1218

COMMERCIAL CAR OWNER:

1. WHERE REGISTRATION TRANSFERRED FROM ONE VEHICLE TO ANOTHER—OWNER CHARGED FOR REMAINING PORTION OF YEAR—TAX RATE IN EFFECT AT TIME OF TRANSFER—CREDIT GIVEN FOR UNUSED PORTION OF ORIGINAL REGISTRATION FEE—TAX RATE IN FORCE AT TIME OF ORIGINAL REGISTRATION—SECTION 6294-1 G. C.—

2. STATUS WHERE APPLICATION FOR REGISTRATION OF VEHICLE STATED WEIGHT TO BE 4000 POUNDS—VEHICLE ACTUALLY WEIGHED 4800 POUNDS—TAX TO BE PAID—SECTION 6292 G. C., AMENDED, EFFECTIVE JUNE 19, 1951.

3. EFFECT OF SECTION 6292 G. C. AMENDED—TAX ON VEHICLE PAID PRIOR TO INCREASE IN TAX RATES—TAX FOR THREE FOURTHS OF YEAR FOR 4000 POUND VEHICLE AND TAX FOR THREE FOURTHS OF YEAR FOR 5000 POUND VEHICLE.

SYLLABUS:

1. Where the owner of a commercial car, pursuant to the provisions of Section 6294-1, General Code, transfers a registration from one vehicle to another, he shall be charged for the remaining portion of the year at the tax rate in effect at the time of such transfer and be given a credit for the unused portion of his original registration fee at the tax rate in force at the time of such original registration.

2. Where the owner of a commercial car, before the increase in tax rates provided by the amendment of Section 6292, General Code, became effective on June 19, 1951, secures a registration for such vehicle upon the basis of the sworn statement in his application for registration that such vehicle weiged 4000 pounds and it is thereafter determined that such statement was incorrect in that the vehicle, at such time, actually weighed 4800 pounds, the obligation for paying the full year tax on the basis of a weight of 4800 pounds arose and was incurred at the time of such registration and the balance due thereon should be collected, computed at the tax rates in force and effect at the time of such registration.

3. Where the owner of a commercial car secures a registration for a vehicle weighing 4000 pounds and pays his tax on such basis prior to the increase in tax rates provided by the amendment of Section 6292, General Code, effective June 19, 1951, and thereafter, in July, 1951, adds 1000 pounds in taxable weight to such vehicle, the additional tax required to be paid is based solely on the addition of such weight and was incurred subsequent to the effective date of such amendment.

Such tax should be computed by ascertaining the sum, which, under the tax rate in force and effect at the time such weight was added, is the difference between the tax for three-fourths of a year for a 4000 pound vehicle and the tax for three-fourths of a year for a 5000 pound vehicle.

Columbus, Ohio, March 3, 1952

Hon. R. E. Foley, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads in part as follows:

"Sections 6290 and 6292, General Code, were amended by Amended Substitute House Bill No. 267 by the 99th General Assembly to increase the license fees on certain types of vehicles and became effective June 19, 1951.

"Section 6294-1 of the General Code sets forth the procedure for transferring license plates and the amount of fees applicable.

"There are two questions that have now arisen concerning the exact amount of commercial car license plate fees that shall be collected, as indicated in the following cases:

"Case No. 1. The owner of a commercial car weighing 4,000 pounds registered said vehicle prior to June 18, 1951 and paid the 1951 full year fees amounting to $40.00. During the month of July, 1951 he sold this vehicle and purchased another. The second vehicle weighs 5,000 pounds. Following the procedure outlined in Section 6294-1, General Code, for collecting the fees in the case of a transfer of license plate registration the amount collected was determined in this manner:

(New Fee) ¾ year fee for commercial car weighing 5,000	$54.00
(Old Fee) ¾ year credit on fees actually paid on commercial car weighing 4,000 pounds	30.00
Balance due	$24.00
Transfer Fee	1.00
Total	$25.00

"Case No. 2. The owner of a commercial car weighing 4,000 pounds registered said vehicle prior to June 18, 1951 and paid the 1951 full year fees amounting to $40.00. During the month of July, 1951 this vehicle was reweighed by an Inspector

of the Bureau of Motor Vehicles and said vehicle was found to weight 4800 pounds. The owner insisted that the design of the vehicle had not been altered and that it was identically the same as when registered and the full year fees paid which was prior to June 18, 1951. The owner thereupon was informed to pay the additional fees that were due which was arrived at in this manner:

"Because Amended Substitute House Bill No. 267 amended the fees which were applicable during the full year fee period (June 19th to July 1st):

The full year fee (New Fee) for commercial car weighing 4,800 pounds	$67.60
Credit for full year fee paid at old rate on 4,000 pounds	40.00
Balance due	$27.60 * * *

"Your opinion is requested as to the proper method for determining the license plate fees in the two cases cited above which has been occasioned by the change in license fees by Amended Substitute House Bill No. 267."

The license tax levied by Section 6291, General Code, is not merely a license fee, but a tax for revenue purposes. Saviers v. Smith, 101 Ohio St., 132; Fisher Bros. Co. v. Brown, 111 Ohio St., 602. Likewise, Section 6292, General Code, the rate setting section, is a "law providing for tax levies." Opinion No. 435, Opinions of the Attorney General for 1951.

It is, therefore, apparent that a certain tax, i.e., the "old rate" was in effect until June 19, 1951 and a higher tax, the "new rate," was in effect thereafter under the fundamental rule that a tax rate can not be applied to taxes paid prior to the effective date of a tax measure. This principle was applied to these same sections by an opinion of one of my predecessors, Opinion No. 2402, Opinions of the Attorney General for 1947, page 571, the syllabus of which reads:

"The rates of taxation set out in House Bill No. 115 of the 97th General Assembly become effective April 1, 1948 and cannot be applied to applications for registration of motor vehicles filed and taxes paid before that date."

I shall now examine the application of these principles to the specific questions which you raise.

In reference to the first question which you raised in your request, I find the situation is governed by Section 6294-1, General Code, which reads as follows:

> *"Upon the transfer of ownership of a motor vehicle the registration of such motor vehicle shall expire* and it shall be the duty of the original owner to immediately remove such number plates from such motor vehicle. Should the original owner make application for the registration of another motor vehicle at any time during the remainder of the current registration year, he may file an application for transfer of registration accompanied by a transfer fee of one dollar and the original certificate of registration. The transfer of such number plates from the motor vehicle for which originally issued to a motor vehicle purchased by the same person in whose name the original number plates were issued shall be done within a period not to exceed ten days. *Provided, however, that at the time of application for transfer the registrar shall compute and collect an additional fee, if any, based upon the amount which would be due on a new registration as of the date on which the license plates were first displayed on the motor vehicle to which the registration is to be transferred less a credit for the unused portion of the original registration beginning on the date such plates are displayed on the motor vehicle to which registration is to be transferred.* In computing the amount due and credits to be allowed as of any date during a current registration year, the first day of the quarterly period in which such date occurs, shall apply. Be it further provided that as to passenger cars, trucks, trailers and motorcycles, transfers within the same class only shall be allowed." (Emphasis added.)

The provisions for crediting a registrant with the unused portion of his original registration were presumably added to the statute to extend a privilege to the registrant, it being clear that the Legislature could have provided in such cases that the registrant be allowed no credit whatsoever on the purchase of a license for a different vehicle. In fact, no such credit is allowed except as to transfers within the same class, e.g., passenger car registration may not be transferred to a motorcycle or trailer. Under the plain language of the above quoted section, the original registration *expires* and the registrant, if he makes application for a license for a different vehicle, pays a tax computed "upon the amount which would be due on a new registration as of the date on which the license plates were first displayed on the motor vehicle to which the registration is being transferred." Under your Case No. 1, the license plates would first be displayed on the 5,000 pound vehicle in July, 1951 and the plain terms of

Section 6294-1, General Code, require that such tax be paid upon the amount which would be due on a new registration as of that date, namely, the "new rate" which had become effective June 19, 1951. The statute also specifically states that the method for the computation of the credit is upon "the unused portion of the original registration." Since the original registration was upon the "old rate" and was the rate legally in force upon April 1, 1951, the credit necessarily must be on that basis.

I note that, in compliance with the provisions of Section 6294-2 and Section 6295, General Code, you have charged three-fourths of the normal or full year tax, the registration falling within the period between July 1st and October 1st, and that you have also given three-fourths credit on the tax previously paid. In view of the clear and unequivocal provisions of Section 6294-1, General Code, it is my opinion that the method which you have set out for computing the tax applicable to the transfer of registration under the facts presented in Case No. 1 is correct.

It may be argued that such an interpretation of Section 6294-1 would result in the additional payment of tax where the transfer of registration is from one vehicle to another vehicle of the same weight and that such was not the legislative intent. It is true that such a result would necessarily follow, but I believe that such result is compelled by the clear provisions of Section 6294-1. Conceding that in years in which the tax rate is not increased a transfer of registration would require an additional payment only in the event of a transfer to a commercial car of greater weight, and conceding that it might have been desirable for the General Assembly to have enacted appropriate legislation to accomplish this same result in years in which there is an increase in tax rates, the inescapable fact is that the General Assembly did not so provide.

I turn now to your case No. 2. Here we have a situation where no transfer of registration is involved from one vehicle to another and where the original registration has not expired. Instead, we have a situation where a commercial car is weighed in July, 1951 and found to weigh 800 pounds more than the weight which the owner had set out on his application for registration for the year 1951. In my discussion I will assume that the weight of 4800 pounds is the correct weight of the vehicle. It must necessarily follow, therefore, either (1) that weight has been added since the application for registration was filed and the license issued, or (2) that the weight, as stated by the owner in his

application for registration, was incorrect and the vehicle at such time actually weighed 4800 and not, as stated on the application for registration, 4000 pounds. Accepting the statement of the owner, who is in possession of the facts, that no weight has been added since the application was filed, we must conclude that the weight as stated in the original application was incorrect.

Before discussing the effect of the change in tax rates, effective June 19, 1951, it might be well to consider how a similar factual situation would have been handled in 1950. Under an identical factual situation arising in 1950, it is my understanding that the Bureau of Motor Vehicles charged an additional tax, computed by ascertaining the *full year* tax on a 4800 pound vehicle and deducting therefrom the tax already paid, namely the full year tax on a 4000 pound vehicle. Furthermore, it is my understanding that this procedure was followed regardless of whether the actual weighing, which revealed the existence of such greater weight than reported, was had in the first quarter, i.e., between April 1st and July 1st, or during a subsequent quarter of the tax year. I also understand that this same procedure has been followed by the Bureau over a great number of years.

I quote from the case of Industrial Commission v. Brown, 92 Ohio St., 309, at page 311:

> "Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. * * *"

Over and above the question of long continued administrative practice, it is my opinion that such a course of action has been fully warranted. Under the provisions of Sections 6292 and 6293, General Code, the fee for a commercial car registration is based on the gross weight of the vehicle fully equipped. Section 6294, General Code, requires an applicant for a commercial car registration to set forth such weight on his application and requires that each application for registration "be signed and verified by the owner before a person authorized by law to administer oaths." It is apparent, therefore, that a license issued pursuant to an application so verified and stating the correct weight of a commercial car to be 4000 pounds is issued in reliance upon such sworn statement. From an examination of the instructions to the deputy registrars, issued by

the Bureau of Motor Vehicles, it would appear that in issuing a commercial car license, reliance is placed almost entirely on such application. A weight slip by a recognized weightmaster is not required except (1) upon the purchase of a new truck, (2) upon a change in ownership of a used truck, (3) where there has been an actual change in weight, (4) when the truck was not registered during the prior year, and (5) when voluntary conversion from a bill of sale or sworn statement of ownership was made to a certificate of title.

Upon discovery, by actually weighing the vehicle, that the statement on the application for registration is in error as to the correct weight of such vehicle as of the time of the application and the issuance of the license, it would follow that it would be the duty of the Bureau of Motor Vehicles to collect the balance of the *full amount which accrued and should have been paid at that time.*

It appears to me that the duty of the Bureau of Motor Vehicles in that regard is not changed by the fact that there has been an increase in the tax rate subsequent to the date when the full tax, based on the actual weight of 4800 pounds, accrued and became due. Since it would appear that the truck actually weighed 4800 pounds at the time when the application for registration was made and the license issued, the obligation for such payment arose at that time and would have been enforced at that time under the "old rate" had the true facts been known. The fact that the true weight of the vehicle was not discovered until July, at which time the "new rate" was in effect, in my opinion can not affect the duty of the owner of the vehicle to pay the balance of the full amount of his obligation at the rate in existence at the time such obligation was incurred.

Section 26-1, General Code, provides that where a section or part thereof of the statutes of Ohio is repealed, such repeal shall not affect any rights or liabilities "which exist, have accrued or been incurred under and by virtue of such section, act or part thereof, nor shall such repeal affect an action or proceeding for the enforcement of any rights." It has been held that by virtue of this section the repeal of the admissions tax statutes did not affect the right of the state to collect admissions taxes which had accrued prior to such repeal. Summit Beach, Inc., v. Glander, 153 Ohio St., 147. The fact, therefore, that old Section 6292 prescribing the "old rates" was repealed by the same act which enacted new Section 6292 could not have the effect of relieving the tax payer from, or in any

way affecting his obligation for payment which existed, had accrued and had been incurred prior to June 19, 1951.

It is my conclusion, therefore, that the method which you have set out for computing the tax under the facts presented in Case No. 2 is incorrect; that it should be computed by charging the owner of such vehicle the difference between a full year fee for a 4800 pound vehicle at the rate in effect prior to June 19, 1951 and the full year fee theretofore paid for a 4000 pound vehicle at the rate in effect prior to June 19, 1951.

Although not specifically contained in your request for my opinion, I believe that a third question is inherently involved therein. That question is: What method of calculation should be followed when weight has been added to the vehicle after the effective date of the "new rates"? If, for example, under your Case No. 1, the owner had added 1000 pounds to his 4000 pound vehicle during the month of July, 1951, instead of acquiring a new vehicle at that time, how should the additional tax be computed?

Opinion No. 2085, Opinions of the Attorney General for 1933, Volume III, page 1986, is authority for the proposition that if such weight is added during the tax year so as to increase the total weight over that for which the registration was issued, the owner of such vehicle is required to pay the tax *for such additional weight* for the proportionate balance of the tax year, dependent upon which quarter such weight was added. If the state were to charge such owner three-fourths of the new full year tax rate for vehicles weighing 5000 pounds ($54.00), less three-fourths credit on the fee theretofore paid for a 4000 pound vehicle at the "old rate" ($30.00,) or a total payment of $24.00, the legal effect of such method of computation would be that the owner, during the tax year, would be paying one-fourth of the full year tax on a 4000 pound vehicle at the "old rate" and three-fourths of the full year tax on the total weight of a 5000 pound vehicle at the "new rate." The effect of such method of computation would not limit the owner to the payment of additional tax only on the additional weight added after the "new rates" went into effect. Since the obligation for additional tax is only for additional weight, and since such obligation was incurred after the "new rates" went into effect, it is clear that such tax should be computed at the "new rate," but in such computation, only the additional weight should be taxed. The method which I have heretofore set forth would amount to an assertion of the new and higher rates of tax on the entire piece of equipment and to that extent

would be retroactive and entirely unlawful. As heretofore stated, the additional tax should be charged at the "new rate," but only as to the *additional weight* added in July, 1951. In other words, the owner has fully paid his tax on a 4000 pound vehicle and the only tax that can be asserted is the sum which, under the new law, is the difference between the tax for three-fourths of a year for a 4000 pound vehicle and the tax for three-fourths of a year for a 5000 pound vehicle.

In conclusion, it is my opinion that:

1. Where the owner of a commercial car, pursuant to the provisions of Section 6294-1, General Code, transfers a registration from one vehicle to another, he shall be charged for the remaining portion of the year at the tax rate in effect at the time of such transfer and be given a credit for the unused portion of his original registration fee at the tax rate in force at the time of such original registration.

2. Where the owner of a commercial car, before the increase in tax rates provided by the amendment of Section 6292, General Code, became effective on June 19, 1951, secures a registration for such vehicle upon the basis of the sworn statement in his application for registration that such vehicle weighed 4000 pounds and it is thereafter determined that such statement was incorrect in that the vehicle, at such time, actually weighed 4800 pounds, the obligation for paying the full year tax on the basis of a weight of 4800 pounds arose and was incurred at the time of such registration and the balance due thereon should be collected, computed at the tax rates in force and effect at the time of such registration.

3. Where the owner of a commercial car secures a registration for a vehicle weighing 4000 pounds and pays his tax on such basis prior to the increase in tax rates provided by the amendment of Section 6292, General Code, effective June 19, 1951, and thereafter, in July, 1951, adds 1000 pounds in taxable weight to such vehicle, the additional tax required to be paid is based solely on the addition of such weight and was incurred subsequent to the effective date of such amendment. Such tax should be computed by ascertaining the sum, which, under the tax rate in force and effect at the time such weight was added, is the difference between the tax for three-fourths of a year for a 4000 pound vehicle and the tax for three-fourths of a year for a 5000 pound vehicle.

Respectfully,

C. WILLIAM O'NEILL
Attorney General