

**Note from the Attorney General's Office:**

1985 Op. Att'y Gen. No. 85-068 was modified by  
1986 Op. Att'y Gen. No. 86-090.

**OPINION NO. 85-068****Syllabus:**

Pursuant to R.C. 3769.20, a permit holder who qualifies for the major capital improvement allowance provided for by that section may take his tax reduction for a period of ten years or until the total tax reduction equals the cost of the major capital improvement project plus debt service applicable to the project, whichever occurs first. A permit holder who qualifies for the major capital improvement allowance and who, on the last day of the ten year carry forward period, has an unused amount of the capital improvement allowance may not carry forward such amount as a credit against the permit holder's tax liability of the subsequent racing day.

**To: Joanne Limbach, Tax Commissioner, Department of Taxation, Columbus, Ohio; Edward A. Babst, Executive Director, Ohio State Racing Commission, Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, October 29, 1985**

I have before me your opinion request concerning the state horse racing tax law. You ask whether a permit holder who qualifies for the major capital improvement allowance provided for by R.C. 3769.20 and who, on the last day of the ten year carry forward term, has an unused amount of such capital improvement allowance, may carry forward such amount as a credit against the subsequent racing day's tax.

R.C. Chapter 3769 embodies the state horse racing law. R.C. 3769.01 prohibits the holding or conducting of any meetings at which horse racing is permitted for any stake, purse or award unless a permit to conduct a horse racing meeting is secured and unless a permit holder complies with the state horse racing

law. Under R.C. 3769.08, a permit holder "may provide a place in the race meeting grounds or enclosure at which the permit holder may conduct and supervise the pari-mutuel system of wagering by patrons of legal age on the horse races conducted by such permit holder." R.C. 3769.08(A). R.C. 3769.08 requires permit holders to pay a tax on pari-mutuel wagering and classifies such taxpaying permit holders into three categories: permit holders authorized to conduct thoroughbred racing, see R.C. 3769.08(B), harness racing, see R.C. 3769.08(C), and quarter horse racing, see R.C. 3769.08(C). R.C. 3769.087 requires permit holders to pay an additional tax upon exotic wagering. Permit holders must pay the Tax Commissioner the appropriate taxes at the close of each racing day. See R.C. 3769.08(C); R.C. 3769.087.

Your question concerns R.C. 3769.20, which allows for a tax reduction for a major capital improvement project. Specifically you ask whether a permit holder who qualifies for the major capital improvement allowance provided for by R.C. 3769.20 and who, on the last day of the ten year carry forward period, has an unused amount of such capital improvement allowance, may carry forward such amount as a credit against the tax liability of the subsequent racing day.

R.C. 3769.20(A) authorizes a tax reduction for permit holders who carry out a major capital improvement project as defined in R.C. 3769.20(B). Such reduction is for the purpose of "encourag[ing] the renovation of existing racing facilities for the benefit of the public, breeders, and horse owners, and [of] increas[ing] the revenue to the state from the increase in pari-mutuel wagering resulting from such improvement. . . ." R.C. 3769.20(A). R.C. 3769.20(A) provides that for permit holders who carry out a major capital improvement project as defined in R.C. 3769.20(B), the taxes paid by such a permit holder to the state in excess of the amount to be paid into the Ohio fairs fund and into the Ohio thoroughbred race fund, where appropriate, as provided in R.C. 3769.08, shall be reduced by a specified percentage of the total amount wagered. I believe that the statutory language of R.C. 3769.20(A) is dispositive of the question you raise. R.C. 3769.20(A) provides in pertinent part as follows:

If the amount of allowable abatement exceeds the amount of taxes derived from a permit holder, the amount of the allowable abatement not used may be carried forward and applied against future tax liability. . . . Such reduction shall start from the day racing is first conducted following the date on which the major capital improvement project is completed and the construction cost has been certified by the state racing commission, except as otherwise provided in division (B) of this section, and shall continue for a period of ten years or until the total tax reduction equals the cost of the major capital improvement project plus debt service applicable to the project, whichever occurs first.

Thus, R.C. 3769.20(A) provides that if the amount of allowable abatement exceeds the amount of taxes paid by a permit holder, then the amount of unused allowable abatement may be carried forward and applied against future tax liability. You ask whether a permit holder with an unused amount of the capital improvement allowance on the last day of the ten year carry forward period may carry forward such amount as a credit against the tax liability of the succeeding racing day. In response to your question, R.C. 3769.20(A) clearly provides that a permit holder may take the reduction starting from the day racing is first conducted following the date on which the major capital improvement project is completed and the construction cost has been certified by the Ohio State Racing Commission, except as otherwise provided in R.C. 3769.20(B),<sup>1</sup> and continuing for a period of ten years

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<sup>1</sup> R.C. 3769.20(B) provides that the Racing Commission "may terminate the tax adjustment if a permit holder fails to complete the major capital improvement project, or fails to comply substantially with the schedule for construction and completion of the major capital improvement project." R.C. 3769.20(B) further provides that if a permit holder fails to complete the major capital improvement project, "the commission may order the permit holder to repay to the state the total amount of tax reduced."

or until the total tax reduction equals the cost of the project plus debt service applicable to the project, whichever occurs first. A permit holder may not take a tax reduction for a capital improvement project for a period of time in excess of ten years. Since R.C. 3769.20(A) expressly requires that the period in which a permit holder may take a reduction continues for ten years or until the total tax reduction equals the cost of the project plus debt service applicable to the project, whichever occurs first, a permit holder with an unused amount of the capital improvement allowance upon the expiration of such ten year carry forward term may not carry forward such amount as a credit against the tax liability of the succeeding racing day.

Accordingly, it is my opinion, and you are hereby advised, that pursuant to R.C. 3769.20, a permit holder who qualifies for the major capital improvement allowance provided for by that section may take his tax reduction for a period of ten years or until the total tax reduction equals the cost of the major capital improvement project plus debt service applicable to the project, whichever occurs first. A permit holder who qualifies for the major capital improvement allowance and who, on the last day of the ten year carry forward period, has an unused amount of the capital improvement allowance may not carry forward such amount as a credit against the permit holder's tax liability of the subsequent racing day.