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CIGARETTE LICENSE TAX—JOBBER MUST PAY WHOLESALE TAX WHEN HE IS LIABLE TO MANUFACTURERS FOR SHIPMENTS MADE TO RETAIL DEALERS AND WHEN HE RECEIVES SMALL PROFIT FROM SAID RETAIL DEALERS FOR COLLECTION OF INVOICES.

**SYLLABUS:**

*Where manufacturers of cigarettes make sales through their salesmen direct to retail dealers and ship the goods direct to said retail dealers, a jobber who is billed for such cigarettes, who is required to pay the invoices therefor and who in turn collects the amounts of such invoices plus a small profit from the retail dealers, but who must stand any loss through failure of any of the retail dealers to pay, is engaged in the wholesale business of trafficking in cigarettes and is liable for the wholesale cigarette license tax.*

COLUMBUS, OHIO, April 23, 1927.

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

DEAR SIR:—Acknowledgement is made of your recent request for an opinion relative to the liability for wholesale cigarette license taxes under circumstances as set out in two letters from a jobber of tobacco in Fostoria, Ohio. Briefly stated the facts are as follows:

Salesmen of tobacco and cigarette manufacturers make sales of cigarettes direct to the retailer. Shipments of such cigarettes are made direct from the factory to the retailer, the jobber in question never handling the goods or having the same in his possession. However, the shipments are billed to the jobber who is required to pay the invoices and who collected the amounts due from the retailers making a small profit or fee on the sales.

The jobber states: "I must pay the manufacturer for these drop shipments and collect my accounts from the retailer. Of course, if the retailer doesn't pay these accounts I am responsible and lose, not the manufacturer."

The wholesale cigarette license tax is provided for in Section 5894, General Code, as follows:

"A person, firm, company, corporation, or co-partnership, engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred dollars, or, if so engaged in such traffic in the retail business, the sum of fifty dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership."

In an opinion rendered by this department under date of July 20, 1915, and appearing in Volume II of the Opinions of the Attorney General for that year at page 1270, it was held:

"A corporation located outside the state through its salesmen sells cigarettes to retail dealers in Ohio and ships the same direct. The retail dealers receive no invoices from the corporation, which sends the invoices to an Ohio representative who presents the invoices to the retailers, makes collection and settles with the corporation, deriving a profit from the transactions. Such transactions are in legal effect sales by the corporation direct to the retail dealers and the Ohio representative who makes the collections is not liable for the wholesale cigarette dealer's license under Section 5894 G. C."

It did not appear in the facts under consideration in that opinion that the jobber was billed for the merchandise or that he was responsible to the manufacturer for the payment of the invoices regardless of whether he was able to collect from the retailer.

However, such are the facts in the question under consideration at the present time. The jobber is billed for the cigarettes and is responsible for the payment of the invoices. He in turn bills the retailers for the amounts of the invoices plus a small profit, but if he is unable to make collection he has no recourse against the manufacturer and must personally stand the loss.

Under such circumstances it is clear that the jobber is more than merely the agent of the wholesaler for the purpose of making collection of the wholesaler's accounts. It is further clear that under such circumstances, as between the manufacturer and the jobber, there is a sale of the cigarettes to the jobber and that the title to such cigarettes passes to the jobber even though they are delivered to persons other than the jobber and never come into his actual physical possession. The salesmen who sell the cigarettes to the retailers are as a matter of law the agents of the jobber for the purpose of making such sales. It is not necessary for the purposes of this opinion to determine the exact time when title does pass to the jobber.

For the reasons above stated it is my opinion that under circumstances as outlined in the two letters above referred to and as set out above the jobber is a wholesaler of cigarettes and is liable for the payment of the wholesale cigarette license tax.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

373.

CORPORATION—MUST MAINTAIN OFFICE AT PLACE DESIGNATED IN ARTICLES OF INCORPORATION IN ORDER TO SECURE BENEFIT OF TAXATION—DIRECTORS' MEETINGS AT SUCH PLACE UNNECESSARY.

**SYLLABUS:**

*In order to secure the benefit of the tax rate of the place designated by a corporation in its articles of incorporation as the place where it is located, or its principal business transacted, an office must be maintained at said place, but it is unnecessary to hold directors' meetings at said place.*

COLUMBUS, OHIO, April 23, 1927.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

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

“It is my understanding that the domicile of a corporation, for the purpose of taxation, is its principal office as specified in Charter.

We have several corporations in Trumbull county, whose principal office, as specified in charter, is in a district having a low tax rate.

Kindly advise me if it is necessary for the corporation to maintain an office or hold directors' meetings in the district claimed as its residence, in order to secure the benefit of the lower tax rate.”