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APPROVAL, NOTES OF MONROE TOWNSHIP RURAL SCHOOL DISTRICT, DARKE COUNTY, OHIO—\$2,700.00.

COLUMBUS, OHIO, February 18, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

155.

APPROVAL, BONDS OF ORANGE VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, February 18, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

156.

CIGARETTE STAMPS—AFFIXED TO PACKAGES THAT BECOME STALE—TREASURER OF STATE MAY REDEEM SUCH UNUSED STAMPS.

SYLLABUS:

Under section 5894-9, General Code, the Treasurer of State has authority to redeem and pay for cigarette stamps that have been sold to purchasers in accordance with provisions of the cigarette law, out of the cigarette tax fund when said stamps have been purchased, affixed to packages of cigarettes and cancelled, but due to the fact that the cigarettes contained in said packages have become stale or old on the shelves of the wholesaler or retailer, have been separated from the unsold packages upon which they were originally affixed.

COLUMBUS, OHIO, February 20, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion, which reads as follows:

“A question has arisen with respect to the administration of Amended Senate Bill No. 324 which is the cigarette excise and license law of Ohio. This Commission desires a formal opinion from your department on the following question:

Has the Treasurer of State authority to redeem and pay out of the moneys in the cigarette tax fund received from the sale of stamps

which have been paid for either with the ten per centum for cash or for cash without the ten per centum, said stamps having been purchased, affixed to the package of cigarettes, cancelled, and because of the fact that the cigarettes contained in said packages have become stale or old on the shelves of the wholesaler or retailer, redeem and pay for said stamps when they have been separated from the package upon which they were originally affixed?

The above is the question we desire you to render an opinion upon.

Section 3 of the act states as follows:

"* * * The stamp or stamps so affixed shall be prima facie evidence of payment of the tax imposed by this act."

Section 9 of the act states:

"* * * The Treasurer of State shall redeem and pay for any unused stamps on written verified requests made by the purchaser, his administrators, executors, successors, or assigns. * * *"

The Tax Commission has been holding and answering inquiries to the effect that under Section 3 the affixation of the stamp being prima facie evidence of the payment of the tax carries with such affixation and cancellation the usage of the stamp, and that under the circumstances of the wording of Section 3 the Treasurer of State is precluded because of the fact of the usage of the stamp, which includes the affixation and cancellation, from redeeming stamps that have been so affixed and cancelled."

The question you present, in my estimation, resolves itself into the proper interpretation to be given to the word "unused" appearing in that portion of section 9 of Amended Senate Bill No. 324 of the 89th General Assembly, which you quote in your letter.

In determining the meaning to be given to language in statutes, it is a general rule that all parts of an act may be read together to arrive at the intention of the legislature. See Sutherland Statutory Construction, 2nd Ed., Vol. II, Page 706, Sec. 368.

Hence, the issue is—did the legislature, by the adoption of the words "unused stamps" in section 5894-9, General Code, contemplate that the stamps would be "used" when affixed to packages of cigarettes and cancelled by wholesalers or retailers in accordance with the requirements of section 3 of the act (section 5894-3, General Code), or only when the packages to which the stamps were affixed were sold.

The excise tax imposed by Amended Senate Bill 324 of the 89th General Assembly is levied on the *sale* of cigarettes. This is clear from the title of the act which states in part:

"Providing for the levy of an excise tax on *sales* of cigarettes * * *"
(Italics the writer's.)

Furthermore, section 2 of the act (section 5894-2, General Code) provides, so far as pertinent:

"For the purpose of affording the advantage of a free education to all youth of the state and providing an educational equalization fund therefor, and of providing revenue for the building program of the

state welfare institutions, an excise tax on *sales* of cigarettes is hereby levied and imposed * * *." (Italics the writer's.)

Since the tax is on the sale of cigarettes, it would seem to follow that until such sale, no tax should rightfully be collected by the State. However, in order to facilitate the collection of the tax, the legislature provided for the sale of stamps to wholesalers and others and for the affixing of such stamps to cigarette packages prior to their sale by wholesalers or retailers. Evidently recognizing the fact that it had provided that stamps purchased by dealers had to be affixed to the packages of cigarettes by wholesalers or by retailers within twenty-four hours after receipt by said retailers and prior to the sale of such cigarettes, under the provisions of section 3 of the act (section 5894-3, General Code), and that the tax was imposed on the sale of cigarettes, it would seem reasonable that the legislature considered that if the stamps should become torn, mutilated or spoiled or the packages of cigarettes to which the stamps were affixed would never be sold, it would be only just that the purchasers of the stamps be reimbursed.

The word "use" is defined in Webster's New International Dictionary as "To make use of; to convert to one's services; to avail one's self; to employ." Hence, the word "unused" means "Not made use of" or "unemployed." As the tax is on the "sale" of cigarettes, it seems reasonable that the legislature in inserting the word "unused" before "stamps" in section 5894-9, General Code, meant stamps affixed to packages that had not been sold.

While it is true that there is danger of fraud in collecting refunds for stamps that have become detached from packages, since the stamps are attached to cellophane and might easily be detached from packages which have been sold, yet it would seem that your Commission could make rules requiring satisfactory evidence to be attached to the written verified requests made by the purchasers that would conclusively prove that the stamps for which refund is to be made were separated from cigarette packages that were not sold, and therefore the State would be protected from making illegal refunds.

Section 8 of the act (section 5894-8, General Code) provides that "the commission shall have authority to promulgate such rules and regulations as it may deem necessary to carry out the provisions of this act." This, in my estimation, gives your commission ample authority to supplement the provision of the statute by setting forth definitely just what the written verified requests shall contain.

In view of the above considerations, I am of the opinion, in specific answer to your question, that under section 5894-9, General Code, the Treasurer of State has authority to redeem and pay for cigarette stamps that have been sold to purchasers in accordance with provisions of the cigarette law, out of the cigarette tax fund when said stamps have been purchased, affixed to packages of cigarettes and cancelled, but due to the fact that the cigarettes contained in said packages have become stale or old on the shelves of the wholesaler or retailer, have been separated from the unsold packages upon which they were originally affixed.

Respectfully,
JOHN W. BRICKER,
Attorney General.