

4849.

SUNDRY CLAIMS BOARD—MAY ALLOW REFUNDER OF CERTAIN  
FRANCHISE TAXES PAID IN 1931 BY FOREIGN CORPORATIONS.

*SYLLABUS:*

*Since the provisions of the Classified Property Tax Law (Amended Senate Bill No. 323 of the 89th General Assembly), particularly section five thereof, evince a clear legislative intent that no foreign corporation should be authorized in the year 1931 to pay a franchise tax upon the basis authorized in section 192 of the Code prior to its repeal in said act, where payments made prior to the effective date of the act were in excess of the amount for said year chargeable to such foreign corporations under the provisions of section 5498 of the Code, as amended in said act, claims for the refunder of such excess payments are proper subjects for consideration by the Sundry Claims Board.*

COLUMBUS, OHIO, December 30, 1932.

HON. HOWARD L. BEVIS, *Chairman, Sundry Claims Board, Columbus, Ohio.*

DEAR SIR:—This acknowledges your letter of December 24, in which you ask my opinion concerning the propriety of the allowance of certain sundry claims which have been presented to your Board by various corporations therein named.

An examination of the claims under consideration discloses that they all involve the same question, namely, whether it is proper to make refunder of franchise taxes paid in error by the corporations in question during the year 1931. All of these corporations are foreign corporations which, as previously authorized by the provisions of section 192 of the Code, had elected to pay a franchise tax upon the same basis as a domestic corporation, thereby obtaining for their stockholders, resident in Ohio, exemption from taxation upon their shares. This statute was on the books for several years and many corporations had availed themselves of the opportunity afforded.

In 1931, however, the legislature passed the so-called Intangible Tax Law, known as Amended Senate Bill No. 323, which effected a basic change in our system of taxation. As an integral part of the legislative scheme, certain low uniform rates became applicable to various classes of intangible property, and shares in corporations, both domestic and foreign, were made taxable. The consideration for a foreign corporation paying upon the same basis as a domestic corporation accordingly was removed, and the legislature repealed section 192 of the Code. It also in the same act provided a new method of computing the franchise taxes of both foreign and domestic corporations by amending the provisions of sections 5498 and 5499 of the Code.

With respect to the personal property assessments for the year 1931, the act, in section 5 thereof, provided that the county auditor should strike all such assessments from the tax lists and duplicates. The taxpayer owning shares of stock in 1931 was, however, required by the provisions of the act to list such shares early in 1932 and pay a tax thereon based upon the income yield during the year 1931. In view of the injustice which would be worked upon foreign corporations by reason of the fact that they had paid in full for the year 1931, while their shareholders did not secure exemption of their shares from taxation for the same year, the legislature made specific pro-

vision requiring the recomputation of the tax in accordance with the provisions of section 5498 of the Code as amended. This specific provision is found in the last paragraph of section 5 of the act, and is as follows:

“With respect to any foreign corporation which shall have elected to exempt its share of stock from taxation in Ohio, as personal property for the year 1931, as heretofore provided by law, the tax commission shall determine and certify to the auditor of state the amount upon which such fee is chargeable, as provided in section 5498 of the General Code, and the auditor of state shall charge such fee for collection against any such foreign corporation upon the basis prescribed in said section, in lieu of the fee heretofore chargeable by law to exempt shares of stock of foreign corporations from taxation in Ohio as personal property for the year 1931, and certify such charges immediately to the treasurer of state. Notwithstanding that a certificate may have been made before this act becomes effective, the certification provided herein shall be made on the effective date hereof, and the auditor of state shall charge for collection against all such foreign corporations such fee and certify such charge to the treasurer of state forthwith upon the receipt of such certification from the tax commission. In such event, the treasurer of state shall mail the statement as provided by law immediately upon receipt of such certification from the auditor of state and the amount of the fee shown upon such statement shall be payable to the treasurer of state within five days from the date of the mailing of such statement.”

In the Digest and Interpretation of the New Classified Tax Law, the counsel for the joint legislative taxation committee comments thus upon the reason for the provisions of the law hereinbefore quoted:

“The Commission is required to refigure the franchise tax on foreign corporations which had made their reports and had previously elected to purchase immunity from the taxation of their resident stockholders by paying an optional franchise tax. Had these provisions not been made these foreign corporations would have been required to pay the full tax notwithstanding that their payment would not have had the effect of exempting their resident shareholders from taxation in respect to the income yield of their shares for the year 1931.”

It is, accordingly, plain that the legislature intended that no foreign corporation should in the year 1931 pay on the old basis. In view of the time when the act went into effect, however, it was found that many corporations had already paid the tax in full upon the old basis and among these are the ones whose claims are here under consideration. Since no specific provision is found in the act for a refunder, these corporations have presented their claims to your Board.

It appears to me that the legislative intent is clear to relieve corporations from payments of the character here in question, since the incentive for making payment of this kind was removed when the shares of these corporations became taxable for the year 1931 in the hands of the shareholders. It is manifestly true from the provisions of the act that any corporation which

had not already paid the tax at the effective date of the act was relieved therefrom, and it would seem that these corporations should not now be penalized for the promptness with which they met what they deemed to be their governmental obligations. In fairness to them, they should have these overpayments refunded so as to place them on a parity with other corporations.

It is, of course, not within my province to dictate what course your Board should take, but I submit there is no impropriety in an allowance of the claims as presented.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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4850.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE W. K. MITCHELL COMPANY, INC., OF PHILADELPHIA, PENNSYLVANIA, FOR THE CONSTRUCTION AND COMPLETION OF STATION PIPING FOR THE OHIO PENITENTIARY POWER PLANT, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$19,559.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY.

COLUMBUS, OHIO, December 30, 1932.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare, and the W. K. Mitchell & Company, Inc., of Philadelphia, Pennsylvania. This contract covers the construction and completion of Station Piping for the Ohio Penitentiary Power Plant, Columbus, Ohio, in accordance with the base bid, Alternate A, and Substitutions (6" valve and Klingerit Gasket) of the form of proposal dated December 3, 1932. Said contract calls for an expenditure of nineteen thousand five hundred and fifty-nine dollars (\$19,559.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board showing that said board has released funds for this project, in accordance with Section 8 of House Bill No. 624 of the 89th General Assembly.

In addition, you have submitted a contract bond upon which the National Surety Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with. A certificate of the Secretary of State shows that the above foreign corporation is admitted to do business in Ohio.

Finding said contract and bond in proper legal form, I have this day