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TAX—FEDERAL LAND BANKS—INSTRUMENTALITIES OF FEDERAL GOVERNMENT—USCA TITLE 12, SECTION 931 GRANTS EXPRESS EXEMPTIONS FROM STATE TAXATION—SALES OF PERSONAL PROPERTY, FURNITURE, EQUIPMENT AND SUPPLIES TO SUCH BANKS FOR USE IN CONDUCT OF BUSINESS AND EXERCISE OF FUNCTIONS—NOT TAXABLE.

SYLLABUS:

Federal land banks are instrumentalities of the federal government and by reason of this fact and of the express exemption from state taxation given to them by section 26 of the Federal Farm Loan Act, USCA, Tit. 12, §931, such banks are not required to pay sales taxes on the purchase in this State of furniture, equipment and supplies used by them in the conduct of their business and in the exercise of their functions as banks.

COLUMBUS, OHIO, February 21, 1939.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: As previously acknowledged, I am in receipt of a com-

munication from you in which my opinion is requested on the question as therein stated:

“Are sales to federal land banks taxable under the Ohio sales tax?”

Although not so stated in your communication, I assume that the sales referred to in the question presented by you are sales of furniture, equipment and supplies of various kinds made to federal land banks for use in the conduct of their business. And it may be presumed that the question thus presented is suggested by the thought that federal land banks in the exercise of their functions and the conduct of their business are or may be federal agencies or instrumentalities and that as such they may not be subject to the taxing power of the State.

In consideration of this question, I do not deem it necessary to enter into any extended discussion as to the powers and functions of federal land banks, the organization of which and of joint-stock land banks and national farm-loan associations is provided for by the “Federal Farm Loan Act,” so-called, enacted by Congress under date of July 17, 1916, 39 Stat., 360, the several sections of which, as amended in part from time to time, have been carried into the United States Code Annotated as found in sections 641 to 1001 (Chap. 7), Tit. 12, USCA. In this connection, it is sufficient to note that the Supreme Court of the United States in several cases before it for determination has had occasion to consider the organization and function of federal land banks, “and to declare that they are instrumentalities of the federal government, engaged in the performance of an important governmental function.” *Federal Land Bank vs. Priddy*, 295 U. S., 229; *Smith vs. Kansas City Title and Trust Company*, 255 U. S., 180; *Federal Land Bank vs. Gaines*, 290 U. S., 247. Aside from the consideration that federal land banks have been held to be instrumentalities of the federal government, it is noted that section 26 of said Federal Farm Loan Act, as said section now appears in section 931, Title 12, USCA, provides:

“Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sections 761 and 781 of this chapter. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.”

In view of the decisions of the Supreme Court of the United States in the cases above noted as to the character of federal land banks as instrumentalities of the federal government and of the express exemption from state taxation granted to such banks by the section of the Act of Congress above quoted, the only remaining question in a determination of that presented in your communication is as to the incidence of the excise taxes provided for by the Sales Tax Law of this State on and with respect to sales in this State of furniture, equipment and supplies to the federal land banks referred to in your communication. Secs. 5546-1, et seq., G. C. As to this, it is quite clear that the excise tax levied on the retail sale of tangible personal property in this State, by the provisions of section 5546-2, General Code, is a tax upon the "consumer" or person to whom the transfer effected by such sale is or is to be made and "is a tax on the right to acquire property by purchase for use or consumption." *Fox vs. Frank, Treasurer*, 52 O. App., 483, 489.

It follows on the considerations above noted that it is not within the taxing power of the State to levy an excise tax of the kind provided for by section 5546-2, General Code, on the sale of furniture, equipment and supplies to a federal land bank for use in the conduct of its business. And the question presented in your communication is, accordingly, answered in the negative. See *W. G. West Co. vs. Johnson*, 20 Cal. App., 95. (Writ of certiorari denied, 302 U. S., 638.)

Respectfully,

THOMAS J. HERBERT,
Attorney General.