

the Tax Commission as deputy tax commissioners were in the unclassified service, it would have been unnecessary for the legislature to have expressly provided in section 154-38a that such employes were to be in the unclassified service, inasmuch as the provision of subsection (a) of section 486-8, being general in nature, would have applied, on the omission of that provision in section 154-38a, to deputy tax commissioners appointed by virtue of the latter statute.

Whether the persons designated by the Tax Commission of Ohio as deputy tax commissioners are clothed with and actually exercise the power of acting for and in place of the Tax Commission in the administration of the duties imposed upon the Tax Commission by law, is a question of fact to be determined in the first instance by the Civil Service Commission from the duties assigned to and performed by such persons. In placing a position in its proper classification, the Civil Service Commission must be guided solely by the character of the duties it involves and not by the name or designation which may be given to the position.

Summarizing what I have said, it is my opinion that:

1. The provisions of section 154-38a, General Code, in respect to deputy tax commissioners, are not subject to, limited or qualified by paragraph 9 of subsection (a) of section 486-8, General Code.

2. The Civil Service Commission of the State of Ohio is governed solely by the provisions of section 154-38a, General Code, in determining whether a person, appointed by the Tax Commission under section 154-38a to act for and in place of the Tax Commission in the administration of the duties that devolve upon the Tax Commission by law, is in the classified or unclassified service. In determining whether the position of deputy tax commissioner is in fact in the unclassified service, the Civil Service Commission has no recourse to the test or conditions established by the legislature in paragraph 9 of subsection (a) of section 486-8, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2090.

CIGARETTE TAX STAMPS—WHOLESALE DEALER IN CIGARETTES
NOT REQUIRED TO AFFIX STAMPS TO PACKAGES SOLD TO
FEDERAL GOVERNMENT.

SYLLABUS:

1. *An Ohio wholesale dealer in cigarettes who after having bid a contract with the federal government, sells and delivers to the federal government at the Chillicothe Reformatory quantities of cigarettes, is not required by sections 5894-1 et seq., General Code, to affix cigarette tax stamps to the packages so sold and delivered, even though the cigarettes may thereafter be sold to visitors as well as inmates.*

2. *The cigarette stamp tax law (sections 5894-1 to 5894-21 G. C.) does not require such stamps to be affixed to cigarettes sold to the federal government.*

3. *The Ohio cigarette stamp tax law is not applicable to any sales of cigarettes on lands owned and used for governmental purposes by the federal government, where the State has not retained civil jurisdiction to such lands. (1932 O. A. G. 828 approved and followed.)*

COLUMBUS, OHIO, December 30, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion as follows:

"We request your formal opinion regarding the liability of an Ohio wholesaler in cigarettes, who after having successfully bid a contract with the federal government, sells and delivers to the federal government, i. e. the Chillicothe Reformatory, quantities of cigarettes without having affixed thereto the Ohio revenue stamps required by the cigarette tax law. Such unstamped cigarettes are sold not only to the inmates but also to visitors."

In an opinion of my predecessor in office (1932, O. A. G. 841) it was held as stated in the syllabus:

"1. The Liberty Stores, Inc., which has been authorized by the governing officials of the National Military Home at Dayton to operate a store for the sale of general merchandise, cigarettes, tobacco, etc., is to the extent that it sells cigarettes to the inmates of said institution, an agency of the United States fulfilling a governmental purpose, and the Ohio cigarette sales and license taxes are not applicable to its sales of and business of selling cigarettes at the Home to said inmates.

2. In so far as in said store The Liberty Stores, Inc., sells cigarettes to members of the general public, as distinguished to said inmates, it is not acting as an agency of the United States fulfilling a governmental purpose, and it must procure the state license tax to engage in such business and must comply with the state cigarette sales tax with regard to the sale of cigarettes made to the general public."

This opinion is upon the reasoning that the state government has no constitutional right to tax an instrumentality of the federal government. This opinion is probably dispositive of your inquiry, for if the sale to the instrumentality cannot be taxed, it is difficult to see in what manner the sale to the federal government itself could be taxed.

My predecessor in office also held in an opinion found in Opinions of the Attorney General for 1932, page 828, as stated in the syllabus:

"The Ohio cigarette sales and license taxes are not applicable to the sale of cigarettes upon the grounds of the two federal aviation fields, namely, Wright and Patterson Fields, in Montgomery County."

This opinion is reasoned upon the theory that the Ohio statutes give to the United States the exclusive jurisdiction, except for service of civil and criminal process, over all lands owned for purposes of government by the federal government. Sections 13770, 13771 and 13772, General Code.

Such opinion of my predecessor is well reasoned. After a review of the authorities upon which it is based, I concur in the conclusion therein reached.

It is to be presumed that it is not the intent of the legislature to give extraterritorial effect to its laws. Black on Interpretation of Laws, Sec. 43. The cigarette license tax law in terms excludes sales in interstate and foreign commerce from its provisions. (Section 5894-1 G. C.)

It would lead to an absurd conclusion if I were to hold that even though the Ohio cigarette stamp tax law did not apply to retail sales of cigarettes at the Federal Reformatory at Chillicothe, the wholesaler must nevertheless attach the stamps before selling the cigarettes to the retailer in such district. While there is a presumption that any construction of a statute which leads to absurd consequences should be avoided, if possible (Black on Interpretation of Laws, § 48), yet in the absence of such presumption, I am unable to deduce from the act (sections 5894-1 to 5894-21 G. C.) any intent on the part of the legislature to require the wholesaler to attach stamps on cigarettes so sold.

It would appear to me that within the meaning of the Ohio statutes, property owned by the United States for governmental purposes, is just as distinct and apart from the State of Ohio as is the District of Columbia, except for the service of criminal and civil process.

Specifically answering your inquiry, it is my opinion that:

1. An Ohio wholesale dealer in cigarettes who after having bid a contract with the federal government, sells and delivers to the federal government at the Chillicothe Reformatory quantities of cigarettes, is not required by sections 5894-1 et seq., General Code, to affix cigarette tax stamps to the packages so sold and delivered, even though the cigarettes may thereafter be sold to visitors as well as inmates.

2. The cigarette stamp tax law (sections 5894-1 to 5894-21 G. C.) does not require such stamps to be affixed to cigarettes sold to the federal government.

3. The Ohio cigarette stamp tax law is not applicable to any sales of cigarettes on lands owned and used for governmental purposes by the federal government, where the State has not retained civil jurisdiction to such lands.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2091.

TRUST—TAX COMMISSION AUTHORIZED TO ASSESS EQUITABLE INTERESTS OF BENEFICIARIES THEREIN ON BASIS OF INCOME YIELD WHEN INCOME WITHHELD FROM BENEFICIARIES TO ESCAPE ASSESSMENT.

SYLLABUS:

The Tax Commission of Ohio, when it specifically finds that the terms of a trust, which authorize or require the trustee to accumulate all or any part of the income thereof and to withhold the payment of the same to the beneficiaries, have been availed of to prevent the assessment of the equitable interests of such beneficiaries in such trust on the basis of income yield therefrom to the beneficiaries, is, under the provisions of section 5392, General Code, authorized to assess the equitable interests of the beneficiaries in such trust on the basis of the income yield that would have accrued to such beneficiaries but for the terms of the trust which authorized the accumulation of the income thereof and the withholding of the payment of such income to the beneficiaries of the trust.

COLUMBUS, OHIO, December 30, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have requested my informal opinion with respect to the application generally of Section 5392, General Code, to the taxation of the equitable