

1948.

INHERITANCE TAX LAW—SUCCESSION TO SHARES OF STOCK IN NATIONAL BANK IN OHIO TAXABLE THOUGH DECEASED OWNER RESIDENT OF ANOTHER STATE—NATIONAL BANK IN OHIO SUBJECT TO SAME DUTIES AND LIABILITIES AS OHIO CORPORATION UNDER PROVISIONS OF OHIO INHERITANCE TAX LAW ON SUCCESSION OF BANK SHARES.

A succession to shares of stock in a national bank in Ohio is taxable under the Ohio inheritance tax law, though the deceased owner was a resident of another state and had the certificate for the shares in his possession at the time of his death.

A national bank in Ohio is subject to the same duties and liabilities as a corporation organized under the laws of Ohio, so far as concerns the transfer on its books of shares of stock passing by death or under other circumstances, giving rise to the imposition of the Ohio inheritance tax on the succession to such shares.

COLUMBUS, OHIO, March 26, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of the commission's letter of recent date requesting the opinion of this department, as follows:

“A dies a resident of California, but owning stock in a national bank in Ohio. The certificate for this stock was at the residence of A. Is such certificate subject to inheritance tax in this state? If the issuing bank should transfer such certificate without the consent of this commission to what extent, if any, is it liable for any Ohio inheritance tax that might be assessed thereon?”

So far as the first question is concerned, the authorities in states imposing taxes on the succession to shares of stock in domestic corporations owned by non-resident decedents are uniform in support of an affirmative answer.

Greves vs. Shaw, 173 Mass. 205;

In re Cushing's Estate, 82 N. Y. Supp. 795.

The reasons given for the conclusion have not always been the same. In *Greves vs. Shaw*, though the comment on this point in the opinion is very brief, the decision would seem to be based upon the analogy to the property taxation of the shares of national banks, which under section 5219 of the Revised Statutes of the United States is required to be at the place where the bank is located. In *Cushing's Estate*, the court also refers to the Federal statute, constituting national banking associations citizens of the state in which they are respectively located, and on its bases an argument to the effect that such associations should be treated as domestic corporations of the states in which they do business. The Ohio statute, section 5348-14, sub-paragraph 1, seems broad enough to include this concept, when it refers to “shares of stock in a corporation organized or *existing* under the laws of this state.”

A third view is suggested by the citation, in the cases previously referred to, of cases like *Matter of Bronson's Estate*, 150 N. Y., 1, in which the line of reasoning is to the effect that a share of stock represents the interest which the shareholder has in the capital and net earnings of the corporation. Being thus regarded fundamentally as a muniment of title, it represents an interest in something located in the state.

At all events, the precedent seems firmly established, and this department entertains no doubt that under the broad language of section 5331, sub-paragraph 3, General Code, the share (as distinguished from the "certificate," as the commission puts it) is property the succession to which is taxable under the inheritance tax law of Ohio.

As to your second question, the letter of section 5348-2, General Code, certainly applies to the case, when it provides that

"No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent * * * without the written consent of the tax commission of Ohio,"

and goes on to prescribe the consequences thereof, which may be liability for the amount of taxes and interest due under the chapter on a succession to the shares. It is believed that national banking associations are subject to this provision. That it is competent for the state to require of national banking associations services of this character, in connection with the collection of its public revenue, seems to be settled by

Bank vs. Commonwealth of Kentucky, 9 Wall, 353;
Waite vs. Dowley, 94 U. S. 527;
Merchants, Etc., Bank vs. Pennsylvania, 167 U. S. 461.

Your second question is accordingly answered by the statement that the national bank in question is liable to the same extent and under the same circumstances that a corporation organized under the laws of Ohio would be for failing to comply with section 5348-2 of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1949.

DISAPPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
HARDIN COUNTY, OHIO.

COLUMBUS, OHIO, March 26, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

DEAR SIR:—Under date March 25, 1921, you sent me for examination the following three final resolutions:

Lima-Kenton road, I. C. H. No. 128, Section "G," Types A, B and C,
Hardin county.

I am returning said three final resolutions, enclosed, without my approval. The county auditor's certificate as shown by the original duplicate attached to the final resolution bears date March 24, 1921. The final resolutions themselves as appears from the certificate of the clerk of the board of county commissioners appear to have been adopted on March 22, 1921. By reason of sections 1218 and 5660 G. C., the county commissioners should not attempt to adopt the final resolutions until at or after the time of the making of the auditor's certificate.