

4089.

DISCUSSION AS TO WHETHER OR NOT A TRUST BENEFICIARY IS REQUIRED TO LIST AS INCOME YIELD, ALL THE INCOME PAID TO HIM BY THE TRUSTEE INCLUDING THAT DERIVED FROM REAL ESTATE AND GOVERNMENT BONDS, OR ONLY SUCH PART AS REPRESENTS THE EARNINGS OF TAXABLE STOCKS AND BONDS.

COLUMBUS, OHIO, February 26, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your request for my opinion relative to the income yield to be listed by a trust beneficiary under the provisions of Amended Senate Bill No. 323, enacted by the 89th General Assembly, where the corpus of the trust in which the taxpayer has a beneficial interest is made up of taxable stocks and bonds, real estate and United States government bonds.

More specifically, the question presented is whether the beneficiary in such case is required to list as income yield all the income paid to him by the trustee, including that derived from real estate and government bonds, or only such part as represents the earnings of taxable stocks and bonds.

Section 5328-1, General Code, enacted as a part of the act above referred to, provides for the taxation of investments as one of the classes of intangible property included within the provisions of this section. By Section 5388, General Code, as amended in said act, provision is made for taxing investments on the basis of income yield, and taxes are levied and extended thereon at the rate prescribed in section 5638, General Code.

The question here presented requires a consideration of the further question as to the kinds of intangible property included within the meaning of the term "investments" for purposes of taxation. Touching this question, section 5323, General Code, so far as the same is pertinent in the consideration of this question, provides that the term "investments" includes the following:

"Interest bearing obligations for the payment of money, such as bonds, certificates of indebtedness, debentures and notes; certificates of deposit, savings and other like deposits in financial institutions outside of this state yielding income by way of interest or dividends in excess of four per centum of the principal sum withdrawable; and other similar evidences of indebtedness, whether negotiable or not, and whether or not secured by mortgage of or lien upon real or personal property or income, by whomsoever issued, excepting such as have been issued (1) by the United States or any of its territories, districts, or dependencies, or (2) by any instrumentality of the federal government, or (3) prior to the first day of January, 1913, by the state of Ohio or any political or other subdivision or school district in this state and (4) bonds of the state of Ohio issued pursuant to article VIII, section 2a of the constitution of Ohio and (5) such as are defined in this chapter as 'deposits' and 'current accounts.'

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, however evidenced, excepting (1) patents and copyrights and royalties derived from each, (2) interests in land and rents and royalties derived therefrom, other than equitable interests divided into shares evidenced by transferable certificates and (3) employment and partnership contracts and salaries and wages derived therefrom.

All equitable interests, life or other limited estates and annuity interests in any investment hereinbefore described, or in any fund made up of any such investments, wherever located."

It will be noted from a consideration of the statutory provisions above quoted that United States government bonds and interests in land and rents and royalties therefrom, (other than land trust certificates) are excepted from the definition of "investments" as made by the provisions of this section.

It is further noted, with respect to the question here submitted, that by the provisions of the section of the General Code above quoted all equitable interests, life or other limited estates and annuity interests in any investment before described in said section, or in any fund made up of any such investments, are themselves defined as investments for purposes of taxation. It appears from this, however, that the only equitable interests that are defined as investments and are taxable as such are equitable interests in things theretofore in said section defined as investments, in which, as above noted, there is not included government bonds or interests in land and rents and royalties therefrom. It follows, therefore, that equitable interests in United States government bonds and in lands (other than such as are evidenced by land trust certificates) are not taxable as investments; and that a beneficiary of a mixed trust, such as that presented in the question here under consideration, is not required to list as taxable income yield that part of the income of the trust which is derived from government bonds or from real estate constituting a part of the corpus of the trust, other than income yield from equitable interests in such lands in the trust as may be represented by land trust certificates.

In view of the conclusions here reached upon construction of the statutory provisions above noted, I do not feel called upon to consider certain obvious constitutional questions which might otherwise be presented.

Respectfully,

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Attorney General.

4090.

DEPOSITORY—COUNTY GENERAL FUND MAY NOT BE LEGALLY
INVESTED IN GOVERNMENT BONDS.

SYLLABUS:

The "general fund" of a county may not be legally invested in government bonds, even though the county is unable to obtain a legal depository therefor.