

time hold the position of clerk of a city council and that of employe in the County Auditor's office, as distinguished from a deputy in the County Auditor's office, if, as an employe in the County Auditor's office, he is not in the classified civil service and if it is physically possible to perform the duties of all three positions.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2472.

CORPORATION STOCK—IN COMPUTING INCOME YIELD FOR TAXATION PURPOSES FEDERAL DIVIDEND TAXES PAID BY OWNER MAY NOT BE DEDUCTED FROM AMOUNT OF DIVIDENDS RECEIVED.

SYLLABUS:

In ascertaining the income yield of shares of stock for the purpose of determining the tax to be paid upon such stock for the year 1934, under the Intangible Tax Law of this state, no deduction of federal dividend taxes paid by the owner of such stock can be made by him from the amount of dividends received by him on such stock.

COLUMBUS, OHIO, April 7, 1934.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication which reads as follows:

"The County Auditor has requested us to ask the benefit of your opinion as to the proper interpretation of the intangible tax law.

During the last half of the year 1933, the federal government levied a tax of 5% of each dividend on investments in corporate stocks. In computing the gross income from such investments for the purpose of filing a return under the intangible tax law and computing the state tax thereon, may the taxpayer deduct from the dividend rate the amount paid to the federal government or must the return show the full amount of dividend paid by the corporation including the five per cent. paid to the federal government?

Your early reply is requested, due to the short period of time before such schedules must be filed and the first installment of the tax paid."

The federal tax referred to in your communication is that imposed by section 213 (a) of the National Industrial Recovery Act, approved June 16, 1933. This section provides as follows:

"There is hereby imposed upon the receipt of dividends (required

to be included in the gross income of the recipient under the provisions of the Revenue Act of 1932) by any person other than a domestic corporation, an excise tax equal to 5 per centum of the amount thereof, such tax to be deducted and withheld from such dividends by the payor corporation. The tax imposed by this section shall not apply to dividends declared before the date of the enactment of this Act."

The question presented in your communication is, in a sense, one with respect to the application and effect of the provisions of this section with respect to the provisions of the Intangible Personal Property Tax Law of this state providing for the taxation of corporation stock.

Under the provisions of section 5323 and other related sections of the General Code providing for the taxation of intangible personal property, shares of stock in corporations, associations and joint stock companies are taxed as "investments" at a stated percentage of the income yield of such shares of stock, which income yield is the cash dividends paid on such shares of stock during the calendar year next preceding the tax listing date thereof.

The question presented in your communication is whether the federal tax paid by a citizen and taxpayer of this state on stock dividends received by him during the year 1933 is to be deducted from the amount of such dividends received for the purpose of determining the income yield of such shares of stock in ascertaining the tax on such stock imposed by the provisions of the Intangible Tax Law of this state above referred to. Inasmuch as the tax imposed upon shares of corporation stock in this state is a property tax and is in no sense a tax on the income of the owner of such stock derived from dividends or otherwise, and the amount of such tax is measured by the income yield of the stock during the preceding year whether such income yield in the way of dividends is paid to the listing taxpayer or to some other person entitled to receive the same, it is obvious that the total amount paid and received as dividends on such stock during the preceding year constitutes the income yield of such stock for purposes of taxation under the intangible tax laws of this state, whether federal taxes were paid on such dividends or not. In this case, it is likewise evident that the fact that the corporation declaring such dividends is, in a sense, made an agent of the federal government for collecting the federal tax on the dividends declared and paid by such corporation, does not affect the question here presented; and, as to this, the situation is the same as if the owner of the shares of stock upon which the dividends were declared and paid, had paid the federal taxes out of his own pocket after the receipt of the dividends so paid.

By way of specific answer to your question, I am of the opinion, therefore, that in ascertaining the income yield of the corporation stock referred to in your communication, for the purpose of determining the tax to be paid upon such stock for the year 1934, no deduction of federal dividend taxes paid by the owner of such stock can be made by him from the amount of dividends received.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2473.

POOR RELIEF—WORK UNDER THE PWA OR CWA NOT “UPON RELIEF” WITHIN PURVIEW OF SECTIONS 3477 AND 3479, GENERAL CODE—CIVIL WORKS SERVICE EXCEPTION.

SYLLABUS:

1. *Work under the PWA or CWA projects, as distinguished from Civil Works Service projects, does not constitute “relief under the provisions of law for the relief of the poor or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief”, within the purview of Sections 3477 and 3479 of the General Code.*

2. *Workers or recipients of relief under Civil Works Service projects do receive “relief under the provisions of law for the relief of the poor or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief”, within the purview of Sections 3477 and 3479 of the Ohio General Code.*

COLUMBUS, OHIO, April 7, 1934.

HON. LYMAN R. CRITCHFIELD, JR., *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion upon the following matter:

“Section 3477 of the Ohio General Code provides that a person may obtain a legal settlement after supporting himself or herself for twelve consecutive months ‘without relief under the provisions of law for the relief of the poor’.

The specific question is, does work under the CWA or PWA constitute relief as defined in this Section which would serve to prevent a person from obtaining a legal settlement if he had not resided a sufficient length of time without relief as defined, prior to the time of the employment.”

Section 3477, General Code, defines “legal settlement”, as follows:

“Each person shall be considered to have obtained a legal settlement in any county in this state in which he or she has continuously resided and supported himself or herself for twelve consecutive months, *without relief under the provisions of law for the relief of the poor, or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief.*” (Italics the writer’s.)

Section 3479, General Code, provides the manner of securing a legal settlement in a new township or municipality of a county other than that in which the indigent already has a legal settlement, and reads in part as follows:

“A person having a legal settlement in any county in the state shall be considered as having a legal settlement in the township, or