

1097.

WHOLESALE DEALER—CHAIN STORES—PERSON OR CORPORATION  
BUYING CIGARETTES FOR DISTRIBUTION TO BRANCH STORES  
WHERE SOLD AT RETAIL NOT QUALIFIED AS WHOLESALE  
DEALER.

*SYLLABUS:*

*Under Section 5894-1, General Code, as amended by the 90th General Assembly, a person or corporation, operating a system of chain stores, which buys cigarettes for distribution to its branch stores where such cigarettes will be sold at retail, may not qualify as a "wholesale dealer".*

COLUMBUS, OHIO, July 24, 1933.

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

GENTLEMEN:—This acknowledges the receipt of your recent communication requesting my opinion as follows:

"Amended Substitute H. B. 323 continues the cigarette excise tax levy for two years. In the bill the definition of wholesale dealers was changed to read as follows:

' "Wholesale dealer" includes only those persons who sell cigarettes to licensed retail dealers other than branch stores operated by or connected with such wholesale dealer or for purposes of resale only.'

Heretofore it read in the following manner:

' "Wholesale dealer" includes only those persons who sell cigarettes to licensed retail dealers or for purposes of resale only.'

A number of the large chain store systems have secured wholesale dealers licenses for the years 1933 and 1934 and the question is squarely before us whether the treasurer may now sell to the chains, stamps at discount, the chains being engaged in supplying cigarettes to their branch stores.

H. B. 323 is now in effect, being a tax levy signed by the Governor."

The question presented in your communication is with respect to the application of the term "wholesale dealer", as this term is defined in House Bill No. 323, to a person or corporation operating a so-called chain store system made up of a number of branch stores. Under the provisions of section 5894-9, General Code, the treasurer of state, upon regulations therefor adopted by the tax commission and certified to him, may sell cigarette stamps to wholesale dealers at a discount of not to exceed ten per centum of the face value of the stamps sold; and the more specific question presented in your communication is whether a person or corporation operating a chain of branch stores can qualify as a "wholesale dealer" for the purpose of this discount privilege by selling or otherwise disposing of cigarettes purchased by it to its branch stores.

Prior to the amendment of section 5894-1, General Code, in and by House Bill No. 323, above referred to, the term "wholesale dealer" was defined in and by said section as follows:

“‘Wholesale dealer’ includes only those persons who sell cigarettes to licensed retail dealers or for purposes of resale only.”

In section 5894-1, as amended, this term is defined as follows:

“‘Wholesale dealer’ includes only those persons who sell cigarettes to licensed retail dealers *other than branch stores operated by or connected with such wholesale dealer* or for purposes of resale only.”

Under the provisions of this section as amended, as before its amendment, a wholesale dealer is one who sells cigarettes to licensed retail dealers; but under the provisions of this section as amended, in order that a person or corporation selling cigarettes may qualify as a wholesale dealer, such person or corporation must sell the cigarettes only to retail dealers other than branch stores operated by or connected with the person or corporation selling the cigarettes as a wholesale dealer. That is, if the person or corporation operating a system of chain stores buys cigarettes for distribution to its branch stores where the cigarettes will be sold at retail, such person, under the statute as amended, does not qualify as a wholesale dealer for the purpose of securing the stamp discount privilege provided for by section 5894-9, General Code, or otherwise. In this connection, I do not believe the words “or for the purposes of resale only” in themselves define the term “wholesale dealer” otherwise than as this term is defined by the other provisions of the section above quoted. In other words, these words are explanatory of the preceding language of that part of the section quoted, and do not in the alternative constitute an independent definition of the term “wholesale dealer”. The above is, I believe, a sufficient statement of my opinion on the question submitted.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1098.

APPROVAL, NOTES OF NEW LEXINGTON EXEMPTED VILLAGE SCHOOL DISTRICT, PERRY COUNTY, OHIO, \$16,735.00.

COLUMBUS, OHIO, July 25, 1933.

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

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1099.

APPROVAL, NOTES OF GLOUSTER EXEMPTED VILLAGE SCHOOL DISTRICT, ATHENS COUNTY, OHIO, \$19,225.00.

COLUMBUS, OHIO, July 25, 1933.

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