

1098.

FOREIGN CORPORATIONS—EXEMPTION OF STOCK FROM GENERAL PROPERTY TAX—SECTION 192, GENERAL CODE, CONSTRUED—FRANCHISE TAX—DOMESTIC CORPORATION.

SYLLABUS:

1. *The latest date on which a foreign corporation could have made the necessary election under Section 192 of the General Code so as to exempt its shares of stock held by Ohio shareholders from the general property tax in 1927, was the day preceding the first day of January as to the shares of stock held by corporations and the day preceding the second Monday in April as to its shares of stock held otherwise than by domestic corporations.*

2. *The method of election prescribed in Section 7 of the Aigler Act (Sub. Senate Bill No. 22) is not exclusive. The election should be made annually.*

3. *The franchise tax must be paid by a foreign corporation in order to exempt shares of its stock held by Ohio shareholders from payment of the property tax, but the election if in time, will exempt said shareholders from listing said shares from taxation.*

4. *A domestic corporation cannot be required to report in the calendar year in which it is organized, and a foreign corporation cannot be required to elect in the calendar year in which it is admitted, but said foreign corporation may, if it desire, elect to pay and pay the franchise tax in the calendar year in which it is admitted and exempt its stock in the hands of Ohio shareholders from the property tax.*

5. *The status for taxation of the shares of stock of a foreign corporation held by domestic corporations is fixed as of January first and the election by the foreign corporation to pay the franchise tax filed after January first will not exempt said shareholders from listing their stock for taxation.*

COLUMBUS, OHIO, October, 3, 1927.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

"I suggest that you substitute the following questions for those answered in yours to the commission of June 13, 1927.

1. What is the latest date on which a foreign corporation could have been admitted to do business in this state so that by making election under Section 192 of the General Code or under the Aigler Franchise Act, its stock is entitled to exemption from general property tax in the current year when owned by Ohio corporations?

2. Similarly what is the latest date of admission so that the stock of the foreign corporation may be exempted in the year 1927 when owned by individual taxpayers?

3. Is the method of election prescribed in Section 7 of the Aigler Act exclusive?

4. Must such election on the part of a foreign corporation be made annually? Or may it file an election in writing 'to be effective until revoked?'

5. Is *election* the only prerequisite or must not the franchise tax be paid prior to the exemption of the stock from property tax? In other words, must the foreign corporation not only 'elect to pay', but 'pay' its franchise tax before its stock is exempt?

6. Bearing in mind the provision of the Aigler Act by which a domestic corporation organized in any calendar year does not stand regularly for report until the next calendar year and also that a foreign corporation admitted to do business in any calendar year does not stand regularly for report until the ensuing calendar year, can a foreign corporation under any circumstances tender its report and election in and for the same year in which admitted and have its stock declared tax exempt in such year, either in the hands of corporations or individuals?

7. Anticipating conditions as they will arise shortly, in the case of a corporation admitted to do business in Ohio in the year 1927 and filing its annual report and election some time between January 1, 1928, and March 31, 1928, as required by the Aigler Act, will or will not such election have the effect of rendering its stock tax exempt for the year 1928 when held by an Ohio corporation?

All of the above questions have already been presented to the commission in concrete form with the exception of that stated in number seven. I have thought it might be well to have it considered along with the others as it is sure to come and may as well be passed upon while you are considering the construction of Section 192 in connection with the Aigler Act."

1. Your first question is answered in Opinion No. 606 rendered to your commission June 13, 1927, the syllabus of which reads as follows:

"The latest date on which a foreign corporation could have made the necessary election under Section 192 of the General Code so as to exempt its shares of stock held by Ohio shareholders from the general property tax in 1927, was the day preceding the first day of January as to the shares of stock held by corporations and the day preceding the second Monday in April as to its shares of stock held otherwise than by domestic corporations."

2. Your second question is also answered in said Opinion No. 606, which held that the latest date on which a foreign corporation could have made the necessary election under Section 192 of the General Code so as to exempt its share of stock held by individual Ohio shareholders from the general property tax in 1927, was the day preceding the second Monday of April of said year.

3. In your third question you inquire as to whether the method of election prescribed in Section 7 of the Aigler Act is exclusive. The Aigler Act is Enacted Amended Substitute Senate Bill No. 22, and Section 7 reads in part as follows:

"Provided, further, if any foreign corporation elects, as provided by law, to exempt its shares of stock from taxation in Ohio as personal property, it shall pay in lieu of the franchise tax prescribed herein, a franchise tax upon the entire value of its issued and outstanding shares of stock determined as aforesaid, and without apportionment. A foreign corporation

making this election shall set forth such fact in its annual report to the Tax Commission and thereupon its franchise fee shall be computed upon the entire value of its issued and outstanding stock as herein provided. Promptly upon receipt of the certificate of the auditor of state the treasurer of state shall mail to such corporation at its principal office in the State of Ohio or to such person in the State of Ohio as the corporation may designate in its report, a statement showing the value or the proportionate value of the shares of stock upon which such fee is charged and the amount of the fee. Such fee shall be payable to the treasurer of state on or before the 15th day of the following July. If such fee is not paid on or before that time a penalty shall attach thereto as is provided in Section 5491 of the General Code. But no penalty shall attach prior to the expiration of thirty days from the date of the mailing of the statement by the treasurer of state."

The words "as provided by law" have reference to Section 192 of the General Code which provides as follows:

"No person shall be required to list for taxation a share of the capital stock of an Ohio corporation; \* \* \* or a share of the capital stock of any other foreign corporation provided such corporation, for the privilege of exercising its franchise in Ohio, elects to pay and pays annually a franchise tax at the times, in the manner, on the basis and in the amount prescribed by law for domestic corporations. \* \* \* "

These respective provisions must be construed together and each given force and effect.

It is noted that Section 192, supra, makes no provision as to when said election must be made, while the portion of Section 7 of the Aigler Act provides that the fact of the election shall be set forth in its annual report to the Tax Commission and Section 3 of said Act provides that:

"Within thirty days after the taking effect of this act and annually, thereafter, between the first day of January and the thirty-first day of March \* \* \* each foreign corporation for profit, doing business in this state or owning or using a part or all of its capital or property in this state, or having been authorized by the secretary of state to transact business in this state, shall make a report in writing to the Tax Commission in such form as the commission may prescribe."

However, while it is provided that the fact of the election shall be set forth in its annual report to the Tax Commission, there is no inhibition against a foreign corporation filing such election separately and at a different time from the annual report.

4. In your fourth question you inquire as to whether such election on the part of a foreign corporation must be made annually, or if it may file an election in writing "to be effective until revoked." It is noted that Section 192, General Code, provides that no person shall be required to list for taxation a share of the capital stock of any foreign corporation provided such corporation for the privilege of exercising its franchise in Ohio,

"elects to pay and pays annually a franchise tax at the times, \* \* \* prescribed by law for domestic corporations."

It is also noted that Section 7 of said bill provides that :

“A foreign corporation making this election shall set forth such fact in its annual report to the Tax Commission, and thereupon its franchise fee shall be computed upon the entire value of its issued and outstanding stock as herein provided.”

It is therefore evident that in both these sections reference is made to an annual election and I am therefore of the opinion that said election by said foreign corporation should be made annually.

5. In your fifth question you inquire :

“Is election the only prerequisite or must not the franchise tax be paid prior to the exemption of the stock from property tax? In other words, must the foreign corporation not only ‘elect to pay’, but ‘pay’ its franchise tax before its stock is exempt?”

It was evidently the intention of the legislature as expressed in Section 192 of the General Code and in Section 7 of the Aigler Act, that payment of the franchise tax be a prerequisite to the exemption of the stock from property tax. However, your attention is called to Opinion No. 606, supra, wherein it was stated in reference to Section 192, General Code, that :

“It will be noted that the exemption provided in this section has reference to the listing for taxation of the shares of capital stock.”

Therefore, if said election is made by a foreign corporation previous to tax listing day the stockholders are exempt from listing said shares of stock in said foreign corporation for taxation, but the exemption from payment of the property tax becomes effective only upon the payment of its franchise tax by the foreign corporation.

6. Your sixth question is :

“Can a foreign corporation under any circumstances tender its report and election in and for the same year in which admitted and have its stock declared tax exempt in such year either in the hands of corporations or individuals?”

This question is based upon the provisions of the Aigler Act by which a domestic corporation organized in any calendar year does not stand regularly for report until the next calendar year, and also that a foreign corporation admitted to do business in any calendar year does not stand regularly for a report until the ensuing calendar year. The provisions of said Aigler Act referred to are found in Section 2 of said act and read as follows :

“Each domestic corporation shall be required to file its first report and pay the tax thereon in and for the calendar year immediately succeeding the date of its organization and each foreign corporation shall similarly report and pay in and for the calendar year immediately succeeding its admission.”

It is evident from these provisions that a domestic corporation cannot be required to file its first report and pay the tax thereon until the calendar year succeeding the

date of its organization; and it is also evident that a foreign corporation cannot be required to file its first report and pay the tax thereon until the year immediately succeeding its admission. However, if a foreign corporation desires to report and elects to pay the franchise tax as provided by law, there is no inhibition against so doing. It is optional with the foreign corporation as to whether or not it will elect to pay and pay the franchise tax in the calendar year of its admission and if said foreign corporation elects to pay previous to tax listing day, said franchise tax, the Ohio individual holders of its shares will be exempt from listing their shares for taxation, and upon the payment of the franchise tax by a foreign corporation said shares will be exempt from the payment of the property tax. This is true of the stock in the hands of individuals, but not of the stock of foreign corporations held by domestic corporations.

7. Your seventh question is as follows:

"In the case of a corporation admitted to do business in Ohio in the year 1927 and filing its annual report and election sometime between January 1, 1928, and March 31, 1928, as required by the Aigler Act, will or will not such election have the effect of rendering its stock tax exempt for the year 1928 when held by an Ohio corporation?"

The answer to this question will depend upon the date as of which the status of property for taxation is fixed by law. Cooley on Taxation, Volume II, Section 546, entitled, "Time as of which liability determines" reads:

"The taxable status of persons and property relates to a certain day in each year. There must be some day of the year as of which the power to tax property at all, or the power to tax it to a certain person is to be determined \* \* \*. In the several states this day is fixed by statute. \* \* \*"

Section 5366-1, General Code, provides:

"The listing of all personal property, \* \* \* investments in \* \* \* stock \* \* \* shall be made between the second Monday of April and the first Monday of May, annually, except as otherwise provided.

The listing and valuation of all such property for taxation shall be made as of the day preceding the second Monday of April annually, \* \* \* provided that the provisions of this section shall not apply to \* \* \* the returns made by incorporated companies, \* \* \* ."

In an opinion of the Attorney General found in Opinions of the Attorney General for 1916, page 32, construing Section 5366-1, General Code, at page 39, it is held that:

"It will be noted that the only purpose of this section is to fix a time as of which and the period within which the liability for taxes attaches and the valuation thereof is to be made, \* \* \* ."

It is evident that unless a foreign corporation has complied with the provisions of Section 192, General Code, its stock held by Ohio shareholders, must be listed for taxation, and when so listed the status for taxation is fixed for the current year. It is therefore necessary for a foreign corporation to comply with the provisions

of Section 192, General Code, before the last tax listing day in any year in order to exempt Ohio shareholders from listing their stock for taxation. If shares of stock of foreign corporations are held by domestic corporations, said domestic corporations are required to list and value said stock as of the first day of January. If the status for taxation of the shares of stock of foreign corporations held by domestic corporations is fixed as of January 1, 1928, and the listing and valuation of said shares are required to be made as of January 1, 1928, it is evident that the election of said foreign corporation to pay the franchise tax filed after January 1, 1928, will not exempt from listing and taxation the shares of stock of said foreign corporation held by domestic corporations.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1099.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN JEFFERSON AND WOOD COUNTIES, OHIO.

COLUMBUS, OHIO, October 3, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

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1100.

COUNTY COMMISSIONERS—ALLOWANCE TO PERSONS BITTEN BY DOGS—RABIES—ITEMIZED STATEMENT OF EXPENSES MUST BE FILED.

SYLLABUS:

1. *County commissioners may in their discretion, make allowances to persons who have been bitten by dogs, cats or other animals afflicted with rabies, for necessary medical and surgical expenses growing out of said injuries, which injuries have been sustained prior to the effective date of House Bill No. 164, passed by the 87th General Assembly, (112 v. 354), wherein Sections 5851 and 5852, General Code, are amended.*

2. *To vest jurisdiction in the county commissioners to make allowances to persons who have been injured by animals afflicted with rabies as provided by Sections 5851 and 5852, General Code, there must first be filed with said commissioners within four months after the injury, a verified itemized statement of the expenses incurred by the person receiving such injury, or his parent or guardian, if a minor, or the administrator or executor of a deceased person.*