benefits as an inducement to prompt payment. That is to say, a rebate or deduction from the principal sum of the tax assessed is given if the tax is paid a certain number of months prior to the expiration of one year from the date of its accrual. The language is as follows:

> "Sec. 5338. * * * If such taxes are paid before the expiration of one year after the accrual thereof, a discount of one per centum per month for each full month that payment has been made prior to the expiration of the year, shall be allowed on the amount of such taxes."

There is no question as to what the words "each full month * * * prior to the expiration of the year" mean. The time is reckoned backward from the expiration of the year; Monday, October 24th, was less than five full months prior to the expiration of the year. The whole provision is for the benefit of the taxpayer; no forfeiture is involved, as in the case of rule days for pleadings, etc., and, in the opinion of this department, the claim is not well founded.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2651.

INHERITANCE TAX LAW—INSURANCE POLICY PAYABLE TO C. BANK, TRUSTEE—SUCCESSION TO PROCEEDS OF POLICY TAXABLE—BANK DESIGNATED AS "TRUSTEE FOR M., N. AND D." IN POLICY—WHERE WILL DEFINES TERMS OF TRUST—SUCCESSION TAXABLE.

1. *A. procures a policy of insurance on his life, the proceeds payable to the "C. bank, trustee" without further specification; he dies leaving a will specifying the terms of the trust and the beneficiaries thereof; the succession to the proceeds of the policy is taxable under the inheritance tax law of this state.*

2. *The same result is reached where the bank is designated as "trustee for M., N. and D." (designated persons) but the will defines the terms of the trust.*

COLUMBUS, OHIO, December 2, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Recently the commission submitted to this office the following request for opinion:

> "Under date of June 29th in Opinion 2204 you advised us as to the exemption from inheritance tax of the proceeds of an insurance policy payable to a trust company as trustee when a trust agreement had been made with such company to pay therefrom any inheritance taxes that might be assessed against the estate and pay over the unconsumed balance to the distributees of the estate in certain proportions. Would any different rule be applicable:
>
> 1. If the policy is drawn 'proceeds payable to the C. bank, trustee for M., N. and D." in a case in which the trust terms are defined in the will of the insured of which such company is the executor?

2. If the policy is drawn 'proceeds payable to the C. bank, trustee,' and the trust terms and beneficiaries are specified in the will of which the bank is executor?"

For convenience, the questions thus submitted will be considered in the inverse order of their statement by the commission.

Manifestly, the proceeds of a policy of insurance on the life of a decedent payable to a bank as "trustee," without any designation in the policy of the terms of the trust and the beneficiaries thereof, coupled with the specification of such terms and beneficiaries in the will of the decedent of which the bank is executor, would constitute a succession taxable under the inheritance tax law of this state. A brief analysis of the facts will disclose the basis for this conclusion and the distinctions that exist between this question and others which have been considered by this department.

By virtue of the policy and the death of the decedent the bank becomes entitled to the money as against the insurance company. But it is clear that the bank is not entitled to hold the money in its own right; it does not acquire the beneficial interest therein; it is a mere trustee. If the will had not been executed a trust would have resulted in favor of the estate of the decedent, as in the case of any other imperfectly declared trust. In that event, the proceeds, should be considered in the beneficial sense as a part of the estate of the decedent, just as if the policy had been drawn "proceeds payable to the C. bank, trustee for my estate," or "proceeds payable to my administrator;" then, in case of intestacy, such proceeds would have become a part of the personal estate of the decedent just as if the policy had been payable directly to that estate.

The effect, then, of the execution of the will and the death of the testator leaving it behind him, is to dispose of a part of his estate by will. That is, the will prescribes the course and terms of the succession to property which but for the will would have been ultimately disposed of under the statutes of descent and distribution, and could have been claimed by the administrator. The effect of the will is precisely the same as it would be upon any other part of the estate of the testator. A succession by will thus arises which is taxable under the inheritance tax law.

The first question is slightly more complicated than the one just discussed; nevertheless, it is to be determined upon similar principles. Take it that the receipt of the proceeds of the policy by the bank as "trustee for M., N. and D." prima facie vests equal, equitable interests in common in M., N. and D. and creates a mere dry trust, under which they would be entitled to claim the money from the bank or to hold the bank to the obligations of a trustee in their behalf, at their option. In such case, of course, and if there were nothing but the policy and its collection by the bank, no succession taxable under the inheritance tax law would arise. The situation would be precisely the same as if the policy were payable directly to "M., N. and D.," which, as held in previous opinions of this department, would not constitute its proceeds a taxable succession.

Yet in this case the whole statement of facts submitted by the commission shows that the phrase "trustee for M., N. and D" is merely a description, and that the trust itself was intended by the creator of the trust to be declared and its terms specified otherwise than in the policy, namely, in his will. The whole evidence therefore discloses a case essentially similar to the one already considered herein.

From another point of view: Suppose the death of the decedent in this case, intestate, would have left a valid trust in the proceeds in favor of "M.,

N. and D." as equally-sharing beneficiaries; so that in the event of such intestacy, as hereinbefore intimated, no taxable succession would have existed; yet the decedent did not die intestate but left a will, by which it may be presumed he altered what would otherwise have been the legal effect of the policy. Quite aside from the evidence which the will furnishes as to the real intent of the testator in constituting the bank "trustee for M., N. and D."—and such evidence is always admissible to show the true and actual terms of a trust, notwithstanding the parol evidence rule, it is clear that the will at least has the effect of disposing of these proceeds in the beneficial sense otherwise than in accordance with what would have been the terms of the trust had there been no will. True, the testator might be said to be disposing of property that is not his own, in this view of the case. But where this is done, as it frequently is (for example, where a widow elects to take under the will instead of under the law; or where a debt is paid by a legacy—cases which have been dealt with in previous opinions of this department), the succession which actually occurs, if the will is carried out, is one that takes place "by will" and is therefore within the terms of the statute.

It is not meant to be intimated herein that in the case stated M., N. and D. would have any right of election. The other view is believed to be more sound, namely, that the will, together with other evidence that could probably be adduced, would show the true nature of the trust and disclose it as a testamentary one in its essence. Both views are stated merely for the sake of complete analysis.

In view of the fact that the conclusions reached are predicated in large part upon reasoning which has been more fully expressed in previous opinions of this department, it is felt that it is unnecessary to repeat herein the authorities by which that reasoning is sustained.

It should be added that the fact that in each case the trustee is also the executor of the will is not without its materiality as reflecting on the nature of the respective transactions. It is certainly consistent with the analysis which has been attempted herein.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2652.

INHERITANCE TAX LAW—IF PERSON DIES ON OR AFTER TAX LISTING DAY AND BEFORE OCTOBER 1st IN ANY YEAR—WHEN DETERMINING SAID TAX ON ESTATE THERE SHOULD BE DEDUCTED AS GENERAL DEBT TAXES FOR THAT YEAR ON PERSONALTY OF DECEDENT—TAXES FOR THAT YEAR ON REAL ESTATE OF DECEDENT SHOULD NOT BE DEDUCTED AS GENERAL DEBT.

1. *If a person dies on or after tax listing day and before October 1st in any year, the probate court when determining inheritance tax on the estate should deduct as a general debt the taxes for that year on the personalty of the decedent.*