

1952.

BOND FORMS—CONTRACT—SPECIFICATIONS—CORRECTED.

COLUMBUS, OHIO, April 10, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of April 4, 1928, enclosing for my approval revised specifications, contract and bond forms.

It has been deemed advisable to make several additions and corrections to these specifications and where additions or corrections have been made, the same have been accomplished by the making of pencil notations appearing in the body of the specifications.

Likewise, in conformity with your request, there has been prepared in conjunction with the engineers of your department a bond form covering grade elimination projects as required by Section 1208 of the General Code. This form is herewith submitted with the specifications, contract and bond forms as corrected.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1953.

TAXATION—STOCK OF FOREIGN CORPORATION PURCHASED THROUGH BROKER—MUST BE LISTED.

SYLLABUS:

Where stock in a foreign corporation has been purchased through brokers and the brokers either advance or borrow part or all of the purchase price and hold or pledge the certificates of the stock as collateral security for the payment of the purchase price, such purchaser is the owner of such stock within the meaning of Section 5328, General Code, and is required to list same for taxation, if so held on tax listing day.

COLUMBUS, OHIO, April 11, 1928.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

“We are sending you a letter received at our office relative to the taxability of certain stocks of foreign corporations.

You will note by the enclosed letter that an order was passed through a Cincinnati office that the New York office should purchase certain shares of foreign corporation stock. The purchaser had deposited with the Cincinnati office certain shares of stock as security. The specific question is: ‘Should the person in Cincinnati who had placed the order with the New York firm have listed this stock on tax listing day for the purpose of taxation?’”

The letter to which you refer reads as follows :

"Referring to the tax return made as of April 10, 1927, by L. J. B., Jr., who died on May 2nd, 1927, I would suggest that inasmuch as you and the writer cannot come to any decision on the matter which we have so thoroughly discussed, that the same be submitted to the Tax Commission, and, if possible, to the Attorney General of the State of Ohio for an opinion thereon. In order that the Tax Commission and the Attorney General may be advised fully as to the facts, may I briefly state them as follows :

On July 29, 1926, L. J. B., Jr., a resident of Cincinnati, placed with the Cincinnati office of D. and D. an order to buy 300 shares of Anaconda Copper Mines Company stock and 300 shares of The Columbia Gas & Electric Corporation stock, both of which were foreign corporations. The New York office of D. and D. on that day charged Mr. B. with the market price of the respective stocks and Mr. B. deposited with the Cincinnati office of that firm a certificate for 65 shares of the common stock of The P. & G. Company, which certificate was issued in the name of Mr. B. Mr. B. paid no money on account of the purchase of this stock, and the stock was never delivered to him, nor were any certificates issued in his name. If any certificates were issued, they were issued in the name of D. & D., the New York brokers, and held by them in the New York office. In fact, it is admitted by these brokers that the certificates never were issued in the name of L. J. B., Jr.

The auditor of Hamilton County contends that L. J. B., Jr., on Tax Listing Day owned, or at least controlled the stocks above mentioned, and that the same should have been returned by him for the purpose of taxation on Tax Listing Day in the year 1927. Our contention, however, is that inasmuch as the stock had never been issued in the name of Mr. B., and the certificates had never been delivered to him, that he neither *owned nor controlled* said stock for the purpose of taxation, from the time that the same was purchased. If the certificates had been issued in the name of L. J. B., Jr., and endorsed by him and deposited with the brokers as collateral, we admit that the stock would have been taxable in his name by virtue of the Opinion heretofore rendered by the Attorney General No. 3728 dated November 16, 1922, in which opinion the writer fully concurs.

In the case under consideration, however, Mr. B. was never the owner of any specific certificate for the stock above named, and would not have become the owner of said stock or been put in a position to control the same until the debit balance as shown by the books of D. & D. had been paid by him. We do not see upon what theory it can be held that Mr. B. owned or controlled the stock as contemplated by the statute, and submit that no part of it was subject to taxation under the condition existing on April 10, 1927."

Section 5328, General Code, reads as follows :

"All real or personal property in this state, belonging to individuals or corporations, and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. Such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title." (R. S. Sec. 2731)

This section expressly provides that investments in stocks, belonging to persons residing in this state shall be subject to taxation. Section 5324, General Code, defines the term investment in stocks and reads as follows:

"The term 'investment in stocks' as so used, includes all moneys invested in the capital or stock of a bank whether incorporated under the laws of this state or the United States, or an association, corporation, joint stock company, or other company, the capital or stock of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by law, held by persons residing within this state, either for themselves or others." (R. S. Sec. 2730.)

It was held in the cases of *Lee vs. Sturges; Insurance Co. vs. Ratterman*, 46 O. S. 153, that shares of stock in a foreign corporation held by a resident of Ohio, are subject to taxation in this state.

There is an exception to this general rule, however, under the provisions of Section 192, General Code, which provides that under certain conditions, Ohio owners are not required to list their shares of stock in foreign corporations, for taxation.

It is assumed that the corporations in question had not complied with the provisions of said Section 192, General Code.

When L. J. B., Jr., placed his order for the stock in question, the brokers purchased same for his account. The fact that instead of paying cash for the stock and securing the immediate delivery to himself of the stock certificates he chose to put up collateral security and obtain a credit from the brokers for the purchase price, did not alter the fact that when the brokers purchased this stock for his account it became the property of said L. J. B., Jr. The fact that the certificates evidencing this stock were held as collateral security by the brokers or by the person from whom the brokers had borrowed money thereon, did not alter the fact that L. J. B., Jr., owned the stock and was entitled to the delivery of the same upon the payment of the indebtedness to or through the brokers.

I am therefore of the opinion that said L. J. B., Jr., owned and controlled the stock in question on listing day.

Specifically answering your question, it is my opinion that where stock in a foreign corporation has been purchased through brokers and the brokers either advance or borrow part or all of the purchase price and hold or pledge the certificates of the stock as collateral security for the payment of the purchase price, such purchaser is the owner of such stock within the meaning of Section 5328, General Code, and is required to list same for taxation, if so held on tax listing day.

Respectfully,
EDWARD C. TURNER,
Attorney General.