

communication, may be defined as "an obligation by a person or company to pay to the annuitant a certain sum of money at stated times during life or a specified number of years, in consideration of a gross sum paid for such obligation". *Chisholm vs. Shields, Treasurer*, 67 O. S. 374, 378. In other words, it is this obligation referred to in the definition above quoted, considered as a species of intangible property, which is taxed on the annual income yield determined in the manner provided by section 5389, General Code.

With respect to the question here presented, it is to be noted that there is no suggestion in the provisions of section 5389, General Code, or elsewhere in the title of which the same is a part, that the method of computing the income yield of an annuity for purposes of taxation is to be determined by the time when the right to such annuity accrued whether under contract by the payment of a certain sum of money in consideration for such annuity or otherwise. Without reference to the time when such annuity was created and the right to the same accrued, if the same was created by the payment of a fixed sum of money as a consideration for such annuity, the income yield on such annuity is to be computed upon the amount so paid as the principal and in such case is four per cent of one-half of such principal.

The above conclusions reached by me sufficiently answer the question presented in your communication, which question may be more specifically answered by saying that if a certain sum of money is paid as the purchase price of an annuity, one-half of such sum of money should be taken as the principal upon which the income yield should be computed at the rate of four per cent prescribed by section 5389, General Code, although such annuity was purchased and was in force prior to January 1, 1932.

It may be added, by way of conclusion, that I am not unmindful of the fact that there may be some unfairness in taxing the same income yield on two different annuities purchased for the same amount of money as the purchase price thereof but at different times. This, however, is a matter for the consideration of the legislature in the enactment of laws of this kind, and is not a consideration which this office can take into account in face of the explicit provisions of section 5389, General Code, above quoted.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4576.

APPROVAL, ABSTRACT OF TITLE TO LAND OF JOHN W. EGLER IN
RICHLAND TOWNSHIP, DEFIANCE COUNTY, OHIO.

COLUMBUS, OHIO, August 25, 1932.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from Hon. William H. Reinhart, Conservation Commissioner, submitting for my examination and approval an abstract of title, warranty deed and encumbrance record No. 43, relating to the proposed purchase by the State of Ohio of a certain tract of land owned of record by one John W. Egler in Richland Township,

Defiance County, Ohio, which tract of land is more particularly described as follows:

“Situated in the Northwest Quarter of Section 24, and in the Northeast Quarter of Section 23, Town 4 North, Range 5 East, and more particularly described as follows: Beginning at the point of intersection of the southerly property line of the Miami and Erie Canal and the westerly property line of Jacob H. Bishop, being also the easterly property line of John W. Egler; said point being also located on the center line of the road, produced, that diverts the lands of said Jacob H. Bishop and John W. Egler; thence along the southerly property line of the Miami and Erie Canal, the following courses and distances: S. 55° 08' W., 22 feet to a stake; thence S. 69° 14' W., 504.7 feet to a stake; thence S. 61° 13' W., 163.5 feet to a stake; thence S. 51° 56' W., 260.6 feet to a stake; thence S. 56° 33' W., 264.8 feet to a stake; thence S. 67° 29' W., 175.9 feet to a stake; thence S. 71° 38' W., 242.7 feet to a stake; thence S. 83° 16' W., 224.6 feet to a stake; thence N. 89° 37' W., 253.3 feet to a stake; thence N. 81° 29' W., 264.6 feet to a stake; thence N. 73° 12' W., 87.4 feet to a stake; that marks the intersection of the southerly property line of the State and the westerly property line of John W. Egler; also the easterly end of a tract of land owned by John Minck; said point being N. 7° 16' W., 49.3 feet from a stone in the Egler-Minck line; thence S. 7° 16' W., 142 feet, more or less, to the northerly water line of the Maumee River; thence in a southeasterly, easterly and northeasterly direction along the said northerly water line of said Maumee River, 2555 feet to the property line between the said John W. Egler and Jacob H. Bishop; thence N. 23° 30' W., along said Egler-Bishop property line, 38 feet, more or less, to the place of beginning—containing 5.57 acres of land, more or less.”

Upon examination of the abstract of title submitted, I find that said John W. Egler has a good merchantable fee simple title to the above described tract of land, free and clear of all incumbrances except the taxes for the last half of the year 1931 amounting to the sum of \$41.22, the undetermined taxes for the year 1932 and nine semi-annual special assessments amounting to \$21.89 each, levied on account of the Defiance-Napoleon road No. 316. The above taxes and assessments are apparently a lien upon a larger tract of 97.24 acres of land, of which the above described parcel to be conveyed to the State of Ohio is a part, and it does not appear that any apportionment of said taxes and assessments has been made between the parcel of land to be conveyed to the state and the remainder of the larger tract of land above referred to. This of course should be done in adjusting the taxes and assessments to be paid by the grantor and by the state, respectively, in closing the transaction for the purchase of this property.

Upon examination of the warranty deed tendered by said John W. Egler, I find said deed to be properly executed and acknowledged by him and by his wife, Emma Egler, and that the form of said deed is sufficient to convey the above described property to the State of Ohio by full fee simple title, free and clear of all incumbrances except the taxes and assessments upon the property for the year 1932 which are due and payable in December, 1932.

Upon examination of encumbrance record No. 43 submitted as a part of the files relating to the purchase of the above described property, I find that this instrument has been properly executed and approved and that the same shows

a sufficient balance in the proper appropriation account to pay the purchase price of the above described property, which purchase price is the sum of \$657.00. It likewise appears from the encumbrance record submitted that the purchase of this and other property was approved by the board of control under date of December 29, 1931.

I am herewith returning with my approval said abstract of title, warranty deed and encumbrance record No. 43.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4577.

APPROVAL, ABSTRACT OF TITLE TO LAND OF A. L. SCHLIENTZ IN
RICHLAND TOWNSHIP, DEFIANCE COUNTY, OHIO.

COLUMBUS, OHIO, August 25, 1932.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from Hon. William H. Reinhart, Commissioner of the Division of Conservation in your department, submitting for my examination and approval an abstract of title, warranty deed and encumbrance record No. 38, relating to the proposed purchase by the State of Ohio of a tract of land in Richland Township, Defiance County, Ohio, which tract of land is owned of record by A. L. Schlientz and Stephen Schlientz, and is more particularly described as follows:

Beginning at the point of intersection of the southerly property line of the Miami and Erie Canal and the north and south half section line of said section twenty-two; said point being 132.8' southerly as measured along the said half section line from the center line of U. S. Highway No. 24; thence westerly along the southerly property line of said Canal N. 89 degrees 12 minutes W., 145.8' to a point; thence N. 88 degrees 53 minutes W. 748.4' to a point in the southerly property line of the Canal; thence S. 0 degrees and 25 minutes W., 88 feet more or less, to the water line of the Maumee river; thence easterly along the northerly water line of said Maumee River 898 feet, more or less, to the above described half section line; thence N. 1 degree 05 minutes E., along said half section line, 174 feet, more or less, to the place of beginning, containing 2.75 acres of land, more or less,

and being the same premises conveyed to said A. L. Schlientz and Stephen Schlientz by George T. Patten and Hattie M. Patten, his wife, by deed dated April 11, 1908, and recorded in Volume 72 at page 417 of the deed records of Defiance County, Ohio.

Upon examination of the abstract of title of the above described property, I find that A. L. Schlientz and Stephen Schlientz have a good and indefeasible fee simple title to the above described tract of land, free and clear of all encumbrances except the taxes for the last half of the year 1931 amounting to