

Mr. Charles E. Bichy, Superintendent, Bureau of Receipts (cont'd)

Section 2 of Ordinance No. 106 provides among other things:

"* * * That it shall be presumed that all sales of cigarettes, cigars, smoking tobacco and chewing tobacco are subject to the tax herein levied and imposed unless and until the contrary is established and the burden of proof that a sale is not taxable hereunder shall be upon the vendor. * * *"

Section 4, Sub-section (c) provides in part, that:

"Before any person shall sell, offer or display for sale any cigarettes, he shall purchase the proper stamp or stamps from the City Treasurer and affix it or them to the smallest container of such cigarettes to be sold to the consumer thereof, * * *."

Section 4, Sub-section (e) of said Ordinance, as you point out in your letter, outlines that the goods for sale in Baltimore City must be stamped within twenty-four hours after a dealer's receipt thereof, and prior to the sale of such cigarettes, cigars, smoking tobacco and chewing tobacco, unless such cigarettes, cigars, smoking tobacco and chewing tobacco are being held for sale outside the limits of the City of Baltimore. Said section goes on to say that whenever any cigarettes, cigars, smoking tobacco and chewing tobacco are found in the place of business of a dealer without the stamps affixed, or not marked as having been received within the preceding twenty-four hours, or not marked as being held for sale outside of the City of Baltimore, the prima facie presumption shall arise that such cigarettes, cigars, smoking tobacco and chewing tobacco are kept therein in violation of the provisions of said ordinance.

Section 6 of Ordinance No. 106 provides in part:

"The word 'sale' shall mean any transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor."

In the opinion of this office, the Sections above outlined show that the legislative intent of the Mayor and City Council of Baltimore was that all sales made within the limits of the City of Baltimore are subject to the tax levied by said Ordinance. You are advised, therefore, that no jobber or dealer can sell wholesale tobacco products in Baltimore City to another jobber without having first purchased and affixed the proper stamps to said merchandise, in accordance with the Ordinance and the regulations of the City Treasurer.