

1325

CIGARETTE LICENSE LAW—NO REFUNDER SHOULD BE MADE TO COVER PERIOD OF LESS THAN ONE-FIFTH OF YEAR

No refunder should be made under the cigarette license law to cover a period of less than one-fifth of a year

COLUMBUS, OHIO, June 9, 1920

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department, as follows:

“Under the Dow-Aiken law the statute providing for refunders definitely stated that there must be at least \$200 00 left in the treasury after a refunder is paid, but this language was not followed in writing the cigarette refunder section. The language of section 5896 is peculiar inasmuch as under the preceding section a dealer may pay in one fifth of the whole year's tax and if he discontinued could not under the strict letter of this section secure any refunder at all, but if he paid in \$20 00 for a part of the year he could if he discontinued secure a refunder of \$15 00 which would leave a net \$5 00 in the treasury under the strict construction of this section. So that the man who paid in \$10 00 and discontinued business on the day following could get nothing back while the man who paid in \$20 00 could do business to the extent of \$10 00 tax time and draw down the remaining \$10 00.

Different county auditors have been giving varying constructions to this section and we desire to have its administration uniform.

The real question is as to the intention of the General Assembly and whether that intention was to protect the state by leaving one-fifth in the treasury, as provided under different words in the Dow-Aiken refunder law, or whether the intent of the General Assembly was to protect the dealer as in the amount of refunder he might obtain.”

The law involved in the question presented by you is to be found in section 5895 G C which fixes the time of payment of such tax to be on or before the 20th day of June each year, the last sentence of the section being as follows:

“When such business is commenced *after* the 4th Monday of May, such assessments shall be proportionate in amount to the remainder of the assessment year, except that *it shall not be less than one-fifth of the whole amount to be assessed in any one year.*”

Section 5896 G C, which relates to refunders in cases of discontinuance, is as follows:

“When a person, firm, company, corporation or co-partnership described in section fifty-eight hundred and ninety-four, which has been so assessed, and which has paid or is charged upon the tax duplicate with the full amount of such assessment, discontinues such business, the county auditor shall issue to such person, firm, company, corporation or co-partnership, a refunding order for a proportionate amount of the assessment. Such order shall not be less than one-fifth of the whole amount to be assessed in one year.”

The question presented by you is covered by the last paragraph of your letter

and it appears to me that it is clearly disposed of by the sections quoted in whole or in part. The only question involved being as to the extent to which a refunder may be made in case of the discontinuance of business by a licensee, we are not concerned particularly about the initial payment except that under the provisions of section 5896 the full amount of the assessment must be paid or charged upon the duplicate if a refunder is to be had at all. It is further provided in said section that such order of refunder shall not be less than one-fifth of the whole amount to be assessed in one year. In case of the discontinuance of business by a person who has paid the full assessment under the law, or is charged therewith, it is provided that he shall be entitled to a refund for a proportionate amount of the assessment, except that no such refunding order shall be for less than one-fifth of the whole amount to be assessed in any one year. The tax levied is \$50 00 per year and if a licensee has operated for a period longer than four-fifths of the year and then discontinues business, he has gone beyond the point of being entitled to any refunder, and it is the opinion of this office that no refunder can be granted for a period of less than one-fifth of the year under any circumstances.

The state of facts set forth in the first paragraph of your letter could not arise under the law as it exists as the only practical result would be as above stated and the licensee would be obliged to pay under all circumstances for the time he operated as such licensee, and if any portion of the time short of one-fifth of the year was abandoned by him under his license he would be entitled to no relief in the shape of a refunder.

Respectfully,

JOHN G PRICE,

Attorney-General.

1326

DISAPPROVAL, BONDS OF MOULTON TOWNSHIP, AUGLAIZE COUNTY,
OHIO, IN AMOUNT OF \$12,800 FOR ROAD IMPROVEMENTS

COLUMBUS, OHIO, June 9, 1920.

Industrial Commission of Ohio, Columbus, Ohio

RE: Bonds of Moulton township, Auglaize county, in the amount of \$12,800, to pay the cost and expense of the Cozad road improvement.

GENTLEMEN—I have examined the transcript of the proceedings of the township trustees relative to the above bond issue and find from the information contained in said transcript, that the proceedings for the improvement of said road were commenced by the filing of a petition of property owners April 7, 1919. The bond resolution purports to authorize the issuance of bonds bearing interest at the rate of six per cent per annum. Prior to the amendment of section 3298-15e of the General Code by the enactment of house bill 699, which was passed February 4, 1920, and approved by the governor February 16, 1920, the township trustees were not authorized to issue road improvement bonds under authority of said section bearing interest in excess of five per cent.

Following the rule of construction laid down by the supreme court of Ohio in the case of state ex rel Andrews vs Zangerle, auditor of Cuyahoga county, No 16578, decided May 11, 1920, I am of the opinion that the township trustees were without authority to issue bonds for road improvements, the proceedings for which were commenced prior to February 16, 1920, bearing a rate of interest in excess of five per cent per annum.