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AMENDED SUB. HOUSE BILL NO. 330 OF 104TH G. A., IS NOT A LAW PROVIDING FOR A TAX LEVY AND SAID LAW GOES INTO EFFECT 90 DAYS AFTER DATE ON WHICH IT WAS FILED BY GOVERNOR IN OFFICE OF SEC'Y. OF STATE—§5739.02, R.C. SECTION 1D, ARTICLE II, OHIO CONST.

SYLLABUS:

Amended substitute House Bill No. 330 of the 104th General Assembly, dealing with certain exemptions from the excise tax levied by Section 5739.02, Revised Code, is not a law providing for a tax levy within the purview of Section 1d of Article II, Ohio Constitution; and said law goes into effect ninety days after the date on which it was filed by the governor in the office of the secretary of state.

Columbus, Ohio, July 19, 1961

Hon. Stanley J. Bowers, Tax Commissioner
Ohio Departments Building, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Substitute House Bill No. 330, as enacted by the present General Assembly, was signed by the Governor on Monday, July 17. The provisions of the bill amended Section 5739.02 of the Ohio Revised Code in that exemptions were provided in the sale of prescription medicine, medically prescribed devices to support weakened and useless bodily segments, and wheel chairs.

“The question has been raised as to the effective date of this bill and you are respectfully requested to advise this office at your earliest convenience.”

Section 1c of Article II, Ohio Constitution, provides *inter alia* as follows:

“* * * No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided.

* * *”

Section 1d of Article II, Ohio Constitution, provides in part as follows:

“Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, *shall go into immediate effect.*

* * *

(Emphasis added)

Thus, Amended Substitute House Bill No. 330 of the 104th General Assembly will not go into effect until ninety days after it has been filed by the governor in the office of the secretary of state unless it is a law providing for a tax levy, or an appropriation, or an emergency law.

An examination of said bill reveals that it is neither an appropriation nor an emergency measure. The only question, therefore, is whether it is a law providing for a tax levy.

The bill amends Section 5739.02, Revised Code, which section provides for an excise tax levied on retail sales. The bill does not, however, alter the provisions dealing with the creation, amount, and levying of the tax, but pertains solely to exemptions from the tax. Under the bill, sales of tangible personal property to certain organizations and sales of certain items are exempted from the operation of the sales tax. The question is, therefore, whether the exempting of such items constitutes a law providing for a tax levy within the purview of Section 1d of Article II, *supra*.

In the case of *State, ex rel. vs. Milroy*, 88 Ohio St., 301, the following appears at page 304:

“Sections 5649-2 and 5649-3b comprise the act which the relator designates as ‘a law providing for tax levies.’ This act, by Section 5649-2, imposes a limitation upon the aggregate amount of all taxes that may be levied, and the other section in said act creates the budget commission.

“The general assembly did not, in this act, impose a tax, stating distinctly the object of the same, nor did it fix the amount or the percentage of value to be levied, nor did it designate persons or property against whom a levy was to be made. It merely imposed certain limitations and created an agency. The act cannot be said to be one ‘providing for tax levies,’ within the meaning of those words as used in Section 1d of Article II of the Constitution. It is, therefore, clearly subject to the referendum and cannot become effective until ninety days after it was filed in the office of the secretary of state.”

The third paragraph of the syllabus of the case of *The State, ex rel. Keller v. Forney*, 108 Ohio St., 463 (1923), provides :

“The express language, ‘laws providing for tax levies,’ is limited to an actual self-executing levy of taxes, and is not synonymous with laws ‘relating’ to tax levies, or ‘pertaining’ to tax levies, or ‘concerning’ tax levies, or any agency or method provided for a tax levy by any local subdivision or authority.”

In line with the rules set down by the above-noted cases, I am unable to conclude that the bill here in question provides for a tax levy. It does provide an exemption from a tax levy and it amends the section of law creating and levying the tax ; however, the tax in question and the levy of the tax were authorized by previous acts of the General Assembly, not by the bill in question. The language of Section 5739.02, *supra*, pertaining to the creation, amount, and levy of the tax cannot here be considered to be provided by Amended Substitute House Bill No. 330, *supra*. In this regard, the rule of law is stated in *In re Hesse*, 93 Ohio St., 230, at 234, as :

“* * * The provisions contained in the act as amended which were in the original act are not considered as repealed and again reenacted, but are regarded as having been continuous and undisturbed by the amendatory act. *In re Allen*, 91 Ohio St., 315. * * *”

Accordingly, it is my opinion and you are advised that Amended Substitute House Bill No. 330 of the 104th General Assembly, dealing with certain exemptions from the excise tax levied by Section 5739.02, Revised Code, is not a law providing for a tax levy within the purview of Section 1d of Article II, Ohio Constitution ; and said law goes into effect ninety days after the date on which it was filed by the governor in the office of the secretary of state.

Respectfully,
MARK McELROY
Attorney General