

1262.

DOMESTIC CORPORATIONS—NOT EXCUSED FROM FILING REPORTS WITH TAX COMMISSION ON ACCOUNT OF HAVING REORGANIZED UNDER SECTION 8528-5 G. C. OF NON-PAR VALUE STOCK ACT—HOW FRANCHISE TAXES OF NON-PAR VALUE STOCK ACT ARE COMPUTED—SECTION 8728-11 G. C. CONTROLS.

1. *Domestic corporations otherwise required to file reports with the tax commission of Ohio during the month of May, 1920, under sections 5495 et seq. G. C., are not excused therefrom on account of their having been reorganized under section 5 (now section 8728-5 G. C.) of the non-par value stock act.*

COLUMBUS, OHIO, May 20, 1920.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date inquiring whether or not domestic corporations which have reorganized under the non-par value stock act within six months immediately preceding the month of May, 1920, are subject to the provisions of sections 5495 et seq. G. C. providing for the filing of annual reports and the payment of franchise taxes by corporations, etc., was duly received.

It is my understanding, and for the purpose of this opinion it is assumed, that all of the corporations referred to in your inquiry were duly incorporated prior to November 1, 1919, and hence are not exempted by section 5519 G. C. from making the reports and paying the taxes referred to, and on that assumption you are advised as follows:

(1) A corporation reorganizing under authority of section 5 (now section 8728-5 G. C.) of the so-called non-par value stock act does not, by reason thereof, become a new corporation or interrupt in any way the continuity of its existence, for the reason that section 9 (now section 8728-9 G. C.) of the act expressly provides that

“No proceedings taken under section 5 of this act shall be deemed to work a dissolution or to create a new corporation, or to interrupt in any way the continuity of existence of the corporation affected.”

The section just quoted was enacted as part of the original non-par value stock act which became effective September 1, 1919, and it has continued in full force and effect since that time,—not having been amended or affected in any way by recent amendments of other sections of the act.

By reason of the clear and positive provisions of section 9 (now section 8728-9 G. C.) of the non-par value stock act, the conclusion must be that domestic corporations otherwise required to file reports with your commission this month under section 5495 et seq. G. C., are not excused therefrom on account of their having been reorganized under section 5 (now section 8728-5 G. C.) of the act referred to.

(2) With respect to your other question whether original section 11 (now section 8728-11 G. C.) of the non-par value stock act, or the recent amendment of that section, should be taken as the guide in determining the amount of franchise taxes to be charged against and collected from such domestic corporations, you are advised that when the tax commission and the auditor of state come next July and August to discharge the duties imposed upon them by section 5498 G. C., they must be guided by the amended section which becomes effective May 21, 1920, for the reason that the amended section contains no exception or saving clause applicable to any corporation formed or reorganized under the act.

Amended section 8728-11 G. C., so far as pertinent, reads as follows:

"The amount of fees payable under section 5498 by corporations formed or organized (reorganized) under this act shall be three-twentieths of one per cent upon its subscribed or issued and outstanding preferred stock, plus ten cents for each share of common stock without par value, subscribed or issued and outstanding, but not less than ten dollars in any case."

Respectfully,

JOHN G. PRICE,
Attorney-General.

1263.

ROADS AND HIGHWAYS—BONDS ISSUED UNDER PROVISIONS OF SECTION 1223 G. C.—SECTION AMENDED INCREASING AUTHORIZED MAXIMUM INTEREST RATE ON BONDS—OLD SECTION APPLICABLE TO PENDING PROCEEDINGS PROVIDED INTEREST RATE NOT INCREASED, OTHERWISE PROCEEDINGS MUST BE COMMENCED ANEW—SALE OF BONDS UNDER SECTION 1223 G. C. GOVERNED BY SECTION 2294 G. C.—HOW ADVERTISEMENT CAN BE MADE WHERE TWO ISSUES NECESSARY UNDER SECTION 1223 G. C.—DEFECTIVE ADVERTISEMENT OF ABOVE BOND ISSUES DOES NOT HAVE EFFECT OF INVALIDATING VALID STEPS BEFORE ADVERTISING BEGUN.

1. *An increase in the authorized maximum interest rate on bonds authorized by section 1223 G. C., in connection with state aid road improvement proceedings, through the medium of an amendment of said section, does not operate to discontinue state aid road improvement proceedings pending when such amendment becomes effective. See section 26 G. C.*

2. *The offering at public sale of bonds authorized by section 1223 G. C. is governed by section 2294 G. C. (106 O. L. 492).*

3. *Where a second issue of bonds under section 1223 G. C. is made necessary through an increase in estimated cost of a state aid improvement project, the commissioners may advertise the public sale of the two issues either together or separately.*

4. *A defective advertisement of the public sale of bonds authorized by section 1223 G. C. does not have the effect of invalidating such valid steps as took place, before the advertising was begun.*

COLUMBUS, OHIO, May 20, 1920.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

"As I understood section 1223 G. C. authorizing county commissioners to issue bonds in certain cases bearing interest at five per cent was amended in February, 1920, so as to permit six per cent bonds being issued, the commissioners of our county applied to the highway department for aid in improving or constructing a certain road prior to February, 1920, and passed a resolution providing for the issuance of \$95,000 of county bonds, subse-