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SECTION 5415 AND 5416, GENERAL CODE—AMENDED BY HOUSE BILL 448—EFFECTIVE DATE OF TAX LEVY AMENDMENTS RELATING TO “SINGLE COMPANIES” AND PUBLIC UTILITIES—FRANCHISE TAXES, SUCH CORPORATIONS MUST PAY FOR 1937, ETC.

SYLLABUS:

Sections 5415 and 5416, General Code, as amended by Senate Bill No. 448 passed by the 91st General Assembly, excluding from the definitive provisions of these sections corporations theretofore included therein as “signal companies” and public utilities for purposes of excise taxes and property assessment by the Tax Commission of Ohio, are laws providing for tax levies within the meaning of Section 1d of Article II of the State Constitution, and became effective in their amended form on December 30, 1936, when said act was approved by the Governor.

Such corporations are required to pay franchise taxes for the year 1937 on so much of the value of their issued and outstanding capital stock as is represented by property owned and business done in the State of Ohio; and they will likewise be subject to property taxes for the year 1937 under the general laws of this State relating to the assessment of property of private corporations other than public utilities.

COLUMBUS, OHIO, June 24, 1937.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: You recently submitted to this office for opinion certain questions with respect to the status of The American District Telegraph Company of Cleveland, Ohio, and of a number of other companies in like situation with respect to the liability of such companies to property and corporation franchise taxes for the year 1937. The questions here presented arise by reason of the enactment of Senat Bill No. 448 which was passed as an act by the 91st General Assembly under date of December 17, 1936, approved by the Governor December 30, 1936, and which was filed in the office of the Secretary of State on January 4, 1937, 116 O.L., Part II, page 309. This act amended Sections 614-2, 5415 and 5416, General Code, Section 614-2, General Code, defining public utilities for purposes of regulation by the Public Utilities Commission, and Sections 5415 and 5416, General Code, defining public utilities for purposes of property and excise tax assessments by the Tax Commission of Ohio.

The companies here in question are corporations engaged in the business of signaling or calling by electrical apparatus, or in a similar manner, and prior to the amendment of said sections of the General Code these companies were included therein as "signal companies" and as public utilities for purposes of regulation by the Public Utilities Commission and property tax and excise tax assessments by the Tax Commission of Ohio, respectively. In the amendment of Sections 614-2, 5415 and 5416, General Code, companies therein defined as signal companies and as public utilities were omitted from these sections and for purposes of taxation were remitted to the status of ordinary private corporations.

Obviously, the questions here presented with respect to the liability of these companies, if any, for personal property taxes and for franchise taxes for the year 1937 are to be determined by a consideration of the question as to when the act of the 91st General Assembly amending Sections 5415 and 5416, General Code, became effective; the amendment of Section 614-2, General Code, having nothing to do with the questions at hand.

If Sections 5415 and 5416, General Code, in their amended form, did not go into effect until after the lapse of ninety days from the 4th day of January, 1937, when said bill as an enacted law was filed in the office of the Secretary of State, to wit, the 4th day of April, 1937, and these companies, consequently, had the status of signal companies and of public utilities for purposes of taxation until such time, they would not be liable for excise taxes for the year 1937 for the reason that the excise taxes assessed against them for the year 1936 were on the respective gross receipts of such companies for the year ending April 30, 1936, and were for the privilege said companies had of doing business as public utilities for the following year from May 1, 1936, to April 30, 1937, inclusive. See *Express Company vs. State*, 55 O.S., 69; Opinions of Attorney General, 1918, Vol. I, 707, 709; Annual Report of Attorney General, 1914, Vol. II, 1697. And inasmuch as by the amendment of these sections of the General Code, the companies above referred to had ceased to be public utilities before May 1, 1937, they would not be required to pay excise taxes in the year 1937 for the privilege of doing business as public utilities for the following year. And, on this view, such companies would not be liable for franchise taxes for the year 1937; and this, for the reason that as to domestic corporations franchise taxes paid by such corporations are for the privilege of exercising their franchises during the calendar year in which such taxes are payable (Sec. 5495, G.C.), and in this case the companies here in question did not have the status of corporations required to pay franchise taxes between the dates of January 1, and March 31, 1937,

the time prescribed by law for the filing of reports by corporations for franchise tax purposes. Sec. 5495-2, G. C. Inasmuch as, except in cases of bankruptcy, receivership, and like proceedings, there is no authority for the apportionment of the franchise taxes of corporations for a part of a year, it follows that these corporations would not be liable for franchise taxes for any part of the year 1937, if this act did not go into effect until April 4 of this year. *State, ex rel., vs. Brown*, 121 O. S., 73; Annual Report of Attorney General, 1914, Vol. II, page 1697. Again, if these sections in their amended form did not go into effect until April 4, 1937, said companies, as public utilities, would be assessed by the Tax Commission of Ohio for property taxes for the year 1937 upon reports filed by such companies with the Tax Commission on or before March 1, 1937, as provided for in Sections 5420, et seq., General Code.

If, on the other hand, Sections 5415 and 5416, General Code, went into effect in their amended form on December 30, 1936, when the act amending these sections was approved by the Governor, the companies here in question lost their status as public utilities for purposes of taxation at that time; they were no longer subject to the assessment and levy of excise taxes as such, and became subject to the assessment for property taxes and to assessment and levy of franchise taxes in the same manner as other corporations not having the status of public utilities; that is, the real property of such corporations whether used in business or not would be subject to assessment by the county auditor and to the payment of local taxes on the real property tax list and duplicate of the county for the year 1937 and thereafter. And such companies were likewise required to report their intangible and personal property for purposes of taxation in the year 1937 in the same manner as is required by the provisions of the Intangible and Personal Tax Law with respect to other corporations. Again, on this view, these companies would be subject to the assessment and levy of franchise taxes on their issued and outstanding stock for the year 1937 the same as any other company having the status of an ordinary private corporation on January 1, of that year.

Obviously, the question whether Sections 5415 and 5416, General Code, became effective on the approval of the act amending them on December 30, 1936, or only after the lapse of ninety days from the time said act was filed in the office of the Secretary of State, depends upon whether said sections of the General Code as thus amended are laws providing for tax levies within the meaning of Section 1d of Article II of the Constitution of Ohio which provides, among other things, that laws providing for tax levies shall go into immediate effect.

With respect to this question, Sections 5415 and 5416, General Code, now, as before their amendment, are part of a comprehensive statutory

scheme for the assessment by the Tax Commission of Ohio of the property of public utilities for purposes of local taxes and for the assessment and *levy* of excise taxes as such upon public utilities. Sections 5415 and 5416, General Code, are a component and essential part of this statutory scheme of taxation, in this that their provisions are definitive, defining the corporations which with respect to the nature of their business have the legal status of public utilities for purposes of taxation.

And in this view, speaking with respect to the levy and assessment of excise taxes on public utilities, Sections 5415 and 5416, General Code, are just as much laws providing for tax levies as are the related sections of the General Code providing for the determination of the gross receipts or gross earnings of public utilities and providing for the levy of taxes thereon at the several rates prescribed in these several sections of the General Code. And these sections in their amended form, excluding therefrom signal companies from the category of public utilities for tax purposes, likewise have the character of laws providing for tax levies as much as if other companies theretofore having the status of ordinary private corporations had been included in their provisions as public utilities for purposes of taxation. In other words, Sections 5415 and 5416, General Code, now, as before their amendment, define the persons or corporations which as public utilities are subject to the incidence of the excise tax provided for by the related and following sections of the General Code and for this reason they are likewise laws providing for tax levies within the meaning of the constitutional provision above referred to. Touching this question, it is noted that this office in an opinion directed to the Tax Commission of Ohio under date of July 11, 1927, Opinions of the Attorney General, 1927, Vol. II, page 1234, held that an act of the 87th General Assembly amending Sections 5526-3 and 5526-4, General Code, so as to extend the meaning of the word "dealer" as used in the Gasoline Tax Law and render subject to tax certain transactions which prior thereto were not assessable, was an act providing for the levy of taxes within the meaning of Section 1d of Article II of the Constitution and that the same went into immediate effect upon the approval by the Governor. Likewise, it is noted in this connection that in an opinion of this office directed to the Tax Commission of Ohio under date of June 1, 1935, Opinions of the Attorney General, 1935, Vol. I, page 648, it was held that an act of the 91st General Assembly amending Section 5546-1 of the General Code so as to exclude from the category of retail sales subject to the incidence of the sales tax provided for by Section 5546-2, General Code, certain sales which prior thereto had been defined as retail sales for purposes of such tax, was an act providing for tax levies and that said act and Section 5546-1, General Code, thereby amended, became effective

immediately upon the approval of the act by the Governor. I do not deem it necessary to extend the discussion on this question or to cite further authority in support of the view that Sections 5415 and 5416, General Code, became effective in their amended form immediately upon the approval of the act of the 91st General Assembly, above referred to, in and by which they were amended.

In this view, these companies would not be in a more favorable situation with respect to their liability for franchise taxes for the year 1937 than would be that of corporations incorporated and organized under the laws of this state in the year 1936 (Sec. 5495-1, G. C.); and it follows that The American District Telegraph Company of Cleveland and other corporations of like kind heretofore having the status of signal companies, are required to pay franchise taxes for the year 1937 on so much of their issued and outstanding capital stock as is represented by property owned and business done in the State of Ohio. These companies will likewise be subject to property taxes for the year 1937 under the general laws of this State relating to the assessment of the property of private corporations other than public utilities.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

780.

APPROVAL—CONTRACT BY AND BETWEEN THE CITY OF
TOLEDO AND THE STATE OF OHIO FOR THE IMPROVE-
MENT OF THE TOLEDO-WATERVILLE ROAD.

COLUMBUS, OHIO, June 24, 1937.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my consideration, as provided by statute, a contract by and between the City of Toledo, Ohio, and the State of Ohio covering the proposed improvement of all of that portion of the Toledo-Waterville Road, State Highway No. 697, Canal Boulevard, located between Erie Street and Western Avenue in the City of Toledo, Ohio.

After examination, I find said contract to be correct as to form and legality. I have, therefore, endorsed my approval as to form and legality, on said contract and am returning the same herewith.

Respectfully,

HERBERT S. DUFFY,
Attorney General.