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1. BONDS ISSUED BY FEDERAL GOVERNMENT — WHEN CALLED FOR REDEMPTION — NO LONGER INTEREST BEARING — OBLIGATION NO LONGER EXEMPT FROM STATE TAXATION — UNITED STATES CODE, TITLE 31, SECTION 742.
2. SUCH ITEMS “DEPOSITS” RATHER THAN “MONEYS” WHEN LISTED AND ASSESSED FOR TAXATION — SECTIONS 5324, 5326 GENERAL CODE.

SYLLABUS:

1. *Where bonds issued by the Federal Government have been called for redemption and are no longer interest bearing and money having been set aside in the Treasury for their payment, the obligation evidenced by such called bonds is no longer exempt from state taxation either under authority of Section 742, Title 31, United States Code, or otherwise.*

2. *In listing such items of property for taxation in Ohio, they should be listed and assessed as “deposits” rather than as “moneys” (Sections 5324 and 5326, General Code).*

Columbus, Ohio, December 22, 1941.

Hon. Carl W. Rich, Prosecuting Attorney,
Cincinnati, Ohio.

Dear Sir:

I am in receipt of your request for my opinion reading:

“This office received a request from the Auditor of Hamilton County requesting our opinion concerning certain liberty loan bonds totaling some Two Hundred, Thirty-five Thousand Dollars, which were discovered in a safe deposit box of a certain decedent who died a resident of Hamilton County, Ohio.

It appears that these bonds were called for redemption in

1935 and have remained in the decedent's safe deposit box up to the present time.

The question with which we are concerned is whether or not these bonds from the date of their redemption retain their identity as bonds or whether or not they become in character a taxable intangible. Due to the fact that the bonds in reality have the same status as United States currency from the date of their redemption there was a question whether or not they should not be treated as cash held in a safe deposit box and subject to an intangible tax for the prior years."

The legal question presented by your inquiry is whether liberty loan bonds, which when issued were not subject to taxation by this state by reason of the fact that they were the direct obligations of the United States Government, become the subject of taxation by the State of Ohio after having become past due and payable, and the only reason for their being an outstanding obligation is that the holder thereof has not presented them for payment, and also the possible question as to whether there is any provision under Ohio law taxing such type of obligation.

While you do not so state, I presume that the bonds in question were those of the First Liberty Loan, since such issue was called for redemption on June 15, 1935. By the terms of such bonds, they were subject to redemption on any semiannual interest paying date upon the giving of three months' published notice of the intention so to do. Such bonds further provided that "from the date of redemption designated in such notice interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void." You will recall that on March 14, 1935, the Secretary of the Treasury published a notice of call for redemption of all the First Liberty Loan Bonds on June 15, 1935; and that on April 22, 1935, the Secretary of the Treasury issued a circular, prescribing the rules for such redemption (Dep't. Cir. No. 535), declaring, among other things, that "After June 15, 1935, interest will not accrue on any First Liberty Bonds." Were it not for such provisions with reference to the acceleration of the due date of such bonds, they had a specified maturity date from 1932 to 1947, both inclusive.

Section 742 of Title 31, United States Code, with reference to the taxation of obligations of the United States, provides:

"Except as otherwise provided by law, all stocks, bonds,

Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority."

Section 746 of such title makes further mention of the taxability of First Liberty Bonds and in substance provides that they shall be exempt from all state and local taxation "except estate or inheritance taxes." Similar provisions are set forth in Section 747 of such title with reference to the taxability of the later issues.

By reason of the specific language contained in such sections, it is evident that the Federal Government has not consented to the taxation by the state of any liberty loan bonds. It therefore seems to me that unless the fact that such bonds have been called for redemption and are unpaid causes such securities to be no longer bonds of the United States Government, the Federal Government has denied to the states the right to tax them. Let us examine into the nature of such obligations at the present time with a view to determine whether such change has taken place. The bonds are now non-interest bearing. If any coupons maturing after June 15, 1935, are attached thereto, they are void by reason of the circumstances and events above described. By reason of the act under authority of which the bonds were issued and the terms of the bonds, moneys have been segregated in the United States Treasury with which to pay the principal of such bonds when surrendered. The bond is, in terms, payable to bearer. I am informed that if it is presented to a bank, such bank will credit an amount equal to the face thereof to the depositor's account. In other words, it would seem that for commercial purposes such past due obligation is readily acceptable as though cash or a treasury warrant. The position of the owner of such past due obligation is not intrinsically different from that which would exist if he were to deposit a sum of money with the Treasury withdrawable on demand, or had a warrant on the Treasury in payment of the bonds.

Inasmuch as by the terms of the bond and the call for redemption above described the character of the obligation owned by the taxpayer, after the accelerated maturity date, was one for the immediate payment of money upon presentment of the evidence of the obligation, much as though it were a warrant drawn upon the Treasury, it would seem that it would be subject to taxation by the states unless prevented by the language "other obligations of the United States" as contained in Section 742 of Title 31, United States Code.

In *Hibernia Savings and Loan Society v. San Francisco*, 200 U.S., 310, 50 L.Ed., 495, the question was raised as to whether a state might tax two orders drawn on the Treasurer of the United States by such Treasurer in payment of interest on registered bonds. It was urged that such checks or orders were not taxable as being "other obligations of the United States." The court, in holding such vouchers subject to taxation, after reviewing the decisions interpreting Section 3701, Revised Statutes (Section 742, Title 12, United States Code), said:

"The principle, however, upon which this exemption is claimed, does not apply to obligations such as checks and warrants, intended for immediate use, and designed merely to stand in the place of money until presented to the Treasury, and the money actually drawn thereon. In such case the tax is virtually a tax upon the money which may be drawn immediately upon presentation of the checks. As was said by Mr. Justice Miller in *First National Bank v. Kentucky*, 9 Wall. 352, 362: 'That limitation (upon the power to tax) is, that the agencies of the Federal Government are only exempted from state legislation, so far as that legislation may interfere with or impair, their efficiency in performing the functions by which they are designed to serve that government.'"

It would seem to me that, when we apply the reasoning of the decision above quoted to the instant facts, it must be held that the state has the power to tax the obligation in question if it chose so to do.

If such be true, we must examine the provisions of the Ohio statute with a view to determining whether the General Assembly has levied a tax against such type of property. For purposes of taxation, the legislature has divided taxable property into three classes, viz., real property, personal property, and classified property. "Real property," as so used, means lands and improvements thereon. (Section 5322, General Code.) "Personal property," as so used, includes substantially all articles of tangible personal property only. (Section 5325, General Code.) "Classified property" includes those types of property defined by statute as "moneys" (Section 5326, General Code), "credits" (Section 5327, General Code), "investments" (Section 5323, General Code), "deposits" (Section 5324, General Code), and "other intangible property" (Section 5327-1, General Code). (See Section 5328-1, General Code.)

The "bonds" in question are patently neither real estate nor personal property, as such term is defined in Section 5325 of the General Code,

since they are not tangible property. Section 5324 of the General Code defines "deposits," for purposes of taxation, as follows:

"The term 'deposits' as so used, includes every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account certificate of deposit, savings account or certificates of running or other withdrawable stock, or otherwise, excepting * * *." (Exceptions not applicable.)

Section 5326 of the General Code defines "moneys" for purposes of taxation as follows:

"The term 'money' or 'moneys' as so used, includes gold, silver and other coin, circulating notes of national banking associations, United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency."

From the language of such section it becomes evident that called bonds are not "moneys" for purposes of taxation, since they neither circulate nor are intended to circulate as currency.

Section 5327 of the General Code defines "credits" for purposes of taxation as follows:

"The term 'credits' as so used, means the excess of the sum of all current accounts receivable and prepaid items in business when added together estimating every such account and items at its true value in money, over and above the sum of current accounts payable of the business, other than taxes and assessments. 'Current accounts' includes items receivable or payable on demand or within one year from the date of inception, however evidenced. 'Prepaid items' does not include personal property. * * * "

"Investments," for purposes of taxation, generally speaking, include shares of corporate, interest bearing obligations for the payment of money, annuities, royalties, other contractual obligations for the payment of money from which income is or may be derived, however evidenced, and equitable interests in such obligations, with exceptions which are immaterial for purposes of this opinion. (See Section 5323, General Code.) It is evident that the called bonds in question are not investments for no income is or may be derived therefrom.

Section 5327-1, General Code, defines, for purposes of taxation, "other taxable intangibles" as follows:

"The terms 'other taxable intangibles' and 'other intangible property' as so used, include every valuable right, title or interest not comprised within or expressly excluded from any of the other definitions of this chapter. * * * "

From the definitions above quoted, it would appear that the "called bonds" in question have many attributes of "deposits" such as being moneys or credits set aside by the government for the benefit of the holder of such certificates; the holder of the certificates has the right to withdraw the whole thereof in money. In fact, when the moneys were placed in or set aside in the Treasury for the specific purpose of paying the bonds in question and others upon the calling of the bonds, they appear to have every earmark of a deposit for a specific purpose (of redeeming the bonds called), which type of deposit was held in *Merchants and Mechanics Federal Savings and Loan Association v. Evatt*, 138 O.S., 457, to be a "taxable deposit" in Ohio. Such type of deposit has been defined as follows:

"Money deposited for a definite purpose without any agreement or understanding that it shall not be used by the depositor for its own purposes is a general deposit for a specific purpose or, as it is sometimes called, a specific purpose."

Merchants and Mechanics Federal Savings and Loan Association v. Evatt, 138 O.S., 485. See also *Squire v. American Express Company*, 131 O.S., 239, 249; *Squire v. Oxenreiter*, 130 O.S., 475; *Pontius v. Sears Roebuck and Company*, 16 O.App., 240, 244; *Guardian Trust Company v. Kirby*, 50 O.App., 539.

It would therefore seem to me that the "called bonds" in question must be assessed as "deposits" or "other taxable intangibles" rather than as "moneys" as suggested in your inquiry, since the "called bonds" do not and are not intended to circulate as currency.

Specifically answering your inquiry, it is my opinion that:

1. Where bonds issued by the Federal Government have been called for redemption and are no longer interest bearing and money having been set aside in the Treasury for their payment, the obligation evidenced

by such called bonds is no longer exempt from state taxation either under authority of Section 742, Title 31, United States Code, or otherwise.

2. In listing such items of property for taxation in Ohio, they should be listed and assessed as “deposits” rather than as “moneys” (Sections 5324 and 5326, General Code).

Respectfully,

THOMAS J. HERBERT,

Attorney General.