1860.

FRANCHISE TAX—PROMISSORY NOTES AND OTHER RECEIVABLES ACCRUING TO OHIO CORPORATION FOR SERVICES RENDERED IN OTHER STATES CONSIDERED AS PROPERTY OWNED IN THIS STATE WHEN—WHEN BUSINESS DONE IN OTHER STATES NOT CONSIDERED AS BUSINESS DONE IN THIS STATE FOR TAXATION PURPOSES.

SYLLABUS:

Promissory notes and other receivables accruing to an Ohio corporation on account of work done and services rendered by it in other states are to be considered as property owned by the corporation in this state for the purpose of determining the franchise tax of such corporation, unless the corporation has localized such receivables for taxation in the other states by a course of business therein in substantial conformity with the provisions of section 5328-1 *and* 5328-2, *General Code. However, the business done by the corporation in such other states is not required to be included as business done by the corporation in this state, by reason of the fact that bills for work done and services rendered by the corporation in such other states are made out by the corporation at its home office in this state, to which remittances are made by customers to whom such bills are sent.*

COLUMBUS, OHIO, November 13, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your recent communication requesting my opinion with respect to certain questions that have arisen in the assessment of a franchise tax on a certain Ohio corporation which does business not only in this state but in most of the other states of the union. The principal business of this corporation is that of tree surgery and the rendering of other expert service in the treatment and care of trees. Work of the nature above indicated is done by the company in each and all of the states where it does work of this kind on orders therefor obtained by its salesmen or agents residing in the particular state; and when such orders are obtained the same are turned over to other agents and employes of the company in that state who do the work called for in the order. A copy of the order thus obtained is mailed to the home office of the company here in Ohio and when the work is done the customer is billed for such services directly from the home office, to which remittances are made by the customer.

The questions presented in your communication are whether promissory notes and accounts receivable accruing from work done by the company in other states are to be reported as property owned by the company in Ohio for the purpose of assessing such franchise tax, and whether for this purpose the business done by the corporation in other states is to be considered as Ohio business by reason of the fact that statements for services rendered by the company in other states are mailed to the customers there from the main office of the company here in Ohio and remittances on such statements are sent by such customers directly to the office of the company in this state.

I do not deem it necessary to discuss at any length the statutory provisions relating to the assessment of franchise taxes on corporations. With respect to a domestic corporation the tax is one assessed on the corporation for the

privilege of exercising its franchise as a corporation in this state, and the tax is assessed at the prescribed rate on the proportion of the determined value of the issued and outstanding stock of the corporation represented by the property owned and used and by the business done by the corporation in this state.

With respect to the first question presented in your communication, it is noted that this office in an opinion directed to you under date of August 5, 1930, Opinions of Attorney General for 1930, Vol. II, p. 1281, held that accounts, bills receivable and other credits owned by a corporation for profit incorporated and organized under the laws of Ohio, which have accrued in the transaction of the business of the corporation in another state, are required to be reported to the Tax Commission of Ohio as property owned by such corporation in this state for the purpose of determining the franchise tax to be paid by the corporation in this state, under the provisions of Sections 5495, et seq., General Code. This conclusion was reached in the former opinion of this office above referred to on a consideration of the general rule that accounts, bills receivable and other like credits as intangible property have no situs of their own for purposes of taxation, and that they are, therefore, assessable at the place of the owner's domicile, regardless of the place where such receivables and other taxable credits accrue. See *Cream of Wheat Co.* vs. *County of Grand Forks,* 253 U. S. 325; *Blodgett* vs. *Silverman,* 277 U. S. 1; *Coal Co.* vs. *O'Brien,* 98 O. S. 14; *Anderson* vs. *Derr,* 100 O. S. 251, 259.

The opinion of this office, above referred to, was rendered prior to the amendment of Section 5498, General Code, in the enactment of Amended Senate Bill No. 323 by the 89th General Assembly. In and by said act this section of the General Code was amended so as to provide that in determining the amount or value of intangible property owned or used in this state by either a domestic or foreign corporation, the Tax Commission shall be guided by the provisions of Sections 5328-1 and 5328-2 of the General Code as these sections were enacted in and by said act. Section 5328-1, General Code, here referred to, provides that property of the kinds and classes mentioned in Section 5328-2, General Code, used in and arising out of business transacted in this state by, for or on behalf of a non-resident person shall be subject to taxation in this state; and that all such property of persons residing in this state used in and arising out of business transacted outside of this state by, for or on behalf of such persons shall not be subject to taxation in this state. Section 5328-2, General Code, which is referred to in Section 5498, General Code, as amended, and in Section 5328-1, General Code, above noted provides as follows:

> "Property of the kinds and classes herein mentioned, when used in business, shall be considered to arise out of business transacted in a state other than that in which the owner thereof resides in the cases and under the circumstances following:
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> In the case of accounts receivable, when resulting from the sale of property sold by an agent having an office in such other state or from a stock of goods maintained therein, or from services performed by an officer, agent or employe connected with, sent from, or reporting to any officer or at any office located in such other state."

In making applicable the above noted provisions of Sections 5328-1 and 5328-2, General Code, the legislature in the amendment of Section 5498, General Code, providing for the assessment of corporation franchise taxes, has evinced an intention to allocate outside of the state for the purpose of determining such

franchise taxes intangible property of the kind here in question which have accrued in the conduct of the business of the corporation in another state, and which have been localized in such other state in the manner provided by Section 5328-2, General Code. That is where, as in the case here presented, the business done by the corporation in such other state has been services there rendered by it, the credits accruing to the company from such services are localized where such services were there performed "by an officer, agent or employe connected with, sent from, or reporting to any officer or at any office located in such other state".

In the consideration of this question it is to be observed that generally and before credits arising in the transaction of business in a state other than that in which the owner resides can be said to be localized for taxation in such other state, the transaction of the business in such other state must be such as to vest in some agent of the owner control and management of the credits thus accruing in the conduct of the business. *Tax Commission of Ohio* vs. *Kelly-Springfield Tire Co.,* 38 O. App. 109. In this case it was held that credits consisting of accounts receivable of a foreign corporation arising out of merchandise sold by a local agency in Ohio to customers in this state, did not become localized and have a business situs here, although it appeared that a large force of men were employed at such agency under a local manager and that orders were filled from a warehouse located in this state at the place of such agency, where it appeared that credits accruing to such corporation in the conduct of the business of the corporation in this state were under the exclusive control of the home office of the corporation, and the local agency of the corporation in this state had no interest in such credits or accounts receivable and had no authority to utilize any of the proceeds of sales here made in the conduct of the local branch of the company's business. In a case of *State ex rel. American Auto Ins. Co.* vs. *Gehner,* 320 Mo. 702, it was held that to make credits taxable in a state other than that of the domicile of the owner, such credits must be used in an established business in such other state, and the proceeds of that business must be under a management of some kind in such locality, with some discretion in the local manager or agent with respect to the disposition of the proceeds of the business conducted in such other state. In the case of *Endicott Johnson & Co.* vs. *Multnomah County,* 96 Ore. 679, it was held that notes, accounts and other receivables of a non-resident corporation did not acquire a business situs for purposes of taxation in Oregon, where such corporation had no branch office or place of business in that state, or any agency therein, except a traveling salesman whose only authority was to solicit orders for goods manufactured by such corporation, which orders, when accepted at the home office of the company, were filled by shipping the goods directly from the manufacturing plant of the company in its home state to customers in Oregon who paid therefor by remitting directly to the home office of the company.

Speaking with respect to the application of Sections 5328-1 and 5328-2, General Code, to the question at hand, it does not appear from your communication or from any other information at hand that the corporation referred to by you has any office or officers in any state other than Ohio. In this situation it cannot be said that the services of the company in any of these other states out of which credits here in question accrued were performed by an agent or employe of the company sent from or reporting to any officer or at any office located in such other state. Upon this state of facts I am inclined to the view that the general rule applicable in the determination of the situs of intangible property of this kind is to be applied, and that the accounts receivable, notes and other credits accruing to the company by reason of services performed by it in other states

should be reported as property owned by the company in this state for the purpose of determining the proportion of the value of the issued and outstanding shares of stock of the company to be assessed for franchise tax purposes.

The other question presented in your communication is whether the work done and services rendered by this corporation in states other than Ohio, is, nevertheless, to be considered as business done in this state for the purpose of determining the franchise tax on the corporation, by reason of the fact that as a practical matter the business done by a corporation is measured by its gross receipts and charges for the goods sold or services rendered by it and the fact that in this case all charges for work done and services rendered by the corporation were made in Ohio where remittances therefor were received. By Section 5497, General Code, it is provided that in determining the franchise tax of a domestic corporation all business done by such corporation shall be set out in the report of the corporation as business done in Ohio except extra-state business. This is, of course, tantamount to saying that extra-state business shall not be considered as business done in Ohio for the purpose of computing such tax.

As above noted, the business done by this corporation is that of tree surgery and the performance of other expert work in the care and treatment of trees and of other work of related kinds. This work is done in other states as in Ohio as a regular business by employes of the corporation who are expert in this work and who for the most part reside in the respective states in which their work is done, which work is done on orders taken by resident agents of the corporation in the respective states. In this situation there can be little doubt but that the work done and services rendered by the company as a regular business in these other states constitute the doing of business in such states so as to render the corporation amenable to the jurisdiction of such states for purposes of taxation and otherwise. And, in this connection, it is noted from information accompanying your communication that in the year 1932 this corporation was required to pay taxes of various kinds and in varying amounts in thirty-two (32) states other than Ohio on account of business done by the corporation in such states.

Consistent with constitutional requirements it has been found to be a matter of some difficulty to formulate a satisfactory rule whereby the public burdens of taxation can be justly apportioned with respect to the business of a corporation where the same is carried on in different states. I do not deem it necessary to discuss this question at length. It is perhaps sufficient to say that any method of apportionment of the business done by a corporation which would attribute or allocate to one state as business done in that state such percentage of the total business done by the corporation as is out of all proportion to the business transacted by the corporation in that state, would be beyond the power and authority of such state. See *Hans Rees' Sons* vs. *State of North Carolina,* 283 U. S. 123. In this view I am of the opinion that the only part of the work done and services rendered by this corporation as a part of its regular business which is to be allocated to the state of Ohio as business done in this state for the purpose of determining the franchise tax on this corporation, is the work done and services performed by the corporation in this state; and that a business of this kind carried on by the corporation in other states should be considered as business done outside of Ohio notwithstanding the fact that charges therefor are made at the home office of the corporation in this state where remittances for such business are received.

Of course if any considerable part of the business done by this corporation

was on account of goods, such as shrubbery sold and delivered from its office or plant in Ohio on orders therefor taken by agents in Ohio and elsewhere, such business should be considered Ohio business for the purpose of determining the franchise tax to be assessed on this corporation. *Western Cartridge Co.* vs. *Emmerson,* 281 U. S. 511.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1861.

MOTOR VEHICLE—SOLD WITHIN THIS STATE BILL OF SALE REQUIRED — CLERK OF COURTS UNAUTHORIZED TO ACCEPT SWORN STATEMENT OF OWNERSHIP WITHOUT BILL OF SALE.

SYLLABUS:

Even though a motor vehicle was originally purchased outside the state of Ohio, if such motor vehicle is later sold within the state of Ohio, a bill of sale is required from such vendor to the vendee, and the clerk of courts is without authority to accept for filing a mere sworn statement of ownership without such bill of sale.

COLUMBUS, OHIO, November 13, 1933.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

> "I am writing you with respect to a question which has arisen in the Clerk's office of Putnam County, Ohio. As you no doubt have read, the men who broke out of the Indiana prison at Huntington delivered a bank robber by name of Dillinger from the Allen County Jail at Lima, and in such delivery killed the Sheriff of Allen County.
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> The parents of one of these men reside in Putnam County and when our officers made a raid on the farm of the parents they found a new automobile which was at first believed stolen, bearing no license tags. The officers took this car and now have it in their possession. The brother of Pierpont, the man who shot the Sheriff, was taken in custody for concealing this car, and since that time has been transferred to the Allen County Jail. His attorney came to the Clerk's office and claimed that he, the brother, owned this automobile and requested filing of a sworn statement of ownership and is seeking to gain possession of this car. The Clerk refused to accept it because there was a break in the chain of title and Fred Pierpont, claimant, can show no Bill of Sale or other evidence of conveyance of this car to him. The car was purchased by one of the escaped convicts and killers of the Sheriff of Allen County, in Chicago, and has been identified as one of the cars used in perpetration of the robbery of the bank at St. Marys, Ohio, by the same convicts.
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> Please advise me whether or not the Clerk is required in law to accept a sworn statement of ownership from this party for the car when