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1. LAW LEVYING A TAX — SECTION EFFECTIVE IMMEDIATELY WHEN SIGNED BY GOVERNOR — WITHIN EXCEPTION SPECIFIED, ARTICLE II SECTION 1d, CONSTITUTION OF OHIO—SECTION 1345-4 G. C., AMENDED SUBSTITUTE SENATE BILL 202, 95th GENERAL ASSEMBLY —REMAINING SECTIONS NOT STATUTES LEVYING A TAX—DO NOT BECOME EFFECTIVE IMMEDIATELY—NO EMERGENCY CLAUSE.
2. “VOLUNTARY PAYMENTS IN ADDITION TO CONTRIBUTIONS REQUIRED UNDER” SECTION 1345-4 G. C. MADE ON OR BEFORE JUNE 30, 1943—MUST BE CREDITED IN EMPLOYER’S ACCOUNT AS OF COMPUTATION DATE NEXT FOLLOWING SUCH PAYMENT.

SYLLABUS:

1. Section 1345-4 of the General Code, as enacted in Amended Substitute Senate Bill No. 202 by the current General Assembly, is a law levying a tax and, therefore, such section became effective immediately upon being signed by the Governor. It is within the exception specified in Article II, Section 1d of the Constitution of Ohio. The remaining sections of the statute amended and enacted in such Senate Bill are not statutes levying a tax and, therefore, do not become effective immediately since such act contained no emergency clause.

2. Where “voluntary payments in addition to the contributions required under” Section 1345-4 of the General Code were made on or before the 30th day of June, 1943, they must be credited in an employer’s account as of the computation date next following such payment.

Columbus, Ohio, July 10, 1943.

Hon. Hugh S. Jenkins, Administrator, Bureau of Unemployment Compensation, 427 Cleveland Avenue, Columbus, Ohio.

Dear Sir :

I am in receipt of your request for my opinion, which reads :

"Amended Substitute Senate Bill No. 202, which amends the unemployment compensation law, has been signed by the Governor and was filed with the Secretary of State on June 29, 1943.

Among other things this act amended Section 1345-4, General Code. This section provides for the contributions which shall be paid by employers.

Subsection (b) of the above section, among other things, provides :

'Each employer shall pay contributions as follows: * * *

(5) On and after the effective date of this act, with respect to wages paid during each calendar year, an amount equal to two and seven-tenths per cent of such wages, except as may otherwise be provided in subsection (c) (4) of this section.'

Subsection (c) (1) of this section contains the following sentence :

'Any employer may make voluntary payments in addition to the contributions required under this section, in accordance with regulations established by the bureau. Such payments shall be included in the employers' account as of the computation date provided they are received by the bureau on or before the thirtieth day of June preceding such computation date. Such voluntary payment when accepted from an employer will not be refunded in whole or in part.'

I shall appreciate your opinion on the following questions :

1. Are the contributions required to be paid by this act considered to be tax levies and, if so, are the 'voluntary payments' authorized herein included within the meaning of tax levies?
2. When does this act become effective?
3. If all sections do not become effective at one time, when

does Section 1345-4 become effective and, also, the provision for 'voluntary payments' included therein?

4. May the Bureau accept the tender of 'voluntary payments' made on June 29 or June 30, 1943, to be included in the employers' account as of the next computation date, September 30, 1943, and are these the only dates upon which such tender can be made to be so included in the employers' account?"

Section 1d of Article II of the Ohio Constitution provides certain exceptions to the rule that laws enacted by the General Assembly shall not go into effect until after the expiration of ninety days from the date of their enactment, during which period laws, other than those excepted in such section, are subject to referendum. Such exception, in so far as pertinent to your inquiry, is contained in the first sentence of such section and reads as follows:

"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect.
* * *"

In the case of *State, ex rel. Donahey, Auditor v. Roose, Auditing*, 90 O. S. 345, the Supreme Court had occasion to construe the meaning of the constitutional provision above quoted and held as stated in the first and second paragraphs of the syllabus, as follows:

"1. Section 1 of the act of April 8, 1913, as amended April 16, 1913 (103 O. L., 863), is a law providing for a tax levy, and, by the provisions of Section 1d of Article II of the Constitution, is expressly exempted from the referendum provisions of Section 1c of Article II of the Constitution of Ohio.

2. Section 1c of Article II of the Constitution of Ohio expressly provides for a referendum not only upon any law but any section of a law. All sections of a law not subject to the referendum provisions of this section of the constitution go into immediate effect when approved and signed by the governor."

Again in the case of *State, ex rel. Keller v. Forney*, 108 O. S. 463, the Supreme Court had occasion to consider the effect of the constitutional provision above quoted and held in the second and third paragraphs of the syllabus that:

"2. The language of Section 1d, Article II of the Constitution, expressly enumerating certain exceptions to the people's

right of referendum upon acts of the General Assembly, must be construed and applied with reference to this rule.

3. The express language, 'laws providing for tax levies,' is limited to an actual self-executing levy of taxes, and is not synonymous with laws 'relating' to tax levies, or 'pertaining' to tax levies, or 'concerning' tax levies, or any agency or method provided for a tax levy by any local subdivision or authority."

Your inquiry is more particularly limited to the effective date of Section 1345-4, as amended in Amended Substitute Senate Bill No. 202 as enacted by the current General Assembly. An examination of such section will disclose that if any tax is levied by the Unemployment Compensation Law of Ohio it is levied by that section and none other. We must therefore, consider whether the Unemployment Compensation Law of Ohio levies a tax. Such question was before the Supreme Court of the United States in the case of *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 81 L. Ed. 1245, wherein the court considered the effect of a similar law enacted by the State of Alabama. An examination of that act discloses that it is substantially similar to the Ohio act. As that case is reported in 81 L. Ed., the following paragraphs of the syllabus appear:

"1. The particular name which a state court or legislature may give to a money payment commanded by its statute is not controlling in the Supreme Court of the United States when its constitutionality is in question.

2. A state statute which imposes upon employers the obligation to pay a certain percentage of their monthly payrolls into the state unemployment compensation fund is an exercise of the taxing power of the state.

3. Taxes, which are but the means of distributing the burden of the cost of government, are commonly levied on property or its use, but may likewise be laid on the exercise of personal rights and privileges."

Mr. Justice Stone, in delivering the opinion of the court on pages 508 and 509 in determining the nature of the unemployment contribution, reasoned as follows:

"In *Beeland Wholesale Co. v. Kaufman*, Ala., 174 So. 516, supra, the Supreme Court of Alabama held that the contributions which the statute exacts of employers are excise taxes laid in conformity to the constitution and laws of the state. While the particular name which a state court or legislature may give to a money payment commanded by its statute is not controlling here when its constitutionality is in question, cf. *Educational Films Corp. v. Ward*, 282 U. S. 379, 387, 75 L. ed.

400, 404, 51 S. Ct. 170, 71 A. L. R. 1226; *Storaasli v. Minnesota*, 283 U. S. 57, 62, 75 L. ed. 839, 843, 51 S. Ct. 354; *Wagner v. Covington*, 251 U. S. 95, 102, 64 L. ed. 157, 167, 40 S. Ct. 93; *Standard Oil Co. v. Graves*, 249 U. S. 389, 394, 63 L. ed. 662, 666, 39 S. Ct. 320, we see no reason to doubt that the present statute is an exertion of taxing power of the state. Cf. *Carley & Hamilton v. Snook*, 281 U. S. 66, 71, 74 L. ed. 704, 708, 50 S. Ct. 204, 68 A. L. R. 194.

Taxes, which are but the means of distributing the burden of the cost of government, are commonly levied on property or its use, but they may likewise be laid on the exercise of personal rights and privileges. As has been pointed out by the opinion in the *Chas. C. Steward Mach. Co. Case*, such levies, including taxes on the exercise of the right to employ or to be employed, were known in England and the Colonies before the adoption of the Constitution, and must be taken to be embraced within the wide range of choice of subjects of taxation, which was an attribute of the sovereign power of the states at the time of the adoption of the Constitution, and which was reserved to them by that instrument. As the present levy has all the indicia of a tax, and is of a type traditional in the history of Anglo-American legislation, it is within state taxing power, and it is immaterial whether it is called an excise or by another name. See *Barwise v. Shepard*, 299 U. S. 33, 36, ante, 23, 57 S. Ct. 70. Its validity under the Federal Constitution is to be determined in the light of constitutional principles applicable to state taxation."

In view of the holding of the Supreme Court, I am persuaded to be of the opinion that the forceable exaction of contributions required by Section 1345-4 of the General Code are "taxes" within the meaning of that term as used in the second article of the Ohio Constitution, a portion of which is above quoted.

An examination of Section 1345-4 discloses that it is the section which levies the tax. It would, therefore, seem that such section must be considered as being a law levying a tax which would go into effect immediately upon its enactment. I am not unmindful of the fact that there may be certain sentences and certain clauses in such act which do not in and of themselves levy a tax and which might be argued as being pertaining to a tax, rather than levying a tax. However, I am unable to find any provision of law which would authorize a part of a section to become effective at one time and part of a section to become effective at a different time. It would, therefore, appear that the rule pronounced by the Supreme Court of Ohio in the case of *State, ex rel. Donahey v. Roose*, supra, and *State, ex rel. Keller v. Forney*, supra, impels the conclusion that each and every portion of Section 1345-4 became effective immediately upon the enactment of Amended Substitute Senate Bill No. 202 on June 29, 1943 as stated in your inquiry.

It would also follow from the holding of the court in such cases that the remaining sections of such act which do not levy a tax, but are rather provisions pertaining to or concerning the use of taxes levied, do not become effective until after the expiration of the ninety day period permitted by the Constitution within which to subject such law to referendum.

With respect to your further question, I call your attention to the following language contained in Section 1345-4 (c) (1) :

“ * * * Any employer may make voluntary payments in addition to the contributions required under this section, in accordance with regulations established by the bureau. Such payments shall be included in the employers' account as of the computation date provided they are received by the bureau on or before the thirtieth day of June preceding such computation date. * * * ”

It would, therefore, seem that if Section 1345-4 of the General Code, as amended in Amended Substitute Senate Bill No. 202, became effective immediately upon signature by the Governor, such language requires that the voluntary payments made on June 29 or June 30, 1943 must be included in the employers' account as of the next computation date, which you state to be September 30, 1943.

Inquiry has also been made as to whether voluntary contributions may be made by employers and credited for the current year on the basis of an extended date beyond June 30. In other words, such inquiry is as to whether the time for making the voluntary payments fixed by the statute as June 30 may be extended beyond such date.

While I am cognizant of the fact that under certain circumstances, where the statute requires public officials to take certain action on specified days, such statutes may be construed as directory in so far as the time therein designated is concerned; however, there seems to be also a settled rule of interpretation of statutes that where the statute, in providing for the doing of some act, specifies the time for its performance and the performance of the act at that time concerns the public interest or rights of individuals, such language is to be construed as mandatory and the exercise of the power at that time may be required. See Black on Interpretation of Laws, Section 125; Devine v. The State, ex rel. Tucker, 105 O. S. 288; Columbus, Springfield and Cincinnati Railroad Co. v. Mowatt, 35 O. S. 284, 287.

Specifically answering your inquiries, it is my opinion that:

1. Section 1345-4 of the General Code, as enacted in Amended

Substitute Senate Bill No. 202 by the current General Assembly is a law levying a tax and, therefore, such section became effective immediately upon being signed by the Governor. It is within the exception specified in Article II, Section 1d of the Constitution of Ohio. The remaining sections of the statute amended and enacted in such Senate Bill are not statutes levying a tax and, therefore, do not become effective immediately since such act contained no emergency clause.

2. Where "voluntary payments in addition to the contributions required under" Section 1345-4 of the General Code were made on or before the 30th day of June, 1943, they must be credited in an employer's account as of the computation date next following such payment.

Respectfully,

THOMAS J. HERBERT,
Attorney General.