

“and trust funds, whether owned or controlled by private or public persons or officers.”

It is therefore my opinion, in specific answer to your inquiry, that the effect of Section 1078-61, General Code, is not to enlarge and broaden the investment provisions of the Banking Act and the Building and Loan Act, and that trust funds under the jurisdiction and control of a state bank, by virtue of being expressly mentioned in said section, may be so invested in bonds or other obligations of a housing authority created under the present Ohio law.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2489.

OHIO RETAIL SALES TAX — ROOFING CONTRACTOR —
—WHERE HE PURCHASES UNIT OIL BURNER FROM
OHIO MANUFACTURER AND USES IT IN HIS BUSI-
NESS, SUCH UNIT OIL BURNER IS SUBJECT TO OHIO
RETAIL SALES TAX—SECTION 5546-2, G. C.

SYLLABUS:

When “D,” an Ohio roofing contractor, purchases a unit oil burner from “M,” an Ohio manufacturer, and “D” uses said unit oil burner in his business of installing and laying roofs for his customers, the purchase of such unit oil burner is subject to the Ohio Retail Sales Tax as provided by Section 5546-2 of the General Code of Ohio, and is not exempt from such tax under the provisions of Section 5546-1 of the General Code, or any other provisions of the Ohio Retail Sales Tax Act.

COLUMBUS, OHIO, May 19, 1938.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date, which reads as follows:

“I would request your formal opinion upon the following set of facts:

“D, an Ohio roofing contractor, purchases a unit oil burner from M, an Ohio manufacturer, said article to be used

by D solely and exclusively in his business of installing and laying roofs for his customers.

"Is this transaction subject to the provisions of the retail sales tax, or is it exempt under the provisions of Ohio General Code, Section 5546-1, defining 'sales at retail'?"

Section 5546-1, General Code of Ohio, as amended and effective January 1, 1937, provides in part as follows:

" * * *

" 'Sale' and 'selling' include all transactions whereby title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is granted, for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange or barter, and by any means whatsoever; * * *

" 'Retail sale' and 'sales at retail' include all sales excepting those in which the purpose of the consumer is (a) to resell the thing transferred in the form in which the same is, or is to be, received by him; or (b) to incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing or refining, or to use or consume the thing transferred directly in the production of tangible personal property for sale by manufacturing, processing, refining, mining, production of crude oil and natural gas, farming, horticulture, or floriculture, or directly in making retail sales or directly in the rendition of a public utility service; * * *"

The question to be decided is whether or not the unit oil burner purchased by the roofing contractor is used directly in the production of tangible personal property for sale, so that it would become exempt from the application of the Ohio Retail Sales Tax which is levied under the provisions of Section 5546-2 of the General Code of Ohio. In this connection it should be noted that Section 5546-2 of the General Code, levies an excise tax upon each retail sale made in this state of tangible personal property, on and after January 1, 1935, with certain exceptions and exemptions, as are set forth under the provisions of Sections 5546-1, and 5546-2 of the General Code of Ohio.

The Ohio Retail Sales Tax is levied on a bracket plan, and the amount is so well known to the citizens of this state that I do not deem it necessary to repeat the provisions of Section 5546-2 of the General

Code, as to what they are. However, I do want to call attention to the last provision contained in Section 5546-2 of the General Code, which provides as follows:

“For the purpose of the proper administration of this Act, and to prevent evasion of the tax hereby levied, it shall be presumed that all sales made in this state are subject to the tax hereby levied until the contrary is established.”

You state in your communication that the unit oil burner is used solely and exclusively by “D” in his business of installing and laying roofs for his customers. I do not see where, under this set of circumstances, “D” would be entitled to exemption from the application of the Ohio Retail Sales Tax. This unit oil burner is only an accessory used by “D” in furthering his ability to do a better job in the installing and laying of roofs. The oil burner is not incorporated as a material or part in the completed roof, and is not used directly in the production of tangible personal property for sale, because the roof, when completed, becomes a part of the real estate.

Therefore, it is my opinion that when “D,” an Ohio roofing contractor, purchases a unit oil burner from “M,” an Ohio manufacturer, and “D” uses said unit oil burner in his business of installing and laying roofs for his customers, that the purchase of such unit oil burner is subject to the Ohio Retail Sales Tax as provided by Section 5546-2 of the General Code of Ohio, and is not exempt from such tax under the provisions of Section 5546-1 of the General Code, or any other provisions in the Ohio Retail Sales Tax Act.

Respectfully,

HERBERT S. DUFFY,

Attorney General.