

1871.

APPROVAL, 1 OHIO CANAL LEASE AND 2 MIAMI AND ERIE CANAL
LEASES.

COLUMBUS, OHIO, October 27, 1924.

*Department of Highways and Public Works, Division of Public Works, Columbus,
Ohio.*

1872.

TAXES AND TAXATION—FRANCHISE TAX SHOULD BE COMPUTED
UPON STOCK ISSUED BY CORPORATION.

SYLLABUS:

*The stock of a corporation once issued remains outstanding within the meaning
of a tax statute, although returned to the corporation and held by it as treasury
stock, and the stock so held is to be considered in computing the tax due from the
corporation.*

COLUMBUS, OHIO, October 27, 1924.

The Tax Commission of Ohio, Columbus, Ohio.

Gentlemen:—

I acknowledge receipt of your letter of recent date in which you submit the following state of facts with reference to the G. W. Bobb Company, and inquire whether under these conditions the surrendered stock is subject to franchise tax:

The G. W. Bobb Company, during the year 1923 had issued and outstanding stock to the amount of \$867,000.00. Subsequent to the return to the State Tax Commission for the year, \$127,000.00 of this capital stock was voluntarily surrendered to the company by the stockholders and held in the treasury as treasury stock. This action was taken to make good certain losses incurred during the years 1920 and 1921; the capital stock of this company was not reduced according to the provisions of statute.

In the Opinions of the Attorney General for 1917, Vol. II, page 1543, this matter is discussed at some length, and the conclusion is as follows:

“Upon the considerations and authorities above noted, in the absence of authorities and decisions of our own courts to the contrary, I am constrained to the view that the fee or tax required of a corporation, under Section 5498 General Code, should be computed upon all its subscribed or issued and outstanding stock regardless of the fact that a portion of such stock has been subsequently acquired by the corporation; and with respect to The Carroll Foundry and Machine Company I am of the opinion that until it takes proper steps in accordance with statutory provisions to reduce

the amount of its capital stock, it will be required to pay the franchise fee computed at the prescribed rate upon the full amount of its subscribed, issued and outstanding stock in the sum of \$400,000.00."

Cooley in his recent work on Taxation, Vol. II, page 1753, adopts the same view, and bases such view upon the same authorities as those cited in the Opinions of the Attorney General above quoted.

"Stock once issued is outstanding within the meaning of a tax statute, although returned to and owned by the corporation issuing it, until retired and cancelled as required by the statute relating to the reduction of capital stock."

Cooley, Taxation, Vol. II, page 1753.

In view of these authorities, I find no reason for reversing the previous opinion of this department, and you are therefore advised that the franchise tax of the G. W. Bobb Company should be computed upon the entire amount of capital stock originally issued.

Respectfully,

C. C. CRABBE,
Attorney-General.

1873.

TAXES AND TAXATION—CHURCH PROPERTY USED EXCLUSIVELY FOR PUBLIC WORSHIP IS EXEMPT FROM TAXATION—APPLICATION FOR EXEMPTION BY TAXPAYER IS NOT NECESSARY.

SYLLABUS:

Church property used exclusively for public worship since January, 1921, is exempt from taxation from that date, although no application was made for exemption until May 1, 1924.

COLUMBUS, OHIO, October 27, 1924.

The Tax Commission of Ohio, Columbus, Ohio.

Gentlemen:—

The Commission requests the opinion of this department upon the facts stated in the following communication:

"A church organization purchased a piece of real estate in January, 1921, and since that date said property has been used exclusively for public worship. No application for exemption was made until May 1, 1924. Tax has been assessed on this property from the years 1921, 1922 and 1923, which tax remains unpaid and delinquent.

Query: Is this property exempt from taxation from the date of its purchase and use or from the date of filing the application for exemption?