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FEES, FILING, CLERK OF COURTS—JUDGMENT ENTRY FOR SALES TAX, SUBJECT TO—PAYMENT IN ADVANCE—NOT REQUIRED FOR TAX COMMISSIONER—§§2303.20, 5739.13, 109.19 R.C.

SYLLABUS:

The filing of a judgment for state retail sales tax pursuant to Section 5739.13, Revised Code, is subject to the fee provided by division (F) of Section 2303.20, Revised Code; but under Section 109.19, Revised Code, the tax commissioner, as an officer of the state, is not required to pay such fee in advance.

Columbus, Ohio, January 14, 1960

Hon. Stanley J. Bowers, Tax Commissioner of Ohio
Department of Taxation, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Section 5739.13 of the Revised Code provides, in part, as follows:

“‘After the expiration of the period within which the person assessed may appeal to the board of tax appeals, a certified copy of the entry of the commissioner making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the vendor’s or consumer’s place of business is located or the county in which the aparty assessed resides.

“‘The clerk, immediately upon the filing of such entry, shall enter a judgment for the state against the vendor or consumer in the amount shown on the entry. The judgment may be filed by the clerk in a looseleaf book entitled “special judgments for state retail sales tax”.’

“The fee schedule authorized under section 2303.20 of the Revised Code for the clerk of the court of common pleas (amended effective July 17, 1959 by H. B. No. 9) does not specifically provide a fee for filing the judgments for state retail sales tax.

“A number of the clerks of the court of common pleas are billing the department of taxation for costs in advance

for filing these judgments. There is no uniformity in the amounts of such billings.

"I am therefore respectfully requesting your opinion on the following points:

"1. Is the Department of Taxation required or authorized to pay in advance to a clerk of the court of common pleas for filing a judgment for state retail sales tax?"

"2. If so, what is the amount of the fee which would be applicable to filing such judgment?"

At the outset I would like to state that while the provisions of Section 2303.20 of the Revised Code do not specifically provide for the payment of a fee for filing the judgments for state retail sales tax, division (F) of such Revised Code Section by its broad and general language, in my opinion, requires the imposition of a fee for such filing. Division (F) insofar as pertinent provides:

"Eighty-five cents for each double spaced eight and one-half by thirteen inch page, or fraction thereof, for entering on journal
* * *"

However, I would like to call your attention to the provisions of Section 109.19 of the Revised Code, which insofar as pertinent provides:

"No undertaking or security is required on behalf of the state or an officer thereof, in the prosecution or defense of any action, writ, or proceeding. In an action, writ, or proceeding it is not necessary to verify the pleadings on the part of the state or any officer thereof."

One of my predecessors had opportunity to examine such provisions and under authority of such statutory language ruled that there was no authority to require the payment of advanced costs in an action instituted by the State of Ohio. See Opinion No. 1576, Opinions of the Attorney General for 1928, Volume I. I am in agreement with such opinion.

While such opinion dealt with the question of the payment of advanced court costs for the filing of a petition in the Common Pleas Court of Hamilton County, I believe that it is in point in this matter. The fee which you are required to pay by Section 2303.20 (F) of the Revised Code, for the filing of state retail sales tax judgments is actually a court cost. It is my opinion, therefore, that while under the provisions of Section 2303.20

(F) of the Revised Code, a fee of eighty-five cents shall be imposed for the filing of State retail sales tax judgments, there is no authority to require the advance payment of such fee. Section 109.19 of the Revised Code, specifically exempts the State and you, as an officer thereof, from the advance payment of such fee. I would like to point out, additionally, that on the satisfaction of the judgment, payment can be secured by the Clerk of Courts from the judgment debtor and such fee will not be lost to the County.

Accordingly, it is my opinion and you are advised that the filing of a judgment for state retail sales tax pursuant to Section 5739.13, Revised Code, is subject to the fee provided by division (F) of Section 2303.20, Revised Code; but under Section 109.19, Revised Code, the tax commissioner, as an officer of the state, is not required to pay such fee in advance.

Respectfully,
MARK MCELROY
Attorney General