

It would lead to an absurd conclusion if I were to hold that even though the Ohio cigarette stamp tax law did not apply to retail sales of cigarettes at the Federal Reformatory at Chillicothe, the wholesaler must nevertheless attach the stamps before selling the cigarettes to the retailer in such district. While there is a presumption that any construction of a statute which leads to absurd consequences should be avoided, if possible (Black on Interpretation of Laws, § 48), yet in the absence of such presumption, I am unable to deduce from the act (sections 5894-1 to 5894-21 G. C.) any intent on the part of the legislature to require the wholesaler to attach stamps on cigarettes so sold.

It would appear to me that within the meaning of the Ohio statutes, property owned by the United States for governmental purposes, is just as distinct and apart from the State of Ohio as is the District of Columbia, except for the service of criminal and civil process.

Specifically answering your inquiry, it is my opinion that:

1. An Ohio wholesale dealer in cigarettes who after having bid a contract with the federal government, sells and delivers to the federal government at the Chillicothe Reformatory quantities of cigarettes, is not required by sections 5894-1 et seq., General Code, to affix cigarette tax stamps to the packages so sold and delivered, even though the cigarettes may thereafter be sold to visitors as well as inmates.

2. The cigarette stamp tax law (sections 5894-1 to 5894-21 G. C.) does not require such stamps to be affixed to cigarettes sold to the federal government.

3. The Ohio cigarette stamp tax law is not applicable to any sales of cigarettes on lands owned and used for governmental purposes by the federal government, where the State has not retained civil jurisdiction to such lands.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2091.

TRUST—TAX COMMISSION AUTHORIZED TO ASSESS EQUITABLE INTERESTS OF BENEFICIARIES THEREIN ON BASIS OF INCOME YIELD WHEN INCOME WITHHELD FROM BENEFICIARIES TO ESCAPE ASSESSMENT.

*SYLLABUS:*

*The Tax Commission of Ohio, when it specifically finds that the terms of a trust, which authorize or require the trustee to accumulate all or any part of the income thereof and to withhold the payment of the same to the beneficiaries, have been availed of to prevent the assessment of the equitable interests of such beneficiaries in such trust on the basis of income yield therefrom to the beneficiaries, is, under the provisions of section 5392, General Code, authorized to assess the equitable interests of the beneficiaries in such trust on the basis of the income yield that would have accrued to such beneficiaries but for the terms of the trust which authorized the accumulation of the income thereof and the withholding of the payment of such income to the beneficiaries of the trust.*

COLUMBUS, OHIO, December 30, 1933.

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

GENTLEMEN:—You have requested my informal opinion with respect to the application generally of Section 5392, General Code, to the taxation of the equitable

interests of beneficiaries in and to trusts created prior to the enactment of the Intangible and Personal Property tax law, and more particularly with respect to the application of this section to two several trusts described in your communication as follows:

(1) A trust is irrevocable as to the donor but he reserves the power to control the distributions of income or to designate the beneficiaries other than himself, and the donor has no beneficial interest whatsoever. The income has been accumulated since the creation of the trust, which was prior to the enactment of the intangible tax law in 1931.

(2) The trust is identical with the above except that the donor has died and there is no power in anyone to control the distribution of the trust funds other than is specifically fixed by the document itself, which provides for partial payments of income until the beneficiaries have arrived at a certain age.

In the consideration of the questions presented in your communication, I assume that the property making up the corpus of the trusts therein referred to, are stocks and bonds and other similar property which, under the provisions of Section 5323, General Code, are classed as investments for purposes of taxation, and that, therefore, the respective beneficial interests in such trusts are likewise, under the provisions of this section, to be considered as investments for tax purposes. With these assumptions, it is to be further noted in the consideration of the questions presented in your communication, that the tax on investments provided for by the law here in question is a property tax whether the same be owned and held by legal or equitable title; and this is true, notwithstanding the fact that the normal measure of such tax for any particular year is the income yield of such investments for the next preceding calendar year. Sec. 5388, G. C.

With this view clearly in mind, the pertinent provisions of Section 5392, General Code, can be applied, I believe, to the solution of your questions without great difficulty. Touching the questions at hand, Section 5392, General Code, provides as follows:

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"If any trust under the terms of which the trustee is required or authorized to withhold and accumulate all or any part of the income thereof is created or availed of for the purpose of preventing the assessment of the equitable interests of the resident beneficiaries on the basis of income yield, as provided in this chapter, the commission, upon finding such to be the fact, shall assess the amount representing the aggregate assessment of such equitable shares, so prevented, in the manner provided in this section. The fact that the creator of such trust reserved a power of revocation thereof, or that the trustee has discretion to pay and distribute the income of the trust property to or for the benefit of such resident beneficiary, shall be prima facie evidence of a purpose to prevent the assessment of the equitable shares of the resident beneficiaries upon such basis."

It must be admitted that in carrying out the manifest intention of the legislature in the enactment of the above quoted provisions of Section 5392, General Code, the same could have been more clearly stated. However, reading the above

quoted provisions of this section of the General Code in the light of the established rule that that which is plainly implied in the language of a statute is as much a part of it as that which is expressed (*Doyle vs. Doyle*, 50 O. S. 330), it plainly appears that it was the intention of the legislature in the enactment of these provisions to authorize The Tax Commission to assess the equitable interest of a beneficiary in a trust of this kind in any particular year on the basis of what would have been the normal income yield to the beneficiary on such equitable interest if the provisions of the trust agreement had not been availed of for the purpose of accumulating such normal income yield in the hands of the trustee and thus preventing the payment of the same to the beneficiary.

In all of the cases referred to in your communication, the trusts were created prior to the enactment of the Intangible and Personal Property tax law. As to this, it may be observed that although it was not within the power of the legislature in the enactment of this law to affect the contractual relations between the donor and the trustee on one hand and between the trustee and the beneficiaries on the other, created by the establishment of a trust of this kind, it was nevertheless competent for the legislature to provide for the levy and assessment of a property tax on the equitable interest of the beneficiary of such trust, and to provide in effect that such tax should be assessed on the basis of the income yield accruing to such beneficiaries. It was likewise competent for the legislature to provide that in the event that the income yield accruing to any such beneficiary is not paid to the beneficiary in any particular year by reason of the fact that the terms of the trust agreement are availed of for the purpose of withholding the payment of such income yield to the beneficiary and of thereby preventing an assessment on the basis of such income yield, the Tax Commission in assessing such equitable interest in the following year and as of January 1st of such year, is authorized to assess such equitable interest on the basis of the income yield that would have been paid to the beneficiary had not such payment been prevented in the manner above stated.

In this view, it is obvious that the above quoted provisions of Section 5392, General Code, and the implications thereof are not limited in their operation to trusts created after the enactment of Section 5392, General Code, as a part of the Intangible and Personal Property tax law, but that the same apply as well to trusts created before the enactment of this section.

What has been said above applies to the questions which you have in mind with respect to each and all of the different trusts referred to in your communication, and affords, I believe, a sufficient guide for the assessment of the equitable interests of the beneficiaries in a trust of this kind, if it is borne in mind that before there can be any assessment in the cases contemplated by the above quoted provisions of Section 5392, General Code, the Tax Commission in each case is required to make a specific finding that the particular trust and the provisions thereof have been availed of for the purpose of preventing the assessment of the equitable interest of the beneficiary or beneficiaries of such trust on the basis of the income yield to such beneficiary or beneficiaries.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*