

3837.

TAX REFUND—TREASURER OF STATE MAY USE MONEY APPROPRIATED UNDER SALES TAX LAW TO REFUND COSMETIC OR BOTTLED BEVERAGE TAX STAMPS.

SYLLABUS:

Moneys appropriated to the Treasurer of State by section 22 of House Bill No. 134 of the second special session of the 90th General Assembly, for the purpose of "refunds," may be used to make refunds of cosmetic or bottled beverage tax stamps authorized by section 24 of said act.

COLUMBUS, OHIO, January 18, 1935.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Will you kindly advise this office on the following question:

Ever since the law imposing a tax on cosmetics as well as on beverages has been in existence, this office has had authority and an appropriation with which to redeem all spoiled or unused stamps used for the collection of this tax when returned to this office. There was still a considerable balance left in the appropriation for refunds on these stamps at the end of the year 1934, but we understand that all appropriations lapsed at the end of the year and are not now available.

In the new act, Senate Bill 134, which is the act creating a sales tax in the State of Ohio, Section 22, the cosmetic tax and a certain part of the beverage tax is suspended during the life of the sales tax and provision is made for the redemption of all cosmetic and beverage stamps which will not be needed.

Will you kindly advise this office whether the appropriation made in Section 22 of S. B. 134 under the head of refunds in the amount of \$250,000 can be used for the redemption of these cosmetic and beverage stamps which are now being sent to this office, or whether this appropriation for refunds of \$250,000 is confined to the redemption of sales tax stamps, etc., under S. B. 134 and not to the redemption of cosmetic and beverage."

The reference in the third paragraph of your letter to Section 22 of Senate Bill 134 obviously is to Section 24 of House Bill 134 of the second special session of the 90th General Assembly. This section will be quoted infra. Section 22 of this Act provides, in so far as pertinent to your question, as follows:

"The sums hereinafter set forth for the purposes specified are hereby set apart for the use of the general revenue fund out of the moneys received into the state treasury under the provisions of this act and appropriated. The sums hereinafter named shall not be expended to pay liabilities incurred subsequent to June 30, 1935.

Appropriations herein made shall be and remain in full force and effect for a period of two years, commencing with the dates on which such appropriations shall take effect, for the purpose of drawing money from the state treasury in payment of liabilities lawfully incurred hereunder, and at the

expiration of such period of two years, and not before, the unincumbered balances of the moneys hereby appropriated shall lapse into the general revenue fund.

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TREASURER OF STATE	
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Refunds	\$250,000.00
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Section 23 of the act amends Sections 6212-49a and 6212-49b, General Code, relating to the tax on bottled beverages. By virtue of these amendments, the tax imposed by Section 6212-49b is included as a part of the so-called retail sales tax act.

Section 24 of this last mentioned act provides as follows:

“That existing sections 6212-49a and 6212-49b of the General Code, are hereby repealed, and sections 5543-1 to 5543-20, both inclusive, 6212-49q, 6212-49r, 6212-49s and 6212-49t of the General Code are hereby suspended January 1, 1935, until and including December 31, 1935. Said amendments or suspensions shall not affect the right to refund for unused stamps purchased under any of said sections which right shall extend to refunds on account of stamps affixed to articles unsold at the end of business on December 31, 1935; and the moneys appropriated to the treasurer of state under section 22 of this act for the purpose of making refunds may be expended for the purpose of making refunds authorized by this section.”

Sections 5543-1 to 5543-20, both inclusive, of the General Code, which are suspended by the foregoing section, comprise the sections of the General Code providing for a tax on cosmetics payable to the state by the purchase of stamps from the Treasurer of State, which stamps are required by that act to be affixed to certain cosmetics by the retail dealers thereof. Section 5543-8, General Code, authorizes the redemption of unused or spoiled stamps in the following language:

“ * * * The treasurer of state shall redeem and pay for any unused or spoiled stamps on written verified requests made by the purchaser, his administrators, executors, successors, or assigns. Such payment shall be made from an appropriation to the state treasurer for the purpose of defraying the expenses of administering this act.”

Sections 6212-49q to 6212-49t, both inclusive, which are suspended by Section 22 of the sales tax act, supra, during the life thereof (January 1, 1935 to December 31, 1935), relate to the licensing of dealers in bottled beverages, such dealers being required to be otherwise licensed as vendors under Section 10 of such House Bill No. 134. Provision for refund on bottled beverage tax stamps is contained in Section 6212-49h, General Code, which is still in force and effect.

It is obvious that as to cosmetics the present sales tax thereon may not be collected by the sale of such stamps as were heretofore used and which were affixed to the article sold, since Section 3, paragraph 2, of the retail sales tax act requires the cancellation of the prepaid tax receipts by the vendor, when a sale is consummated, by tearing such receipts into two parts and delivering one part to the customer or his agent and retaining the other part thereof. Undoubtedly, the same situation prevails

with respect to the bottled beverage stamp taxes, for, although Section 6212-49c requires that such stamps be affixed to the bottles, the section relates to "the tax hereby imposed". Since Section 6212-49b, which imposed that tax has been repealed and enacted in amended form as part of the sales tax act, it might be contended that Section 6212-49c is no longer of force and effect. Be that as it may, no opinion is asked with respect to this particular point and no opinion is expressed thereon. All of these tax stamps nevertheless, whether heretofore purchased for bottled beverages or for cosmetics, may be turned in and a refund made thereon in accordance with the provisions of Section 24 of House Bill No. 134, supra, wherein it is provided that amendments or suspensions of the bottled beverage and cosmetic tax laws "shall not affect the right to refund for unused stamps purchased under any of said sections which right shall extend to refunds on account of stamps affixed to articles unsold at the end of business on December 31, 1935". The concluding clause of this section, in my judgment, clearly compels an affirmative answer to your inquiry, wherein it is provided that "the moneys appropriated to the Treasurer of State under section 22 of this act for the purpose of making refunds may be expended for the purpose of making refunds authorized by this section."

Respectfully,

JOHN W. BRICKER,
Attorney General.

3838.

SALES TAX—DISCOUNT REQUIRED ALL SALES REGARDLESS OF SIZE ON
PREPAID TAX RECEIPTS—TAX COMMISSION TO FIX DISCOUNT
RATE.

SYLLABUS:

Section 8 of House Bill 134 of the 90th General Assembly, second special session, requires that all prepaid tax receipts sold by the Treasurer of State, his agents, and the several county treasurers, shall be sold and accounted for at a discount of not to exceed three percent of the face value thereof as fixed by the Tax Commission, regardless of the size of such sales.

COLUMBUS, OHIO, January 18, 1935.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Under authority of Section 8, H. B. No. 134, enacted by the Ninetieth General Assembly at its second special session, the Tax Commission of the State of Ohio certified to this office the following regulation:

'December 19, 1934.

In the matter of the amount of discount which may be allowed to vendors under Amended House Bill No. 134.

This day the commission came on to fix the amount of discount which may be allowed to vendors under the provisions of section 8 of Amended House Bill No. 134.

The commission being fully advised in the premises finds that discount in the amount of three per cent of the face value of prepaid tax receipts shall