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ASSESSMENT OF DELINQUENT SALES TAX—TAX COMMISSION MUST USE INFORMATION ABOUT A PARTICULAR VENDOR—CANNOT USE “WEIGHTED AVERAGE” OF VENDOR’S BUSINESS, AS SOLE BASIS FOR ASSESSMENT—NO OPINION BY ATTORNEY GENERAL AS TO CONSTITUTIONALITY OF STATUTES.

**SYLLABUS:**

*The Tax Commission of Ohio, in determining the question whether a delinquent sales tax assessment should be made against a particular vendor under the provisions of section 5546-9a, General Code, and, if so, the amount of such assessment, is required to determine such questions upon such information as it may have or which may come into its possession upon its investigation of the business done and sales made by the particular vendor and of the sales taxes collected and sales tax receipts canceled by him during the period of time under investigation. The Tax Commission is not authorized under this section of the General Code, or otherwise, to determine the question of such delinquency or to make an assessment against such vendor based on an application to the amount of the gross sales receipts of the vendor during such period of time of a weighted average percentage rate determined by the Tax Commission indicating the average amounts of sales taxes properly collectible by vendors generally in that particular line of trade or business as compared with gross sales receipts by vendors generally in such line of trade or business during the period of time under investigation.*

*The Tax Commission of Ohio is not authorized under this section of the General Code to make a delinquency sales tax assessment against a vendor for the particular period of time under investigation based solely upon information and evidence obtained by the Tax Commission by means of a subsequent “spot-check” of the vendor’s business and sales made by the Tax Commission. Although the information and evidence obtained by the Tax Commission by means of such “spot-check” may be both competent and relevant if the conditions obtaining with respect to the business done and sales made by the vendor during the period of such “spot-check” are comparable in amount, kind and character with the business done and sales made by the vendor during the period of time under investigation, the information and evidence thus obtained should be used with “any (other) information within its possession or that shall come into its possession,” in determining the question whether any delinquency sales tax assessment should be made against the vendor, and, if so, the amount of such assessment.*

*The Attorney General will not assume the prerogative of expressing any opinion as to the constitutionality of the provisions of section 5546-12a, General Code, as the same were enacted in and as a part of House Bill No. 572 by the 91st General Assembly.*

COLUMBUS, OHIO, July 24, 1936.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN: This is to acknowledge the receipt of your recent communication which reads as follows:

"Section 5546-2 of the General Code imposes a bracket tax on retail sales made in the State of Ohio. House Bill No. 134, which is the original Sales Tax Act, does not provide for payment of the tax to the State on a fixed percentage basis.

Section 5546-9a of the General Code, as enacted originally in House Bill No. 134, Ninety-First General Assembly, provided in part as follows:

'In case any vendor fails to collect the tax herein imposed, or having collected the tax, fails to cancel the prepaid tax receipts in the manner prescribed by this Act and by the regulations of the Commission, he shall be personally liable for such amount as he failed to collect, or for the amount of the prepaid tax receipts which he failed to cancel.

In such case the Commission shall have power to make an assessment against such vendor based upon any information within its possession or that shall come into its possession.

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The question has arisen as to the information upon which an assessment may be based. The following questions relate to assessments based on the sales tax due on sales made in the year 1935.

The Tax Commission has been able, by means of a study and survey of various businesses and through the study of reports filed by the various vendors, to arrive at certain rates which represent the percentage of gross receipts collected as tax by various classes of vendors. For example, the study of the grocery vendors might reveal that the average retailer in this class of business should collect 3.30% of his receipts from taxable sales as tax.

Under the provisions of section 5546-9a of the General Code, may the Tax Commission make an audit of a vendor's records and assess that vendor on the basis of the percentage of tax which the study and survey shows the average vendor in his class of business collects when the vendor does not have adequate records?

May the Tax Commission make such assessment when the vendor has adequate records which are kept in such manner that it is impracticable to make a complete audit to determine the exact rate of tax?

If a vendor objects to the computation of the deficiency on the basis of the determined average rate, may the Tax Commission make an assessment based on the percentage which a survey of that particular vendor's business indicates to be the correct rate? For example, would the Tax Commission be justified in basing the assessment on the rate which was determined by checking the actual sales made by a vendor for a three or four day period, or by checking the cash register tape of a vendor for a period of several days?

Could the rate determined by checking the actual sales be used to determine the tax deficiency for a previous period? For example, could the rate found by checking to be the correct rate be applied to 1935 sales when the check was made during the year 1936?

In some cases a vendor may have collected a rate of tax which is higher than the determined average rate, but his records may reveal that there is an actual deficiency in tax collection. May the Tax Commission assess for the actual deficiency found to be due even though the vendor has collected more than the average rate?

May the Tax Commission make an assessment against a vendor for failure to collect the tax on sales made in 1935 on the basis of a flat 3% of his receipts from taxable sales where such receipts do not include proceeds of sales of items which sell for less than nine cents, and also exclude receipts from all non-taxable sales?

May an assessment be made on the basis of a flat 3% of receipts from all sales less all exempt sales excepting sales of items selling for less than nine cents?

House Bill No. 572, passed by the Ninety-First General Assembly, amended section 5546-9a, of the General Code and enacted a supplemental section known as section 5546-12a of the General Code. The latter section provides that it shall be con-

clusively presumed that the vendor has failed to collect the tax from the consumer if the vendor's aggregate collection is less than three percentum of the receipts from sale. The following questions relate to assessments made pursuant to the amended sections and during the year 1936.

In your opinion, is section 5546-12a of the General Code constitutional? May the Tax Commission proceed to make assessments based upon the provisions contained therein.

May the Tax Commission make assessments against vendors for failure to collect the tax in 1936, basing such assessments on the average rate of tax collected by vendors within the classification of business of the party assessed?

May the Tax Commission proceed under the provisions of section 5546-12a of the General Code and assess on the basis of 3% of the net taxable sales rather than on the basis of 3% of the gross receipts from sales—thus in effect, construing the provision to mean that the conclusive presumption provided for in that section relates to net taxable sales?

With respect to 1935 or 1936 assessments, may the Tax Commission in any case make an assessment based on a percentage figure? If so, under what circumstances and what rate could be made the basis of a legal assessment?

In view of the fact that the entire audit procedure of the Sales Tax Section of the Tax Commission depends on the questions submitted herein, we shall appreciate a prompt opinion."

The questions presented in your communication, for the most part, require a consideration of the pertinent provisions of the original Sales Tax Act which, enacted as House Bill 134 under date of December 13, 1934, was carried into the General Code by designation of the Attorney General as Sections 5546-1 to 5546-23, inclusive. However, as I view the questions here presented, no extended discussion of the provisions of this act or of the several sections thereof, as they have found their place in the General Code of the state, is required.

Subject to the exceptions provided in Section 5546-2, General Code, and save as to the exemptions therein designated, this section provides for the levy of an excise tax in the bracketed amounts therein prescribed on all sales of tangible personal property made during the period of time beginning on the first day of January, 1935 and ending on the 31st day of December, 1935. And in this connection, it is pertinent to note that this section of the General Code provided and still provides that for the purpose of the proper administration of the act and to prevent the evasion of the tax thereby levied, it shall be presumed that all sales made

in this state during the period covered by the act are subject to the tax thereby levied until the contrary is established.

Section 3 of this act, which has been carried into the General Code as Section 5546-3, provided as follows:

“Excepting as provided in section 5 of this act, the tax hereby imposed shall be paid by the consumer to the vendor in every instance, and it shall be the duty of each vendor to collect from the consumer the full and exact amount of the tax payable in respect of each taxable sale, and to evidence the payment of the tax in each case by cancelling prepaid tax receipts, equal in face value to the amount thereof, in the manner and at the times provided in this section, to-wit:

(a) If the price is, at or prior to the delivery of possession of the thing sold, to the consumer, paid in currency passed from hand to hand by the consumer or his agent to the vendor or his agent, the vendor or his agent shall:

1. Collect the tax with and at the same time as the price.
2. Immediately cancel in the presence of the buyer by immediately tearing into two parts a prepaid tax receipt or receipts of the proper face value, deliver one part of each such cancelled prepaid tax receipt to the consumer or his agent, and retain the other part thereof.

(b) If the price is otherwise paid or to be paid, the vendor or his agent shall, at or prior to the delivery of possession of the thing sold, to the consumer, cancel or cause to be cancelled by tearing into two parts prepaid tax receipts equal in face value to the amount of the tax imposed by this act. Thereupon and thereby the amount of the tax with respect to such sale, payment of which to the state is evidenced by such cancellation, shall become a legal charge in favor of the vendor and against the consumer, which shall in every case be collected by the vendor, as herein provided, in addition to the price; and at or immediately after such collection, the vendor shall deliver one part of each such cancelled prepaid tax receipt to the consumer and retain the other part thereof.”

Section 5 of this act (Sec. 5546-5, G. C.), which is referred to in section 3 of the act above quoted, provided as follows:

“The commission shall design and procure the prepaid tax receipts provided for. The commission shall enforce and ad-

minister the provisions of this act, which is hereby declared to be one of the laws which the commission is required to administer within the meaning of sections 1465-9, 1465-12 to 1465-30, inclusive, 1465-32, 1465-34 and 12924-3 of the General Code. It shall have power to adopt and promulgate such rules and regulations as it may deem necessary to carry out the provisions of this act, and without prejudice to the generality of the powers of the commission by virtue of the foregoing provisions, the commission may:

1. Prescribe the form and manner of cancelling prepaid tax receipts consistently with the provisions of this act.

2. Authorize a vendor to prepay the tax levied by this act upon sales of things produced or distributed by such vendor, and waive the collection of the tax from the consumer in the manner otherwise provided in this act; but no such authority shall be granted or exercised excepting upon application to the commission and unless the commission shall, after hearing, advance notice of which must be given by the commission to all vendors in the same general classification as the applicant, find that the conditions of the applicant's business are such as to render impracticable the collection of the tax in the manner otherwise provided by this act and upon the applicant furnishing bond payable to the state of Ohio in such amount as the commission may determine to be sufficient to secure the prepayment of the taxes levied by this act in the manner desired, with surety to the satisfaction of the treasurer of state, with whom such bond shall be filed; nor shall the authority so granted be exercised nor the vendor or vendors actually selling such products be exempted from the other provisions of this act by virtue thereof unless the person to whom such authority is granted shall print plainly upon the product sold or offered for sale, a statement to the effect that the tax levied by this act has been paid in advance."

Although, as provided in and by section 3 of the act (Sec. 5546-3. G. C.), the ultimate incidence of the sales tax provided for by this act was on the consumer as the person to whom the sale of the property was made, the vendor who was required to collect the tax from the consumer was likewise required to cancel an equivalent amount of prepaid sales tax stamps which as a licensed vendor he was authorized and required to purchase from the designated agents of the state.

The duty imposed by this act upon the vendor to collect from the consumer sales taxes in the prescribed amount or amounts on the sale

or sales made by him to such consumer, and to cancel prepaid sales tax stamps in the amount of the sales taxes collected by him, was enforced by sanctions provided for in and by section 9a of this act which was carried into the General Code as Section 5546-9a and which provided as follows:

“In case any vendor fails to collect the tax herein imposed, or having collected the tax, fails to cancel the prepaid tax receipts in the manner prescribed by this act and by the regulations of the commission, he shall be personally liable for such amount as he failed to collect, or for the amount of the prepaid tax receipts which he failed to cancel.

In such case the commission shall have power to make an assessment against such vendor based upon any information within its possession or that shall come into its possession. The commission shall give to vendor written notice of such assessment, together with written notice of the time and place where the vendor may be heard on a petition by him for reassessment. Such notice may be served upon the vendor personally or by registered mail.

Any amount assessed by the commission under the provisions of this section, together with a penalty of fifteen per centum thereof shall be due and payable from the vendor to the treasurer of state fifteen days after the service upon the vendor of notice of such assessment and when paid shall be considered as revenue arising from the tax imposed by this act.

Any vendor, against whom an assessment is made by the commission under the provisions of this section, may petition for a reassessment thereof. Notice of intention to file such a petition or to appear and be heard shall be given to the commission prior to the time the assessment becomes due and payable. A petition for such a reassessment may be filed with the commission on or before the date designated in the notice of such assessment as the time when the vendor may be heard on a petition by him for reassessment. Each such hearing shall be held at the time and place designated in such notice to the vendor, but the commission shall have power to continue the same from time to time as may be necessary. Each such petition filed with the commission shall set forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous. If no petition for reassessment is filed with the commission, the vendor may nevertheless appear at the hearing and present his objections orally.

All amounts assessed under this section, which are not paid to the treasurer of state by the vendor on the date when the same becomes due and payable, shall bear interest at the rate of twelve per centum per annum from and after such date until paid.

If any vendor against whom an assessment has been made by the commission, pursuant to this section, shall fail to give due notice of an intention to petition for reassessment, or to file a petition for reassessment or to appear for hearing, the assessment shall be considered final. The commission by its deputy or deputies authorized by it for such purpose, shall forthwith call at the place of business of such person and in case of refusal to pay such assessment and penalty, on demand shall levy on the moneys, goods and chattels or other personal property of such person wherever found in this state. Such levy shall take precedence of all liens, mortgages, conveyances, or encumbrances hereafter taken on such moneys, goods and chattels, or other personal property. No property of any such person liable to pay the tax, penalty and costs shall be exempt from such levy.

The commission shall give like notice of the time and sale of the personal property to be sold under this act as in the case of sale of personal property on execution. All provisions of law applicable to sales of personal property on execution shall be applicable to sales under this act, except as herein otherwise provided; all moneys collected by the commission shall be paid into the state treasury.

The vendor may appeal from an assessment by the commission to the court of common pleas in the same manner and form as that provided in section 5611-2 of the General Code of Ohio."

Upon consideration of the above quoted provisions of the original Sales Tax Act which were in effect during the year 1935, it clearly appears that this act contemplated that the sales tax thereby levied on taxable sales was to be paid by the consumer who in the payment of such tax reimbursed the vendor for the moneys expended by him in the purchase of prepaid sales tax stamps. It further appears in this connection, however, that in order to obtain exoneration from ultimate incidence of the sales tax upon him, the vendor is required to do two things with respect to every taxable sale: He must collect the sales tax in the prescribed amount or amounts from the consumer and he must at the same time cancel prepaid sales tax stamps, theretofore purchased and acquired by him, in the amount and value of the sales tax collected from the consumer on such taxable sale or sales. In this



connection, Section 5546-9a, General Code, above quoted, provided with respect to transactions under the original Sales Tax Act that "In case any vendor fails to collect the tax herein imposed, or having collected the tax, fails to cancel the prepaid tax receipts in the manner prescribed by this act and by the regulations of the commission, he shall be personally liable for such amount as he failed to collect, and for the amount of the prepaid tax receipts which he failed to cancel. In such case the commission shall have power to make an assessment against such vendor based upon any information within its possession or that shall come into its possession."

The questions presented in your communication relate to cases where the vendor has failed to collect sales taxes on taxable sales made to consumers or where he has collected such taxes from the consumers and has failed to cancel sales tax stamps or receipts in an amount equal in amount to the sales taxes collected. And more particularly your questions relate to the procedure to be followed by the Tax Commission in making assessments against vendors in cases of this kind. As to this you state, among other things, that the Tax Commission has been able by means of a study and survey of various trades and businesses and through a study of reports filed by vendors in the several lines of such trade and business to determine certain weighted average percentage rates which represent the amount of sales taxes properly and legally collectible by vendors generally in such lines of trade and business as compared with the gross sales receipts of vendors in these several lines throughout the state. And as an example you state that "the study of the grocery vendors might reveal that the average retailers in this class of business should collect 3.30% of his receipts from the taxable sales as tax". And, in this situation, my opinion is requested upon the question whether under the provisions of Section 5546-9a of the General Code, the Tax Commission may make an audit of a vendor's records and assess such vendor on the basis of a certain predetermined percentage of his gross receipts, the percentage rate applied being that determined by the Tax Commission with respect to the particular line of trade or business in which such vendor is engaged. In the consideration of the question thus presented, I am not prepared to say that a survey of the volume and character of the sales made by vendors in a particular line of trade or business throughout the state and a study of the reports filed by such vendors, would not afford a sufficient basis upon which the Tax Commission might determine what percentage of the gross receipts of all of the vendors in this particular trade or business would properly represent the sales taxes which the vendor should be expected to collect on the taxable sales included in the gross business out of which the gross receipts of the trade or line of business arise. However, the ques-

tion whether the percentage rate thus determined indicating the proportion and amount of money which vendors in a particular line of trade or business should collect as compared with gross receipts in this trade or business can be applied as the measure of the liability of a particular vendor who is thought to have been delinquent in the collection of taxes on taxable sales made by him or in the cancellation by him of prepaid sales tax stamps or receipts, obviously depends upon the application to be made of the provisions of Section 5546-9a, General Code, last above quoted. It is there provided that if the vendor fails to collect from the consumer the taxes imposed by the act on taxable sales made or fails to cancel prepaid tax stamps or receipts as therein provided the Tax Commission "shall have power to make an assessment against such vendor based upon any information within its possession or that shall come into its possession."

Although in the administration of these provisions of Section 5546-9a, General Code, and for the purpose of enforcing the same the Tax Commission of Ohio may make suitable rules and regulations, no rules or regulations that the Tax Commission may make to this end and for this purpose can add to the powers which have been conferred upon it by the statutory provisions with respect to the assessment of delinquent vendors. See *Davis v. State ex rel.*, 127 O. S., 261; and these statutory provisions above noted must be considered as the full measure of the power of the Tax Commission to make such assessments. Wholly aside from the question of the power and authority of the Tax Commission to apply the weighted average percentage rate determined by the Tax Commission with respect to some particular line of trade or business in determining the deficiency assessment, if any, to be made against a vendor in this line of trade or business, it is obvious that such weighted average percentage rate may in proper cases be used as a "tip-off" for the purpose of determining whether further investigation should be made by the Tax Commission of the sales made and business done by the vendor for the purpose of determining whether a deficiency assessment should be made against the vendor or further information obtained by The Tax Commission under the authority conferred upon it by this statute.

However, as I understand the first question presented in your communication, it is whether the Tax Commission can apply this weighted average percentage rate determined by it with respect to the particular trade or business, to the gross receipts of a vendor in this trade or business, as the measure for determining the amount of sales taxes that the vendor should have collected during the period of time in question as the basis for determining whether a delinquency assessment should be made against such vendor. I am quite clearly of the opinion that such weighted average percentage rate for the particular trade or business as a whole

cannot be so applied with respect to the particular vendor under investigation. To do so, would, in effect, require such vendor to pay or otherwise stand obligated for the payment of a certain and determinable minimum amount of sales taxes, wholly without reference to the question whether on the particular kind, character and amount of sales made and business done by the vendor he should, as a matter of law and fact, have collected this particular amount of sales taxes and cancelled a corresponding amount of sales tax stamps or receipts. As to this, it may be said that any method of assessment which requires the taxpayer to pay a stated or determinable minimum amount of taxes without reference to the question whether this amount of taxes is legally due and payable from such taxpayer, is unlawful. *Titlow v. Pierce County*, 108 Wash. 633. And although under the broad language of Section 5546-9a, which authorizes the Tax Commission to make an assessment against a vendor in any case where such vendor fails to collect the tax imposed by the act or having collected the tax, fails to cancel prepaid tax receipts in the manner therein provided, the Tax Commission is not limited to any particular kind of evidence in determining the delinquent or deficiency assessment, if any, to be made against the vendor, the assessment made by it must be based upon facts and information as to the particular vendor rather than upon a weighted average which may represent the percentage of no single vendor considered in computing such average.

Your first question in the form in which it is stated in your communication is, accordingly, answered in the negative.

You further inquire whether the Tax Commission may make an assessment against a vendor based on the percentage which a survey of that particular vendor's business indicates to be the correct rate. Or, as otherwise stated in your communication, whether the Tax Commission would be justified in basing the assessment on the rate which is determined by the Commission by making a check of the actual sales made by a vendor for a three or four day period or by checking the cash register tape of a vendor for a period of several days. I know of no reason why the Tax Commission may not avail itself of the information obtained by making a "Spot-check" of the business done and sales made over a period of three or four consecutive days if there is other evidence satisfactory to the Commission that the conditions under which such "spot-check" is made are comparable with respect to the average amount and character of sales with those made by the vendor during the period of time under investigation. However, the information thus obtained by a subsequent "spot-check" of the vendor's business is at best only information or evidence relating to the ultimate question of the assessment, if any, to be made against the vendor; and the Tax Commission would not be authorized to use the information thus obtained as the measure of the

delinquency assessment to be made against the vendor to the exclusion of other information and evidence which may be in the possession of the Tax Commission or available to it touching the question of the proper assessment, if any, to be made against the vendor.

You state in your communication that in some cases a vendor may have collected a rate of tax which is higher than the average rate applicable to the line of business in which he is engaged, but his records may reveal that there is an actual deficiency in tax collections. With respect to a situation of this kind, you inquire whether the Tax Commission may assess for the actual deficiency found to be due even though the vendor has collected more than the average rate. Upon the consideration above noted and assuming that the information in the possession of the Tax Commission or available to it shows that there is an actual deficiency in the amount of taxes which the vendor should have collected and accounted for, this question is quite obviously to be answered in the affirmative.

You further inquire whether the Tax Commission may make an assessment against a vendor for failure to collect the tax on sales made by him in 1935 on the basis of a flat 3 per cent of his receipts from taxable sales "where such receipts do not include proceeds of sales of items which sell for less than nine cents, and also exclude receipts from all non-taxable sales". As to this, it may be stated that if the gross receipts of a vendor for the period of time in question do not include receipts from non-taxable sales, including those for less than nine cents, it is not seen how the amount of sales taxes which the vendor should have collected during such period of time could be less than three per cent of the gross receipts as that term is impliedly defined in the statement of your question. Under the statutory provisions above noted, however, relating generally to the questions presented in your communication, the duty of the Tax Commission in this and every other instance is to make the assessment against the vendor for the actual amount of the delinquency found against him upon all of the information in the possession of the Tax Commission or which is available to it relevant to the question whether an assessment shall be made against the vendor and, if so, the amount of such assessment.

In your communication you call my attention to supplemental Section 5546-12a, General Code, which was enacted as a part of the present Sales Tax Act by House Bill 572. You submit to me several questions relating to the constitutionality and application of certain provisions of this section. Section 5546-12a, General Code, in so far as the same is material to the questions presented in your communication, provides:

"When an examination and audit of the vendor's books and records, by the commission and its agents, discloses no separate

records of the tax collected from the consumers and the amount of such collections, or that the aggregate collection from consumers is less than three per centum of the vendor's sales, it shall be conclusively presumed that the vendor has failed to collect the tax from the consumer and in such cases the commission shall make a finding and assessment of the amount of tax, plus a penalty of fifteen per centum of the amount thereof, which the vendor should have collected and proceed forthwith to collect the same."

The first question presented by you with respect to the above quoted provisions of Section 5546-12a, General Code, is whether such provisions are constitutional. As to this, I can only say that it is the declared and consistent policy of this office not to pass upon the constitutionality of laws after the same have been enacted by the General Assembly and approved by the Governor. This is deemed to be one of the highest and most responsible prerogatives of the courts. I must, therefore, decline to answer this question as the same is presented in your communication other than to state that it is your duty, as well as mine, to assume that the provisions of this section are constitutional until some court of competent jurisdiction has decided otherwise.

You inquire whether the Tax Commission may make assessments against vendors for failure to collect the tax in 1936 basing such tax upon the average rate of tax for the line of business of the party assessed. It is not seen how the provisions of Section 5546-12a, General Code, affect this question and it is thought that the same is sufficiently answered by what has been said herein with respect to the first question presented in your communication.

You ask whether the Tax Commission may proceed under the provisions of Section 5546-12a of the General Code, above referred to, and make an assessment on the basis of three per cent of the net taxable sales rather than on the basis of three per cent of the gross receipts from sales, or, in other words, whether the provisions of this section are to be so construed as to apply the conclusive presumption therein provided to net taxable sales. As to this it is noted that this section provides that when an examination and audit of the vendor's books and records, by the commission and its agents, discloses no separate records of the tax collected from consumers and the amount of such collections, "or that the aggregate collection from consumers is less than three per centum of the vendor's sales," it shall be conclusively presumed that the vendor has failed to collect the tax from the consumer and in such cases the Commission shall make a finding and an assessment of the amount of such tax, plus a penalty of fifteen per centum of the amount thereof, which the

vendor should have collected and proceed forthwith to collect the same. It is to be presumed that the legislature in the use of the term "sales" in the above quoted provisions of Section 5546-12a used this term in the sense ascribed to it by the definitive provisions of Section 5546-1, General Code, wherein it is stated that the term "sale" includes all transactions whereby title or possession, or both, of tangible personal property is or is to be transferred for a consideration in any manner, whether absolutely or conditionally, whether for a price in money or by exchange or barter, and by any means whatsoever. It follows from this that the term "sales" as used in this connection means all sales made by the vendor and not only taxable sales. Moreover, it is to be presumed that by the time Section 5546-12a was enacted as a part of House Bill 572, the Tax Commission, as well as the legislature through its authorized committee, were able to formulate generally the relation in terms of percentage which was found to exist between the gross receipts of vendors generally in a particular line of business and the amount of sales taxes which should be collected by the trade or business on the aggregate amount of sales representing the gross receipts. This view of the reasons actuating the legislature in the enactment of this section likewise indicates that the term "sales" as used in the connection above noted was meant to include all sales made by the vendor.

It is thought that the discussion in the foregoing opinion sufficiently answers the other questions presented in your communication.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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APPROVAL—BONDS OF VILLAGE OF BAY, CUYAHOGA  
COUNTY, OHIO, \$27,000.00.

COLUMBUS, OHIO, July 24, 1936.

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