4274.

APPROVAL, SEVEN CONTRACTS FOR ROAD IMPROVEMENTS.

COLUMBUS. OHIO, April 26, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval the following contracts:

County	State Highway	Section
Franklin	546	"Worthington" (Part)
Erie	294	"A-3" and "Sandusky"
Sandusky	274	"Fremont" (Part)
Belmont	1	"J" (Blaine Overhead)
Franklin	24	"A"
Stark	72	"A"
Erie	294	"A-3" and "Sandusky"

Finding said contract correct as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4275.

FOREIGN CORPORATION—TAX AND TAXATION—METHOD OF DETERMINING FRANCHISE TAX DUE STATE OF OHIO.

SYLLABUS:

1. *For the purpose of determining the franchise tax on foreign corporations doing business in Ohio, the term "business done within this state" by a foreign corporation, should be construed as being such part of the business of such corporation as is transacted in Ohio, but excluding therefrom such business as is interstate commerce.*

2. *For the purpose of determining the amount of franchise tax due from a foreign corporation the situs of credits due to such foreign corporation arising out of business done in Ohio, should be determined in accordance with the provisions of Section 5328-2, General Code.*

3. *For the purpose of determining the amount of the franchise tax due from a foreign corporation the situs of the intangible items of assets of a New York corporation whose sole business is that of operating department stores in Ohio, should be allocated to the state in which the stores are located.*

COLUMBUS, OHIO, April 27, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your two requests for opinion which I have taken the liberty of combining in a single opinion. Your first request is as follows:

"The commission is desirous of having your ruling on the question of what constitutes 'Ohio' business to be used as a factor in determining the proportion and value of the shares of issued and outstanding stock of a foreign corporation for franchise tax purposes.

In an opinion of the Attorney General for 1915, page 460, it was held that if a stock of goods of foreign manufacture was maintained in Ohio and sales made in this state from that stock, or were made wherever negotiated to an Ohio customer from such stock, the business was 'Ohio' business within the meaning of Section 5502 G. C.; that the operation of a factory in Ohio by a foreign corporation having its principal place of business in another state constituted 'doing business' in Ohio, regardless of where the products of such factory were sold or transported; and that it was reasonable and lawful under Section 5502 to measure the volume of such business by sales of manufactured articles, whether such sales otherwise represented interstate commerce or not. The rule for determining the relative volume of business of a foreign corporation when it operated factories in Ohio and also sold its products of outside factories in Ohio was set forth in an opinion of the Attorney General for 1915, page 2411.

Section 5502 referred to in the above opinion was repealed in 1925 by the so-called Dempsey Act, and for the years 1925 and 1926 the franchise tax of domestic and foreign corporations was assessed under this act. The Dempsey Act was replaced by the Aigler Act passed on April 20th, 1927, under which act the franchise tax of domestic and foreign corporations is now assessed and for the first time in the history of the assessment of the franchise tax, domestic corporations were allowed allocation for property and business outside of Ohio. In view of the fact that the value of the stock of a domestic corporation was to be allocated, Ohio business of such a corporation was defined in the Act as follows: 'Business done within state by domestic corporations shall include all business except extra-state business.' (Section 5497).

While the Act did not define the business done within this state by a foreign corporation, it might be inferred from the Act that such business would be equivalent to 'extra-state' business of a domestic corporation, or as being only such business arising from sales made to, or business done with persons in Ohio from a plant or warehouse maintained by the corporation in Ohio.

The commission is therefore desirous of knowing whether business in this state of a foreign corporation shall be construed as business arising from sales made to, or business done with persons in Ohio from a plant or warehouse maintained by such foreign corporation within Ohio only, or whether it should be construed in accordance with the opinions referred to wherein an interstate transaction might be considered as 'Ohio business' if the corporation maintained a stock of goods in this state from which a sale was made, regardless of where the sale was negotiated. A recent decision of the Supreme Court of the State of Illinois—*Western Cartridge Co.* vs. *Emerson,* decided May 19, 1930, would seem to have bearing on this question.

If the operation of a factory in this state by a foreign corporation is 'doing business' in Ohio as was held in Opinions of the Attorney General for 1915, page 460, how shall the relative volume of business

of such corporation when it operates a factory in Ohio and also sells its products of outside factories in Ohio be determined?"

Your second request reads as follows:

"Do the intangible items of assets of a foreign corporation whose domicile is located outside of Ohio take the situs of the domicile located without the state regardless of where they may arise? For example, if a foreign corporation maintains a stock of goods in this state from which orders are supplied either to customers in Ohio or outside of Ohio, would the accounts receivable arising from such business take the situs of Ohio, or if a foreign corporation maintains a factory in this state, would the accounts receivable arising from business done therefrom take the situs of Ohio?

What would be the situs of the intangible items of assets of a New York corporation whose business is that of operating department stores with all of the stores located in Ohio and none outside of the state, although the principal office of the company is designated as being outside of Ohio?"

Whenever the question arises as to whether business done by a foreign corporation within a state other than that in which it was incorporated, is considered for the purpose of taxation it must be first determined whether the proposed tax violates the interstate commerce clause of the Federal Constitution.

My predecessor in office rendered an opinion under date of July 21, 1927, Opinions of the Attorney General for 1927, page 1300, construing what constituted "doing business" in Ohio within the meaning of the Aigler Act, and in that opinion laid down the following principles to be applied to determine whether a corporation was doing business within this state:

"1. Not only must a foreign corporation in order to be taxable for doing business, be doing business, but also business for the doing of which it was incorporated.

2. Whether a foreign corporation is doing business in the state must be determined by the character of the business carried on, and not from the existence of any unexercised powers reserved to it by its contracts.

3. It is not important that the business activities of a corporation in a state are small.

4. A corporation is carrying on or doing business in a particular state if it is doing some of the work or is exercising some of the functions for which it was created; but transactions collateral thereto and incidental only, although they may be business, are not the business referred to in the tax statutes.

5. Whether a corporation is doing business within the state is a question of fact not necessarily dependent solely upon a single act, or upon the effect of a single act, but upon the effect of all the combined acts which it may perform in the state.

6. All the business of a corporation need not be done in the state in order to do business in the state, but an isolated or occasional sale or other business transactions is not sufficient, nor is the mere maintain-

ing of an office or the sale of goods through an agent subject to approvel by the home office.

7. A foreign corporation is taxable if doing business where it has a branch office in the state, or a sales agency to which its goods are consigned and from which they are sold and the proceeds banked.

8. A foreign corporation selling its manufactured goods in this state to citizens of said state on orders taken by its agents and to be approved by it, is not 'doing business' within the state, within the provisions of the tax statutes.

The state could not lay a tax upon the mere privilege of soliciting orders here for goods in behalf of sellers doing business in other states because it would be one upon interstate commerce, and amounts to regulation of commerce which belongs solely to congress.

A foreign corporation which establishes a business domicile here, and brings its property within this jurisdiction and mingles it with its commercial capital, is taxable here."

An additional classification might be added. Thus, if a foreign corporation employs a portion or all of its capital either in conducting a manufacturing plant within this state for the manufacture of articles to be sold here or elsewhere such conduct might be considered as doing business within this state, and it would be immaterial whether part or all of the manufactured articles were subsequently sold elsewhere, the taxing of such business would not interfere with interstate commerce. The manufacturing of goods is not necessarily interstate commerce. The rule is well stated in 8 *Fletcher, Cyclopaedia of Corporations,* Section 5778:

"The fact that an article is manufactured for export to and sale in another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine when the article or product passes from the control of the state and belongs to commerce. Commerce succeeds to manufacture and is not a part of it. * * * It follows therefore, that a foreign corporation engaged in the business of manufacturing cannot carry on such business in a state without complying with the laws of such state imposing certain conditions upon foreign corporations doing business therein." Citing *Diamond Glue Company* vs. *U. S. Glue Company,* 187 U. S. 611, 47 L. Ed. 328; *Capital City Dairy Company* vs. *Ohio,* 183 U. S. 238, 46 L. Ed. 171; *Crutcher* vs. *Ky.,* 141 U. S. 47, 35 L. Ed. 646.

On April 15, 1915 (Opinions of the Attorney General for 1915, p. 460) my predecessor in office held as stated in the third and fourth branches of the syllabus, as follows:

"But if a stock of goods of foreign manufacture is maintained in Ohio and sales are made in this state from that stock, or are made wherever negotiated to an Ohio customer from such stock, the business is 'Ohio business' within the meaning of said section.

The operation of a factory in Ohio by a foreign corporation having its principal place of business in another state constitutes 'doing business' in Ohio, regardless of where the products of such factory are sold or

transported; and it is reasonable and lawful under section 5502 to measure the volume of such business by sales of manufactured articles, whether such sales otherwise represent interstate commerce or not."

I would call your attention to the holding of the United States Supreme Court in the case of *Hump Hairpin Mfg. Company* vs. *Emmerson,* 258 U. S., 290, 66 L. E., 622, in which such court held that under a similar law in Illinois there was no violation of this provision of the Constitution. The headnotes of such case read as follows:

"1. Error of state authorities in treating interstate as intrastate business in computing a corporation excise tax under a statute meant to include the latter only in the computation, goes to the constitutionality of the tax and not of the statute.

2. Business done by a corporation through orders approved in a State where its tangible property and business office were located and its manufacturing conducted, but first obtained by its salesmen from residents in other states, held interstate.

3. Where a state law for taxing foreign corporations for the privilege of doing local business bases the tax upon the capital stock actually represented by property located and business transacted within the State, plainly intending not to tax interstate commerce, and is reasonable as to amount and free from discrimination in favor of local corporations, a tax assessed under it will not be unconstitutional merely because a trifling part resulted from inclusion of interstate business in the basis of computation."

Of similar import is the case of *Western Cartridge Company* vs. *Emmerson,* 335 Ill., 150, decided by the Supreme Court of the State of Illinois, which follows the decision laid down in the Federal case, and was affirmed by the U. S. Supreme Court, in 281 U. S. 511, 74 L. Ed. 1004. The third branch of the headnotes of such decision reads:

"Interstate commerce is not unlawfully burdened by the inclusion of sales of goods manufactured in the state and shipped to customers in other states by a corporation having within the state its principal office, at which it receives and accepts orders, which it fills at its factories within the state, in computing a state franchise tax of 5 cents on each $100 of the proportion of its issued capital stock represented by the proportion of its business transacted and property located in the state."

These principles for the determination of what constitutes doing business although enunciated under the provisions of another statute would be equally applicable under the existing statute except where modified by the provisions of the so-called "Intangible Tax Law" in the respects hereinafter set forth. These rules are summarized in Section 5325-1, General Code, a section of the new act, as follows:

"Within the meaning of the term 'used in business,' occurring in this title, personal property shall be considered to be 'used' when employed or utilized in connection with ordinary or special operations, when acquired

or held as means or instruments for carrying on the business, or when stored or kept on hand as material, parts, products or merchandise; and 'business' includes all enterprises of whatsoever character conducted for gain, profit or income and extends to personal service occupations."

Answering specifically the inquiry set forth in the sixth paragraph of your request, by the application of the foregoing principles, it would appear that all of the business of a foreign corporation arising from the manufacturing plant located in Ohio should be considered as Ohio business, regardless of whether such manufactured articles were sold and delivered without the state, but when products of such corporation manufactured outside of Ohio are delivered not from warehouses in Ohio but directly from the factory or warehouse without the State of Ohio, upon receipt of orders solicited in Ohio but accepted and filled at the plant outside of the state, such business is not Ohio business but interstate business and should be so considered for the purpose of determining the franchise tax against such foreign corporation. Therefore, when it is ascertained that a foreign corporation is doing business in this state, it becomes necessary to determine the basis of computing the tax. In the syllabus of the case of *State* vs. *Cabin Creek Consolidated Coal Company,* 17 O. N. P. (N.S.) 60, Kinkead, J. of the Common Pleas Court of Franklin County set forth the following rule:

"The franchise tax chargeable against a corporation for the privilege of exercising its franchise in this state is to be determined by ascertaining the relation which the property of the company located in this state and the amount of business done here bears to the authorized capital stock as compared to the value of the property owned and the amount of business done outside of the state."

While the decision was rendered under the provisions of an earlier section the language of present Section 5497, General Code, would demand a similar construction. Such section, in so far as applicable, is as follows:

"* * * 8. The location and value of the property owned or used by the corporation as shown on its books, both within and without the state, given separately; and the total amount of business done and the amount of business done within the state by said corporation during its preceding annual accounting period, given separately. Business done within this state by domestic corporations shall include all business except extra-state business;

* * * * *"

Section 5498, General Code, establishes the method of computation to be used in determining the tax on corporations doing an extra-state or out-of-the-state business. Said statute has been amended by the insertion of the second paragraph as hereinafter set forth, by the addition of the word "fair" before the word "value" and by deleting the proviso theretofore contained. Such section reads as follows:

"After the filing of the annual corporation report the tax commission, if it shall find such report to be correct, shall on or before the

first Monday in May determine the value of the issued and outstanding shares of stock of every corporation required to file such report. Such determination shall be made as of the date shown by the report to have been the beginning of the then current annual accounting period of such corporation. For the purpose of this act, the value of the issued and outstanding shares of stock of any such corporation shall be deemed to be the total value, as shown by the books of the company of its capital, surplus, whether earned or unearned, undivided profits, and reserves, but exclusive of (a) proper and reasonable reserves for depreciation, and depletion as determined by the tax commission, (b) taxes due and payable during the year for which such report was made, (c) the item of good will as set up in the annual report of the corporation when said annual report is accompanied by certified balance sheet showing such item of good will carried as an asset on the books of the company (such balance sheet shall not be deemed a part of the public records, but shall be a confidential report for use of the commission only) and (d) such further amount as upon satisfactory proof furnished by the corporation, the tax commission may find to represent the amount, if any, by which the value of the assets (other than good will) of the corporation as carried on its books exceeds the fair value thereof. Claim for the deduction of such difference must be made by the corporation at the time of filing its report. The commission shall then determine as follows the base upon which the fee provided for in section 5499 of the General Code shall be computed. Divided into two equal parts the value as above determined of the issued and outstanding shares of stock of each corporation filing such report. Take one part and multiply by a fraction whose numerator is the value of all the corporation's property owned or used by it in Ohio and whose denominator is the value of all its property wheresoever situated; take the other part and multiply by a fraction whose numerator is the value of the business done by the corporation in this state during the year preceding the date of the commencement of its current annual accounting period and whose denominator is the total value of its business during said year wherever transacted.

In determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation the commission shall be guided by the provisions of section 5328-1 and 5328-2 of the General Code except that investments shall be allocated in and out of the state in accordance with the value of physical property in and out of the state representing such investments.

On the first Monday in June the tax commission shall certify to the auditor of state the amount determined by it through adding the two figures thus obtained for each corporation."

By the enactment of the Intangible Tax law, items of intangible property are not to be included in the first of such computations. Such intangible property is, for the purpose of determining the franchise tax, to have the situs as set forth in Sections 5328-1 and 5328-2, of the General Code, which read as follows:

"Sec. 5328-1. All moneys, credits, investments, deposits, and other intangible property of persons residing in this state shall be subject to taxation, excepting as provided in this section or as otherwise provided or exempted in this title; but the good will of a business shall not be

considered to be property separate from the other property used in or growing out of such business. Property of the kinds and classes mentioned in section 5328-2 of the General Code, used in and arising out of business transacted in this state by, for or on behalf of a non-resident person, other than a foreign insurance company as defined in section 5414-8 of the General Code, and non-withdrawable shares of stock of financial institutions and dealers in intangibles located in this state, and capital and surplus of domestic insurance companies, shall be subject to taxation; and 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 and non-withdrawable shares of stock of financial institutions located outside of this state, belonging to persons residing in this state, shall not be subject to taxation. Such property, subject to taxation, shall be entered on the classified tax list and duplicate of taxable property as prescribed in this title.

A corporation shall not be required to list any of its investments in the stocks of any other corporation or in its own treasury stock."

"Sec. 5328-2. 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:

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 the case of accounts payable, the proportion of the entire amount of accounts receivable, wherever arising, represented by those arising out of business transacted in such other state ascertained as herein provided shall be taken to represent the proportion of the entire amount of accounts payable arising out of the business transacted in such other state.

In the case of deposits (other than such as are used in business outside of such other state), when withdrawable in the course of such business by an officer or agent having an office in such other state; but deposits representing general reserves or balances of the owner thereof, maintained for the purpose of his entire business wherever transacted, shall be considered located in the state wherein the owner resides, if an individual, or wherein its actual principal executive office is situated, if a partnership or association, or under whose laws it is organized, if a corporation, by whomsoever they may be withdrawable.

In the case of moneys, kept on hand at an office or place of business in such other state.

In the case of investments not held in trust, when made, created or acquired in the course of repeated transactions of the same kind, conducted from an office of the owner in such other state, and (1) representing obligations of persons residing in such other state or secured by property located therein, or (2) when an officer or agent of the owner at the owner's office in such other state, has authority, in the course of the owner's business, to receive or collect the income thereon and the principal, if any, when due, or to sell and dispose of the same.

The provisions of this section shall be reciprocally applied, to the end that all property of the kinds and classes mentioned in this section having a business situs in this state shall be taxed herein and no property of such kinds and classes belonging to a person residing in this state and having a business situs outside of this state shall be taxed. It is hereby declared that the assignment of a business situs outside of this state to property of a person residing in this state in any case and under any circumstances mentioned in this section is inseparable from the assignment of such situs in this state to property of a person residing outside of this state in a like case and under similar circumstances. If any provision of this section shall be held invalid as applied to property of a non-resident person, such decision shall be deemed also, to affect such provision as applied to property of a resident, but shall not affect any other provision hereof."

Thus, in determining the value of corporate shares for tax purposes in any corporation doing an intrastate business as well as an extra-state business the assets of such corporation should be first divided into tangible and intangible property.

Tangible property should be allocated to Ohio if located therein, if located elsewhere should be considered as property without the state. In other words, the situs of tangible property for such purpose is the location thereof.

The allocation of intangible property, for such purpose, should be determined by taking all items of intangible property, exclude therefrom all items of "investments" as defined by Section 5323, General Code, allot the remaining items as to situs in the manner and form set forth in Sections 5328-1 and 5328-2, General Code. The rule of allocation of investments is somewhat difficult to determine by reason of the ambiguous language contained in Section 5498, General Code, "except that investments shall be allocated in and out of the state in accordance with the value of physical property in and out of the state *representing such investment.*"

The term "investment" is defined in Section 5323, General Code, and includes:

A—Shares of stock in corporations, associations and joint stock companies except (1) shares in corporations which are instrumentalities of the Federal Government, as joint stock land banks. (2) (a) Shares of stock in "financial institutions" as such term is defined in Section 5407, General Code, (b) Shares of stock in "dealers in intangibles" as defined in Section 5414-1, General Code, e.g., mortgage companies, etc. (c) Shares of stock which are included within the definition "deposits." (Section 5324, General Code) e.g., withdrawable shares in building and loan associations, etc.

(B) Interest bearing obligations due and payable more than one year after the date thereof, whether bonds, notes, debentures, certificates of indebtedness, certificates of deposit, or savings accounts, providing interest rate is in excess of four per cent per annum, but excluding government bonds and certain state and county bonds.

(c) 1. Annuities, royalties and other contractual obligations *for the periodical* payment of money.

2. Incorporeal rights of a pecuniary nature, e.g., land trust certificates, mortgages, etc., (other than patents, copyrights or rents or royalties derived therefrom), equitable interests in lands when not evidenced by shares from partnership or employment contracts.

(D) Equitable interests, life or other limited estates or in fund made up of above, e.g., investment trusts.

In the Michigan statute, Section 10143, Comp. L. Mich., 1929, I find the following language:

> "Provided, that in determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, such property shall be considered to be located, owned or used in the state for the purposes hereof, if used in or acquired from the conduct of its business in this state; irrespective of the domicile of the corporation."

It is apparent that the Michigan provision just quoted is almost identical with that paragraph of Section 5498, General Code, in question, were it not for the omission of the exception clause.

It is a general rule of statutory construction that where a statute of a foreign jurisdiction, which had there received a settled judicial construction, is adopted, wholly or in part, the courts of the adopting state will give such language the same construction that was given it by the courts of the state from which it was borrowed. See *Casualty Company* vs. *Nadler,* 115 O. S., 472; *Gale* vs. *Priddy,* 66 O. S., 400; *Board of Commissioners* vs. *Dietsch,* 94 O. S., 1; Lewis' Sutherland Statutory Construction, Section 404.

In *White Brothers Lumber Company* vs. *Corporation Tax Appeals Board,* 222 Michigan, 274, the Michigan Supreme Court in determining the situs of certain shares of a subsidiary corporation held by a parent corporation, for franchise tax computation purposes held, as stated in the first and second paragraphs of the syllabus:

> "1. The capital stock of a corporation is personal property, and its situs for the purpose of taxation, when not otherwise provided by statute, is that of the domicile of the owner.
>
> 2. Capital stock in a subsidiary corporation owned by a domestic corporation is personal property of the corporation, held either as capital or surplus, and as such is subject to the annual franchise fee of three and one-half mills under Act No. 85, Pub. Acts 1921 (Comp. Laws Supp. 1922, § 11361 (4, 7), and it is immaterial that the physical property of said subsidiary corporation is located in a foreign State."

In *Saginaw Mfg. Co.* vs. *Secretary of State,* 226 Mich., 1, it was held, in construing the provisions of the Michigan Act quoted above, that bonds bought outside of the state and kept outside of the state by a domestic corporation, were to be considered to have a situs at the domicile of the owner.

In the case of *Re. Pantlind Hotel Company,* 232 Mich., 330, such court likewise held, as stated in the third branch of the syllabus:

> "3. A legal or business situs of the stock of a corporation cannot be found apart from that of the domicile of the owner."

It is therefore apparent that since the paragraph in question was copied from the Michigan statutes, and the exception added, that were it not for the exception, any stocks and bonds would have the situs of the domicile of the owner for the purpose of determining the franchise tax of the owner.

The exception clause must therefore be examined in order to determine to what extent the Michigan decisions are applicable. The rule of construction of exception clauses in a statute is reiterated in the first syllabus of the case of *State ex rel.* vs. *Forney,* 108 O. S., 463:

> "1. Exceptions to the operation of laws, whether statutory or constitutional, should receive strict, but reasonable construction."

The exception clause,

> "* *except that investments shall be allocated in and out of the state in accordance with the value of physical property in and out of the state representing such investment"

is ambiguous. What physical property of value represents a share of stock or an unsecured promissory note? In the case of "land trust certificates or investment trust shares" there is apparently no ambiguity, if such certificates are viewed as mere declarations of trust, for the situs of the land or the location of the corpus of the trust res would then determine the allocation. However, the term "investments," as defined by Section 5323, General Code, includes other types of securities, such as bonds, notes, shares of capital stock, certificates of deposit bearing more than four percent interest, etc.

In Section 214, Consol. Laws of N. Y., Ch. 60, I find somewhat similar language:

> "The value of share stock of another corporation owned by a corporation liable hereunder shall for purposes of allocation of assets be apportioned in and out of the state in accordance with the value of the physical property in and out of the state representing such share stock."

The courts of that state, in construing this provision, have uniformly held that such stock, so owned, should be allocated in and out of the state in the proportion that the physical assets of the issuing corporation are distributed in and out of the taxing state. I am inclined to the belief that the exception contained in Section 5498, General Code, was modeled after the New York statutory provision, and that the intent of such legislative body, in determining the amount of franchise tax was to allocate investments in and out of the state on like proportions. I am therefore constrained to hold that "investments" as defined in Section 5323, General Code, for the purpose of determining the franchise tax of a corporation, should be allocated in and out of the state in the proportion that the physical property of the issuer is located within and without the state.

Your second question, as to whether intangible items of assets of a foreign corporation whose domicile is located outside Ohio take the situs of such foreign domicile or the situs of the state in which they arise, for the purpose of determining the franchise tax, is answered by the second paragraph of Sections 5498 and 5328-2, supra, which is incorporated in such first section by reference. From the language of such sections, it is readily apparent that if a foreign corporation maintains a stock of goods in this state from which orders are supplied either to customers in Ohio or elsewhere, the accounts receivable arising from such business would take a situs in Ohio for the purpose of determining the franchise tax on such corporation, and also that if such foreign corporation maintains a factory in this state the accounts receivable arising from such business done therefrom would take the Ohio situs for the purpose of determining the franchise tax.

Your third question is as to what would be the situs of intangible items of

assets of a New York corporation, whose business consists entirely of operating department stores solely in Ohio although the principal office designated in the charter is outside Ohio for the purpose of determining the franchise tax. This question has been hereinbefore discussed, and such intangible items of assets for the purpose of determining the state franchise tax of such foreign corporation should be allocated as outlined above.

Specifically answering your inquiries, I am of the opinion that:

1. For the purpose of determining the franchise tax on foreign corporations doing business in Ohio, the term "business done within this state" by a foreign corporation should be construed as being such part of the business of such corporation as is transacted in Ohio, but excluding therefrom such business as is interstate commerce.

2. For the purpose of determining the amount of franchise tax due from a foreign corporation the situs of credits due to such foreign corporation arising out of business done in Ohio, should be determined in accordance with the provisions of Section 5328-2, General Code.

3. For the purpose of determining the amount of the franchise tax due from a foreign corporation whose sole business consists of operating a chain of department stores in Ohio, the accounts receivable, the deposits and other intangible items used in the furtherance of Ohio business should be allocated to Ohio. Other intangible items forming reserves or general balances of the owner, not used particularly in the furtherance of the doing of business in Ohio, should be allocated without the state. The "investments" should be allocated in and out of the state in proportion to the situs of physical property representing such investments.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4276.

APPROVAL, NOTES OF BRACEVILLE TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—$4,650.00.

COLUMBUS, OHIO, April 28, 1932.

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

4277.

APPROVAL, NOTES OF LIBERTY TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—$7,500.00.

COLUMBUS, OHIO, April 28, 1932.

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