

construction bonds in the aggregate amount of \$230,000, dated November 15, 1920, bearing interest at the rate of 6% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

623.

SALES TAX—TAX COMMISSION OF OHIO—REFUND CLAIMS
—LIMITATION EFFECTIVE, WHEN.

SYLLABUS:

1. *The ninety day limitation period contained in Section 5546-6 of the General Code, enacted by the 91st General Assembly, effective January 1, 1937, does not limit the time within which claims for refunds by vendors may be filed with the Tax Commission where such claims arise under the provisions of said section in effect prior to said date.*

2. *The ninety day limitation period contained in Section 5546-8, of the General Code, as enacted by the 91st General Assembly, effective January 1, 1937, does not limit the time within which an application shall be filed with the Tax Commission, on the form prescribed by it, by a vendor, for redemption of unused or spoiled tax receipts, at the net value thereof; or, for refund of the amount of sales tax paid on any illegal or erroneous assessment by either a vendor or consumer where the cause for such claim arose under the provisions of said section in effect prior to January 1, 1937.*

COLUMBUS, OHIO, May 20, 1937.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your letter of recent date, which reads as follows:

“The Tax Commission of the State of Ohio hereby requests an opinion concerning the effect of the limitation periods contained in Sections 5546-6 and 5546-8, of the Sales Tax Law, effective January 1, 1937, to claims for refunds arising during

the years 1935 and 1936. The 1936 law in Sections 5546-6 and 5546-8, provide that claims for refunds shall be for sixty (60) day periods and no limitation is placed upon the time in which such claims shall be made.

Sections 5546-6 and 5546-8, of the Sales Tax Law effective January 1, 1937, provide that claims for refunds shall cover a period of 60 days and must be filed within ninety (90) days of the time the claim for refund occurs, or ninety (90) days from the time of the ascertainment of an erroneous illegal assessment.

The specific question which has arisen is as follows:

(1) 'A' has a claim for refund June 1, 1936. He makes such claim in January of 1937. The claims covers a period of sixty (60) days, but is not filed within ninety (90) days of the date the claim arises.

Shall the Tax Commission apply the ninety (90) day period in Section 5546-6 of the 1937 Sales Tax Law, or shall it follow Section 5546-6 in effect for the year 1936, which places no period of limitation in which he should file his claim for refund.

(2) If the ninety (90) day limitation period in the 1937 law does not apply, must 'A' file his claim for refund within ninety (90) days after the effective date of the present Sales Tax Law? Or may he file his claim at any time and follow the provisions of Section 5546-6 of the Sales Tax Law in effect during the year 1936, the year in which the claim for refund arose?"

The first Sales Tax Law, House Bill No. 134, was passed by the 90th General Assembly on December 6, 1934, approved by the Governor on December 13, 1934, and covered the period from January 1, 1935, to December 31, 1935. Section 6 of this Act (Section 5546-6, General Code) provided the method by which a vendor was to be reimbursed by the State for sales tax stamps canceled in the sale of merchandise, which merchandise was later returned by the consumer to the vendor and on which the vendor had reimbursed the consumer for the sales tax which he had paid on such transaction. This section reads as follows:

"Upon receipt of a sworn statement by the vendor as to the gross amount of such refunds, during the period covered by such sworn statement which period shall not be longer than sixty days, the commission shall issue to the vendor an official credit memorandum equal to the net amount paid by the vendor

for such canceled prepaid tax receipts. Such memorandum shall be accepted by the state treasurer or his agents at full face value from the vendor to whom it is issued in the purchase of prepaid tax receipts under the provisions of Section 7 of this act."

Section 8 of the same Act (Section 5546-8, General Code) provided, in part, as follows:

"* * * The Treasurer of State shall redeem and pay for any unused or spoiled tax receipts at the net value thereof, on written, verified request made by any licensed vendor, his administrators, executors, successors or assigns. Such payments shall be made from an appropriation to the Treasurer of State for the purpose of defraying the expenses of administering this act."

It happened, however, that no appropriation had been made to the Treasurer of State, for the payment of such refunds, on unused or spoiled tax receipts, as this section provided for, so the General Assembly amended Section 5546-8, General Code, by passing Senate Bill No. 329, on May 23, 1935, which was approved by the Governor on June 4, 1935. The amendment to this section provided as follows:

"* * * The Treasurer of State shall redeem and pay for any unused or spoiled tax receipts at the net value thereof, or he shall refund the amount of the tax so paid on any illegal or erroneous assessment. Such application shall be filed with the Tax Commission on the form prescribed by it. On filing of such application the Tax Commission of Ohio shall determine the amount of refund due and shall certify such amount to the Auditor of State. The Auditor of State shall thereupon draw a warrant for such certified amount on the Treasurer of State to the person claiming such refund. For the purpose of paying such refund the treasurer of state shall place ten thousand dollars collected in a special fund to be known as the Sales Tax Rotary Fund; and thereafter as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said fund at the time of each such credit amount to ten thousand dollars."

On December 13, 1935, the General Assembly passed House Bill No. 572, which was "An Act to extend the period of the excise tax on

retail sales to and including the 31st day of March, 1937, and for that purpose to amend Sections * * * 5546-8 * * * of the General Code." This bill was approved by the Governor on December 20, 1935. The only amendment to Section 5546-8, General Code, in this act, was to include prepaid sales tax cards in the same classification as prepaid sales tax receipts. Section 4 of the Act, designated as Section 5546-24, General Code, provided as follows:

"The intent and purpose of this act includes the extension of the excise tax on retail sales levied by and pursuant to Sections 5546-1 to 5546-23, both inclusive, of the General Code, until and including the 31st day of March, 1937; and all of the provisions of said sections of the General Code are thereby so extended in effect excepting as affected by the amendments herein made." (Italics the writer's.)

On December 22, 1936, the General Assembly passed House Bill No. 694, which was "an act to extend the period of the excise tax on retail sales and for that purpose to amend Sections * * * 5546-6 * * * 5546-8 * * * General Code." This bill was signed by the Governor on December 30, 1936, and went into effect January 1, 1937. Section 4 of the Act (Section 5546-24a General Code) provides as follows:

"The intent and purpose of this act includes the extension of the existing tax on retail sales levied by and pursuant to Sections 5546-1 to 5546-24, both inclusive, of the General Code, and all the provisions of said sections of the General Code are hereby so extended in effect excepting as affected by the amendments herein made." (Italics the writer's.)

The only amendment to Section 5546-6 of the General Code, as contained in this act, was to add the following:

"The applications for refunds made pursuant to this section must be made within ninety days after the prepaid purchases have been returned by the consumer." (Italics the writer's.)

Before the amendment to Section 5546-6, General Code, there was no limit as to the time within which a vendor was required to file his application for refunds to be made pursuant to said section.

Section 5546-8, General Code, was amended by this same Act to read in part, as follows:

“* * * The Treasurer of State shall redeem and pay for any unused or spoiled tax receipts at the net value thereof, and he shall refund to vendors the amount of taxes illegally or erroneously paid or paid on any illegal or erroneous assessment where the vendor has not reimbursed himself from the consumer. When such illegal or erroneous payment or assessment was not paid to a vendor but was paid directly to the Treasurer of State, or an agent of the Treasurer of State, by the consumer, the Treasurer of State shall make refund to the consumer. *In all cases an application shall be filed with the Tax Commission on the form prescribed by it and must be filed within a period of ninety days from the date the tax receipts are spoiled, or from the date it is ascertained that the assessment or payment was illegal or erroneous.*” (Italics the writer’s.)

This section did not previously provide for a limitation of time within which a vendor was required to file an application for reimbursement for unused or spoiled tax receipts. Neither did it limit the time within which an application could be filed for refund of the amount of taxes paid on any illegal or erroneous assessment made by the Commission.

The question you now raise is whether the amendments made to Sections 5546-6 and 5546-8, General Code, in House Bill No. 694, effective January 1, 1937, limit the time within which claims for refunds must be filed by vendors on claims which arose from business done during the previous years of 1935 and 1936.

The duties of a vendor, on claims arising after January 1, 1937, are clearly provided for under the amendments to the above sections as contained in House Bill No. 694. Whether the previous provisions of the Sales Tax Law are still in effect to govern the filing of claims arising on refunds made during the years 1935 and 1936 should, in my opinion, be answered in the affirmative. Both House Bill No. 572 and House Bill No. 694 carry the provision, in Section 4 of each Act, that:

“The intent and purpose of this act includes the extension of the existing (excise) tax on retail sales levied by and pursuant to Sections 5546-1 to 5546-23 (5546-24) both inclusive, of the General Code, and all the provisions of said sections of the General Code are hereby so extended in effect excepting as affected by the amendments herein made.” (Parentheses ours.)

As stated before, Section 5546-6, General Code, provides, that “the applications for refunds made pursuant to this section must be made

within ninety days after the prepaid purchases have been returned by the consumer;” and Section 5546-8, General Code, that, “in all cases an application shall be filed with the Tax Commission on the form prescribed by it, and must be filed within a period of ninety days from the date the tax receipts are spoiled, or from the date it is ascertained that the assessment or payment was illegal or erroneous.”

When, if ever, do these two ninety day limitation periods apply to the filing of claims arising under the 1935 or 1936 Sales Tax Laws? Are these new amendments retroactive? Do they bar the vendor from the right of filing his claims where he has not done so, within ninety days after the prepaid purchases have been returned by the consumer” or “within a period of ninety days from the date the tax receipts are spoiled, or from the date it is ascertained that the assessment or payment was illegal or erroneous?

Article II, Section 28, of the Constitution of Ohio, provides:

“The General Assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts;
* * *.”

A further discussion of this matter is found in the case of *Safford, Superintendent of Insurance, vs. Metropolitan Life Insurance Company*, 119 O. S., 332. The first branch of the syllabus reads as follows:

“*A statute which creates a new obligation in respect to transactions or considerations already past is violative of Article II, Section 28 of the State Constitution, which forbids the enactment of retroactive laws by the General Assembly.*” (Italics, the writer’s.)

Under the 1935 and 1936 Sales Tax Statutes, no limitation of time existed for the filing of these claims for refunds. Do the January 1, 1937, amendments to these statutes, create a new obligation for a vendor to comply with, in the filing of his refund claims, which would affect transactions already past? I think not.

In the case of *Safford, Superintendent of Insurance vs. Metropolitan Life Insurance Company*, supra, the Court in its opinion says:

“* * * The power of taxation conferred upon the legislative branch of the government is broad and comprehensive, but even such legislation is included within the limitation imposed by the constitutional provision expressly denying the power to pass retroactive laws. The terms ‘retroactive’ and ‘retrospective’

are synonymous, and are used interchangeably. The definition of that term announced by Justice Storey has been heretofore approved by this court in *Rairden vs. Holden, Admr.*, 15 Ohio State, 207, and *Commissioners vs. Rosche Bros.*, 50 Ohio State, 103, 33 N. E., 408, 19 L. R. A., 584, 40 Am. St. Rep., 653. It is as follows:

‘Every statute which takes away or impairs vested rights, acquired under existing laws, or created a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective.’

The General Assembly having the power to enact laws, and having enacted laws with certain limitations, and persons having conformed their conduct and affairs to such state of the law, the General Assembly is prohibited, estopped, from passing new laws to reach back and create new burdens, new duties, new obligations, or new liabilities not existing at the time. (*Nulley vs. Hixson, Treas.*, 64 O. S., 39 followed.)

“The amended statute, in so far as it acts prospectively, is valid, but its application to business transacted (during the previous year) * * * must upon principle and authority be disapproved.”

I feel this case is controlling in the present situation. Further authority for this holding is found in 59 Corpus Juris, at page 1159, where it says:

“Retrospective or retroactive legislation is not favored. Hence, it is a well-settled and fundamental rule of statutory construction, variously stated, that all statutes are to be construed as having only a prospective operation, and not as operating retrospectively. It is equally well settled as a fundamental rule of statutory construction supported and established by numerous judicial decisions that statutes are not to be construed as having a retroactive effect. Both the above statements and rules are of course contingent upon the absence of any words expressing a contrary intention, or, more specifically, unless the purpose and intention of the legislature to give them a retrospective effect clearly, * * * appears, or is clearly, * * * shown, by express declaration or command or by a very clear * * * implication. *In every case of doubt, the doubt must be solved against the retrospective effect and in favor of prospective construction only.*” (Italics the writer’s.)

In the present situation, does it seem reasonable to assume that either of these two "ninety day limitation periods" effective January 1, 1937, would act to bar "A" from filing his June 1, 1936 claim for refund on sales tax collected and returned to customers during the sixty day period, immediately preceding said date? I think not. If he had a valid claim then, he has a valid claim now, and no act of the Legislature can take it away from him. His rights are protected by the Constitution itself. However, if the Legislature desires to specifically set a date and limit the time within which a vendor or consumer must file his claim with the Tax Commission for refund on claims arising under the former statutes herein mentioned then, I believe, the vendor or consumer would be legally bound by such limitation. This is true providing a reasonable time is allowed the vendor or consumer within which to prepare and file his said claim. This has not been done by the Legislature in this instance.

Therefore, in specific answer to your question it is my opinion that:

1. The ninety day limitation period contained in Section 5546-6 of the General Code, enacted by the 91st General Assembly, effective January 1, 1937, does not limit the time within which claims for refunds by vendors may be filed with the Tax Commission where such claims arise under the provisions of said section in effect prior to said date.

2. The ninety day limitation period contained in Section 5546-8, of the General Code, as enacted by the 91st General Assembly, effective January 1, 1937, does not limit the time within which an application shall be filed with the Tax Commission, on the form prescribed by it, by a vendor, for redemption of unused or spoiled tax receipts, at the net value thereof; or, for refund of the amount of sales tax paid on any illegal or erroneous assessment by either a vendor or consumer where the cause for such claim arose under the provisions of said section in effect prior to January 1, 1937.

Respectfully,

HERBERT S. DUFFY,

Attorney General