

1793.

FRANCHISE TAX—TAX COMMISSION IS AUTHORIZED TO RECEIVE REPORT FOR A YEAR MORE THAN 5 YEARS PRIOR TO DATE OF SUBMISSION.

SYLLABUS:

The Tax Commission is authorized to receive the franchise tax report of an Ohio corporation voluntarily submitted to it although the report is for a year more than five years prior to the date of such submission.

COLUMBUS, OHIO, March 2, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication of recent date, as follows:

“The commission wishes to submit to you the matter concerning the franchise tax report of a domestic corporation who voluntarily, without any prior correspondence, submits a franchise tax report for the year 1920, enclosing same with a letter as follows:

‘Tax Commission of Ohio, Wyandotte Bldg., Columbus, Ohio.

GENTLEMEN:—

You will find enclosed 1920 domestic franchise tax report of
 _____ Company.

Please have the amount assessed and certified to the Attorney General for collection.’

Section 5506 of the General Code recites among other things that taxes and penalties are a first lien, and states in its last sentence that ‘such lien shall continue until such fees, taxes and penalties are paid.’

We call to your attention, also, Section 5461, which recites that the Tax Commission has no authority or power to go back beyond five years in determining the amount, value, proportion or other fact concerning the report of a corporation for franchise tax purposes.

In view of the possible conflict of these two sections, the commission would like to have you interpret Sections 5506 and 5461 in order that it may follow the interpretation that is made by your department concerning this long belated corporation franchise tax return.

In connection with the inquiry that we make and as applied to this case, we may state that the submission of this corporation franchise tax report was entirely voluntary on the part of the company through their attorneys, and that the Tax Commission took no initial action in the matter.”

I find upon inquiry at the office of the Secretary of State that the articles of incorporation of the corporation in question were canceled on March 21, 1921, upon certificate of the Tax Commission. You invite my attention to Section 5461, General Code, the provisions of which are as follows:

“When any public utility or corporation fails to make any report to the tax commission required by law or makes such report and fails to report or reports erroneously any information essential to the determination of any

amount, value, proportion or other fact to be determined by the tax commission pursuant to law which is necessary for the fixing of any fee, tax, or assessment, the tax commission shall proceed to determine such amount, value, proportion, or other fact as nearly as practicable and shall certify the same as required by law. Such power and duty of the tax commission shall extend to and only to the five years next preceding the year in which such inquiry is made. Upon the determination and certification by the tax commission herein authorized a tax, fee or assessment shall be charged for collection from such public utility or corporation at the rate provided by law for the year or years when such tax, fee or assessment was omitted, or erroneously charged so that the total tax, fee, or assessment paid and to be paid for such year or years shall be in the full amount chargeable to such public utility or corporation by law. Such charge shall be without prejudice to the collection of any penalty authorized by law."

I do not so interpret the language of this section as to preclude the acceptance of the 1920 report which is being voluntarily presented in this instance. As I read the section, the five year limitation therein provided would prevent the Tax Commission making inquiry as to the amount of tax due from a corporation which had failed to make a report or whose report contained omissions or erroneous statements. The section would, therefore, effectively prevent action upon the initiative of the Tax Commission, but it does not operate to prevent the computation and certification of the tax due upon a report filed more than five years after the year for which such report is filed.

You do not inquire whether, in the determination of the tax due, you are at this time authorized to go beyond the report submitted and make collateral inquiry as to the correctness of the statements made therein or to supply any deficiencies which may exist. I am, therefore, not giving consideration to this question, since I assume that the report is sufficient to enable you to determine the proper amount due under the provisions of Section 5498 of the General Code, as that section read at the time of the accrual of the tax. At that time the fee to be paid by a domestic corporation was three-twentieths of one per cent upon the value of the subscribed or issued and outstanding capital stock and I assume that this information is available to you in the report as filed.

You inquire, however, whether or not there is a conflict between Section 5461 of the Code, supra, and Section 5506 of the Code, which is as follows:

"Annually on the last day of the month fixed for the filing of its report with the tax commission of Ohio the fees, taxes and penalties, required to be paid by this act, shall become the first and best lien on all property of a public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee or receiver for the benefit of the creditors and stockholders thereof. Such lien shall continue until such fees, taxes and penalties are paid."

On the face of this latter section, the lien for the franchise tax becomes effective on the last day of the month fixed for the filing of the report of the corporation and it continues thereunder until the tax is paid. As I interpret this section, the lien exists for the amount of the franchise tax which is to be subsequently determined. The fact that, by the provisions of Section 5461 of the Code, a limitation is placed on the time within which the Tax Commission may of its own motion act in the determination of the amount of the tax, does not necessarily affect the validity of the

lien. It persists for an undetermined amount until such time as a report is filed and a determination of the amount of the tax made and the taxes subsequently paid.

I note that the letter of the attorney for this corporation asks that the amount be assessed and certified to this office for collection. In this connection it is my suggestion that the usual course be followed and that the tax be first certified to the treasurer of state for collection and notice be sent to the corporation in question. Upon delinquency, proceedings may be had under the provisions of Section 5491 by certification to the auditor and recertification to the treasurer, after which the treasurer would be authorized to certify the amount due to the tax commission. Thereafter, by virtue of the provisions of Section 5492 of the Code, the tax and penalty could be certified to this office for collection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1794.

MUNICIPALITY—MAY ISSUE BONDS FOR PURPOSE OF INSTALLING BUCKETS IN SEWER CATCH BASINS AND FOR RECONSTRUCTING SUCH BASINS WHEN SAME HAVE ESTIMATED LIFE OF 5 YEARS OR MORE.

SYLLABUS:

A municipal corporation may issue bonds for the purpose of installing buckets in sewer catch basins and also for the purpose of reconstructing sewer catch basins in the event that each class of such improvements has an estimated life or usefulness of five years or more.

COLUMBUS, OHIO, March 2, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN :—This will acknowledge receipt of your communication, as follows :

“May a municipal corporation issue bonds for the purpose of installing buckets in sewer catch basins, which equipment has an estimated life of more than five years?

May a municipal corporation legally issue bonds for the purpose of reconstructing sewer catch basins?”

Section 3939 of the General Code provides in part as follows :

“Each municipal corporation in addition to other powers conferred by law shall have power :

* * * * *

(2) To extend, enlarge, reconstruct, repair, equip, furnish or improve a building or improvement which it is authorized to acquire or construct.

* * * * *

(10) To construct sewers, sewage disposal works, flushing tunnels, drains and ditches.

* * * * *

Section 2293-2 of the Code is in the following language :