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TAX COMMISSION OF OHIO—RETAIL SALES—TO FEDERAL AGENCIES, SAVINGS AND LOAN ASSOCIATIONS, BANKS, ETC., “MEMBER BANKS”—HOME OWNERS LOAN ACT—SECTION 1421 ET SEQ. TIT. 12 USCA—SUBJECT TO SALES TAX—SECTION 5546-1 ET SEQ. G. C.

SYLLABUS:

Retail sales made in this State to federal savings and loan associations incorporated under the Home Owners Loan Act of 1933, Sec. 1461, et seq., Tit. 12, USCA, and to building and loan associations, savings and loan associations, savings banks and other like institutions which are members of a Federal Home Loan Bank under the Federal Home Loan Bank Act, Sec. 1421, et seq., Tit. 12, USCA, are subject to the sales taxes provided for by section 5546-1, et seq., General Code.

COLUMBUS, OHIO, March 15, 1939.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: As previously acknowledged, I am in receipt of a communication from you in which my opinion is requested on questions stated therein as follows:

“Are sales to federal savings and loan associations taxable under the Ohio sales tax? Are member banks to be placed in the same classification?”

Although you do not so state, I assume that the sales referred to in the questions presented by you are sales made in this State of furniture, equipment and supplies of various kinds made to federal savings and loan associations and to “member banks” for use in the conduct of their business as such associations. And it may be presumed, further, that the questions here presented have been suggested by the thought that federal savings and loan associations or “member banks,” as the case may be, are or may be federal agencies or instrumentalities and that as such they may not be subject to the taxing power of the State, or that they may, perhaps, be exempted from the payment of taxes of this kind.

In the consideration of the questions here presented, it is to be observed that the primary incidence of sales taxes under the Sales Tax Law of this State which has been carried into the General Code as section 5546-1, et seq., 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*, Treas., 52 O. App., 483, 489. In this view, the only further

question presented for consideration is whether the associations referred to in your communication are federal instrumentalities or agencies which are not subject to the taxing power of this State or, if these associations are otherwise subject to taxes of this kind, whether they have been exempted therefrom.

Directing my attention, first, to federal savings and loan associations, it is noted that the incorporation and organization of such associations is provided for by section 5 of the Home Owners Loan Act of 1933, which section as amended from time to time by subsequent acts of Congress has been carried into the United States Code Annotated as section 1464 of Title 12. By subdivision (a) of this section, the Federal Home Loan Board created under the Federal Home Loan Act of 1932, USCA, Tit. 12, Sec. 1421, et seq., is authorized to issue charters for Federal Savings and Loan Associations "in which people may invest their funds and in order to provide for the financing of homes." By subdivision (e) of this section, certain conditions are prescribed as to the character and responsibility of persons to whom a charter for this purpose may be granted, while by certain other subdivisions of this section, provisions are made with respect to the powers and duties of such associations. In this connection, it may be noted that by subdivision (g) of this section the Secretary of the Treasury is authorized to subscribe for preferred shares of stock in such associations on behalf of the United States, which shares shall be preferred as to the assets of the corporation and which shall be entitled to dividends, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders; and it is made the duty of the Secretary of the Treasury to subscribe for such preferred shares upon request of the Federal Home Loan Board. Subdivision (f) of the section above referred to provides that "each such association, upon its incorporation, shall become automatically a member of the Federal Home Loan Bank of the district in which it is located, or if convenience shall require and the Board approve, shall be a member of a Federal Home Loan Bank of an adjoining district." By this same section subdivision it is further provided that such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

Subdivision (k) of section 1464, Tit. 12, USCA, above referred to, provides:

"When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal savings and loan association or member of any Fed-

eral Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States."

Subdivision (h) of such section 1464 is, perhaps, more directly pertinent in the consideration of the question here presented so far as the same pertains to federal savings and loan associations, and reads as follows:

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserve, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

In the consideration of the provisions of the Home Owners Loan Act above quoted and referred to it is noted that although federal savings and loan associations or other members of any Federal Home Loan Bank may on proper designation therefor be made governmental agencies for certain purposes, there is nothing in these statutory provisions which provides that such associations normally and in the transaction of their usual business are to be considered agencies or instrumentalities of the federal government for any purpose. And, moreover, although federal savings and loan associations provided for in this Act are expressly exempted from all taxation now or hereafter imposed by the United States, they are not by the provisions of the Act above quoted exempted from state taxes. On the contrary, applying the cardinal rule of construction that "that which is plainly implied in the language of a statute is as much a part of it as that which is expressed," *Doyle vs. Doyle*, 50 O. S., 330; *Oates vs. National Bank*, 100 U. S., 239, 244, the above quoted provisions of subdivision (h) of section 1464, Tit. 12, USCA, clearly empower the State or any territorial, county, municipal or local taxing authority to tax such associations subject only to the condition that the tax imposed shall not be greater than that imposed on other similar local mutual or cooperative thrift and home financing institutions. The sales taxes imposed by section 5546-2 and other related sections of the General Code apply without distinction or discrimination to all retail sales made in this State other than such as are expressly exempted from the incidence of such sales taxes; and in this view retail sales made to federal savings and loan

associations are subject to sales taxes the same as are like retail sales made to building and loan associations or other mutual or cooperative thrift and home financing institutions incorporated under the laws of the State.

Upon the considerations above noted, I am of the opinion that retail sales of tangible personal property made to federal savings and loan associations in this State are subject to the sales taxes provided for by section 5546-1, et seq., General Code.

The "member banks" referred to in your communication are, I assume, building and loan associations, savings and loan associations, savings banks and other like institutions which under the Federal Home Loan Bank Act, Sec. 1421, et seq., Tit. 12, USCA, may become a member of a Federal Home Loan Bank subject to the conditions provided for in said Act. With respect to the question presented in your communication, so far as the same applies to building and loan associations, savings and loan associations, savings banks and other similar institutions which become members of a Federal Home Loan Bank under the provisions of the Act above referred to, it is sufficient to say that these institutions in the normal and usual conduct of their business are not agencies or instrumentalities of the federal government and that there is nothing in the provisions of the Federal Home Loan Bank Act authorizing such institutions to become members of a Federal Home Loan Bank upon the conditions provided for in said Act, or in any other related act of Congress, which either expressly or by the remotest implication exempts these institutions from state taxes; and retail sales made to such "member banks" are, therefore, subject to sales taxes under the Sales Tax Law of this State.

Respectfully,

THOMAS J. HERBERT,
Attorney General.