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THE TIME OR STAGE OF PROCEDURE WHEN SOME VALUE IN MONEY ATTACHES TO A PREPAID SALES TAX RECEIPT IS AT THE TIME SUCH RECEIPT IS PROCURED—IF THE TREASURER OF STATE CAN ACCOUNT FOR ALL OF THE PREPAID SALES TAX RECEIPTS RECEIVED AND UNSOLD BY HIM, HE IS NOT RESPONSIBLE FOR A DEFICIENCY—AN AGENT OF THE TREASURER OF STATE IS RESPONSIBLE FOR WHATEVER MONEY DAMAGES THE STATE MIGHT SUSTAIN BY REASON OF A DEFICIENCY CHARGEABLE TO HIS ACCOUNT—§§5739.05, 5739.06, 5739.07, 5741.08 R.C.

SYLLABUS:

1. The time or stage of procedure when some value in money attaches to a prepaid sales tax receipt is at the time such receipt is procured by the tax commissioner pursuant to the provisions of Section 5739.05, Revised Code.
2. Under the provisions of Section 5739.06, Revised Code, if the treasurer of state can account for all of the prepaid sales tax receipts received and unsold by him, he is not responsible for a deficiency in the prepaid sales tax receipts chargeable to the account of one of his agents.
3. An agent of the treasurer of state is responsible for whatever money damages the state might sustain by reason of a deficiency in the prepaid sales tax receipts chargeable to his account, and such money damages will depend upon the circumstances in each individual case.

Columbus, Ohio, August 18, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The enforcement of the laws covering the issuance, collection and accounting of prepaid sales tax receipts has created a question as to that moment of time in which such prepaid sales tax stamps acquire a money value.

“Under date of December 19, 1941, the then Attorney General issued his Opinion No. 4604 in which he held as follows:

“1. An agent of the treasurer of state, appointed under authority of Section 5546-7 of the General Code, is required by

such section to account on the first business day of each week, in the manner therein specified, for the sales of prepaid tax receipts sold by him during the preceding week and to pay into the state treasury the face value of such stamps less the discounts allowed by statute to wholesale purchasers and less amounts paid to licensed vendors for redemption authorized by statute.

“2. When, upon examination of the accounts of an agent, of the treasurer of state by the auditor of state, the amount of cash in his possession from the sale of prepaid tax receipts is deficient, such agent may not account for such cash shortage by substituting uncanceled prepaid tax receipts.

“3. There is no provision of law authorizing the auditor of state to confiscate prepaid tax receipts found in the possession of a sales tax agent, even though such prepaid tax receipts are determined by the auditor of state to be illegally in the possession of such agent.”

“Under date of July 31, 1953, the then Attorney General in his Opinion No. 2912 held in the syllabus thereof as follows:

‘Where a sales tax agent, appointed by the Treasurer of State, pursuant to Section 5546-7, General Code, Section 5739.06, R.C., has in his possession an unaccountable surplus of prepaid sales tax stamp forms, over and above the quantity delivered to such agent by the Treasurer of State, less the quantity sold by the agent to licensed vendors, the Treasurer of State is authorized to confiscate such surplus stamps, to be disposed of in such manner as may be agreed upon between the Treasurer of State and the Tax Commissioner.’

“The audits, required by law, to be made by the Sales Tax Auditing Department of the office of the Auditor of State continue to find instances in which shortages of prepaid sales tax receipts are being filled by the use of unauthorized and illegally held prepaid sales tax receipts in the possession of the agent.

“As noted by Syllabus No. 2 of Attorney General’s Opinion No. 4604 of 1941, the Attorney General held that such agent may not account for such cash shortage by substituting uncanceled prepaid tax receipts. It therefore must follow that the present procedure whereby agents use such surplus tax receipts to make up a deficit that the procedure in effect is contrary or in violation of the opinions of the Attorney General as above cited.

“The following questions are pertinent to the proper enforcement of the issuance and collection of prepaid sales tax receipts.

“1. At what time or what stage of procedure does a money value attach to a prepaid sales tax receipt?

“2. In those instances where an agent of the Treasurer of State is deficient in the prepaid tax receipts chargeable to

his account, is either the agent, the Treasurer, or both, responsible money-wise for the face value of the shortage of stamps per his inventory?"

Before proceeding to answer your first question, it should be noted that the money value attached to a prepaid sales tax receipt may not, under all circumstances, be the "face value" of such receipt. The value of a prepaid sales tax receipt in terms of its worth in money could vary under different circumstances. For example, value may mean the cost of production or reproduction of the prepaid sales tax receipt, sometimes referred to as "sound value," or it may mean the amount of money which the prepaid sales tax receipt would command in exchange, if sold, this being called its "market value," or it may mean the subjective value of such prepaid sales tax receipt, having in view its profitableness for some particular purpose, sometimes termed its "value for use." Black's Law Dictionary (4th Ed.) p. 1721. The "value for use" of such receipt would be, in this case, its "face value." Specific examples of circumstances when the money value of prepaid sales tax receipts vary are cited in the answer to your second question. Answering your first question, it is my opinion that *some* value in money attaches to a prepaid sales tax receipt at the time it is procured by the tax commissioner pursuant to the provisions of Section 5739.05, Revised Code.

Your second question can be divided into two parts. First, who, if anyone, is liable for any deficiency in the prepaid sales tax receipts chargeable to the account of an agent of the treasurer of state? Secondly, if there is any liability is it measured by the monetary "face value" of the prepaid sales tax receipts which were deficient?

In regard to the first part of your second question, Section 5739.06, Revised Code, makes the treasurer of state accountable for all prepaid tax receipts received and unsold by him. It does not necessarily follow, however, that because one of the treasurer of state's agents is deficient in the prepaid sales tax receipts chargeable to his account that the treasurer could not account for all of the prepaid sales tax receipts received and unsold by him. For example, suppose that an agent fails to count the receipts delivered to him by the treasurer. It is conceivable that a mistake could be made charging the agent's account with more receipts than he actually received. An audit of the agent's account would show a deficiency, whereas an audit of the treasurer's account would show a surplus. I am of

the opinion, therefore, that, in the absence of an audit of the treasurer's account showing a deficiency therein, the treasurer of state is not responsible where one of his agents is deficient in the prepaid sales tax receipts chargeable to the agent's account.

The agent, of course, is always responsible for his own account. In case of a deficiency in his account, he could be held liable for whatever money damages the state might sustain by reason of the deficiency in prepaid sales tax receipts chargeable to his account. Such receipts are often referred to as "stamps." In this regard, 49 American Jurisprudence, Stamp Taxes, Section 21, page 213, provides as follows:

"Stamp taxes are payable by means of stamps. The stamps are the drafts by which the tax is received in advance, and the vouchers, by which its payment is evidenced. Apart from these purposes the stamps have no value, and Federal revenue stamps are exempt, as property, from all state and local taxation. But such stamps, as property in the hands of a purchaser, may, prior to their use, be insured against destruction by fire."

Whenever, therefore, prepaid sales tax receipts are used by a licensed vendor for the purpose of collecting the sales tax, such receipts have a "value for use," or, in this case, their "face value," less the vendor's commission for handling such receipts. See Section 5739.07, Revised Code. In those circumstances, therefore, where the prepaid sales tax receipts which are missing from an agent's account find their way into the hands of a licensed vendor who uses them for the purpose of collecting the sales tax, then the money damages which the state would sustain would be the "face value" of such receipts, less the vendor's commission. In those circumstances, however, where such receipts find their way into the hands of a person who presents them to the tax commissioner for redemption pursuant to the provisions of Section 5741.08, Revised Code, then the money damages which the state would sustain would be the cost of such redemption, *i.e.*, two per cent of the face value of such receipts. If such receipts are never used to collect the sales tax or are never presented to the tax commissioner for redemption, then the money damages which the state would sustain would be the "sound value" of such receipts, *i.e.*, the cost of production or reproduction of such receipts. Since prepaid sales tax receipts can only be sold by the treasurer of state, his agents, and county treasurers and can only be purchased by a licensed vendor (Sections 5739.07 and 5739.08, Revised Code), there is no "market value," as such, for these receipts.

Accordingly, it is my opinion, and you are advised:

1. The time or stage of procedure when some value in money attaches to a prepaid sales tax receipt is at the time such receipt is procured by the tax commissioner pursuant to the provisions of Section 5739.05, Revised Code.

2. Under the provisions of Section 5739.06, Revised Code, if the treasurer of state can account for all of the prepaid sales tax receipts received and unsold by him, he is not responsible for a deficiency in the prepaid sales tax receipts chargeable to the account of one of his agents.

3. An agent of the treasurer of state is responsible for whatever money damages the state might sustain by reason of a deficiency in the prepaid sales tax receipts chargeable to his account, and such money damages will depend upon the circumstances in each individual case.

Respectfully,

MARK McELROY

Attorney General