3523.

TAXES—OWING TO FEDERAL GOVERNMENT NOT SUCH "TAXES AND ASSESSMENTS" CONTEMPLATED BY LEGISLATURE IN ENACTMENT OF SECTION 5327 G. C.—MAY BE DEDUCTED FROM "ACCOUNTS RECEIVABLE" TO DETERMINE "TAXABLE CREDITS" — FEDERAL TAXES, BITUMINOUS COAL TAX, UNEMPLOYMENT INSURANCE, FEDERAL OLD AGE BENEFIT TAX—OPINION OVERRULED BY OPINION 345, MARCH 22, 1939.

SYLLABUS:

Taxes owing to the federal government are not such taxes and assessments contemplated by the legislature in the enactment of Section 5327, General Code, and therefore such taxes may be deducted from accounts receivable for the purpose of determining the taxable credits.

COLUMBUS, OHIO, January 7, 1939.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your letter of recent date which reads as follows:

> "The 'X' Company filed its tax return with the State Tax Commission for the year 1938. In computing the credits of said corporation for said year the company deducted from its accounts receivable the following items:
>
> Federal Taxes
> Bituminous Coal Tax
> Unemployment Insurance
> Federal Old Age Benefit Tax
>
> Our examiner disallowed these deductions.
>
> Section 5327 G. C. defines credits. That portion of the statute, which we believe governs the question, reads:
>
> 'The term "credits," as so used, means the excess of the sum of all current accounts receivable and prepaid items used in business when added together estimating every such account and item at its true value in money, over and above the sum of current accounts payable of the business, other than taxes and assessments. "Current accounts" includes items receivable or payable on demand or within one year from the date of inception, however evidenced. * * *'
>
> It will be noted that under this section taxes and assess-

ments are not to be included as current accounts payable in the computation of credits, and we should like to be advised in a formal opinion as to whether or not the items above indicated come within the classification of 'taxes and assessments' as contained in said section 5327, G. C."

I assume that the taxes to which you refer are all taxes paid to the federal government. In order to determine the question presented by you, it is necessary to ascertain whether or not taxes paid to the federal government are "taxes and assessments" within the meaning of that phrase as used in Section 5327, General Code, or accounts payable of the business. It is quite clear that if federal taxes are such taxes contemplated in the section quoted in your letter, they may not be deducted from the accounts receivable for the purpose of determining the taxable credits. On the other hand, if the legislature in referring to taxes did not contemplate federal taxes, it would necessarily follow that such taxes may be deducted from the accounts receivable as provided in Section 5327, supra.

Generally speaking, the authorities which I examined agree that taxes are not debts nor accounts payable within the ordinary sense and use of such words. However, in many jurisdictions the courts have held that the terms "debts" and "accounts payable" include taxes where the legislature clearly indicates the use of such terms in that sense. It is, therefore, necessary, in order to determine the question presented by you, to refer to the provisions of Section 5327, supra. A cursory examination of the provisions of the foregoing section indicates that the legislature might have intended in using the term "taxes" to include both federal and state taxes. However, a review of the history of Section 5327, General Code, indicates otherwise. The legislature in 1923 amended Section 5327, General Code, and defined the term "credits" as follows:

"The term 'credits' as so used, means the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due or to become due to the person to pay taxes thereon, including deposits in banks or with persons in or out of the state, other than such as are held to be money, as hereinbefore defined, when added together estimating every such claim or demand at its true value in money, over and above the sum of legal bona fide debts owing by such person. In making up the sum of such debts owing, there shall not be taken into account an obligation to a mutual insurance company, nor an unpaid subscription to the capital stock of a joint stock company, nor a subscription for a religious, scientific, literary, or charitable purpose; nor an acknowledgment of indebt-

> edness, unless founded on some consideration actually received, and believed at the time of making such acknowledgment to be a full consideration therefor; nor an acknowledgment made for the purpose of diminishing the amount of credits to be listed for taxation; nor a greater amount or portion of a liability as surety, than the person required to make the statement of such credits believes that such surety is in equity bound, and will be compelled to pay, or to contribute, in case there are no securities, *nor any tax, fee or assessment due or to become due to the Government of the United States or to the State of Ohio, or to any political subdivision thereof.* Pensions receivable from the United States shall not be held to be credits; and no person shall be required to take into account in making up the amount of credits, a greater portion of any credits than he believes will be received or can be collected, or a greater portion of an obligation given to secure the payment of rent than the amount that has accrued on any lease and remains unpaid." (Italics the writer's.)

It is to be noted that the legislature specifically provided in the foregoing section that in making up the sum of debts owing no tax, fee or assessment due or to become due to the Government of the United States or to the State of Ohio or to any political subdivision shall be taken into account. Thus, we had specific language which prevented a taxpayer from deducting from his legal claims and demands any tax due to either the United States Government or to the State of Ohio. In enacting Section 5327, General Code, in its present form, the legislature did not specify the nature of taxes which may not be deducted from the accounts receivable for the purpose of determining the taxable credits. It must therefore be said that the legislature intended some change in the present law; otherwise, it could have used language similar to the language used in Section 5327, General Code, as enacted in 1923.

In 37 O. Jur., page 570, the following text appears:

> "Aid in the interpretation of state is ordinarily not to be derived from authorities which construe statutes containing substantially different language. The use by the General Assembly of certain language in one instance and wholly different language in the other indicates that different results were intended and the courts have even so presumed. * * *"

In view of the foregoing, it is my opinion that taxes owing to the federal government are not such taxes contemplated by the legislature in

the enactment of Section 5327, General Code, and may therefore be deducted from accounts receivable for the purpose of determining the taxable credits.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3524.

COMPATIBLE OFFICE—ASSISTANT CLERK, BOARD OF COUNTY COMMISSIONERS MAY SERVE AS MEMBER COUNTY CHILD WELFARE BOARD—OPINION 3440, DECEMBER 22, 1938, OVERRULED IN PART.

SYLLABUS:

An assistant clerk of the Board of County Commissioners may at the same time serve as member of the County Child Welfare Board without violating the Common Law rule as to incompatibility of offices. (Opinion No. 3440 *issued December* 22, 1938, *overruled in part.*

COLUMBUS, OHIO, January 7, 1939.

HON. RALPH W. EDWARDS, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication. Your letter requesting reconsideration of an opinion recently issued by this office reads as follows:

> "On December 22, 1938, an opinion was rendered by you, being No. 3440, holding that one may not serve as Budget Commissioner of the County and as member of the County Child Welfare Board, for the reason that the duties of these officers make them incompatible.
>
> "We believe that we are correct in saying that this opinion has application to Cuyahoga County alone, in that for something like nine (9) years past, Mr. Joseph T. Sweeny, who is an employe of the Board as Assistant Clerk to the Board of County Commissioners, by acting as Budget Commissioner of the County, has at the request of and upon designation by the Board during such period of time, acted as its representative on the Child Welfare Board established by it.