

WHEREAS, the said State Highway and the tracks of the said
-----Company are subjected to heavy highway
and railway traffic.

It is, therefore, the opinion of the Director of Highways of the State
of Ohio that it is desirable and necessary for the safety, security and
convenience of the public traveling over said highway, to remove said
crossing at grade and separate the grade of the said highway and the
tracks of the said railroad in the following manner :

And further be and it is hereby found, determined and ordered that
it is desirable for the reasons above mentioned to proceed under Sections
1229, et seq., of the General Code of Ohio, to separate the grades of the
said highway and the said railroad as above mentioned.

And further be and it hereby is ordered that a hearing of the matter
be held at the Department of Highways, in Columbus, Ohio, before me on
-----, at -----, Eastern Standard Time.

(SEAL) ----- Director of Highways, State of Ohio.

I certify that the above is a true and correct copy of an entry on the
Journal of the Director of Highways of the State of Ohio on-----
and the same is recorded in Volume -----, Page ----- of his
official journal.

Secretary.
Respectfully,
EDWARD C. TURNER,
Attorney General.

1753.

GASOLINE AND BENZOL—DEALER MAY SELL IN TANK CAR LOTS
FREE FROM TAX WHEN SAME IS PURCHASED BY DEALER
FROM OHIO REFINERIES AND COMPOUNDED.

SYLLABUS:

*A dealer by whom gasoline and benzol are purchased from Ohio refineries and
compounded, may sell the same in tank car lots to dealers registered under the
provisions of Section 5528, General Code, tax exempt under the provisions of Sec-
tion 5526-4, General Code, and said dealers so purchasing said compounded motor
vehicle fuel must report and pay the tax thereon.*

COLUMBUS, OHIO, February 24, 1928

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is hereby acknowledged of your recent communication
which reads:

“We have been confronted with a matter on which we desire to have
your opinion and facts concerning the same are as follows:

X, an Ohio registered dealer in gasoline, purchases tank car lots of motor vehicle fuel from two Ohio refiners. He purchases gasoline from one refiner and benzol from the other. The two products when received by him at his place of business are emptied into his storage facilities and mixed. The mixed product is used or usable for the purpose of propelling motor vehicles on the public highways and is, therefore, a motor vehicle fuel. Part of this fuel is sold through his privately owned filling stations and part is sold in tank wagon and tank car quantities to other Ohio registered dealers. Under the provisions of Section 5526-4 of the General Code, the refiners herein referred to are required to sell all tank car lots of gasoline and benzol to X 'tax unpaid' and he is held liable for the tax on all such fuel purchased and re-sold by him.

Is X, the dealer by whom the gasoline and benzol are purchased from the refiners and compounded, required to report and pay tax on the fuels by him so purchased, compounded and sold in tank car or tank wagon lots to other registered dealers?

Or may he sell such compounded fuels to other registered dealers tax exempt under the section cited above so that the dealers which purchase the compounded fuel from him must report and pay tax thereon?"

Section 5526, General Code, reads in part as follows:

"Dealer' shall include any person, firm, association, partnership or corporation who imports or causes to be imported into the state of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the state of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the state of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers.

Section 5526-4, General Code, as enacted 112 Ohio Laws, page 191, reads as follows:

"In the event any person, firm, association, partnership or corporation producing, refining, preparing, distilling, manufacturing or compounding motor vehicle fuel in Ohio, shall sell such motor vehicle fuel in tank car lots to any purchaser who is duly registered as a dealer under the provisions of Section 5528, General Code, then such purchaser and not the seller shall be deemed the 'dealer' as to the motor vehicle fuel contained in such tank car lots."

Section 5528, General Code, reads in part as follows:

"Within thirty days after this act (G. C., Sections 5526 to 5540, 6292, and 6295), takes effect, each dealer, as herein defined, doing business within

the state of Ohio, shall file with the tax commission of Ohio, a certificate stating the name under which such dealer is transacting business within the state of Ohio, the location of its principal office or place of business within the state, the names and addresses of the partners, if such dealer is a partnership, or the names and addresses of the principal officers, if said dealer is a corporation or an association. If such dealer is a corporation organized under the laws of another state, territory or country, such dealer shall furnish evidence to the tax commission that it has complied with the laws of Ohio relating to the transaction of business in Ohio. After thirty days from the date when this act goes into effect, no dealer shall sell, use or distribute any motor vehicle fuel until such certificate has been filed, and in the case of a foreign corporation, such evidence of authority has been furnished. * * *

Under the provisions of Section 5526, General Code, the term "dealer" includes importers who either import or cause to be imported into the State of Ohio motor vehicle fuel or fuels as defined in said section, for use, distribution or sale and delivery in Ohio. And also producers who either refine, prepare, distill, manufacture or compound such motor vehicle fuel as defined in said section, in the State of Ohio, for use, distribution, or sale and delivery in Ohio. Said section, however, contains the further provision that when any such importer of said motor vehicle fuel into this state shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers.

Under the provisions of Section 5526-4, General Code, the term "dealer" is further defined as being any person, firm, association, partnership or corporation producing, refining, preparing, distilling, manufacturing or compounding motor vehicle fuel in Ohio and selling such motor vehicle fuel in tank car lots to any purchaser who is duly registered as a dealer under the provisions of G. C., Section 5526.

It is noted that the exception to the general rule under the provisions of Section 5526, General Code, is as to a person, firm, association, partnership or corporation importing motor vehicle fuel into the state and selling the same in tank car lots or in original containers and to purchasers for use, distribution, sale and delivery in the state, while Section 5526-4, supra, has reference to any person, firm, association, partnership or corporation producing, refining, preparing, distilling, manufacturing or compounding motor vehicle fuel in Ohio and selling said motor vehicle fuel in tank car lots to a purchaser who is a registered dealer.

You state that X is an Ohio registered dealer in gasoline and purchases tank car lots of motor vehicle fuel from Ohio refiners. He compounds gasoline and benzol which is used for the purpose of propelling motor vehicles on the public highways. Part of this fuel is sold through his privately owned filling stations and part is sold in tank car quantities to other Ohio registered dealers.

Under the provisions of Section 5526-4, General Code, the refiners are required to sell all tank car lots of gasoline and benzol to dealers, tax unpaid. X is a registered dealer purchasing motor vehicle fuel that has been refined in Ohio and under the provisions of Section 5526, General Code, as such dealer he must pay the excise tax on said motor vehicle fuel unless he comes within the exception in Section 5526, General Code, or the exception in Section 5526-4, General Code.

Your first question is as to whether X, who compounds the gasoline and benzol purchased from Ohio refineries, is required to report and pay tax on the fuels by him so purchased, compounded and sold in tank car or tank wagon lots to other registered dealers.

It is manifest that on all tank car lot sales of motor vehicle fuel made by X to others than registered dealers, X will be required to pay the tax; but under the provisions of Section 5526-4, supra, the motor vehicle fuel compounded by X and by him sold in tank car lots to registered dealers, said purchasers become the "dealers" and take said motor vehicle fuel tax unpaid, and X would therefore not be required to report and pay tax on said fuels so purchased, compounded and sold by him in said tank car lots to said registered dealers and said dealers so purchasing said compounded fuel are required to report and pay the tax thereon.

I find no provision in the statute in regard to tank wagon lots and the foregoing conclusion therefore does not apply to said tank wagon lots.

Specifically answering your question, it is my opinion that a dealer by whom gasoline and benzol are purchased from Ohio refineries and compounded, may sell the same in tank car lots to dealers registered under the provisions of Section 5528, General Code, tax exempt under the provisions of Section 5526-4, General Code, and that said dealers so purchasing said compounded motor vehicle fuel must report and pay the tax thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1754.

APPROVAL, BONDS OF COLLEGE CORNER VILLAGE SCHOOL DISTRICT, BUTLER COUNTY—\$23,000.00.

COLUMBUS, OHIO, February 24, 1928

Industrial Commission of Ohio, Columbus, Ohio.

1755.

APPROVAL, BONDS OF THE CITY OF NILES, TRUMBULL COUNTY—\$18,100.00.

COLUMBUS, OHIO, February 24, 1928

Industrial Commission of Ohio, Columbus, Ohio.