

345.

TAXES—PAYABLE TO UNITED STATES OR THE STATE OR  
A POLITICAL SUBDIVISION—NOT ACCOUNTS PAYABLE  
—TAX PAYER MAY NOT DEDUCT SAME FROM CUR-  
RENT ACCOUNTS RECEIVABLE—AMOUNT TAXABLE  
CREDITS—TAX YEAR—SECTION 5327 G. C.

*SYLLABUS:*

*Taxes payable to the United States or to the State or a political sub-  
division thereof, are not accounts payable within the meaning of Section  
5327, General Code, and, therefore, may not be deducted from the cur-  
rent accounts receivable of a taxpayer in determining the amount of his  
taxable credits for the particular tax year in question.*

COLUMBUS, OHIO, March 22, 1939.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN: This is to acknowledge the receipt of your recent communication in which you request my consideration of a question which you submitted to my immediate predecessor and which was the subject of Opinion No. 3523 directed to you under date of January 7, 1939. The question there presented was whether certain items referred to in your communication as "Federal Taxes, Bituminous Coal Tax, Unemployment Insurance (and) Federal Old Age Benefit Tax" payable by a certain corporation referred to in said communication, were deductible from the current accounts receivable of said company in determining the "credits" of the company for purposes of taxation for the particular tax year in question. Assuming that each and all of said items were payable to the federal government as taxes, my predecessor in the opinion above referred to held that such taxes might be deducted from the accounts receivable of said company for the purpose of determining the amount of its taxable credits. You have requested me to reconsider this opinion and the question therein considered and decided.

In the consideration of the question thus presented, it is noted that under the provisions of the Intangible and Personal Property Tax Law of this State, as before the enactment of said law, credits as a species of intangible personal property are made taxable when the same are owned by persons residing in this State. As to this, section 5328-1, General Code, in so far as the same is pertinent to the question at hand, provides:

"All moneys, credits, investments, deposits, and other intangible property of persons residing in this state shall be subject to taxation, excepting as provided in this section or as otherwise provided or exempted in this title."

Prior to the enactment of the Intangible and Personal Property Tax Law in the year 1931, the taxation of credits and of certain other kinds of intangible personal property was provided for by the then provisions of section 5328, General Code. And then, as now, the term "credits" was defined by the provisions of section 5327, General Code, as such provisions were amended from time to time. In 1856 the General Assembly amended the taxation laws of the State (53 O. L., 51), and in section 5 of this Act, the term "credits" was defined as follows:

"The term 'credits,' wherever used in this act, or in the acts to which this is amendatory, shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due or to become due to the person liable to pay taxes thereon, including

deposits in banks or with persons in or out of this state, other than such as are held to be money as defined by the fifth division of the third section, when added together, (estimating every such claim or demand at its true value in money), over and above the sum of the legal, bona fide debts owing by such person.”

This section of the Act above referred to later became section 2730 of the Revised Statutes and, eventually, section 5327, General Code, and continued substantially in the same language from the time of its enactment until the amendment of March 16, 1923, 110 O. L., 23, which amendment is hereinafter referred to. In the case of the Tax Commission of Ohio v. The National Malleable Castings Company, 111 O. S., 117, the Supreme Court, having under consideration the then provisions of section 5327, General Code, appearing substantially as in the language of section 5 of the Act of 1856, above quoted, held that the legislature in its definition of “credits,” in section 5327, General Code, “used the word ‘debts’ in the significance of an obligation based upon contract express or implied, and did not thereby include taxes due the government of the United States, nor thereby authorize the deduction of such taxes from the sum of all legal claims and demands.” The case of Tax Commission v. The National Malleable Castings Company, supra, was decided by the Supreme Court after the amendment of section 5327, General Code, in the Act of March 6, 1923, but arose prior to said amendment and, as above indicated, involved a consideration of the provisions of said section as they read before said amendment. In this Act of March 16, 1923 (110 O. L., 23), section 5327, General Code, was amended so as to provide, among other things, that, in making up the amount of debts owing by a taxpayer as an offset to legal claims and demands receivable by him, for the purpose of determining the amount of his taxable credits, such taxpayer should not take into account “any tax, fee or assessment due or to become due to the government of the United States or to the State of Ohio, or to any political subdivision thereof.”

As thus amended, section 5327, General Code, was in operation and effect at the time of its amendment in the enactment of the Intangible and Personal Property Tax Law of 1931, 114 O. L., 714, 717. By this Act, section 5327, General Code, was amended so as to read as follows:

“The term ‘credits’ as so used, means the excess of the sum of all current accounts receivable and prepaid items when added together estimating every such account and item at its true value in money, over and above the sum of current accounts payable, other than taxes and assessments. ‘Current accounts’ includes items receivable or payable within one year, however evidenced.”

Section 5327, General Code, was later amended by an Act of the Nintyeth

General Assembly under date of July 18, 1933, 115 O. L., 548, 553, and as thus amended this section now reads:

“The term ‘credits’ as so used, means the excess of the sum of all current accounts receivable and prepaid items (used) in business when added together estimating every such account and item at its true value in money, over and above the sum of current accounts payable of the business, other than taxes and assessments. ‘Current accounts’ includes items receivable or payable on demand or within one year from the date of inception, however evidenced. ‘Prepaid items’ does not include tangible property. In making up the sum of such current accounts payable there shall not be taken into account an acknowledgment of indebtedness, unless founded on some consideration actually received, and believed at the time of making such acknowledgment to be a full consideration therefor; nor an acknowledgment for the purpose of diminishing the amount of credits to be listed for taxation.”

It is thus seen that by section 5327, General Code, at the time of its amendment in the enactment of the Intangible and Personal Property Tax Law of 1931, in terms allowed a taxpayer to deduct his bona fide debts from the amount of his legal claims and demands in determining the amount of his taxable credits, subject to the provision that in making up the sum of his debts so deductible, the taxpayer should not take into account “any tax, fee or assessment due or to become due to the government of the United States or to the State of Ohio, or to any political subdivision thereof;” while by this section as the same now reads the amount of the taxable credits of the taxpayer is determined by deducting from the sum of such taxpayer’s accounts receivable (and prepaid items) in business the sum of his accounts payable of his business, “other than taxes and assessments.”

Aside from the consideration of the effect to be given to the provision of section 5327, General Code, excepting “taxes and assessments” from the amount of current accounts payable which are deductible from current accounts receivable and prepaid items in determining the amount of taxable credits, some thought may well be given to the question whether there is basically any difference, so far as the question here presented is concerned, in the meaning of the term “debts” as the same was used in the former provisions of section 5327, General Code, and that of the term “accounts payable” as this term is now used in said section. The Supreme Court in the case of *Tax Commission of Ohio v. The National Malleable Castings Company*, supra, in deciding that taxes, including those payable to the federal government, were not included within the meaning of the term “debts” as used in the then provisions of section 5327, General Code,

defining the term "credits" for purposes of taxation, based its decision upon the consideration that the term "debts" as so used signified obligations based upon contract express or implied; and in this conclusion, the court followed the view with respect to the distinction between debts and taxes noted in former decisions of federal and state courts and other authorities noted in the opinion of the court in this case. Thus, the court noted this distinction set out in 26 R. C. L., page 25, section 11, as follows:

"It is generally considered that a tax is not a debt, and that the municipality to which the tax is payable is not a creditor of the person assessed. A debt is a sum of money due by certain and express agreement. It originates in, and is founded upon, contract express or implied. Taxes, on the other hand, do not rest upon contract, express or implied. They are obligations imposed upon citizens to pay the expenses of government. They are forced contributions, and in no way dependent upon the will or contract, express or implied, of the persons taxed"; and further referred to 37 Cyc., at page 710, where it is said:

"As the obligation to pay taxes does not rest upon any contract express or implied, or upon the consent of the taxpayer, a tax is not a debt in the ordinary sense of that word."

Referring to the earlier case of *Peter v. Parkinson*, 83 O. S., 36, the Supreme Court, in its opinion in the later case above referred to, said:

"In the case of *Peter v. Parkinson*, *Treas.*, 83 Ohio St., 36, 93 N. E., 197, *Ann. Cas.*, 1912A, 751, which case involved the right of the county commissioners to make settlement of a civil action commenced by the county treasurer against a resident of the county to enforce the collection of unpaid personal taxes under Section 855, Revised Statutes, which provided that 'the board shall have power to compound for or release, in whole or in part, any debt \* \* \* due to the county,' this court held:

'Where suit is brought by the county treasurer under favor of Section 2859, Revised Statutes—Section 5697, General Code—to enforce the collection of personal taxes which stand charged upon the duplicate in the name of the person against whom such suit is instituted, the board of county commissioners, is without authority to compromise or settle such suit, or to remit or release, in whole or in part, the taxes sued for.'

In the opinion, *Crew, J.*, states, at page 47 (93 N. E., 198):

'In the further consideration of this statute it remains then only to inquire whether or not within its meaning and intent a

tax may be considered as a debt, and this also we think must be answered in the negative. In *City of Camden v. Allen*, 2 Dutcher's Reports (New Jersey) 398, Chief Justice Green says:

"A tax, in its essential characteristics, is not a debt, nor in the nature of a debt. A tax is an impost levied by authority of government, upon its citizens or subjects, for the support of the state. It is not founded on contract or agreement. It operates in invitum. *Peirce v. City of Boston*, 3 Metc., 520. A debt is a sum of money due by certain and express agreement. It originates in, and is founded upon contract express or implied."

With respect to the distinction in question, it is not thought that the term "accounts payable" has any different meaning than that ascribed to the term "debts" in the court decisions and other authorities above noted. "An 'account' is a general term which may cover any item of indebtedness by contract express or implied." *Twin Tree Lumber Company v. Ensign*, 193 Ala., 113, 118; *Harris v. Onetonto Company*, 186 Ala., 484; *Barker's Creek Coal Company v. Alpha-Pocahontas Coal Company*, 96 W. Va., 700, 706; *J. R. Rapple Company v. Manitowak*, 182 Wis., 141, 145. Touching this question, it is noted that in the case of *West Virginia Pulp and Paper Company v. Karnes*, 137 Va. 714, which case was cited with approval by the Supreme Court of this State in the case of *Tax Commission of Ohio v. The National Malleable Castings Company*, supra, the court in the consideration of a tax act of the State of Virginia providing that "the excess of bills and accounts receivable over bills and accounts payable" should be taxed as capital of the corporation as a taxpayer,

"Held: That tax bills due to the Federal government were not included in the words 'bills and accounts payable' and could not be deducted from bills and accounts receivable in determining the capital of a corporation subject to taxation."

The court in its opinion in this case said:

"There is but a single question presented for our decision by the assignments of error, which is within a very narrow compass, and is as follows:

1. Are taxes owing by the taxpayer to the Federal government 'bills,' or 'accounts payable,' within the meaning of subsection '2' of paragraph 'second' of section 8 ('Schedule C') of the tax bill statute, approved March 6, 1918 (Acts 1918, pp. 171, et seq.)?

The question must be answered in the negative.

The property of the taxpayer which was assessed for taxation in the instant case consisted wholly of 'bills and accounts receivable.' This is a distinct kind of property, different from 'stock on hand,' 'machinery and tools not taxed as real estate,' 'money on hand and on deposit,' and 'all other property of any kind whatsoever, including all \* \* \* (other) demands and claims' employed in the trade or business of the taxpayer. 'Bills and accounts receivable' are of course 'demands' or 'claims;' but, as appears from the express language of the statute, they are a peculiar kind of demands or claims, different from all other demands or claims 'whatsoever.' It is manifest from the terms of the statute that the 'excess of bills and accounts receivable,' which is taxable thereunder as 'capital,' is to be ascertained by deducting from the total thereof only the amount of 'bills and accounts payable,' which are the same kind of demands or claims as 'bills and accounts receivable,' with the single exception that the latter are owing to ('receivable' by), and the former are owing by ('payable' by) the taxpayer. It is plain, therefore, that it is not every kind of demand or claim owing by the taxpayer which the statute allows to be deducted from the total of his 'bills and accounts receivable,' in order to ascertain the 'excess thereof', which is taxable as 'capital' but only such demands and claims owing by him as would be 'bills and accounts receivable' if they were owing to ('receivable' by), instead of being owing by ('payable' by) him.

Now, as to the meaning of the terms 'bills and accounts receivable' and 'bills and accounts payable,' these terms have a well understood technical meaning. According to that meaning they embrace only contract obligations, express or implied. Blake's Law Dictionary (2d ed.), pp. 16, 134; 1 Words and Phrases, p. 87; 1 Bouvier's Law Dictionary, pp. 63, 243; 1 C. J. 730. As appears from these authorities 'accounts receivable' are contract obligations 'owing to a person on open account;' 'bills receivable' are all other contract obligations 'owing to' a person; 'accounts payable' are contract obligations owing by a person on open account; and 'bills payable' are all other contract obligations owing by a person. Such obligations do not include taxes, State or Federal, as the latter are not contract obligations."

It would seem to follow, therefore, that aside from the fact that taxes and assessments are now under the provisions of section 5327, General Code, expressly excepted from the category of current accounts payable which may be deducted from current accounts receivable and prepaid

items in the business of the taxpayer in arriving at the amount of his taxable credits, taxes, whether the same be payable to the federal government, to the state or to a political subdivision thereof, would not otherwise be included within the meaning of the term "current accounts payable" as the same is used in this section.

However, as above noted, taxes and assessments are expressly excepted by section 5327, General Code, from the meaning of the term "current accounts payable" as the same is used in this section and for the purpose therein stated; and giving effect to this exception it may be stated that inasmuch as the basic distinction between taxes as such and "accounts receivable" as this term is ordinarily used, applies as well with respect to federal taxes as to taxes of the State or a political subdivision thereof, no reason is seen for excluding federal taxes from the exception provided for in this section of the General Code.

Upon the considerations above noted, I am of the opinion, therefore, that the federal taxes referred to in your communication and which were the subject of the opinion of my predecessor as above noted, may not be included in the current accounts payable of the corporation referred to by you, and may not, therefore, be deducted from its current accounts receivable in determining the amount of the taxable credits of said corporation for the year in question.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*