

The fifth paragraph of said section, which relates to the tax for trailers, reads as follows:

"For each trailer, the same tax based on gross weight of vehicle and load, herein provided for commercial cars."

As you suggest in your communication, this paragraph requires that the tax for a trailer shall be twenty cents for each one hundred pounds gross weight of vehicle and load, or fractional part thereof.

The sixth paragraph of said section, after providing for a minimum tax for motor vehicles other than motor bicycles and motorcycles, also provides a minimum tax for trailers as follows:

"and for each trailer, two dollars and fifty cents."

"Minimum tax" as used in this connection means the lowest possible tax that may be required for this purpose. It is not believed that there is any provision in said section 6292 to indicate that it was the intention of the legislature to require the payment of both the minimum tax and the tax to be computed on the gross weight of vehicle and load, in so far as said section relates to trailers.

In view of the foregoing it is the opinion of this department that if the tax for a trailer, computed at the rate of twenty cents for each one hundred pounds gross weight of trailer and load, or fractional part thereof, is two dollars and fifty cents, or more, no other tax is required, in which case the minimum tax provided has no application. On the other hand, if the tax as computed on the gross weight of vehicle and load is less than two dollars and fifty cents, then the provision designating the minimum tax applies and in such case the sum of two dollars and fifty cents should be paid.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1032.

CORPORATIONS—RECEIVER—WHEN REQUIRED TO FILE RETURN OF PERSONAL PROPERTY FOR TAXATION—DAY PRECEDING SECOND MONDAY OF APRIL—SECTION 5372-1 G. C. CONSTRUED.

A liquidating receiver of the assets of a corporation is not within the terms nor the effect of section 5404-1 G. C., requiring personal property returns of incorporated companies to be made as of the first day of January, he is, however, subject to section 5372-1 G. C., requiring, receivers, assignees and other similar officers to list for taxation property held or controlled by them for others (including corporations) on the day preceding the second Monday of April.

COLUMBUS, OHIO, February 27, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of recent date requesting the opinion of this department upon the following question:

"Is the receiver for a corporation required to file a return of the personal property of the corporation for taxation as of the first day of January or as of the day preceding the second Monday in April?"

and enclosing a letter from Messrs. Bayly, Simmons & Dewitt, attorneys-at-law Cleveland.

Section 5404-1 G. C., which changes the time as of which certain personal property returns shall be made from the day preceding the second Monday of April to the first day of January, refers to "incorporated companies" only (108 O. L., Part I, 131-132).

Moreover, the code number chosen by the general assembly for the newly enacted section further evinces an intention to make this section a part of the group of statutes beginning with section 5404 of the General Code and dealing exclusively with returns made by incorporated companies.

For most obvious reasons a return made by a "corporation" must be made by some human being acting for the corporation. The language of section 5404 imposes this duty, as follows:

"The president, secretary, and principal accounting officer of every incorporated company, * * * shall list for taxation, verified by the oath of the person so listing, etc."

Section 5406, which is part of the same group of sections, adds the words "or agent."

A receiver appointed by a court is neither an officer nor an agent of the corporation and does not come appropriately within the class of persons indicated, if not fully expressed, by the enumeration found in the statute.

Moreover, as pointed out by counsel, the case of receivers is expressly dealt with in the statute, section 5372-1, which provides, in part, that

"Personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise in the possession or control of a person as * * * receiver * * *, or otherwise, (naming several fiduciary capacities) on the day preceding the second Monday of April in any year, on account of any person or persons, company * * * or corporation, shall be listed by the person having the possession or control thereof and be entered upon the tax lists and duplicate in the name of such * * * receiver, * * * adding to such name words briefly indicating the capacity in which such person has the possession of or otherwise controls said property, and the name of the * * * corporation to whom it belongs * * *."

This section is not expressly repealed or amended by the legislation of 1919, and I am unable to find any such inconsistency between the two sections as to work any partial implied repeal of the earlier one by the enactment of the latter one. In fact, prior to the enactment of section 5404-1 the true legal situation was that a receiver for a company reported, not under section 5404 et seq. G. C., but under section 5372 thereof.

It follows that the contention of counsel is correct, and that the receiver should list the property in his possession in such capacity as of the day preceding the second Monday of April.

The Commission also requests the opinion of this department upon the further question as to whether a receiver appointed in winding up proceedings or in foreclosure proceedings, and operating under an order of court directing liquidation of the assets of the company, without any continuation of its business, is required to list any property in his possession for taxation. Counsel seemingly make a contention to the general effect that no such duty exists. You refer to an opinion at page 674 of the Opinions of the Attorney-General for the year 1916.

This opinion dealt with section 5372-1 G. C., which was new in 1915, and with the question as to the effect of the express inclusion in the section of the words "assignee" and "receiver" upon the doctrine of *McNeill vs. Hagerty*, 51 O. S. 255, and *French vs. Bobe*, 64 O. S. 323. It was pointed out in the course of that opinion that *McNeill vs. Hagerty* was based upon the omission of the word "assignee" from the statute defining the duty of persons acting in representative capacities to list property for taxation, as it then existed. At that time the word "receiver" was in the law, and in *French vs. Bobe* the position of an assignee operating by the consent of the creditors and under order of court the business of the company, instead of winding it up immediately, was held to be in effect a receiver within the meaning of the statute requiring receivers

to list, rather than an assignee within the meaning of the McNeill case, based as it was upon the omission in the statute. It was pointed out that there was no constitutional or common law principle of sufficient force to control the discretion of the legislature in exempting officers of court and persons representing creditors from listing property in their possession for taxation. The conclusion was reached that after the enactment of section 5372-1 assignees and receivers, whether continuing the business under order of court or engaged in winding up and liquidating assets, are required to list for taxation the property in their possession on listing day.

I fully concur in the opinion just described.

Accordingly, it is my opinion that in the case under consideration the receiver is not obliged to list the personal property and other assets in his possession for taxation as of the first day of January, and may lawfully proceed at the present time to make distribution; but should any property remain in his possession or subject to his control as receiver on the day preceding the second Monday of April, it will be his duty at that time to list such property for taxation in the manner pointed out by section 5372-1 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1033.

BOARD OF EDUCATION—MAY PURCHASE JOURNAL RELATING TO SCHOOL WORK AND PAY FOR SAME OUT OF SCHOOL FUND—IMPLIED POWER—WITHOUT POWER TO PURCHASE FOR INDIVIDUAL MEMBERS.

Under the incidental or implied powers of a board of education it may purchase or subscribe for a journal relating to school board work and pay for the same out of school funds. However, such powers do not permit it to subscribe for such publications for the individual members of the board and such publications should relate to school board work.

COLUMBUS, OHIO, February 27, 1920.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your communication of recent date is as follows:

“We are in receipt of a communication from the city solicitor of Cincinnati, Ohio, as follows:

“Kindly let me know whether your department has ever passed upon the right of a school board to subscribe for any journal relating to school board work, and pay for the same out of school funds?”

and are respectfully requesting your written opinion in answer to his question.”

There are a number of provisions in the statutes empowering boards of education to establish libraries, and in view of such provisions the question of what are proper purchases for such purposes could easily arise, but it is not believed that your inquiry requires a consideration of said statutes.

The school laws of the state dealing with the powers and obligations of the boards of education with reference to purchases for the benefit of the schools under their supervision are somewhat extensive. However, your question is not what the board