

provisions is legally effective to convey the above described property to the state of Ohio by full fee simple title, free and clear of the dower interest of Mabel Reicheldorfer, as the wife of said Evan Reicheldorfer, with a covenant of warranty that the property thereby conveyed is free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 30, which has been submitted as a part of the files relating to the purchase of this property, indicates by its provisions and recitals that this property is being purchased by the Board of Control of the Ohio Agricultural Experiment Station for the use of the Forestry Division of said department pursuant to the authority conferred upon said board by House Bill No. 571, which was enacted by the 91st General Assembly and which was approved by the Governor under date of December 20, 1935. It further appears that the purchase price of the property here under investigation, amounting to the sum of \$550.00 is to be paid for out of segregated receipts and revenues in the custody of the State Treasurer and which are credited to the Forestry Division of the Ohio Agricultural Experiment Station. This contract encumbrance record has been properly executed and the same shows a sufficient unencumbered balance in the fund above referred to to pay the purchase price of this property in the amount above stated.

By reason of the fact that the purchase price of this property is being paid out of the rotary fund of the Division of Forestry provided for by this act and not out of any moneys appropriated to it by the general appropriation act, no action of the Controlling Board with respect to the purchase of this property was or is necessary. I am herewith returning with my approval said abstract of title, warranty deed, contract encumbrance record No. 30 and other files submitted to me in connection with my investigation.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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6107.

CIGARETTE TAX STAMPS—IMPRINTING BY DEVICE ON  
CELLOPHANE WRAPPERS OF CIGARETTE PACKAGES  
CANNOT BE USED IN LIEU OF THE PRESENT PAPER  
STAMP.

**SYLLLABUS:**

*Section 5894-3, General Code, and related sections, providing for stamps to be affixed to cigarette packages, do not authorize the use of stamps imprinted by device on the cellophane wrappers of cigarette packages, in lieu of the present paper stamps used for the purpose.*

COLUMBUS, OHIO, SEPTEMBER 24, 1936.

*Tax Commission of Ohio, Columbus, Ohio.*

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

“May we have your informal opinion relative to the use of a stamp imprinted by a device similar to the postage meter, on the cellophane wrapper of cigarette packages, in lieu of our present paper or decalomania stamp?

Sections 5894-3 and 5894-8 of the General Code cover the design of the stamp and the affixation of the same. The postage meter company is now manufacturing a device which will imprint upon the cellophane wrapper of a cigarette package a unique stamp for every package imprinted, in much the same manner as an envelope is imprinted by a postage meter machine, excepting the unique features which are carried as additional protection upon the cigarette device.”

The question presented in your communication requires a brief consideration of some of the pertinent provisions of sections 5894-1, et seq., of the General Code providing for and relating to excise taxes on the sale of cigarettes. By Section 5894-2, General Code, as the same is amended in House Bill No. 581, 116 O. L., Pt. II, page —, an excise tax for the purpose therein stated is levied on the sale of cigarettes during the year 1936 and the first three months of 1937 at the rate of one cent on each ten or fractional part thereof. As to the tax levied by the Section of the General Code above referred to, Section 5894-3, General Code, provides that “The tax hereby imposed shall be paid by the purchase of stamps as provided in this act.” Under the provisions of Section 5894-8, General Code, the Tax Commission is required to design and procure the stamps necessary in carrying out the provisions of the Cigarette Tax Act and by Section 5894-9, General Code, it is provided:

“All stamps, when procured by the commission, shall be immediately delivered to the treasurer of state who shall execute duplicate receipts therefor showing the number and aggregate face value of each denomination received by him and deliver one such receipt to the commission and the duplicate thereof to the auditor of state. The treasurer of state shall sell the stamps and shall, on the fifth day of each month, make a report in duplicate showing all sales by him made during the preceding month, with the names of the purchasers and the number of each denomina-

tion and the aggregate face value purchased by each, and deliver one copy thereof to the commission and the other to the auditor of state. The treasurer of state shall be accountable for all stamps received and unsold by him. Such stamps shall be sold and/or accounted for at the face value thereof, excepting that the commission may, by regulation certified to the treasurer of state, authorize the sale thereof to wholesale or retail dealers in this state, or to wholesale dealers outside of this state at a discount of not exceeding ten per centum of such face value as a commission for affixing and cancelling such stamps; \* \* \*."

Under the provisions of Section 5894-3, General Code, before referred to, the payment of the tax made by the wholesale or retail dealer in cigarettes by the purchase of stamps from the State Treasurer in the manner provided for by Section 5894-9, General Code, or from the county treasurer, as the appointed deputy of the State Treasurer, in the manner provided for by Section 5894-10, General Code, is evidenced by the affixation of the required amount of stamps on each package of cigarettes sold by the wholesale or retail dealer in the sale of such cigarettes. As to this, Section 5894-3, General Code, provides as follows:

"A stamp or stamps shall be affixed to each package of an aggregate denomination not less than the amount of the tax upon the contents thereof. The stamp or stamps, so affixed, shall be prima facie evidence of payment of the tax imposed by this act. Excepting as may be otherwise provided in the rules and regulations prescribed by the commission under authority of this act, and unless such stamps have been previously affixed, they shall be so affixed by each wholesale dealer in this state, and cancelled, by writing across the face thereof the name of such wholesale dealer and the date of cancellation, prior to the delivery of any cigarettes to any retail dealer in this state.

Each retail dealer in this state shall immediately upon the receipt of any cigarettes at his place of business, so affix such stamps to each package, unless such stamps shall have been previously affixed thereto, and shall cancel the same by writing or stamping his name and the date of cancellation across the face thereof, or shall immediately mark in ink on each unopened box, carton, or other container of such cigarettes the word 'received' and the month, day and hour of such receipt and shall affix his signature thereto."

As will be noted from the statutory provisions above referred to,

the payment of the excise tax on the sale of cigarettes is evidenced by the affixation and cancellation of the required stamps on the packages in which the cigarettes are sold. There is not included in the definitive provisions of Section 5894-8, General Code, any definition of the term "stamp" as the same is used in this act. The term "stamp," used as a noun, has a variety of related meanings. Among other definitions of the term in Webster's New International Dictionary, the following definitions of the word "stamp" are noted:

"(1) That which stamps; any instrument for making impressions, or imprints, on other bodies, as a die for coins or medals; (2) The mark, impression, design, or the like, made by stamping or imprinting; esp., such a mark or impression used to give a distinctive value or force to something; (3) Specific., an official mark or seal set on things chargeable with a government duty or tax, or on papers legally requiring execution under certain conditions, to signify that the duty or tax has been paid, or the conditions fulfilled; as, a stamp on a warrant; a notary's stamp on a deed; (4) A stamped or printed device or slip of paper, issued by the government at a fixed price, and required by law to be affixed to, or stamped on, certain papers or things, as evidence that the government dues are paid; as, a postage stamp; a receipt stamp; an internal revenue stamp, etc."

In this connection, the term "stamp" in its legal aspect may be broadly defined as an official mark set on a thing chargeable with a duty or tax showing that the duty or tax is paid. In other words, stamps when so used are the drafts by which the tax is received in advance, and the vouchers by which its payment is made manifest. Looking to the statutory provisions above noted relating to the imposition and payment of the excise tax on the sale of cigarettes therein provided for, it is noted that although a discretion is conferred upon the Tax Commission with respect to the design of the stamp to be used in effectuating the purposes of the act, the stamps themselves are something that the Tax Commission is required to procure and turn over to the State Treasurer in stated denominations; which stamps are required to be "affixed" to the cigarette package before the same is sold to the consumer. Giving effect to the ordinary and well understood meaning of the provisions of the Cigarette Tax Act in their relation to the question here presented, it is quite evident that the term "stamp or stamps" as therein used is that above defined as:

"A stamped or printed device or slip of paper, issued by the government at a fixed price, and required by law to be affixed to,

or stamped on, certain papers or things, as evidence that the government dues are paid ; as, a postage stamp ; a receipt stamp ; an internal revenue stamp, etc.”

This definition of the term is in accord with that recognized and applied in the case of *United States, v. Skilken*, 293 Fed., 916, 920, decided by the United States District Court of the Southern District of Ohio, wherein the term “stamp” was defined as “a small piece of paper having a certain figure or sign impressed upon it, sold by the government to be attached to goods, papers, letters, documents, etc., subject to duty or the sum charged, as for postage, in order to show that such duty or charge has been paid ; as postage stamps, receipt stamps, internal revenue stamps.”

The specific inquiry made in your communication is whether, in lieu of the present paper stamps which have been designed by your Commission and which are now being used in effectuating the purpose of the Cigarette Tax Act, you may authorize or require the use of stamps imprinted on the cellophane wrappers of cigarette packages by some device similar to a postage meter in and by which the required postage stamps or marks are impressed on envelopes for purposes of mailing. I am of the opinion that your question is required to be answered in the negative. The statutes above referred to clearly require a stamp meeting the requirements of the definition of the term last above noted and must be a stamped or printed device or slip of paper issued by or under the authority of the government of this state which is to be affixed to the package in which the cigarettes are sold. There is no law of this state which requires the packages in which cigarettes are sold to be wrapped in cellophane ; and no authority exists in the Tax Commission to make any such requirement for the purpose of effectuating the Cigarette Tax Act by the sale of cellophane wrappers which have been stamped in the manner suggested in your communication.

If it is thought to be expedient or desirable to effectuate the payment of the excise tax on the sale of cigarettes in the manner indicated by your communication, this is a matter which should be called to the attention of the legislature for such action as that body may take.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*