used for fire protection of business equipment.
6. Concrete fire walls and earthen structures surrounding oil and gasoline storage tanks.
7. Drive-in windows, but only that portion that constitutes the window itself and not the framing.

8. Electrical lines and ancillary equipment that are specialized and used in manufacturing processes.
9. Fuel storage tanks, whether above ground or below ground.
10. Generators when used as a power source for manufacturing equipment or when used exclusively to maintain specific environmental conditions, e.g., in computer rooms. But, see 32 below.
11. Internal communication systems, including public address systems.
12. Kilns used in the drying, burning, firing, baking or similar processes of brick, grain, pottery, ceramics, lumber, and similar products.
13. Modular bank vault rooms. Also, see 3 above.
14. Pneumatic tube systems.
15. Portable grain storage bins regardless of size. But, see 30 below.
16. Process water transportation equipment used to transport water from a well to a processing operation of a business establishment, including equipment, lines, and pipes whether above ground or below ground used to transport manufacturing process water. This classification does not include equipment used to transport water for the general use of the building, such as for drinking, bathing, cooking, or fire suppression.
17. Pumps, motors, or pipes used in connection with cooling towers, manufacturing equipment, spray ponds, storage tanks, or irrigation related to the business, e.g., golf courses.
18. Refrigerated cold areas, including equipment such as panels and insulation and the enclosure around or incident to the equipment, excluding supporting structures.
19. Service station canopies, all electrical wiring for the canopies, any appurtenances to the canopies, and any concrete pads or islands used as foundations for the canopies.
20. Signage, including neon signs and billboards.
21. Skip hoists and tipples. But, see 37 and 38 below.
22. Sliding boards, diving boards, diving platforms, lifeguard stands, lighting, rails, ladders, and filtration and chlorination systems associated with swimming pools. But, see 39 below.
23. Special purpose lighting and associated electrical wiring, whether inside or outside, including lighting for miniature golf courses and lighting for illuminating or displaying inventory, e.g., on automobile dealer lots.
But, see 31 below.

24. Storage silos, bins, or tanks, whether above or below ground, and regardless of the type of facility where used. But, see 30 below.

25. Water softening equipment when used for industrial clothes cleaning or in a manufacturing process. But, see 40 below.

The following property is properly classified as real property:

26. Air conditioners, boilers and ancillary equipment such as, but not limited to, feed water heaters, pumps, steam traps, steam lines, and return water storage tanks primarily used for environmental control for buildings or structures housing people or animals. But, see 1 and 4 above.

27. Carpet installed and attached to a finished or unfinished interior surface so as to indicate permanent affixation for the useful life of the carpet. For sales tax purposes, note that the installation of carpet is taxable. See R.C. 5739.01(B)(5).

28. Cement parking pads, driveways, and walkways in use at trailer courts.

29. Chemical and water lines used for fire protection installed within and an integral part of a building or structure. But, see 5 above.

30. Elevators, storage bins, and storage silos used in agricultural operations. But, see 15 and 24 above.

31. General parking lot lighting. But, see 23 above.

32. Generators that have been installed as an integral part of a building or structure and that supply power for general usage to the building or structure. But, see 10 above.

33. Greenhouses attached to permanent foundations.

34. Powder magazines and any other buildings or structures constructed in compliance with R.C. Chapter 3743 for the storage of fireworks or other types of explosives.

35. Pump houses.

36. Pyrometer houses.

37. Skip hoist houses. But, see 21 above.

38. Supports for cranes, skip hoists, tipples, or similar property that are an integral part of the building or structures. But, see 21 above.

39. Swimming pools. But, see 22 above.