

change that election or withdraw it prior to the receipt of his first payment, it would carry over after the retirement and be fully effective. As a matter of practice, I assume that is often done. However, such an election made prior to retirement, could never become effective if death intervened before retirement and therefore before there existed a retirement allowance which is the very basis of the election.

In specific answer to your question I am of the opinion that the law makes no provision whereby a teacher applying for retirement may exercise the option spoken of in Section 7896-42, General Code, if he dies before the end of the school year in which he makes application for retirement.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1068.

1. TAX—COUPON BOOKS OR TICKETS—WHERE SOLD TO STUDENTS—COLLEGE OR UNIVERSITY—COMPULSORY MATRICULATION FEE—PART OF EDUCATIONAL PROGRAM—NOT SUBJECT TO ADMISSION TAX.
2. WHERE PURCHASE VOLUNTARY—TICKETS SOLD TO STUDENTS, FACULTY MEMBERS AND OTHERS—SUBJECT TO ADMISSION TAX—SECTION 5544-3 G. C.

SYLLABUS:

Coupon books or tickets which are sold only to students as part of a compulsory matriculation fee are part of the educational program of a college or university and are not classified as admissions which are subject to admission tax.

Student activity or season tickets which are sold to students, faculty members and others, the purchase being purely voluntary, are subject to the admission tax.

COLUMBUS, OHIO, August 19, 1939.

HON. WILLIAM S. EVATT, *Commissioner, Department of Taxation, Columbus, Ohio.*

DEAR SIR: This will acknowledge the receipt of two letters in which you request my opinion on admission tax for college activities. Although both letters refer to attendance at college games, the method of selling tickets and the purpose of the tickets are not identical in both instances and I will discuss them separately by referring to the first letter with "Exhibit A", and the second letter with "Exhibit B".

The tax on admission charges to college activities is assessed under Section 5544-2, General Code. The pertinent part reads as follows:

“* * * there is hereby levied:

(1) A tax of three percentum on the amounts received for admissions to any place including admission by season ticket or subscription.”

Section 5544-5, General Code, creates certain exemptions. The pertinent language of this section reads as follows:

“No tax shall be levied under this act with respect to:

(1) Any admissions, all the proceeds of which inure
(a) Exclusively to the benefit of religious, educational or charitable institutions, * * *.”

* * * * * * * *

The exemption from tax provided by this section shall, however, not be allowed in case of admissions to * * * any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any high school, academy, preparatory or other school, in cases wherein the admission price is forty-one cents or more, or wholly or partly to the benefit of any college or university.”

Attached to your first letter are coupon books or student activity tickets, which are printed and registered by number. Your letter states that they entitle the holder to all college events during a stated period or season. The charge for these books is made and collected by the university when the student matriculates; it is a compulsory payment and classed as a student activity fee. Although the coupon book entitles the student to admission to athletic events, debates, dramatic performances, glee club recitals, lectures and other student activities, it is important to remember that the tax applies to the payment of admission and not to the admission itself. College authorities desire to promote certain extra-curricular activities as well as class room work. It is inconvenient to support such activities from tuition charges, therefore the coupon book or ticket is used as a device to obtain money to support college functions as well as to give the student the opportunity to participate as a spectator. The coupon book is a personal non-transferable receipt showing that the student has paid his obligation to promote and support his school; admission is merely an incidental purpose of this book or ticket.

The federal law on admission tax is similar to the Ohio law. Internal Revenue, Title 26, Sections 940 and 941, read in part as follows:

Section 940:

“There shall be levied, assessed, collected, and paid—

(a) a tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription; * * *

Section 941:

“No tax shall be levied under this subchapter in respect of—

(a) RELIGIOUS, EDUCATIONAL, OR CHARITABLE ENTERTAINMENTS. Except in the case of admissions to any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any college or university * * *.”

Acting under this section, the Bureau of Internal Revenue exempted books and tickets similar to those listed as “Exhibit A” and made the following ruling:

“In the X University the students are required to pay a certain sum for nontransferable student books entitling them to admission to all athletic games and other events during a specified period. In this case and in other cases where the fee so required from students is collected in addition to the regular tuition fees, the payment is deemed to be in the nature of a student activity fee rather than a charge for admission and is not, therefore, subject to the tax in question.”

The matter of collecting federal tax on admission to athletic contests, in which college teams participate, received the attention of the United States Supreme Court in *Allen v. Regents of University of Georgia*, 304 U. S., 439. The court found the admission payment was taxable, but in the opinion it was noted that the tax was paid by the spectators generally and none was paid by the students. The quotation from the opinion is as follows:

“* * * The student enrollment is about 2400. Each student pays an annual athletic fee of \$10.00 which confers the privilege of free admission to all the school’s athletic events. All admissions collected, and the tax paid on them, are paid by the general public, none by the students. * * *” (Emphasis the writer’s.)

The facts stated in your letter and the coupon books submitted as “Exhibit A” show that the payment made for these books is chiefly

an amount which the student is required to pay to support college activities and not primarily a charge for admission to the events.

Therefore, I am of the opinion that these coupon books and tickets are part of the educational program of the college or university, are not classified as admissions, and, therefore, not subject to an admission tax.

Thus far my opinion has been concerned solely with that type of ticket which is sold only to a student as part of the matriculation fee required of him and which incidentally entitles him to be admitted to all the college activities for a semester or a given season.

An examination of the coupon book submitted with your second letter shows that it differs materially from those heretofore discussed. This book is sold to students or the faculty or perhaps even to the general public. The student is not required to purchase this coupon book, it is a voluntary investment in admission tickets for a season. The price paid is not an annual assessment but is paid primarily and definitely to obtain entrance to a specific event or series of events. These events, although they take place on a college campus, are not held solely for the benefit of the college students, but are affairs of local or even national significance. The proceeds from the admissions do not go to the general college fund but to the athletic department or to pay interest on money which has been used to build or equip extensive athletic plants.

Again calling attention to the federal law heretofore cited, I find that the Bureau of Internal Revenue made the following ruling on facts similar to those presented in your second letter and "Exhibit B":

"In the Y University, however, there is no student activity fee and regular season tickets are sold to members of the faculty and to students or others, the purchase being a purely voluntary transaction. The amount paid for such tickets may not properly be classified as a 'student activity fee' and is taxable. Likewise, the amount paid for season tickets by members of the faculty of the Y University or by its alumni is subject to the tax."

I am inclined to agree with the conclusion reached by the Bureau of Internal Revenue and am of the opinion that the admission book described in your second letter and designated as "Exhibit B" should be considered as non-exempt under Section 5544-3 of the General Code, and therefore taxable.

Respectfully

THOMAS J. HERBERT,
Attorney General.