

within the said territory the machinery of government as provided by the laws of Ohio for the government of a village.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2096.

TAX COMMISSION—MAY REQUIRE CORPORATIONS TO FILE BALANCE SHEETS WITH PERSONAL TAX RETURNS.

SYLLABUS:

The Tax Commission of Ohio has authority to prescribe and require the use of supplementary tax forms Nos. 10a and 10b, the same being general balance sheets to be made out by corporations in connection with tax returns made by them under the provisions of Sections 5404 and 5404-1, General Code.

COLUMBUS, OHIO, July 16, 1930.

HON. JOHN E. BAUKNECHT, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you which reads as follows:

“I desire to submit the following proposition to you for an opinion.

Section 5366 provides for the voluntary listing of personal property to be made on blanks to be prepared by the Tax Commission which the county auditor distributes, and Section 5404 provides for the manner in which officers of a corporation shall list all property of the corporation.

In addition to the form of return for incorporated companies, the Tax Commission has prepared a form of general balance sheet to be filed by the corporation. Many of the corporations refused to file the general balance sheet, basing their claim upon the argument that individuals and partnerships are not required to furnish this balance sheet.

I am enclosing a copy of the return and balance sheet which are the forms prescribed by the Tax Commission of Ohio, and desire to have your opinion as to whether or not resident and non-resident corporations can be compelled to file this balance sheet with and as a part of their personal tax return.”

The forms for the listing of personal property for taxation provided for by Section 5366, General Code, referred to in your communication, are those for the listing of the personal property of individuals, firms and unincorporated companies, and no other notice need be taken of the provisions of this section of the General Code in the consideration of the question presented in your communication.

The listing of the personal property of corporations other than banks, public utilities and other corporations the taxation of the property of which is otherwise specifically provided for, is required to be made in the manner provided by Sections 5404 and 5404-1, General Code. Section 5404, General Code, provides that the president, secretary and principal accounting officer of every incorporated company, except those of the kind above noted, for whatever purpose they may have been created, and whether incorporated under the law of this state or not, shall list for taxation, verified

by the oath of the person so listed, all the personal property thereof, and all real estate necessary for the daily operations of the company, moneys and credits of such company or corporation within the state, at the true value in money.

By Section 5404-1, General Code, it is provided that the listing and valuation of the personal property, moneys, credits, investments in stocks, bonds, joint stock companies, or otherwise, of incorporated companies, and all the averages of the stocks of merchandise and material used as a manufacturer, of such incorporated companies, shall be listed, valued, and ascertained as of the first day of January annually. This section of the General Code further provides as follows:

"All such listings together with all supplementary forms and all information necessary in the proper fixing of such values for taxation, shall be filed with the county auditor on or before the first day of March, annually."

The tax returns of corporations under the provisions of the sections of the General Code, above noted, are made upon a form prescribed by the Tax Commission of Ohio, and known and designated as "County Auditor Tax Form No. 10." No question is made in your communication with respect to the authority of the Tax Commission of Ohio to prescribe and to require the use of this form by corporations in making their tax returns.

By resolution duly adopted and journalized, the Tax Commission has prescribed two supplementary tax forms, and has required their use by corporations when making out their tax returns on tax form No. 10, before mentioned. These supplementary forms, which are known and designated respectively, as "County Auditor Tax Forms Nos. 10a and 10b" are general balance sheets, said tax form No. 10a being designed for use by domestic corporations and tax form No. 10b being for the use of foreign corporations. In your communication you request my opinion with respect to the authority of the Tax Commission of Ohio to prescribe and require the use of said supplementary forms.

It will not be necessary to enter upon an extended discussion of the nature and purpose of these balance sheets. This sufficiently appears from the printed statement at the top of said balance sheet forms, wherein it is said that the balance sheet will not be filed with the tax return of the company, but will be used by the county auditor to verify the same. It is further stated that the information to be set out by the corporation in said balance sheet will be treated as confidential, and that the information therein set out must exactly correspond with the books of the corporation at the close of the fiscal year, and should be identical with the information disclosed by the Federal income tax return for the given year in question.

With respect to the power and authority of the Tax Commission of Ohio to prescribe and require the use of said balance sheet forms by corporations in connection with tax returns made by them, it is noted that Section 5579, General Code, provides that in addition to all other powers and duties vested in or imposed upon it by law, the Tax Commission of Ohio shall direct and supervise the assessment for taxation of all real and personal property in the state; and that county auditors, under the direction and supervision of the Tax Commission of Ohio, shall be the chief assessing officer of their respective counties, and, shall list and value real and personal property for taxation within and for their respective counties, except as may be otherwise provided by law.

Section 5624, General Code, provides that the Tax Commission of Ohio shall, from time to time, prescribe such general and uniform rules and regulations and issue such orders and instructions, not inconsistent with any provision of law, as it may deem necessary, respecting the manner of the exercise of the powers and duties of any and all officers, relating to the assessment of property and the levy and collection of taxes. This section further provides that the Tax Commission of Ohio

"shall cause the rules and regulations prescribed by it to be observed, the orders and instructions issued by it to be obeyed, and the forms prescribed by it to be observed and used."

Sections 5624-1 and 5624-2, General Code, are perhaps more immediately applicable in the consideration of the question presented in your communication. These sections provide as follows:

Sec. 5624-1. "The tax commission of Ohio shall, from time to time, prescribe for and furnish to all county boards of revision, county auditors and county treasurers, blank forms for all oaths of office, statements, returns, reports, tax lists and duplicates, abstracts, records of proceedings, complaints, notices of appeal, tax bills and receipts, and all other documents, files and records authorized or required by any provisions of law relating to the assessment, levy or collection of taxes, or by any rules, regulations, orders or instructions of the commission, and blank forms of records and papers for all proceedings and official actions authorized or required by the provisions of any law relating to the assessment, levy or collection of taxes or by any rules, regulations, orders or instructions of the commission. County auditors, county treasurers and all other officers and all persons required to list property for taxation shall use true copies of such blank forms."

Sec. 5624-2. "For the purpose of enforcing its rules, regulations, orders and instructions and compelling the observance and use of the forms prescribed by it, the tax commission of Ohio may institute, or cause to be instituted any proceedings, either civil or criminal, provided by law as a punishment for the neglect, failure or refusal to obey any lawful requirement or order made by the commission, or as a means of preventing the violation or disobedience of such orders or compelling their enforcement. All such provisions of law shall be deemed to apply to the enforcement of the rules, regulations, orders and instructions of the tax commission of Ohio prescribed or issued under the authority of this act (G. C., Sec. 5579 et seq.)"

The sanctions referred to in Section 5624-2, General Code, for the enforcement of the rules, regulations, orders and instructions of the Tax Commission of Ohio and for compelling the observance and use of the forms prescribed by said Commission are, I assume those provided in Sections 1465-13 and 1465-22, General Code.

Assuming, as I must, the constitutionality of the statutory provisions by which the power and authority is conferred upon the Tax Commission of Ohio to prescribe and require the use of the forms here in question, I am of the opinion, without further discussion of the question presented in your communication that corporations can be required to make out the statement required by these forms and to file the same with the county auditor when their tax returns are filed with him.

Respectfully,

GILBERT BETTMAN,
Attorney General.