

398.

TAX AND TAXATION—PERSONAL PROPERTY—CORPORATIONS MAY
NOT FILE CONSOLIDATED RETURN.

SYLLABUS:

Neither two or more domestic corporations nor two or more foreign corporations may file a consolidated personal property return with the county auditor. The excess credits of one incorporated company may not be reduced by deducting therefrom the debts of another incorporated company.

COLUMBUS, OHIO, May 11, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads:

“On request of Mr. Z., county auditor at C., Ohio, we are asking an opinion as to the authority of Ohio corporations filing a consolidated personal property return under Ohio statutes; also companies incorporated under the laws of another state filing a consolidated personal property tax return.

The companies in question are The Ohio B. Company and The M. Realty Company, both domiciled in C. The foreign corporations in question are the H. Cabinets, Inc., and The B. Beverages, Inc., both transacting business in C.

We are sending forward under separate cover all the material and information given us by Mr. Z.'s office. Will you kindly return the same for our files?”

The correspondence between the county auditor and the Tax Commission submitted with your communication discloses that the H. Cabinets, Inc., and The B. Beverages, Inc., both Delaware corporations, transacting all of their business in C., if permitted to file a consolidated personal property tax return with the county auditor would thereby effect a reduction in their taxable excess credits of \$13,080.00. The Ohio B. Company and The M. Realty Company are both Ohio corporations and if permitted to file a consolidated personal property tax return for the year 1929 would effect a reduction in their taxable excess credits of \$180,000. In other words, the filing of consolidated reports in said cases would eliminate all taxable excess credits.

Section 5404, General Code, provides for the filing of personal property returns of incorporated companies and reads as follows:

“The president, secretary, and principal accounting officer of every incorporated company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by a law of this state or not, shall list for taxation, verified by the oath of the person so listing, all the personal property thereof, and all real estate necessary to the daily operations of the company, moneys and credits of such company or corporation within the state, at the true value in money.”

It is noted that this section provides that every incorporated company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, and whether foreign or domestic, shall list for taxation all the personal property *thereof*. Said return shall include all real

estate necessary to the daily operations of the company and also shall include all moneys and credits of *such* company within the state.

Section 5404-1, General Code, provides that all the listing and valuation of personal property of incorporated companies shall be listed as of the first day of January annually and shall be filed with the county auditor on or before the first day of March annually.

Section 5405, General Code, provides for the valuation by the county auditor and reads as follows :

“Return shall be made to the several auditors of the respective counties where such property is situated, together with a statement of the amount thereof which is situated in each township, village, city or taxing district therein. Upon receiving such returns, the auditor shall ascertain and determine the value of the property of such companies, and deduct from the aggregate sum so found of each, the value as assessed for taxation of any real estate included in the return. The value of the property of each of such companies, after so deducting the value of all the real estate included in the return, shall be apportioned by the auditor to such cities, villages, townships, or taxing districts, pro rata, in proportion to the value of the real estate and fixed property included in the return, in each of such cities, villages, townships, or taxing districts.

The auditor shall place such apportioned valuation on the tax duplicate and taxes shall be levied and collected thereon at the same rate and in the same manner that taxes are levied and collected on other personal property in such township, village, city or taxing district.”

This section provides for the deduction from the aggregate sum of the value of the property of each company any real estate included in the return. The advantage in filing a consolidated report by two or more companies may result in deducting the legal bona fide debts owing by such corporation from the credits of another corporation and thus reducing the sum to be taxed of the former corporation.

Section 5327, General Code, defines credits for taxation purposes, and reads in part as follows :

“The term ‘credits’ as so used, means the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due or to become due to the person to pay taxes thereon, including deposits in banks or with persons in or out of the state, other than such as are held to be money, as hereinbefore defined, when added together estimating every such claim or demand at its true value in money, over and above the sum of legal bona fide debts owing by such person. * * * ”

I do not find any authority in the statutes whereby separate and distinct incorporated companies are authorized to file consolidated personal property reports with the county auditor for taxation purposes, neither do I find any authority in the statutes for deducting debts of one incorporated company from the credits of another incorporated company and thus eliminating the taxable excess credits of either of said incorporated companies.

Section 5328, General Code, was passed pursuant to the requirement of Section 2 of Article XII of the Constitution and requires the taxation of all real and personal property in this state, except only such property as may be expressly exempted therefrom.

In the case of *Wilson vs. Licking Aerie*, 104 O. S. 137, it is held that the exemption

must be clearly and expressly stated in the statute and must be such only as Section 2 of Article XII of the Constitution authorizes to be exempted.

In the case of *Telegraph Company vs. Poe*, 61 Fed. 449, it is held that Section 5328, General Code, makes all property which is referred to in Sections 5321 to 5327, General Code, subject to taxation, whether it belongs to a natural person or to a corporation, if such property is not otherwise made exempt from taxation.

It is necessarily concluded, therefore, that the credits of a corporation are subject to taxation and there is no authority for exempting the same.

Specifically answering your question, it is my opinion that neither two or more domestic corporations nor two or more foreign corporations may file a consolidated personal property return with the county auditor. The excess credits of one incorporated company may not be reduced by deducting therefrom the debts of another incorporated company.

Respectfully,
GILBERT BETTMAN,
Attorney General.

399.

APPROVAL, ABSTRACT OF TITLE TO LAND OF MELL C. GABRIEL IN
THE CITY OF TROY, MIAMI COUNTY, OHIO.

COLUMBUS, OHIO, May 13, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an addendum to an abstract of title of a tract of land in Troy, Ohio, standing in the name of Mell C. Gabriel, the title to which tract of land on the original abstract and correction thereof was the subject of opinions Numbers 233 and 273, of this department, directed to you respectively on March 23, 1929, and April 6, 1929.

In the first opinion of this department above referred to, it was suggested that owing to the length of time that had elapsed between the time of the certification of the abstract and the time the same came to this office, a further check of the records in Miami County should be made with respect to encumbrances that might appear of record after the original certification of said abstract by the abstracter. Later, on April 2, 1929, the abstracter furnished an additional certification relating to the title to this tract of land, and upon April 6, 1929, this department directed to you its opinion Number 273, approving the title of said Mell C. Gabriel in and to said property. It now appears that since said original certification a lease was filed of record by which lease said Mell C. Gabriel leased and demised to one Ralph Bowsman a tract of land including that here under consideration. This defect in the title has been corrected by a quit-claim deed executed by Ralph Bowsman and Edna Bowsman, his wife, and I am now able to certify that the title to this property is now a good and merchantable fee simple title in the State of Ohio, it appearing that the deed of said Mell C. Gabriel to the State of Ohio has been delivered, accepted and recorded.

In the certification made to said abstract under date of April 2, 1929, it was stated that the taxes for the first half of the year 1928 had been paid, but that the taxes for the last half of the year 1928 were not paid and that the amount thereof was undetermined for the reason that no proportionment of the taxes with respect to the parcel of land to be purchased by the state had been made. In the meantime and before the executions of said deed by Mell C. Gabriel to the State of Ohio, the