

License Laws, Repeal Of. Licenses Due Prior to Repeal.

All persons engaged in an occupation or profession for which a license is required, must procure a license before the commencement thereof; and must at that time pay a quarterly license, as no smaller amount can be accepted by the treasurer.

A person who neglects to pay such license when due cannot after a repeal of the law settle such license for a lesser amount than that due for a quarter.

Helena, Montana, March 21, 1907

Mr. F. H. Ray,
Assistant State Examiner,
Helena, Montana.

Dear Sir:—

Your letter requesting an opinion of this office upon the following question, received:

"What effect has Senate Bill No. 11, which repealed certain occupation and professional licenses, upon licenses due and unpaid under said laws prior to their repeal; will such parties be required to pay for a full quarter or only such part of the quarter as had run up to February 21, 1907?"

Said Senate Bill No. 11. went into effect at midnight of Feb. 21. This law contains the following proviso: "Provided, however, that this Act shall in no way effect or invalidate any license due or unpaid at the time this Act goes into effect."

The several sections repealed by said Act provided for licenses to be issued quarterly, and that was the shortest time for which a license could be issued by the County Treasurer.

Sec. 4043 of the Political Code provides that:

"A license must be procured immediately before commencement of any business or occupation liable to a license tax, from the County Treasurer of the County where the applicant desires to transact the same," etc.

and Sec. 4044 of the same Code, as amended by the laws of 1903, page 65, provides that:

"Against any person required to take out a license, who fails, neglects or refuses to take out such license, or who carries on or attempts to carry on, business without such license, the County Treasurer, when directed to do so by the Board of County Commissioners, must direct suit in the name of the State of Montana as plaintiff, to be brought for the recovery of the license tax."

From the above sections it is perfectly clear that licenses are due at the moment a man commences to carry on business; and where he continues in business, that a second license is due immediately upon the expiration of the one issued for the preceding quarter. Therefore, the proviso contained in the law repealing said license laws to the effect that the Act shall in no way effect or invalidate any license due or unpaid at the time the Act goes into effect, can in no way reduce any license which was due the State prior to midnight of February 21st. It was the duty of every person commencing business prior to that day, or whose license had expired prior to that day, and who continued in business, after the expiration of a prior license to immediately procure a license before the commencement or continuation of the business. If he had done so at the time the law commanded that he should procure a license, he would have been compelled to pay for a full quarter, and the Treasurer could not have accepted a less amount. The fact that any person failed or neglected to pay his license on the day it was due, cannot in any way operate so as to give him an advantage over a person who strictly followed the law by paying his license on the day it was due. This would, in effect, be offering a premium upon laches and violation of law.

"The repeal of the statute imposing an occupation tax does not effect the liability of a person against whom the tax has accrued."

2nd. Ed. Am. & Eng. Enc. Law, Vol. 21, p. 828.

You are therefore advised that licenses due prior to midnight of Feb. 21, but which were not paid until after that date, should be collected in full the same as if they had been paid on the day on which they were due and should have been paid.

Very truly yours,

ALBERT J. GALEN,

Attorney General.