

OPINION NO. 88-032**Syllabus:**

Racing permit holders may not deduct the tax imposed on them by R.C. 3769.081 from daily racing revenue before allocating purse money under R.C. 3769.08(B).

To: Clifford Nelson, Executive Director, Ohio State Racing Commission, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, April 21, 1988

I have before me the Racing Commission's request for my opinion concerning the tax imposed on racing permit holders by R.C. 3769.081 and the calculation of commissions and purse money under R.C. 3769.08(B). The Commission has asked whether permit holders may deduct the tax imposed by R.C. 3769.081 from racing proceeds before allocating purse money. The effect of such a deduction would be that racing permit holders and recipients of purse money would each bear half of that tax.

R.C. Chapter 3769 regulates horse racing in Ohio. R.C. 3769.01 requires anyone who wishes to conduct a horse race meeting for a stake, purse, or award to first secure a permit. R.C. 3769.08(A) allows permit holders to "conduct and supervise the pari-mutuel system of wagering" at horse races conducted by the permit holder, and to retain a maximum of eighteen per cent of all moneys wagered as a commission. The Racing Commission's question concerns R.C. 3769.08(B). That section imposes a tax on permit holders who conduct thoroughbred races, and it provides, in pertinent part:

At the close of each racing day, each permit holder authorized to conduct thoroughbred racing, out of the amount retained on that day

by the permit holder, shall pay by check, draft, or money order to the tax commissioner, as a tax, a sum equal to the following percentages of the total of *all moneys so wagered on that day*:

- (1) One per cent of the first two hundred thousand dollars wagered, or any part thereof;
- (2) Two per cent of the next one hundred thousand dollars wagered, or any part thereof;
- (3) Three per cent of the next one hundred thousand dollars wagered, or any part thereof;
- (4) Four per cent of all sums over four hundred thousand dollars wagered.

Each permit holder authorized to conduct thoroughbred racing shall use for purse money a sum equal to fifty per cent of the pari-mutuel revenues retained by the permit holder as a commission after payment of the state tax. (Emphasis added.)

Thus, R.C. 3769.08(B) requires that permit holders conducting thoroughbred races pay a specified percentage of all moneys wagered on any race day to the tax commissioner, as a graduated tax, and also requires the permit holder to pay fifty percent of the moneys retained "after payment of the state tax" as purse money. The permit holder retains the remaining fifty percent.

R.C. 3769.081, which levies a separate tax, provides:

The tax commissioner shall collect from each permit holder who conducts a pari-mutuel system of wagering where the wagering is less than five million dollars a sum of money equal to one-tenth of one per cent of the total amount wagered and where the wagering is five million dollars or more a sum of money equal to fifteen hundredths of one per cent of the total amount wagered during any horse-racing meeting for the purpose of providing operating revenue for the political subdivisions wherein such meetings are held. Such moneys shall be collected by the commissioner within ten days after the close of such meeting and shall be sent back to the permit holder who paid the tax. Such permit holder shall then immediately forward the moneys to the chief fiscal officers of the municipal corporations or townships in which such horse-racing meeting took place and in which any such facilities or accessory uses therefor were located. Such moneys shall be divided equally between the municipal corporations or townships in which such horse-racing meeting took place and in which any facilities or accessory uses therefor were located....

....
The amount collected under this section from any one permit holder shall not exceed fifteen thousand dollars from any one horse-racing meeting in any calendar year. (Emphasis added.)

The tax imposed by R.C. 3769.081 is a percentage of all moneys wagered during any horse-racing meeting, but the amount of the tax is not to exceed fifteen thousand dollars for any one meeting. The purpose of the tax is to provide operating revenue for the political subdivisions where the horse-racing meetings are held by dividing the proceeds of the tax between the designated municipalities or townships.

The Commission's letter indicates that at least one permit holder has been deducting the R.C. 3769.081 tax from racing revenues before allocating purse money as prescribed in R.C. 3769.08(B). As a result of this practice, the amount of the tax imposed by R.C. 3769.081 remains the same, and the local subdivisions receive the same amount as they would otherwise receive. However, this practice results in decreasing the amount allocated to purse money and increasing the amount retained by the permit holder. As a result, the permit holder and purse money recipients each bear fifty percent of the R.C. 3769.081 tax.

I note that R.C. 3769.08(B) states that "[e]ach permit holder...shall use for purse money a sum equal to fifty per cent of the pari-mutuel revenues retained by

the permit holder as a commission after payment of the state tax." Thus, this provision requires that permit holders, after paying "the state tax," use fifty percent of the remaining revenue as purse money. The term "state tax" as used in R.C. 3769.08(B) is not defined by statute. While it could be argued that any tax imposed by state statute is a "state tax," the following four reasons lead me to conclude that "the state tax" refers only to the graduated tax imposed by R.C. 3769.08(B), and not the tax imposed by R.C. 3769.081. First, "the state tax" is a definite term which refers to one specific tax. It is logical to assume that the General Assembly was referring to the tax imposed in the immediately preceding sentence in R.C. 3769.08(B). Second, the tax imposed by R.C. 3769.08(B) provides revenue for the state, while the tax imposed by R.C. 3769.081 provides revenue for local political subdivisions and is not likely to be termed "the state tax." Third, R.C. 3769.081 provides that the tax is to be collected "from each permit holder," which indicates that the permit holder should bear the tax entirely, rather than splitting the burden with purse recipients. *See also* 1953-1954 Ohio Laws 539 (Am. H.B. 566, eff. July 21, 1953) (the purpose of R.C. 3769.081 is to assess a tax "against horse-racing permit holders for the benefit of the political subdivisions"). Fourth, R.C. 3769.08(B) requires the permit holder to pay the tax imposed by this section "[a]t the close of each racing day," and calculations of the tax are based on "the total of all moneys so wagered on that day." R.C. 3769.081, on the other hand, requires the permit holder to pay the tax imposed by R.C. 3769.081 within ten days after the close of each horse-racing meeting, and calculations of this tax are based on "the total amount wagered during any horse-racing meeting." Horse-racing meetings generally last for a period of time much longer than one day. *See* 5 Ohio Admin. Code 3769-1-02 (defining "race meeting" as "the period of time for which permission to conduct horse racing has been granted to a permit holder by the [racing] commission"); 5 Ohio Admin. Code 3769-4-05 (referring to the first six days of a meeting); 5 Ohio Admin. Code 3769-4-23 (referring to wagering which "is permitted for ten or more days in any meeting"). Because the R.C. 3769.08(B) tax must be calculated and paid on a daily basis, the formula set forth in R.C. 3769.08(B) for calculating purse money appears to be independent of the R.C. 3769.081 tax. In light of the foregoing, I conclude that R.C. 3769.08(B) requires that permit holders deduct only the tax imposed by R.C. 3769.08(B) before allocating an amount as purse money. To do otherwise impermissibly decreases the amount allocated as purse money and increases the amount retained by the permit holder.

Therefore, it is my opinion and you are advised that racing permit holders may not deduct the tax imposed on them by R.C. 3769.081 from daily racing revenue before allocating purse money under R.C. 3769.08(B).