

one dealer to another. This interpretation of the intention of the legislature and the use of the words "delivered by pipe" would limit the interpretation of the words "other than by tank car" contained in paragraph 7 of section 5526 to tank truck delivery and is an answer to the contention of "A". That the ownership and operation of a pipe line is not necessarily a public utility or a common carrier, was decided by the United States Supreme Court in the so-called *Pipe Line Cases in U. S. vs. Ohio Oil Company*, 234 U. S. 548, where the Supreme Court held in substance:

"an oil company using a pipe line solely for the purpose of conducting its own oil from its own wells in one state to its own refinery in another state is not comprehended by the provisions of the Interstate Commerce Commission requiring the parties in control of oil pipe lines to file with the Commission schedules of rates and charges for transportation."

With reference to "C's" contention, it may be said that "C" presents an equitable argument which has some force but it seems to me to be violative of the clear intention of the legislature as regards the question of the deductions for losses sustained in the handling of gasoline. If the loss is occasioned by constant handling, "C's" argument could be applied to the retail service station which handles gasoline constantly with greater exposure, of which there are thousands in the state and whose owners are not registered dealers.

Based upon the foregoing, I am inclined to the view that the problem falls squarely within the provisions of paragraph 8 of section 5526 and it is therefore my opinion that where "A", a licensed dealer refining gasoline in Ohio, delivers such gasoline by short pipe line to "B", a licensed dealer, directly into "B's" storage tanks out of which tank deliveries are in turn made in tank cars and by pipe line to "C", also a licensed dealer, into marketing tanks of "C", out of which tank truck deliveries are made, "B" is deemed to have "received" such gasoline and should pay the tax.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4575.

ANNUITIES—TAX AND TAXATION—ONE HALF SUM PAID AS PURCHASE PRICE TAKEN AS PRINCIPAL INCOME YIELD BASED ON RATE OF FOUR PER CENT.

SYLLABUS:

If a certain sum of money is paid as the purchase price of an annuity, one-half of such sum of money should be taken as the principal upon which the income yield should be computed at the rate of four per cent prescribed by section

5389, *General Code*, although such annuity was purchased and was in force prior to January 1, 1932.

COLUMBUS, OHIO, August 24, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of a communication from you which reads as follows:

“The Commission requests your formal opinion relative to the manner of computing income yield with respect to annuities or other obligations for periodical installment payments including both principal and interest not separately charged and paid.

The basis of determining income yield is set forth in Section 5389, and the question has arisen whether the Commission should use one-half of the principal at 4% as determining income yield where the annuity in question was purchased prior to January 1, 1932, and has been in force prior to that time, or whether the basis of determining income in such cases is one-half the present worth of the payments if computed at 4%.”

The question presented in your communication requires a consideration of certain sections of the General Code as the same have been amended or enacted by the 89th General Assembly in the enactment of Amended Senate Bill No. 323.

Section 5328-1, General Code, provides in general terms for the taxation of investments and other forms of intangible property; and by section 5323, General Code, annuities are defined as investments for purposes of taxation.

Section 5368, General Code, provides generally that taxable property shall be listed with respect to ownership or control and valuation as of the first day of January annually, and section 5388, General Code, providing rules for the listing and assessing of personal property, makes the following provision with respect to the listing and assessment of investments:

“In listing investments, the amount of the income yield of each for the calendar year next preceding the date of listing shall, excepting as otherwise provided in this chapter, be stated in dollars and cents and the assessment thereof shall be at the amount of such income yield.”

Section 5389, General Code, defines the term “income yield” as the same is used in section 5388, General Code, with respect to the different kinds of intangible property classed as investments. So far as the same is pertinent in the consideration of the question presented in your communication, this section (sec. 5389, G. C.) provides as follows:

“‘Income yield’ as used in section 5388 of the General Code and elsewhere in this title means the aggregate amount paid as income by the obligor, trustee or other source of payment to the owner or owners, or holder or holders of an investment, whether including the taxpayer or not, during such year, and includes the following:

In the case of an obligation bearing interest, the amount of interest separately charged and paid during such year, if any, exclusive of pay-

ments on the principal; in the case of shares of stocks, the cash dividends so paid; in the case of annuities or other obligations for periodical installment payments including both principal and interest, not separately charged and paid, four per centum or half of the principal used to purchase the same, or, if there be no such principal, four per centum of half of the present worth of such payments if commuted, which shall be calculated, as of the date on which such investment is required by this chapter to be first listed, with interest at four per centum per annum and, in the case of annuities for life or lives, according to the Combined Annuity Four Per Cent. Table; in the case of equitable interests, the cash distributions of income so made. At the request of the commission or of any county auditor, the superintendent of insurance shall, upon being furnished with a statement of the facts, compute upon a basis equivalent to that herein prescribed, the income yield of any investment as to which the interest is not charged and paid separately from the principal thereof, and the assessor shall be governed by the computation so made."

It is thus seen that as to investments generally they are taxed on the basis of the income yield thereof for the calendar year next preceding the first day of January of the year as of which they are to be listed and, it may be added, at the rates prescribed in section 5638, General Code. As to interest, dividends and other forms of income which are separate and apart from the principal out of which such income accrues, no difficulty is presented, as in such case the income whether in the form of interest or dividends is the income yield upon the basis of which the investment is taxed. However, in the case of annuities or other obligations for periodical installment payments which include both principal and interest, a more or less arbitrary and conventional method of determining the income yield of these forms of investments was necessary and this was accomplished by taking four per cent of one half of the principal used to purchase the annuity as the income yield of such annuities as accrued under contract and for which there was a purchase price. As to annuities which do not accrue upon a purchase price paid in consideration for the same, it is provided that four per cent of one half of the present worth of the commuted payments calculated as of the date when the annuity as an investment is required to be listed, shall be taken as the income yield.

Whether the income yield of an annuity is to be determined in one or the other method above outlined depends solely upon whether any purchase price was paid for such annuity. If so, this purchase price is taken as the principal upon which the income yield is computed at the rate and in the manner provided by the statute.

However, there may be annuities taxed as investments by the provisions of section 5328-1, General Code, which are not created by a contract in which a certain fixed sum is paid as a consideration for an annual or other periodical sum to be paid to the grantee of the annuity; and in such cases, as above noted, the income yield on the basis of which the annuity is to be taxed is to be computed on the present worth of the commuted payments at the rate and in the manner provided by section 5389, General Code.

In the consideration of the question presented in your communication, it should be observed that the tax here in question is not one on the amount of the annual payment or payments made upon the annuity, but the same is a property tax upon the annuity itself which annuity of the kind referred to in your

communication, may be defined as "an obligation by a person or company to pay to the annuitant a certain sum of money at stated times during life or a specified number of years, in consideration of a gross sum paid for such obligation". *Chisholm vs. Shields, Treasurer*, 67 O. S. 374, 378. In other words, it is this obligation referred to in the definition above quoted, considered as a species of intangible property, which is taxed on the annual income yield determined in the manner provided by section 5389, General Code.

With respect to the question here presented, it is to be noted that there is no suggestion in the provisions of section 5389, General Code, or elsewhere in the title of which the same is a part, that the method of computing the income yield of an annuity for purposes of taxation is to be determined by the time when the right to such annuity accrued whether under contract by the payment of a certain sum of money in consideration for such annuity or otherwise. Without reference to the time when such annuity was created and the right to the same accrued, if the same was created by the payment of a fixed sum of money as a consideration for such annuity, the income yield on such annuity is to be computed upon the amount so paid as the principal and in such case is four per cent of one-half of such principal.

The above conclusions reached by me sufficiently answer the question presented in your communication, which question may be more specifically answered by saying that if a certain sum of money is paid as the purchase price of an annuity, one-half of such sum of money should be taken as the principal upon which the income yield should be computed at the rate of four per cent prescribed by section 5389, General Code, although such annuity was purchased and was in force prior to January 1, 1932.

It may be added, by way of conclusion, that I am not unmindful of the fact that there may be some unfairness in taxing the same income yield on two different annuities purchased for the same amount of money as the purchase price thereof but at different times. This, however, is a matter for the consideration of the legislature in the enactment of laws of this kind, and is not a consideration which this office can take into account in face of the explicit provisions of section 5389, General Code, above quoted.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4576.

APPROVAL, ABSTRACT OF TITLE TO LAND OF JOHN W. EGLER IN
RICHLAND TOWNSHIP, DEFIANCE COUNTY, OHIO.

COLUMBUS, OHIO, August 25, 1932.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from Hon. William H. Reinhart, Conservation Commissioner, submitting for my examination and approval an abstract of title, warranty deed and encumbrance record No. 43, relating to the proposed purchase by the State of Ohio of a certain tract of land owned of record by one John W. Egler in Richland Township,