

3038.

GASOLINE TAX—DEPARTMENTS OF GOVERNMENT WHO HAVE AUTHORITY TO CANCEL AND REMIT PENALTIES AND INTEREST CHARGES ARISING THEREUNDER—WHEN CLAIMS MAY BE COMPROMISED AND BY WHOM.

SYLLABUS:

The authority to cancel and remit penalties and interest charges due under the provisions of the gasoline tax law, is vested in the tax commission until such a time as claims are certified to the attorney general, after which such claims, including penalties and interest, may be compromised only by the attorney general with the consent of the tax commission.

COLUMBUS, OHIO, March 11, 1931.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter requesting my opinion reads as follows:

“Section 5531-1, General Code, provides a penalty of 15% shall accrue upon unpaid motor fuel tax and said tax and penalty shall bear interest at the rate of one percent per month until the same is paid—provided that if the tax commission shall find and certify to the Treasurer of State that such failure to pay said taxes was due to justifiable cause said penalty and interest shall be waived by the Treasurer of State.

Section 268, General Code provides that the Auditor of State shall certify unpaid claims to the Attorney General, who shall collect same or secure judgment and execution thereon—the Attorney General and Auditor of State may adjust any claim in such a manner as they deem equitable.

When an unpaid claim for motor fuel tax has been reported to the Auditor of State and the Auditor of State has certified same to the Attorney General for collection as provided in Section 268 O. G. C. may the tax commission acting under Section 5531-1, O. G. C., remit or cancel the penalty or any part of the claim, or does the whole power to adjust the claim lie with the Attorney General and Auditor of State?”

Your inquiry seeks an answer to the question as to the authority to cancel and adjust claims, penalties and interest charges due to the state under the provisions of the Gasoline Tax Law.

The legislature has at various times provided by general and special statutory enactments who shall have the power to compromise and adjust claims as well as the manner of exercising such power.

Section 268, General Code, which is a general statute and which relates to all claims certified by the Auditor of State to the Attorney General for legal action, reads as follows:

“The auditor of state shall keep an account of claims reported to him by an officer or agent of the state which reports shall be made in such form and manner as may be prescribed by the auditor of state. Upon the receipt of such reports the auditor of state shall certify a copy thereof to the attorney general, who shall give immediate notice by mail or otherwise to the party indebted of the nature and amount of such

indebtedness. The attorney general shall collect such claim or secure judgment and execution thereon. Such claims shall bear interest at the rate of six per cent per annum from the day on which they respectively fall due. The attorney general and auditor of state may adjust any claim in such manner as they deem equitable. They may extend the time of the payment of a claim or judgment due the state for such period of time as they deem best for the interests of the state, but not to exceed one year, and they may require and take security for its payment."

The Gasoline Tax Law was enacted in 1925. At that time no provision existed relative to the cancellation and compromise of claims except Section 268, cited above; however, the 87th General Assembly in 1927 amended Section 5524 in which the only change was the omission of the words "this act" and a substitution of the word "law." The words "this act" in Section 5524, before the amendment, related to the franchise tax law. Section 5524, in its present form, reads as follows:

"With the advice and consent of the tax commission, the attorney general may, before or after any action for the recovery of fees, taxes or penalties certified to him as delinquent, under the provisions of * * * law, compromise or settle any claim for delinquent taxes, fees or penalties so certified. * * * "

It was the apparent intent of the legislature to make all claims emanating from the tax commission for taxes, fees and penalties subject to the provisions of Section 5524.

The legislature again indicated its intention with reference to the authority for the cancellation and remission of penalties and interest charges when it enacted, in 1929, Section 5531-1. This Section is part of the gasoline tax law and deals specifically with the provisions thereof. Section 5531-1 reads as follows:

"In the event any dealer shall fail to pay to the treasurer of state the amount of excise taxes due to the state of Ohio upon the use or sale of motor vehicle fuel as and when the same shall be payable, a penalty of fifteen per cent thereof shall immediately accrue and thereafter said tax and penalty shall bear interest at the rate of one per cent per month until the same is paid. Provided, that if the tax commission shall find and certify to the treasurer of state that such failure to pay said taxes was due to justifiable cause said penalty and interest shall be waived by the treasurer of state.

The penalty of fifteen per cent required by Sections 5529-1, 5530, 5533 and 5541-2 of the General Code to be added by the auditor of state shall be waived in cases where the tax commission shall upon due and proper investigation find and certify to the auditor of state and to the treasurer of state that such dealer has not knowingly or fraudulently violated any of the provisions of the laws governing the levying and collection of excise taxes upon the use or sale of motor vehicle fuel.

For good cause shown the tax commission shall have, and it is hereby given, the power and authority to grant extensions of time for the filing of reports required to be filed under the provisions of the law levying excise taxes upon the use or sale of motor vehicle fuel."

It is desirable whenever possible to harmonize the various provisions relating

to the same subject matter. Under the rules of statutory construction a special statute will control over a general statute and as between two sections of the Code dealing with the same subject matter, the latter enactment will prevail. It follows, therefore, that effect should be given to Section 5531-1 with respect to the question of the cancellation of penalties and interest charges arising under the gasoline tax law and to Section 5524 with respect to the compromise of the claim proper. With respect to Section 268, it is clear that Section 5524 and Section 5531-1, General Code, are later enactments as well as special provisions dealing with claims and penalties originating within the jurisdiction of the tax commission.

In view of the above considerations, I am of the opinion that the authority to cancel and remit penalties and interest charges due under the provisions of the gasoline tax law, is vested in the tax commission until such a time as claims are certified to the attorney general, after which such claims including penalties and interest may be compromised only by the attorney general with the consent of the tax commission.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3039.

APPROVAL, PETITION FOR PROPOSED AMENDMENT TO THE CONSTITUTION REPEALING SECTION 9, ARTICLE XV, OHIO CONSTITUTION.

COLUMBUS, OHIO, March 11, 1931.

HON. JOSEPH N. ACKERMAN, *Cleveland, Ohio.*

DEAR SIR:—You have submitted to me a petition signed by more than one hundred qualified electors of this state, requesting me to certify as to the form of a proposed constitutional amendment to repeal Section 9, Article XV of the Constitution of this state, in accordance with the provisions of Section 4785-176, General Code. This proposed amendment is as follows:

“That Article XV, Section 9 of the Constitution of the State of Ohio, reading as follows:

‘The sale and manufacture for sale of intoxicating liquors as a beverage are hereby prohibited. The General Assembly shall enact laws to make this provision effective. Nothing herein contained shall prevent the manufacture or sale of such liquors for medicinal, industrial, scientific, sacramental, or other non-beverage purposes.’

be and the same is hereby repealed.”

There is also similarly requested in accordance with the provisions of Section 4785-176, General Code, my certificate as to the fairness and truthfulness of a summary of the contents and purposes of the foregoing proposed amendment. This synopsis reads as follows:

“The proposed amendment to the Constitution of Ohio repeals the constitutional inhibition against the sale and manufacture for sale of intox-