

Specifically answering your question, it is my opinion that said act does not become effective until ninety days after it was filed by the Governor in the office of the Secretary of State, to-wit, on and after August 10, 1927.

Respectfully,
EDWARD C. TURNER,
Attorney General.

606.

FOREIGN CORPORATIONS—LATEST DATE WHEN IT MAY ELECT TO
EXEMPT ITS SHARES OF STOCK HELD BY OHIO SHARE HOLDERS.

SYLLABUS:

The latest date on which a foreign corporation could have made the necessary election under Section 192 of the General Code, so as to exempt its shares of stock held by Ohio shareholders from the general property tax in 1927, was the day preceding the first day of January as to the shares of stock held by corporations and the day preceding the second Monday in April as to its shares of stock held otherwise than by domestic corporations.

COLUMBUS, OHIO, June 13, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

Attention, John R. Cassidy, Chairman.

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“In view of the recommendation of your department (with which we fully agree) for the cancellation of the franchise tax which was attempted to be assessed by this commission on the stock of The National Malleable and Steel Castings Company of Delaware, it becomes important for us to have you advise us as to:

What is the latest date on which a foreign corporation can be admitted under the Ohio statute to do business in this state and make the necessary election under Section 192 of the General Code, so that its shares of stock may be exempted from the general property tax in 1927 when owned by residents of Ohio?”

The National Malleable and Steel Castings Company of Delaware, did not qualify to do business in Ohio until December, 1926, and therefore, your commission was advised that it would be an impossibility under our taxing laws to secure the exemption of the Ohio owned stock for the year 1926, all tax listing days under our law having passed before the company qualified to do business in Ohio.

Section 192, General Code, provides:

“No person shall be required to list for taxation a share of the capital stock of an Ohio corporation; or a share of the capital stock of a foreign corporation, the property of which is taxed in Ohio in the name of such corporation; or a share of the capital stock of any other foreign corporation provided such corporation, for the privilege of exercising its franchise

in Ohio, elects to pay and pays annually a franchise tax at the times, in the manner, on the basis and in the amount prescribed by law for domestic corporations. * * * *”

This section refers to the listing of capital stock of three different classes of corporations:

- (1) Ohio corporations;
- (2) Foreign corporations, the property of which is taxed in Ohio in the name of such corporations;
- (3) Any other foreign corporation provided such corporation, for the privilege of exercising its franchise in Ohio, elects to pay and pays annually a franchise tax at the times, in the manner, on the basis and in the amount prescribed by law for domestic corporations.

It will be noted that the exemption provided in this section has reference to the listing for taxation of the shares of capital stock. Except for the provisions of Section 192, General Code, the various stockholders mentioned in said Section 192, are required to list their shares of capital stock for taxation as of the day preceding the second Monday in April. If shares of stock of foreign corporations are held by domestic corporations said domestic corporations are required to list and value said stock as of the first day of January.

Ohio owners of shares of stock in foreign corporations unless exempted from listing must list the same for taxation as of the day preceding the second Monday in April. It is therefore evident that unless a foreign corporation has complied with the provisions of Section 192, General Code, its stock held by Ohio shareholders, must be listed for taxation, and when so listed the status for taxation is fixed for the current year. It is therefore necessary for a foreign corporation to comply with the provisions of Section 192, General Code, before the last tax listing day in any year in order to exempt Ohio shareholders from listing their stock for taxation.

Shares of stock acquired by Ohio shareholders after tax listing day would not be subject to listing and taxation in the current year.

Enacted Amended Substitute Senate Bill No. 22, filed in the office of the secretary of state on May 12, 1927, is not applicable in answering your question.

Cooley on Taxation, Vol. 2, Section 546, entitled, "Time as of which liability determined," reads:

"The taxable status of persons and property relates to a certain day in each year. There must be some day of the year as of which the power to tax property at all, or the power to tax it to a certain person is to be determined. * * * *"

In the several states this day is fixed by statute * * * *”

Section 5366-1, General Code, provides:

"The listing of all personal property, moneys, credits, investments in bonds, stock, joint stock companies, or otherwise, except the stock in trade of transient persons, shall be made between the second Monday of April and the first Monday of May annually except as otherwise provided.

The listing and valuation of all such property for taxation shall be made as of the day preceding the second Monday of April annually, and all personal property, * * * * and investments except as otherwise provided by law shall be listed and valued with respect to the ownership thereof on said date and in the place where then taxable, provided that

the provisions of this section shall not apply to * * * the returns made by incorporated companies, * * *."

In an opinion of this department, Opinions of the Attorney General, 1916, page 32, in construing Section 5366-1, General Code, at page 39, it is held that:

"It will be noted that the only purpose of this section is to fix a time as of which and the period within which the liability for taxes attaches and the valuation thereof is to be made, * * *."

Specifically answering your question it is therefore my opinion that the latest date on which a foreign corporation could have made the necessary election under Section 192 of the General Code so as to exempt its shares of stock held by Ohio shareholders from the general property tax in 1927, was the day preceding the first day of January as to the shares of stock held by corporations and the day preceding the second Monday in April as to its shares of stock held otherwise than by domestic corporations.

Respectfully,
EDWARD C. TURNER,
Attorney General.

607.

RELEASE OF ACCUSED TAKEN INTO CUSTODY FOR VIOLATION OF SECTIONS 12603, ET SEQ., GENERAL CODE, DISCUSSED.

SYLLABUS:

Under the provisions of Section 12627, General Code, when a judicial officer is not accessible an accused taken into custody for violation of Section 12603, et seq., General Code, is not entitled to be released from custody unless he gives his name and address to the arresting officer and deposits with him a sum equal to the maximum fine for the offense for which such arrest was made, or, if he is the owner, by leaving the motor vehicle, or, if he is not the owner, by leaving the motor vehicle, with the written consent of the owner, who must be present.

COLUMBUS, OHIO, June 13, 1927.

HON. JOHN E. PRIDY, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

"Since the United States Supreme Court decision in reference to justice courts the sheriff of this county has been taking violators of the speed laws before the probate judge on my advice.

Sections 12626-27-28 of the General Code provide for deputy sheriff taking a deposit for the appearance of a violator under certain conditions but those sections provide that the amount to be taken as a deposit must equal the maximum fine for the offense charged which in some cases amount to one hundred dollars.