

*Parkinson, Treas.* 83 Ohio St., 36, 93 N. E., 197, Ann. Cas., 1912A, 751."

In line with the foregoing, and in specific answer to your inquiry, it is my opinion that township trustees are without authority, either express or implied, to hire and pay out of township funds an independent auditor to correct the township books.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.

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3131.

WAGES PAYABLE TO EMPLOYE UNDER EMPLOYMENT DURING CALENDAR YEAR, 1939, TAXABLE, 1939—WHERE PART PAID AS BONUS, AMOUNT OF WHICH IS DETERMINED AND PAID IN 1940, SUCH PART NOT "WAGES" UNDER EMPLOYMENT, 1940—SECTIONS 1345-1 (e), 1345-4 G. C.

SYLLABUS:

*Under Sections 1345-1 (e) and 1345-4, General Code, wages payable to an employe with respect to employment during the calendar year 1939, are taxable as of 1939, even though a part thereof is paid as a bonus the amount of which is determined and paid in 1940. The part paid in 1940 is not "wages," with respect to employment during 1940.*

Columbus, Ohio, December 18, 1940.

Hon. H. C. Atkinson, Administrator,  
Bureau of Unemployment Compensation,  
427 Cleveland Avenue, Columbus, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

"Your attention is directed to Ohio General Code 1345-1(e), which reads:

'Wages' means remuneration *payable* to an employee by each

of his employers with respect to employment during any calendar year, provided, however, that if the title IX of the Social Security Act shall be amended to exclude from the excise tax thereby imposed upon "wages" that part of the remuneration paid or payable to an individual employee with respect to employment during any calendar year which is in excess of \$3,000, such remuneration *paid or payable* in excess of \$3,000 in such calendar year shall not be subject to contributions for purposes of this act.'

Assume A. received a salary of \$3,000 in 1940, working for B., and taxes have been paid on same. In 1939 A. contracted with B. to work for him at a salary of \$2,000, plus a bonus for 1939. Assume that the bonus is 'wages' but the amount was not determinable until some time in 1940. In 1940 it is determined that the bonus is \$1,000, and is paid to A. in 1940, for services rendered in 1939. Is the bonus taxable as 1939 wages, or does the bonus become a part of the wages in 1940, and not taxable as such, in 1940? (Ohio General Code 1345-1(e). I would appreciate your opinion on this question. (Underscoring is the writer's).")

Section 1345-1(e), of the General Code, quoted in your letter, provides in part:

"Wages means remuneration payable to an employee by each of his employers with respect to employment during any calendar year, \* \* \*"

This phrase of the sentence clearly provides that the term "wages" means all remuneration payable to an employee with respect to *employment during any calendar year*.

Section 1345-4, General Code, provides in part:

"(a) (1) On and after December 21, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 1345-1) occurring during such calendar year, \* \* \*

(3) During the calendar year 1938 and thereafter, to and including December 31, 1941, with respect to wages payable for employment during such years, an amount equal to two and seven tenths of such wages."

This section provides that contributions shall be paid, "with respect to wages payable for employment \* \* \* occurring during such calendar year." Thus, the remuneration which is paid to an employee for his employment during a given calendar year is taxable as wages for that given year, regardless of whether paid in that year or in another year, for example, using the illustration given in your letter, A. was paid a salary of \$2,000 during

1939, and in addition thereto was to receive a bonus for his services during 1939, which bonus was not determined until 1940, when it was paid (but for services rendered and in respect to employment during 1939) and, as such, was wages for 1939, and taxable for that year.

Section 1345-1(e) further provides that if the Social Security Act shall exclude from the Federal tax the part of an employe's wages in excess of \$3,000 "paid or payable to an individual employe with respect to employment during any calendar year," then such excess shall not be subject to contributions under the Ohio Act.

After the passage of said Section 1345-1 (e), the Federal Government, beginning with the calendar year 1940, excluded from taxation the wages paid an employe in excess of \$3,000. The pertinent part of Section 1607 of the United States Internal Revenue Code as amended, reads as follows:

"(b) The term 'wages' means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; \* \* \*

(1) That part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year; \* \* \*"

Your specific question is as follows: A., who was employed by B. in 1939, was paid \$2,000 salary and in addition thereto earned a bonus of \$1,000 which was paid to him in 1940, together with a salary of \$3,000, which he earned in 1940, making a total payment of \$4,000 in 1940. Is the \$1,000 bonus earned with respect to employment in 1939, but paid in 1940, taxable as of 1939, or is it excluded from taxation because it was paid in 1940, and exceeds the limitation of \$3,000 which may be taxed for the year 1940?

The underscoring by you in both instances, of the phrase, "paid or payable" appearing in Section 1345-1(e) indicates that a query has arisen as to whether such phraseology may not affect the meaning of the first clause of the section and in which only the word "payable" is used. An analysis of the section shows that the first phrase of this section defines wages as remuneration *payable* with respect to employment during any calendar year. As previously stated, it is my opinion that the statute clearly defines "wages" as being remuneration which is payable with respect to the employment in a given year, regardless of when it is actually paid, and, under Section

1345-4, General Code, is taxable as of the year of the employment. For instance, in the example given it is wages for 1939, and taxable as of 1939.

The purpose of the balance of Section 1345-1(e), General Code, is only to exclude from "wages" the excess over \$3,000, provided the Federal Government excludes same. Thus, the latter part of the section does not affect the calendar year for which the remuneration was paid, and for which year it is considered as wages, and taxable as of such year. This is all determined by the first phrase of Section 1345-1(e) down to the language "provided however," and Section 1345-4, of the General Code, and the latter part of Section 1345-1(e) in no way modifies the meaning of the first part, except to exclude the excess over \$3,000, provided the Federal Government does likewise.

The latter part of this section provides that if the Federal Government excludes "that part of the remuneration '*paid or payable*' to an individual employee *with respect to employment during any calendar year* which is in excess of \$3,000 then the state will not collect contributions on "such remuneration '*paid or payable,*' in excess of \$3,000 in *such calendar year.*" This part of Section 1345-1(e) still refers to wages paid with respect to employment during any calendar year and *in such calendar year*. Even in this part of the section it refers to "wages" with respect to employment during any calendar year and therefore in no way modifies the first phrase of the section, except to exclude the amount in excess of \$3,000, payable as wages with respect to employment during any calendar year.

The Legislature excluded from taxation the remuneration in excess of \$3,000 which an employee earned which was payable with respect to employment during a given year, and the time of payment is immaterial. Thus, if an employee earns \$3,000 for employment during 1939, as in the instant case, of which amount he is paid \$2,000 during 1939 and \$1,000 in 1940, no exemption applies, as he only received as remuneration for his employment during 1939 \$3,000, even though \$1,000 of it was paid in 1940. During 1940 he received only \$3,000 as remuneration paid with respect to employment for the calendar year 1940, which is subject to taxation for the year 1940.

Section 1600 of the United States Internal Revenue Code as amended, provides as follows:

"Every employer (as defined in Section 1607 (a), shall pay for the calendar year 1939 and for each calendar year thereafter,

an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607-b) paid by him during the calendar year with respect to employment (as defined in section 1607-c) after December 31, 1938."

Under the above statute, the Federal Government since December 31, 1938, collects taxes for any given year upon wages actually *paid* during that year, and pays no attention to the year in which the employment occurred. (See Ruling of Guy T. Helvering, Commissioner of Internal Revenue, dated September 6, 1940, No. 478-Mim. 5107 of Unemployment Compensation Interpretation Service issued by the Social Security Board supplemental of September 15, 1940.) This Federal Act in no way affects the interpretation to be placed upon Sections 1345-1(e) and 1345-4, General Code.

Therefore, in specific answer to your question it is my opinion that, under the provisions of Sections 1345-1(e) and 1345-4, General Code, the bonus of \$1,000, paid in 1940, was part of the employee's wages for the year 1939, and, as such, was taxable as wages in 1939, and was no part of the employee's wages for 1940.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.

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3132.

HOSPITAL, MUNICIPAL.—JOINT PURCHASING SERVICE—  
AGENCY, HOSPITAL COUNCIL—MAY NOT EXPEND FUNDS  
TO PURCHASE SUPPLIES AND EQUIPMENT FOR ALL HOS-  
PITALS WITHIN CERTAIN LOCALITY.

SYLLABUS:

*A municipal hospital may not expend funds for a joint purchasing serv-*