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TAXES AND TAXATION—WHERE NOTE SECURED BY MORTGAGE WAS COLLECTED SHORTLY BEFORE TAX LISTING DAY—MONEY CONVERTED INTO LIBERTY BONDS IMMEDIATELY PRIOR TO TAX LISTING DAY—SECURITIES TAXABLE—SECTION 5376 G. C. CONSTRUED.

D. was the owner of a note and mortgage for \$1,500.00 during the period of time commencing on tax listing day in 1918 and ending on April 1, 1919; on said date the note was paid and D. held the fund in the form of cash or bank deposit until immediately prior to tax listing day (April 13th), 1919, when the money was invested in United States bonds and stocks of Ohio corporations:

Held, Under these facts D. should have listed the entire fund of \$1,500.00 for taxation in 1919.

COLUMBUS, OHIO, January 24, 1920.

HON. J. C. OGLEVEE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—You request the opinion of this department on the following question:

“On April 7, 1918, tax listing day, Mrs. D. was the owner of and listed for tax a note and mortgage for \$1,500.00 and paid the taxes thereon due Dec. 20, 1918, and June 20, 1919. On April 1, 1919, this note and mortgage were paid by the debtor, the money collected and immediately before tax listing day, 1919, re-invested in U. S. Liberty bonds and non-taxable Ohio stocks. The tax payer having neglected and declined to list this property for taxes on tax listing day in April, 1919 the auditor proceeded to put the same on the tax duplicate, and the treasurer now demands payment of taxes due on this property December 20, 1919

Will you kindly furnish me with an opinion as to whether under the circumstances stated, this property was subject to be listed for taxes on tax listing day in April, 1919, or whether the same was exempt from taxation and should have been left off the duplicate?”

The section which governs a situation of this kind is section 5376 of the General Code, last amended 107 Ohio Laws, 29, and in such amended form in effect on tax listing day in 1919. That section provides, in part, that each taxpayer shall list in his statement

“the monthly average amount or value, for the time he held or controlled them within the preceding year, of all moneys, credits, or other effects, within that time invested in, or converted into bonds or other securities not taxed, to the extent he may hold or control such bonds or securities on tax listing day, and no indebtedness created in the purchase of such bonds or securities shall be deducted from the credits required to be listed herein.”

It appears that the taxpayer on tax listing day held and controlled bonds not taxed, to-wit, United States Liberty bonds, and also held other securities not taxed-to-wit, stocks of Ohio corporations. There is no question in the opinion of this department that stocks of Ohio corporations are “other securities not taxed” within the meaning of section 5376.

It also appears from the statement of facts that from tax listing day in 1918 to April 1, 1919, the taxpayer held and controlled taxable effects, viz.: a note secured by mortgage in the amount of \$1500.00. There is no question in the opinion of this department that a note so secured constitutes either “credits” or “other effects” within

the meaning of the section from which quotation has been made. Therefore, if on April 1, 1919, the proceeds of the note then collected had been immediately re-invested in the bonds and non-taxable stocks the case would be clear and the taxpayer would be required to list in 1919 the monthly average amount or value of the note and mortgage for the period of time, slightly short of a whole year, during which she held such taxable effects. It appears, however, that prior to the investment in the non-taxable bonds and securities the taxpayer held the proceeds of the note in the form of money for a period which you do not state, but which may be assumed to be approximately ten days inasmuch as tax listing day in 1919 was April 13th. In other words, there were really two conversions during the year; one of the note into money, and the other of the money into bonds and other non-taxables. Does this prevent the operation of section 5376, or restrain that operation to the taxation of the monthly average value of the money, which was held only ten days? In the opinion of this department the brief period of time during which the fund in question was in the form of money does not affect the case. It is obvious that a direct conversion of the note and mortgage into the non-taxables could not have been made. The reinvestment of necessity had to pass through the intermediate stage in which the fund was represented by cash in hand or an account in bank. The time during which the fund was in such form in the transaction inquired about does not seem to be greater than would be ordinarily required to effect any reinvestment. The statute must be deemed to have been intended to operate upon conditions as they ordinarily are. Thus, without considering what the result would be had the fund passed through a number of permutations during the year, and had been really reinvested several times, and limiting the opinion to the facts of the particular case, you are advised that on such facts the taxpayer should have listed the amount of \$1500.00 mentioned by you for taxation in 1919. The duty to list extended to the whole \$1500.00 apparently because the conversion into non-taxables occurred, as you put it, immediately prior to tax listing day. Possibly some slight deduction might be made to account for the day or so when the fund was in non-taxable form, but on the whole it would seem that the taxpayer had possessed the fund in taxable form for a full twelve months and should pay taxes therefor on the full amount of the fund.

In closing it may be remarked that transactions of this sort constitute the very thing which the statute was aimed to get at. The practice of converting taxables into non-taxables immediately prior to tax listing day is a very familiar one and amounts in many instances—although perhaps such intention may have been absent in the particular instance about which you inquire—to an evasion of taxes. Unless the statute be interpreted as it has been interpreted in this opinion it would be ineffectual to accomplish the object for which it was intended.

Respectfully,
JOHN G. PRICE,
Attorney-General