

TAXATION (CIGARETTES):

Under provisions of House Bill No. 1612 of the 77th General Assembly, a cigarette wholesaler who purchases cigarette tax stamps or meter units on a deferred payment basis must pay for such stamps or meter units on or before the fifteenth day of the month following the month in which the stamps or meter units were purchased.

OPINION NO. 115

June 26, 1975

Honorable Lawrence J. Lee
Missouri Senate, 3rd District
506 Olive Street
St. Louis, Missouri 63101



Dear Senator Lee:

This is in response to your request for an opinion from this office regarding the correct interpretation of Section 4 of House Bill No. 1612 passed by the 77th General Assembly. In particular you have asked whether a cigarette wholesaler who purchases cigarette stamps or meter units on a deferred basis can pay for the stamps or units within thirty days after the date of purchase without being delinquent.

Section 4 of House Bill No. 1612 of the 77th General Assembly provides for a cigarette tax as follows:

"1. Any wholesaler desiring to purchase stamps or meter units on a deferred payment basis, shall file with the director, a surety bond in an amount equal to the estimated total monthly tax liability of the wholesaler. The amount of deferred payment granted at no time shall exceed the total amount of the bond filed by the wholesaler. The director may also require any wholesaler purchasing stamps in this manner to file certain reports or keep certain records as the director may deem necessary.

"2. In the event that payment of the total deferment liability becomes delinquent after fifteen days from the last day of the month during which the purchase was made, the director shall revoke the license held by the

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wholesaler, subject to other provisions of this chapter, for a period of one year and shall notify the bonding company requesting that payment be made under the terms of the bond."

It should be noted that this is the first enactment of Missouri law authorizing the deferred payment of cigarette tax. As a result, there is no body of case law defining the rights of the parties to the deferred payment scheme of House Bill No. 1612. It is therefore necessary to look to the statute itself for guidance in its application.

The words of the statute must be viewed as controlling unless there is no way of reaching a reasonable result within those terms. In Bussman Manufacturing Company v. Industrial Commission, 335 S.W.2d 456 (St.L.Ct.App. 1960), the court stated:

". . . We have no authority to supply or insert words in a statute unless there is an omission plainly indicated and the statute as written is incongruous or unintelligible and leads to absurd results. . . ." Id. 460.

The Supreme Court of Missouri supplies further guidance regarding statutory construction, ". . . If the language used is plain and unambiguous, there is no reason for any construction, . . ." United Air Lines, Inc. v. State Tax Commission, 377 S.W.2d 444, 448 (Mo.Banc 1964).

It is proper then to inspect the statute for its completeness and for its lack of ambiguity.

Paragraph 2 of Section 4 contains the relevant language regarding payment of deferred liabilities. It states, "In the event that payment of the total deferment liability becomes delinquent after fifteen days from the last day of the month during which the purchase was made, the director shall revoke the license. . ." of the wholesaler for a period of one year. Two terms from this section require definition: "delinquent" and "total deferment liability."

Webster's New International Dictionary, Second Edition, Unabridged, defines delinquent as "failing in duty; offending by neglect or violation of duty or of law." A delinquency regarding payment would obviously be a failure to satisfy one's duty or obligation to make the payment. The only problem one confronts

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in this regard is ascertaining when one has the "duty or obligation" to pay.

The statute clearly indicates that a delinquency can occur as early as the sixteenth day of the month following the month in which the tax stamps or meter units were purchased. No mention whatever is made of other dates upon which accounts may become delinquent. Therefore, accounts become delinquent on the sixteenth day of the month following the month in which the meter units or stamps were purchased on a deferred payment basis.

The phrase "total deferment liability" must refer to the amount of unpaid tax stamp or meter unit acquisitions from the previous month. Thus, if during the previous month, \$8,000 worth of meter units or tax stamps had been acquired on a deferred payment basis, and subsequently, \$2,000 was remitted prior to the fifteenth day of the month following the month of purchase, the total deferment liability on the fifteenth day of the month succeeding the month of purchase would be \$6,000.

Section 4, paragraph 2 of House Bill No. 1612 of the 77th General Assembly can only be given reasonable effect by concluding that payment is deferred for as many as forty-six days and as few as fifteen days. All purchases made in any month are required to be paid before the sixteenth of the succeeding month. Any deferment liability of preceding months remaining unpaid after the fifteenth day of the succeeding month is delinquent. Such a delinquency constitutes cause for revocation of the wholesaler's license.

CONCLUSION

It is the opinion of this office that under provisions of House Bill No. 1612 of the 77th General Assembly, a cigarette wholesaler who purchases cigarette tax stamps or meter units on a deferred payment basis must pay for such stamps or meter units on or before the fifteenth day of the month following the month in which the stamps or meter units were purchased.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John D. Ashcroft.

Very truly yours,



JOHN C. DANFORTH
Attorney General