that he is the owner of property abutting upon the parcel of land which you propose to sell and convey to him in and by these proceedings and the deed therein provided for. Assuming, however, that such is the case, or, if not, no person given prior rights with respect to the purchase of this property made application for the same within a period of six months from the time of the appraisement of this property and the filing of the appraisement with the mayor and the governor, I find that the proceedings relating to the sale of this property set out in said transcript are in all respects regular and the same are hereby approved by me as to legality and form as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, which are herewith returned to you.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1869.

INTANGIBLE TAX—AMERICAN EXPRESS COMPANY AND AMERICAN EXPRESS COMPANY, INC., IN ISSUING TRAVELERS CHEQUES, MONEY ORDERS AND LETTERS OF CREDIT NOT DEALERS IN INTANGIBLES.

SYLLABUS:

The American Express Company and the American Express Company, Inc., in carrying on their business of issuing travelers' cheques, money orders and letters of credit, are not dealers in intangibles as that term is defined in section 5414-1 *and in other related sections of the General Code providing for the taxation of individuals and corporations coming within such classification.*

COLUMBUS, OHIO, November 15, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have requested my opinion on the question as to whether the American Express Company and the American Express Company, Inc., in carrying on their business of issuing travelers' cheques, money orders and letters of credit, bring themselves within the classification of dealers in intangibles as that term is defined in section 5414-1, General Code, and in other related sections of the General Code providing for the taxation of individuals and corporations coming within such classification. Section 5414-1, General Code, provides as follows:

> "The term 'dealer in intangibles' as used in this chapter includes every person who keeps an office or other place of business in this state and engages at such office or other place in the business of lending money, or discounting, buying or selling bills of exchange, drafts, acceptances, notes, mortgages or other evidences of indebtedness, or of buying or selling bonds, stocks or other investment securities, whether on his own account, with a view to profit, or as agent or broker for others, with a view to profit or personal earnings. Said term as so used excludes institutions used exclusively for charitable purposes, in-

> surance companies as defined in this chapter and persons engaging in the business of receiving deposits as defined in this chapter and herein designated as 'financial institutions'. Neither casual or isolated transactions of any of the kinds enumerated in this section, nor the mere investment of funds as personal accumulations or as business reserves or working capital shall constitute engaging in business within the meaning of this section."

With respect to corporations engaged in business as dealers in intangibles, it is provided (secs. 5414-2 and 5414-5, General Code) that the assessment shall be made upon the basis of the aggregate amount of the capital, surplus and undivided profits of the corporation as shown in its report to the county auditor, and that such assessment when determined shall be made upon all of the shares of stock of the stockholders in such corporation.

The American Express Company and the American Express Company, Inc., have offices for the transaction of business in this state and I assume that these corporations likewise have offices for the transaction of their business in many, if not in all, of the other States of the Union. In this connection, it is pertinent to note the statutory provisions relating to the assessment of a corporation doing business as a dealer in intangibles through an office in this state and which is doing a similar business through offices in other states. In this situation, it is provided (sec. 5414-5, General Code) that the Tax Commission shall determine the amount of capital employed in this state in the proportion that the gross receipts at the office or offices in this state as shown by the report made by the corporation, bears to the entire gross receipts of the corporation as shown in and by said report. The term "gross receipts", as used in this connection, is defined in section 5414-4, General Code, as follows:

> "The term 'gross receipts' as used in this and the succeeding section shall, in the case of a dealer in intangibles, principally engaged in the business of lending money and/or discounting loans secured by mortgage of real or personal property in this state, mean the aggregate amount of loans effected and/or discounted, so secured; in the case of a dealer in intangibles, principally engaged in the business of selling and/or buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggregate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts."

It seems quite clear from a consideration of the definatory provisions of section 5414-1, General Code, when the same are read in connection with those of section 5414-4, General Code, defining the term "gross receipts" as the same is used in connection with the business of dealers in intangibles, that the term "dealer in intangibles" as used in these sections of the General Code is a classification comprising all persons whether individuals or corporations engaged in the business of buying and selling securities or of lending money and it is not at all clear that it was intended by these statutory provisions to include within the meaning of this term any individual or corporation engaged in any other kind of business.

As above noted, the business in which the American Express Company and the American Express Company, Inc., are engaged is that of issuing travelers' cheques, money orders, letters of credit and, perhaps, other instruments of a

similar nature. A traveler's cheque, such as that issued by the American Express Company, is an order or draft directed to or drawn upon itself payable at any of its regular paying agencies to the person named in the cheque and in the amount of money therein designated when the same is countersigned by such person in the presence of the person cashing the same. A money order of the kind issued by this company is an order for the payment of money in a designated amount to the payee named therein, issued at some particular office of the company and payable at some other particular office of the company. A letter of credit of the kind issued by the American Express Company is, as its name implies, an instrument issued by the company establishing credit with a company in favor of the holder thereof in a certain designated amount, and against which the holder has the right to execute sight draft or drafts in an amount not to exceed the amount of credit indicated by the letter issued by the company.

In addition to the moneys covered by such traveler's cheque, money order or letter of credit which the customer is required to pay to the company upon the issuance thereof, certain fees are charged by the company and paid by the customer as compensation for its services in issuing such instruments and in paying the same upon presentation and in paying drafts drawn against the instrument in the case of a letter of credit issued by the company. I do not think the fees thus charged are commissions as this term is used in section 5414-4, General Code; and, still less, do I think that with respect to the American Express Company and the American Express Company, Inc., the above described instruments issued by these companies in consideration of such fees and other moneys paid to them, are in any sense securities such as are bought and sold by dealers in intangibles, as that term is used in section 5414-1 and in other sections of the General Code relating to persons or corporations so classified for purposes of taxation.

An established rule which we are required to observe in the consideration of a question of this kind which depends for its solution upon the construction and application of the statutory provisions is that such statutes must be strictly, though reasonably, construed in favor of the taxpayer and that any substantial doubt as to whether such taxpayer comes within the purview of the statute should be resolved in his favor. *Cassidy* vs. *Ellerhorst,* 110 O. S. 535, 539. In this case, the court in its opinion said:

> "In approaching the interpretation of statutes imposing taxes, it should be recognized at the outset that the rule of strict construction should be followed, and that, where there is ambiguity or doubt as to legislative intent, the doubt should be resolved in favor of the person upon whom the burden of taxation is sought to be imposed, and that language employed in a taxation statute should not be extended by implication beyond its clear import, or to enlarge its operation so as to embrace subjects of taxation not specifically named."

See also on this point, *Gray* vs. *City of Toledo,* 80 O. S. 445, 448; *City of Cincinnati* vs. *Connor,* 55 O. S. 82, 91; *Caldwell* vs. *State,* 115 O. S. 458, 461; *Gould* vs. *Gould,* 245 U. S. 151.

On the considerations above noted, I am of the opinion that the American Express Company and the American Express Company, Inc., in conducting their business in the manner referred to in your communication do not come within

the classification of dealers in intangibles for purposes of taxation in the manner provided by the statutes hereinabove noted.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1870.

APPROVAL, ABSTRACT OF TITLE TO LAND IN BOSTON TOWNSHP, SUMMIT COUNTY, OHIO.

COLUMBUS, OHIO, November 15, 1933.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You have recently submitted for my examination and approval an abstract of title and warranty deed relating to the purchase of a tract of land in Boston Township, Summit County, Ohio, the title to which was lately owned and held by one Harvey J. Webster and conveyed by him to the State of Ohio. The tract of land here in question is more particularly described as follows:

> "Being a part of Lot 2, Tract 1 in said township, beginning at a southwest corner of 80.45 acres of land, deeded by George Kellogg to F. W. Kellogg March 9th, 1872, in the center of the Brewery Road, so-called, at a stake in the line between the north and south half of said Lot 2, and which point is southwesterly along the center line of the Brewery Road 28.22½ chains from the north line of Lot 2, Tract No. 1, Boston Township; thence northeasterly along the center of said Road as now traveled, 26.33½ chains to a stake at the center of the Culbert; thence south 26 degrees east 3 chains to a stake; thence southwesterly to a point in the division line between the north and south half of said Lot 2, 11.25 chains distant from the first mentioned stake in the center of the Brewery Road; thence north 89¾ degrees west along said division line 11 chains and 25 links to the place of beginning, containing 10 acres of land, be the same more or less, but subject to all legal highways."

Upon examination of the abstract of title submitted, which is certified by the abstractor under date of August 19, 1933, I find that as of said date said Harvey A. Webster had a good and indefeasible fee simple title to the above described property free and clear of all encumbrances in said fee except the undetermined taxes for the year 1933 on this property. In this connection I am advised, and I so find, that since the date of certification of this abstract, arrangements have been made for the payment of these taxes so that upon the conveyance of this property to the state by the warranty deed, hereafter referred to, the title to this property was taken by the state free and clear of the lien of said taxes. Moreover, in this connection, it is obvious, inasmuch as the lien for taxes is the lien of the state itself, such tax lien become merged and lost in the fee simple title which the state thereafter acquired to this property by said deed.

Upon examination of the deed executed and delivered to the State of Ohio for this property, I find that the same has been properly executed and acknowledged by the grantor, Harvey J. Webster, and by his wife, Effie L. Webster, and that the form