413.

APPROVAL, NOTES OF NEW CONCORD-UNION RURAL SCHOOL DISTRICT, MUSKINGUM COUNTY, OHIO, $8,573.00.

COLUMBUS, OHIO, March 28, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

414.

APPROVAL, NOTES OF HOMER RURAL SCHOOL DISTRICT, MORGAN COUNTY, OHIO, $5,501.00.

COLUMBUS, OHIO, March 29, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

415.

ENDOWMENT BOND—DEFINITE INCOME PAID DONOR BY COLLEGE DURING HIS LIFE—TAXED AS A PURCHASED ANNUITY.

SYLLABUS:

An endowment bond issued by a college or other similar institution, in which, in consideration of the payment to such institution of a certain stated sum of money or the transfer to it of property of a certain stated value, provision is made for the payment to the donor of a certain definite sum of money annually, or at shorter periodical stated times without reference to the amount of interest, profits or other income received by such institution from the money or property paid or transferred to it, is a purchased annuity within the meaning of section 5389, *General Code, and the income yield of such annuity for the purpose of taxation should be determined by taking four per centum of one-half of the amount of money or of the value of the property used in purchasing such annuity.*

COLUMBUS, OHIO, March 29, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You recently submitted to me copies of two annuity bonds, so-called, heretofore issued by Mt. Union College to one Ross P. Buchanan, with a request for my informal opinion with respect to the manner in which the income yield on these bonds is to be determined for purposes of taxation.

The first of these annuity bonds is one issued by Mt. Union College under date of December 31, 1917. From the provisions of this bond, it appears that, in consideration of the sum of ten thousand dollars paid to the college by Ross P. Buchanan as an addition to the endowment fund of the college, said Mt. Union College agreed and obligated itself to pay to Ross P. Buchanan or to his wife, Lizzie Buchanan, the sum of two hundred and fifty dollars semi-annually so long as the said Ross P. Buchanan or Lizzie Buchanan shall live, the first semi-annual payment under the contract being made June 30, 1918. From the terms and provisions of the other annuity bond above referred to, it appears that on or about the thirtieth day of July, 1929, Ross P. Buchanan delivered to Mt. Union College twenty-five thousand dollars in cash and certain real estate in Carroll County, Ohio, of the stated value of twenty-five thousand dollars, and that in consideration thereof said college agreed to pay to said Ross P. Buchanan and to his wife, Lizzie Buchanan, if she should survive him, the sum of three thousand dollars annually "as an income on said principal sum donated," payable in monthly installments of two hundred and fifty dollars each, commencing on the first day of September, 1929, and continuing during the life of said donor, and thereafter during the life of his wife if she should survive. The money and property delivered to the college as recited in this bond was for endowment purposes, it being provided in this contract that the net proceeds of this money and property were to be held permanently in the endowment funds of the college. In both cases it was provided that the money and property donated should be and become the absolute property of the college; but both instruments were subject to conditions subsequent therein provided for. In the bond first above mentioned, it was provided that, in the event the college failed to make the semi-annual payment therein provided for within ninety days from the due date of said payment, the college was to return to the donor the principal sum of ten thousand dollars in consideration of which the annuity bond was executed. In the second bond above mentioned, it was provided that "in case any payment of said annuity shall remain in default for more than twenty (20) days after actual notice to Mount Union College of such default, then the sum of $50,000.00 shall be due and payable to the donor at his option and this bond shall thereupon become null and void."

Sections 5328-1 and 5638, General Code, provide, among other things, for the taxation of investments at the rates provided for in the last named section.

Included in the term "investments" as defined by section 5323, General Code, are interest bearing obligations for the payment of money, such as bonds, certificates of indebtedness, debentures and notes. Likewise included in the term "investments" under the provisions of this section are "annuities, royalties and other contractual obligations for the periodical payment of money and all contractual and other incorporeal rights of a pecuniary nature whatsoever from which income is or may be derived," excepting certain intangible property rights and interests not material in the consideration of the question here presented.

It is obvious from the above noted provisions of section 5323, General Code, that the contractual rights now owned and possessed by Ross P. Buchanan under the written instruments above referred to, and therein designated as annuity bonds, are investments under the provisions of this section; and they are taxable as such under sections 5328-1 and 5638, General Code. However, I do not understand that any question is made on this point; but, as above noted, the only question for consideration is as to the manner in which the income yield on these contracts is to be determined as the basis for the tax imposed by the sections of the General Code before mentioned. Touching this point, section 5388, General Code, provides:

"In listing investments, the amount of the income yield of each for the calendar year next preceding the date of listing shall, excepting as otherwise provided in this chapter, be stated in dollars and cents and the assessment thereof shall be at the amount of such income yield."

Section 5389, General Code, so far as the same is material to the question at hand, provides as follows:

> "'Income yield' as used in section 5388 of the General Code and elsewhere in this title means the aggregate amount paid as income by the obligor, trustee or other source of payment to the owner or owners, or holder or holders of an investment, whether including the taxpayer or not, during such year, and includes the following:
>
> In the case of an obligation bearing interest, the amount of interest separately charged and paid during such year, if any, exclusive of payments on the principal; in the case of shares of stock, the cash dividends so paid; in the case of annuities or other obligations for periodical installment payments including both principal and interest, not separately charged and paid, four percentum of half the principal used to purchase the same, or, if there be no such principal, four percentum of half of the present worth of such payments if commuted, which shall be calculated, as of the date on which such investment is required by this chapter to be first listed, with interest at four per centum per annum and, in the case of annuities for life or lives, according to the Combined Annuity Four Per Cent. Table."

More specifically, the question here presented in the light of the provisions of sections 5388 and 5389, General Code, above quoted, is whether for purposes of taxation in the year 1932 the total income received by Ross P. Buchanan during the year 1931 under these so-called annuity bonds is to be taken as the income yield under these contracts, or whether the income yield with respect to such contracts is to be determined according to the method provided by section 5389, General Code, with respect to annuities or other obligations for periodical installment payments including both principal and interest, not separately charged and paid. Annuities are sometimes spoken of as being the annual or other periodical payments of money made under some form of contract providing for such payments. On the other hand, an annuity is more accurately defined as the obligation under which such annual or other periodical payments of money are made. Thus in the case of *Chisholm* vs. *Shields, Treasurer,* 67 O. S. 374, 378, it is said:

> "An annuity, as understood in common parlance, is an obligation by a person or company, to pay to the annuitant a certain sum of money at stated times during life or a specified number of years, in consideration of a gross sum paid for such obligation."

See *Town of Hartland* vs. *Damon's Estate,* 103 Vt. 519, 531. It seems quite clear that the term "annuity," as used in the provisions of the sections of the General Code above noted relating to the taxation of annuities as investments, is to be given the meaning attributed to the term by the Supreme Court of this state in the case of *Chisholm* vs. *Shields, Treasurer, supra.* And it is likewise clear that, in their essential features, the contracts here in question are annuities within the definition of the term made by the court in the

Chisholm case. Assuming that the contracts here in question are annuities, as the term is defined in this case, it remains to be determined whether they are annuities within the meaning of this term in the provisions of section 5389, General Code, determining the method of ascertaining the income yield on such contracts and if so whether the term "annuities," as used in this connection in section 5389, General Code, is limited by the further provisions of the section which refer to "obligations for periodical installment payments including both principal and interest, not separately charged and paid."

The contracts here in question were issued in consideration of certain stated sums of money and of property of a stated value paid or transferred to the obligor and in this sense these endowment contracts were and are purchased annuities. *Continental Illinois Bank and Trust Company* vs. *Blair, Commissioner of Internal Revenue,* 45 Fed. (2d) 345. Although in most cases of purchased annuities there is an amortization of both principal and interest until the principal is exhausted, I am inclined to the view that an annuity is sufficiently distinguished from an obligation to pay income, profits or interest by the fact that in an annuity contract the periodical payments are required to be made without reference to the amount of interest or other income or profits made by the obligor out of the principal which constitutes the purchase price of the annuity. In this view, the contracts here in question are annuities within the meaning of the applicable statutory provisions above noted; and, inasmuch as the annuities here in question were purchased by the payment and transfer to the obligor of certain principal sums, the income yield on these annuities for purposes of taxation in the year 1932 and in any subsequent year should be determined by taking four per centum of one-half of the principal used to purchase said respective annuities, as provided for in section 5389, General Code, above quoted.

This answers the question here presented; and, in this connection, I do not think that the fact that these annuity contracts may be subject to the operation of conditions subsequent therein provided in any way affects the present status of these contracts as annuities within the meaning of the provisions of the General Code providing for the taxation of the same. It does not appear that there has been any default by the obligor under these contracts and in this situation its title to the money and property which constitute the principal of the annuity contracts is as absolute as if the contracts were unconditional, and the present obligation of the college to make the annuity payments provided for is likewise absolute.

Respectfully,
JOHN W. BRICKER,
Attorney General.

416.

APPROVAL, NOTES OF KEENE TOWNSHIP RURAL SCHOOL DISTRICT, COSHOCTON, OHIO, $2,530.00.

COLUMBUS, OHIO, March 29, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.