2207.

CORPORATION—INCORPORATED IN OHIO BUT TRANSACTING ALL BUSINESS IN FOREIGN STATE—CREDITS TO BE REPORTED FOR DETERMINATION OF OHIO FRANCHISE TAX.

SYLLABUS:

Accounts, bills receivable and other credits owned by a corporation for profit incorporated and organized under the laws of the State of Ohio, which have accrued in another state where the physical properties of such corporation are located and where it transacts all of its business, are required to be reported to the Tax Commission of Ohio as property owned by such corporation in this state for the purpose of determining the franchise tax to be paid by such corporation in this state, under the provisions of Sections 5495, *et seq., General Code.*

COLUMBUS, OHIO, August 5, 1930.

The Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your communication which reads as follows:

> "The Corporation Department of this Commission has had brought to its attention a peculiar circumstance in connection with the filing of a domestic corporation report for franchise tax which presents a new situation as regards the taxability of intangible assets including bills and accounts receivable as carried on the books of the corporation, and it is desired that your department furnish us an opinion for its guidance in this and like cases when they may arise. The facts are as follows:
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> A.—An Ohio Corporation for Profit, organized and chartered under the Laws of Ohio is entirely removed from this state, except that their corporate meetings of directors are held in Ohio. They have no property in Ohio, either real or personal; the factory and business office is in a southern state, where offices are maintained and where the books are kept. All transactions involving the shipping of product, incoming and outgoing, are done in that southern state, all collections are received in that office, the banking is done in that state, all remittances received and disbursed in that state, and in submitting their franchise tax report, they fill out the blank in accordance with the new Corporation Code as passed in the last General Assembly.
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> *They make no claim for good will,* and do not submit a balance sheet with the report. They answer under oath all questions and make all statements required. The sum of their capital stock, surplus and undivided profits is in excess of $6,000,000. They give the assessed value of all property which is outside of Ohio. They did $7,000,000 worth of business, $3,000,000 with customers in Ohio, and $4,000,000 with customers in other states. The subject matter which this commission desires to have elucidated by your office is whether or not under the law, with the statement of the circumstances as above given, they can be required to submit a balance sheet, and if so, can any bills and accounts receivable shown on such balance sheet be subject to franchise tax as intangible property with its situs in Ohio."

The question presented in your communication is whether accounts, bills receivable and other credits owned by an Ohio corporation but which have accrued in the conduct of the business of the corporation in another state where all of its

physical properties are located and where its business is transacted, are required to be reported by such corporation to the Tax Commission of Ohio for the determination of the franchise tax to be assessed against such corporation under the provisions of Sections 5495, et seq., of the General Code.

Under the provisions of Section 5495, General Code, said franchise tax, as to domestic corporations, is deemed to be a fee charged against each corporation organized for profit under the laws of this state for the privilege of exercising its franchise during the calendar year in which such fee is payable. Such franchise tax is assessed at the rate prescribed by Section 5499, General Code, upon that part of the value of the issued and outstanding shares of stock of the corporation, determined in the manner provided by Section 5498, General Code, represented by the property owned or used by such corporation in this state, and by the business done by the corporation in this state during the year preceding the date of the commencement of its current annual accounting period. For the purpose of enabling the Tax Commission to determine the value of the issued and outstanding shares of stock of the corporation represented by property owned and business done in this state, Section 5497, General Code, provides that the annual report to be filed by the corporation shall contain, among other things, the following information:

> "The location and value of the property owned or used by the corporation as shown on its books, both within and without the state, given separately; and the total amount of business done and the amount of business done within the state by said corporation during its preceding annual accounting period, given separately."

The accounts, bills receivable and other credits, referred to in your communication, are intangible property. The general rule is that intangible property such as accounts, bills receivable, bank deposits, promissory notes and other credits, has no situs of its own for purposes of taxation, and is therefore assessable only at the place of the owner's domicile, regardless of the actual location of the evidences of such intangible property. *Kirtland* vs. *Hotchkiss,* 100 U. S. 491; *Fidelity and Columbia Trust Company* vs. *City of Louisville,* 245 U. S. 54; *Cream of Wheat Company* vs. *County of Grand Forks,* 253 U. S. 325; *Blodgett* vs. *Silberman,* 277 U. S. 1; *Coal Company* vs. *O'Brien,* 98 O. S. 14; *Anderson* vs. *Durr,* 100 O. S. 251, 259. The case of *Cream of Wheat Company* vs. *County of Grand Forks, supra,* is directly in point on the question presented in your communication. In that case it appeared that the state of North Dakota, by statutory enactment, assessed a tax on each corporation incorporated and organized under the laws of that state upon the excess of the market value of its outstanding stock over the value of its real and personal property. It was held that such tax could be legally assessed against a corporation incorporated and organized under the laws of the state of North Dakota although such corporation did no business within the state and had there no tangible real or personal property, nor any books or papers by which intangible property is customarily evidenced; and that it was immaterial whether the tax was considered to be a franchise tax or a property tax. It was further held in this case that the limitation of the Fourteenth Amendment upon the power of a state to tax the property of its residents which has acquired a permanent situs outside the state does not apply to intangible property even though it has acquired a "business situs" in another state and is there taxable. The court in its opinion in this case, speaking through Brandeis, J., said:

> "The company concedes that the State of North Dakota might constitutionally have imposed a franchise tax upon a corporation organized under its laws even though it had no property within the state. The contentions are

that the Supreme Court of North Dakota erred in holding that the tax here in question was a franchise tax; that it was in reality a property tax upon intangible property; that the company's intangible property must be deemed to have been located where its tangible property was; and that in taxing property beyond its limits North Dakota violated rights guaranteed by the Fourteenth Amendment. The view which we take of the matter renders it unnecessary to consider the question whether or not the law under discussion imposed a franchise tax or a property tax. Compare *Hamilton Company* vs. *Massachusetts,* 6 Wall. 632; *Commonwealth* vs. *Hamilton Manufacturing Co.,* 12 Allen, 298. The view also renders it unnecessary to consider whether the company having been incorporated in North Dakota after the enactment of the law in question is in a position to complain. Compare *Interstate Consolidated Street Ry. Co.* vs. *Massachusetts,* 207 U. S. 79, 84; *International & Great Northern Ry. Co.* vs. *Anderson County,* 246 U. S. 424, 433; *Corry* vs. *Baltimore,* 196 U. S. 466.

The company was confessedly domiciled in North Dakota; for it was incorporated under the laws of that state. As said by Mr. Chief Justice Taney, 'It must dwell in the place of its creation, and cannot migrate to another sovereignty'. *Bank of Augusta* vs. *Earle,* 13 Pet. 519, 588. The fact that its property and business were entirely in another state did not make it any the less subject to taxation in the state of its domicile. The limitation imposed by the Fourteenth Amendment is merely that a State may not tax a resident for property which has acquired a permanent situs beyond its boundaries. This is the ground on which the ferry franchise involved in *Louisville & Jeffersonville Ferry Co.* vs. *Kentucky,* 188 U. S. 385 (an incorporeal hereditament partaking of the nature of real property) and the tangible personal property permanently outside the state involved in *Delaware, Lackawanna & Western R. R. Co.* vs. *Pennsylvania,* 198 U. S. 341, and *Union Refrigerator Transit Co.* vs. *Kentucky,* 199 U. S. 194, were held immune from taxation by the states in which the companies were incorporated. The limitation upon the power of taxation does not apply even to tangible personal property without the state of the corporation's domicile if, like a sea-going vessel, the property has no permanent situs anywhere. *Southern Pacific Co.* vs. *Kentucky,* 222 U. S. 63, 68. Nor has it any application to intangible property, *Union Refrigerator Transit Co.* vs. *Kentucky, supra,* p. 205; *Hawley* vs. *Malden,* 232 U. S. 1, 11, even though the property is also taxable in another state by virtue of having acquired a 'business situs' there, *Fidelity & Columbia Trust Co.* vs. *Louisville,* 245 U. S. 54, 59. As stated in that case: 'It is unnecessary to consider whether the distinction between a tax measured by certain property and a tax on that property could be invoked in a case like this. *Flint* vs. *Stone Tracy Co.,* 220 U. S. 107, 146, 162, et seq. Whichever this tax technically may be, the authorities show that it must be sustained."

It is to be recognized that the accounts, bills receivable and other credits of the corporation referred to in your communication, though they are property of an intangible nature, may have accrued in such manner and may have been so employed in the business of the corporation that they have acquired a taxable situs in the state where said corporation transacts its business. I am not unmindful that in this situation the view has been expressed that the right of one state to tax property may depend somewhat upon the power of another state to do so; and that it is not permissible broadly to say that in all cases following the doctrine of mobilia sequuntur personam intangible property may be taxed at the domicile of the owner of such

property. *Farmers Loan and Trust Company* vs. *Minnesota,* 280 U. S. 204, 210. Touching this point the Supreme Court of the United States, in its opinion in the case of *Safe Deposit and Trust Company* vs. *Virginia,* 280 U. S. 83, 92, said:

> "Ordinarily this court recognizes that the doctrine of mobilia sequuntur personam may be applied in order to determine the situs of intangible personal property for taxation. *Blodgett* vs. *Silberman,* 277 U. S. 1. But the general rule must yield to establish the fact of legal ownership, actual presence and control elsewhere, and ought not to be applied if so to do would result in inescapable and patent injustice, whether through double taxation or otherwise."

However, the views expressed in the majority opinions of the Supreme Court of the United States in the cases of *Farmers Loan and Trust Company* vs. *Minnesota* and *Safe Deposit and Trust Company* vs. *Virginia, supra,* were not so necessarily involved in the decision of the questions before the court in these cases, that such views should be accorded controlling weight as against the decision of that court in the case of *Cream of Wheat Company* vs. *County of Grand Forks, supra,* and in other cases above cited directly in point on the question presented in your communication.

I am of the opinion, therefore, that the accounts, bills receivable and other credits of the corporation referred to in your communication are required to be returned by said corporation as property owned by it in this state for the purpose of determining the franchise tax to be paid by such corporation in the state under the provisions of Sections 5495, et seq., General Code, whether such property is taxed in the state where such corporation transacts its business or not.

Further responsive to your communication and the questions therein presented, I am of the opinion that although apparently the balance sheet referred to in Section 5498, General Code, is not required to be filed by a corporation except when it is seeking a deduction from the book value of its issued and outstanding shares of stock on account of an item of good will carried as an asset on the books of the company, the Tax Commission of Ohio has ample authority under the provisions of Section 5624, et seq., General Code, to prescribe and require the use by corporations of balance sheets or such other supplementary forms as may be necessary to advise the Tax Commission of Ohio of the ownership by the corporation of accounts, bills receivable, bank deposits and other credits that are subject to the franchise tax in this state.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2208.

APPROVAL, BONDS OF DEER PARK VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—$3,800.00.

COLUMBUS, OHIO, August 5, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.