

2083.

APPROVAL, BONDS OF CLOVERDALE CONSOLIDATED RURAL SCHOOL DISTRICT, PUTNAM COUNTY, OHIO—\$2,000.00.

COLUMBUS, OHIO, December 29, 1933.

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

2084.

APPROVAL, BONDS OF MONTVILLE TOWNSHIP RURAL SCHOOL DISTRICT, MEDINA COUNTY, OHIO—\$843.51

COLUMBUS, OHIO, December 29, 1933.

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

2085.

MOTOR VEHICLES—OWNER OF COMMERCIAL CAR MAY BE REFUSED 1934 LICENSE PLATES WHEN—INCORRECT STATEMENT OF TRUCK WEIGHT—AUTHORITY OF REGISTRAR OF MOTOR VEHICLES.

SYLLABUS:

1. *By virtue of Sections 6292 and 6294, General Code, if the weight of the commercial car reported by the applicant for 1933 licenses was not computed upon its weight "fully equipped", the Registrar of Motor Vehicles may refuse to issue 1934 licenses for such car to such applicant until he has paid for such additional weight for the year 1933.*
2. *By virtue of Section 6294, General Code, even though the applicant for licenses for a commercial car for the year 1933 did report the correct weight of the car fully equipped, if during the year he added additional weight, the Registrar of Motor Vehicles may refuse to issue 1934 licenses for such car until such applicant has paid for the additional weight for the remaining period of the year 1933.*
3. *By virtue of Section 6294, General Code, if the weight of the commercial car reported for 1933 licenses was incorrect, it being less than that reported for that of 1934, and such report was not made in good faith by the applicant for the 1933 licenses, the Registrar of Motor Vehicles may refuse to issue 1934 licenses for such car until such applicant has paid the true weight of such car fully equipped for the year 1933.*
4. *If, however, the applicant for 1933 licenses reported a lesser weight for the car fully equipped than the one he is reporting for the 1934 licenses and in good faith with complete absence of fraud reported such as the actual weight of the car*

“fully equipped”, and no additional equipment was added during the year, the Registrar of Motor Vehicles may not refuse to issue 1934 license tags until such difference in fee is paid.

COLUMBUS, OHIO, December 30, 1933.

HON. GLENN DAILY, *Registrar Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“To properly determine the weights of motor vehicles fully equipped, in order to issue 1934 tags and collect the fees, we ask that all commercial vehicle applicants fill out a weight slip, a regulation of our department.

A number of these applications and weight slips have been received, showing that the applicant did not pay his proper fee for 1933, inasmuch as this year's application and weight card shows a difference in the weight as reported by the applicant in securing his 1933 tags. The weights they have reported this year are considerably more than they reported last year.

We have set up an allowance of five hundred pounds, feeling that this would take care of the addition of mud and grime and the fact that the gas tank may have been full this year and nearly empty last year when weighed. We have asked that the applicant pay the difference in fees for 1933 as shown from his application of 1933 as against his application for 1934.

Under Section 6294, General Code, which reads in part:

* * * * *

If all registration and transfer fees required by law for such motor vehicle for the preceding year have not been paid, the license shall be refused.

* * * * *

Can we refuse to issue 1934 plates to these truck owners until they have paid for this deficiency in weight which they failed to report in 1933?

If the truck weight in 1933, fully equipped, was increased during the year, after 1933 tags were issued, we feel within our rights in having them pay for that additional weight in 1933, figured proportionately on the total year.

We would like to have a formal ruling immediately, if possible, on this propounded question, inasmuch as the period under which tags must be purchased is very short.”

I am assuming for the purpose of this opinion that the weight of the commercial car in question reported on the application for the 1934 license tags is the correct weight of the motor vehicle fully equipped. If this is true, there are four fact situations that occur to my mind with respect to the weight of the truck as reported for 1933 license tags: First, the computation made by the applicant for the 1933 registration was not figured, as it should have been, upon the weight of the truck “fully equipped”; Second, additional weight was added during the year 1933; Third, the weight reported for the 1933 license tags

was not only incorrect but was made fraudulently and not in good faith, or; Fourth, the weight reported for the 1933 license tags was actually incorrect but was given as a bona fide report by the applicant viz., the weight of the vehicle "fully equipped" (not, however, just the chassis weight) as represented by the manufacturer, or as named in the shipping bill was in good faith given by the applicant as the correct weight of the truck fully equipped.

Section 6291, General Code, states the purpose of the annual license tax levied upon the operation of motor vehicles. It reads in part:

*"An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles, maintaining and repairing public roads, highways, and streets, paying the counties' proportion of the cost and expenses of cooperating with the department of highways in the improvement and construction of state highways, paying the counties' portion of the compensation, damages, cost and expenses of constructing, reconstructing, improving, maintaining and repairing roads * * * . Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the registrar or deputy registrar, at the time of making application for registration as herein provided."* (Italics the writer's.)

Section 6292, General Code, provides the rate of such taxes for commercial cars and provides in part:

* * * * *

For each commercial car having motor power and for each trailer or semi-trailer, seventy cents per one hundred pounds or part thereof for the first two thousand pounds or part thereof of weight of vehicle *fully equipped*; one dollar and ten cents for each one hundred pounds or part thereof in excess of two thousand pounds up to and including three thousand pounds; one dollar and fifty cents for each one hundred pounds or part thereof in excess of three thousand pounds up to and including four thousand pounds; one dollar and seventy-five cents for each one hundred pounds or part thereof in excess of four thousand pounds up to and including six thousand pounds; two dollars for each one hundred pounds or part thereof in excess of six thousand pounds up to and including ten thousand pounds; and two dollars and twenty-five cents for each one hundred pounds or part thereof in excess of ten thousand pounds." (Italics the writer's.)

Section 6293, General Code, provides in part:

"The weight of all motor vehicles, shall be the weight of the vehicle fully equipped as represented by the manufacturer, or as named in the shipping bill; provided, that if this be not known, or is not the actual weight, the actual weight as determined on a standard scale shall govern.
* * *"

Section 6294, General Code, pertinent to your inquiry, provides in part:

“* * *

* * *

* * *

If such application is not in proper form * * * *or if all registration and transfer fees required by law for such motor vehicle, for the preceding year, have not been paid* * * * *the license shall be refused.* * * *

Provided, however, that nothing in this section shall be so construed as to require the payment of license or registration taxes on a motor vehicle for any preceding year, or for any preceding period of a year, if such motor vehicle was not taxable for such preceding year or period under the provisions of Sections 6291, 6292, 6294-1, 6294-2 and 6295 of the General Code. * * *” (Italics the writer’s.)

Section 6294-2, General Code, provides with regard to quarterly reductions:

“Excepting as provided in sections 6294-1 and 6295 of the General Code, the taxes payable on all applications made under section 6294 of the General Code, shall be as follows:

1. If such application be made prior to April 1, the normal tax;
2. If such application be made on or after April 1 and prior to July 1, three-fourths of the normal tax;
3. If such application be made on or after July 1 and prior to October 1, one-half of the normal tax;
4. If such application be made on or subsequent to October 1, one-fourth of the normal tax.”

In an opinion of my immediate predecessor in office, reported in Opinions of the Attorney General for 1932, Vol. 1, pages 30, at page 35, it is stated:

“* * * It must be presumed that the legislature intended the language ‘fully equipped’ (referring to Sec. 6292 G. C., supra) to have a meaning. If it were meant that a truck was to be taxed as delivered from the manufacturer, it would have used the language ‘truck chassis’, for the larger trucks are usually delivered by the manufacturer in chassis form and the dealer will place thereon a truck body of the type desired, if he has it in stock, or will sell the chassis alone, and as is usually done, a body manufacturer or carriage manufacturer builds the body on a truck of the type suitable for the business of the purchaser of the truck chassis.

I believe that under the rules of construction laid down by the court, I must presume that the legislature had in mind common business practice and when it used the language ‘weight of vehicle fully equipped’ it meant the weight upon which the tax was computed to be that of the vehicle which included the equipment regularly and permanently attached to or built into such vehicle and regularly a part thereof.

I am therefore of the opinion that the tax is to be computed not only upon the chassis of the truck but upon the weight including any equipment built into or upon such chassis in such manner as to become a part thereof.” (Parèntthesis the writer’s.)

In my opinion rendered November 17, 1933, being Opinion No. 1885, I affirmed both the result and the reasoning of the Opinion of my predecessor in office and stated therein:

“It is my opinion that in computing the scale weight of a service car (which is a commercial car) for the purpose of taxation there

should be included the weight of the wrecking equipment bolted or otherwise attached to the truck." (Parenthesis the writer's.)

On the assumption made at the outset of this opinion, and inasmuch as there is no substantial change in the statutes referred to supra relative to your inquiry, it is my opinion that Section 6294 of the General Code which provides, "If all registration * * * fees *required by law* for such motor vehicles, *for the preceding year, have not been paid, the license shall be refused,*" is dispositive of most of the fact situations which are necessarily presented in your inquiry, (outlined at the beginning of this opinion). Making an allowance of five hundred pounds for the discrepancies between the weights reported for the 1933 registration and the 1934 ones, which "tolerance" is to take care of mud and grime, the weight of gasoline and possible discrepancies in the scales used, it is clear to my mind that under the first fact situation i. e., where the computation made by the applicant for the 1933 registration was not made upon the weight of the truck "fully equipped", the registrar of motor vehicles may refuse to issue 1934 licenses for such car to such applicant until he has paid for such additional weight for the year 1933. The applicant is presumed to know the law and if he merely reported the chassis weight in his 1933 registration he should pay the difference in tax between the chassis weight and the weight of the truck fully equipped for the year 1933 before he is entitled to be issued 1934 license plates.

Under the second fact situation i. e., where the weight reported for the 1933 registration was correct but additional weight was added during the year, inasmuch as the owner of such commercial car should have reported this additional weight to the Bureau of Motor Vehicles and should have paid the difference in tax for the remaining portion of the year, the Registrar of Motor Vehicles may refuse to issue 1934 licenses for such car until such applicant has paid for the additional weight for the remaining portion of the year 1933, after such weight was added.

Under the third fact situation i. e., where the weight reported for the 1933 license tags was not only incorrect but was also made fraudulently, it is clear that by virtue of Section 6294, General Code, the Registrar of Motor Vehicles may refuse to issue 1934 licenses until such applicant has paid for the true weight of such commercial car, fully equipped, for the year 1933.

However, the fourth fact situation i. e., where the applicant for a 1933 license in good faith reported a lesser weight for the truck fully equipped than the actual weight, presents a different problem, one which I believe may be disposed of by the following equitable principle found in 29 Cyc. at page 1433, wherein it is stated:

"If the power has by law been given to an officer to determine a question of fact, his determination is final, in the absence of any controlling provision of statute, provided he has not been guilty of an abuse of discretion. Such a determination is * * * binding upon the successors in office of the officer who made it."

Consequently it is my opinion under this last fact set-up that where there has been no change in weight during the year, and in good faith the application was filed last year and the state issued licenses, the present state official, the Registrar of Motor Vehicles, may not go behind the act of the state in issuing

the 1933 licenses and say that it was an error and demand the difference in fees for the last year before issuing the 1934 licenses for such commercial cars.

Specifically answering your inquiries, it is my opinion:

1. By virtue of Section 6292 and 6294, General Code, if the weight of the commercial car reported by the applicant for 1933 licenses was not computed upon its weight "fully equipped" the Registrar of Motor Vehicles may refuse to issue 1934 licenses for such car to such applicant until he has paid for such additional weight for the year 1933.

2. By virtue of Section 6294, General Code, even though the applicant for licenses for a commercial car for the year 1933 did report the correct weight of the car fully equipped, if during the year he added additional weight, the Registrar of Motor Vehicles may refuse to issue 1934 licenses for such car until such applicant has paid for the additional weight for the remaining period of the year 1933.

3. By virtue of Section 6294, General Code, if the weight of the commercial car reported for 1933 licenses was incorrect, it being less than that reported for that of 1934, and such report was not made in good faith by the applicant for the 1933 licenses, the Registrar of Motor Vehicles may refuse to issue 1934 licenses for such car until such applicant has paid the true weight of such car fully equipped for the year 1933.

4. If, however, the applicant for 1933 licenses reported a lesser weight for the car fully equipped than the one he is reporting for the 1934 licenses and in good faith with complete absence of fraud reported such as the actual weight of the car "fully equipped", and no additional equipment was added during the year, the Registrar of Motor Vehicles may not refuse to issue 1934 license tags until such difference in fee is paid.

Respectfully,

JOHN W. BRICKER.

Attorney General.

2086.

TAX REFUND—PAYMENT OF TAXES ON SAME PARCEL OF REAL ESTATE BY TWO RIVAL CLAIMANTS—EXCESS PAYMENT NOT RETURNABLE WHEN.

SYLLABUS:

1. *When by reason of a dispute between two or more parties as to the ownership of a parcel of real estate, each party claiming to be the owner of such parcel, pays the taxes thereon, and one of such excess payments by authority of Section 286, General Code, is placed in a special trust fund and no demand for refund of such excess payment is made until after the transfer of such moneys from the special fund to the general fund of the political subdivision, the party wrongfully paying such excess can not recover such excess payment.*

2. *Opinion of the Attorney General, reported in the Opinions for 1932, Volume III, page 1326, holding a former county treasurer personally liable after the expiration of his term of office for excess payment of taxes received during his term of office, discussed and restricted.*