

2613.

APPROVAL, BONDS OF THE VILLAGE OF BROOK PARK, CUYAHOGA COUNTY, OHIO—\$116,008.98.

COLUMBUS, OHIO, September 24, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

2614.

TAX AND TAXATION—FOREIGN CORPORATION—DEDUCTION OF DEBTS FROM CREDITORS ARISING OUT OF BUSINESS DONE—AUTHORIZED.

**SYLLABUS:**

*A foreign corporation which does business in Ohio is entitled to deduct from its outstanding credits arising from its Ohio business, all of its bona fide debts which arise from the same source.*

COLUMBUS, OHIO, September 24, 1928.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads in part as follows:

“The General Fire Extinguisher Company is a corporation of the State of Rhode Island with its principal place of business and its home office in Providence. It has a plant located in the City of Warren, Trumbull County, Ohio. The local plant in the course of its manufacturing processes buys raw material through its purchasing agent who is located at the local plant. On all such purchases the invoices from the sellers are rendered to and received by the local plant. The material is used solely by the local plant in its production. Upon receipt at the local plant the invoices above mentioned are checked over by the purchasing agent and bills payable department and if satisfactory are sent to Providence with the request that they be paid by the Treasurer of the Company. The seller from whom the local plant buys the material has no dealing whatever with the home office in Providence. The Providence office does not buy any material nor does it sell any material and the only time it pays for any material is upon request of the local plant for materials purchased by, shipped to and used by the local plant.

For convenience of administration all funds of the General Fire Extinguisher Company are controlled and disbursed entirely by the home office at Providence. No bank account is kept in Trumbull County except a pay roll account and deposits are made to this account by the home office in Providence immediately before pay day and promptly checked out to meet the pay roll within the next two or three days.

In filing its personal property tax return the General Fire Extinguisher Company listed X dollars as accounts receivable and deducted therefrom Y dollars as accounts payable, the amount of Y dollars representing the outstanding and unpaid accounts payable for raw material rendered to the local office, for materials purchased by, shipped to and used by the local plant as above outlined. The county auditor has taken the position upon advice from the Tax Commission that only those payables are deductible from credits which are actually paid in Trumbull County and has held that the fact that these accounts are actually paid from the Providence office, even though they may be originally payable here, is the controlling factor. \* \* \*

The authorities are quite clear on the point at issue between the county auditor and myself. They are to the effect that a foreign corporation which does business in Ohio is entitled to deduct from its outstanding credits arising from its Ohio business all of its bona fide debts which arise from the same source. \* \* \*\*

It is evident from the statements in your communication that the credits of The General Fire Extinguisher Company here concerned emanate from business transacted within this state and are located in Trumbull County. Therefore, there is no question as to the taxability of such credits in said county.

The difficulty lies in determining what are the credits of the corporation in question, as defined by General Code, Section 5327, which provides that the term "credits" means the excess of all legal claims and demands over and above the sum of legal bona fide debts owing by such persons; and the question arises as to whether in the instant case, the term is limited to the debts growing out of the Ohio business upon which the credits herein named are realized. In other words, your question is whether a foreign corporation which does business in Ohio is entitled to deduct from its outstanding credits arising from its Ohio business all of its bona fide debts which arise from the same source.

The word "credits" is a constitutional term, found in Section 2 of Article XIII of the Constitution of Ohio, where it is declared that:

"Laws shall be passed taxing by uniform rule all moneys, 'credits' \*  
\* \* etc."

The framers of the Constitution did not define the word "credits" which it thus employs to denote a specific subject of taxation.

In 1856, the General Assembly by statute defined the word "credit" and declared it to mean "the excess of the sum of all legal claims and demands \* \* \* over and above the sum of the legal bona fied debts owing by such person;" and ever since, that legislative definition has been acquiesced in.

Section 5327, General Code, defines "credits" and reads as follows:

"The term 'credits' as so used, means 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 the state, other than such as are held to be money, as hereinbefore defined, when added together, estimating every such claim or demand at its true value in money, over and above the sum of legal bona fied debts owing by such person. In making up the sum of such debts owing, there shall not be taken into account an obligation to a mutual insurance company, nor an unpaid subscription to the capital stock of a joint stock company, nor a subscription for a religious,

scientific, literary, or charitable purpose; nor 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 made for the purpose of diminishing the amount of credits to be listed for taxation; nor a greater amount or portion of a liability as surety, than the person required to make the statement of such credits believes that such surety is in equity bound, and will be compelled to pay, or to contribute, in case there are no securities, nor 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. Pensions receivable from the United States shall not be held to be credits; and no person shall be required to take into account in making up the amount of credits, a greater portion of any credits than he believes will be received or can be collected, or a greater portion of an obligation given to secure the payment of rent than the amount that has accrued on any lease and remains unpaid."

There is no constitutional or statutory definition of the term "debts." However, in the case of *Motor Company vs. Boyle*, 23 O. N. P. (N. S.) 353, it was held that legal bona fide debts as used in Section 5327, General Code, includes all obligations to pay money, due and existing on any ground.

In Opinion No. 1487, rendered by this office to the Tax Commission of Ohio under date of December 30, 1927, the syllabus reads as follows:

"Credits of a non-resident corporation may be taxed in Ohio, only when they are localized by being committed to the charge and management of an agent or other representative who is more than a mere custodian or collector, and who has power to deal in a managerial capacity with the fund represented by the credits."

The tax return of the foreign corporation in question listed X dollars as assets receivable and deducted therefrom Y dollars as accounts payable, the amount of Y dollars representing the outstanding and unpaid accounts payable for raw material rendered to the local office, for material purchased by, shipped to and used by the local plant as above outlined. It therefore appears that the debts deducted consisted of unpaid accounts growing out of the business of the plant located in Trumbull County.

In the case of *Hubbard vs. Brush*, 61 O. S. 252, it was held in the third paragraph of the syllabus that:

"Such corporation, in listing for taxation its 'credits' liable to taxation in this state, may, under the provisions of Section 2730, Revised Statutes (now 5327, General Code), deduct from its claims and demands that arise out of the business it transacts in this state, such of its bona fide debts as arise from the same source."

In the case of *Hess, Auditor vs. Insurance Company*, 116 O. S. 416, in the course of the opinion it was stated that:

"It is urged by counsel for the auditor that the amount which the Insurance Company seeks to deduct as a 'legal bona fide debt' from its credits in making its return for taxation is only a contingent liability to the company for its policy holders and therefore the deduction as a 'legal bona fide debt' is not authorized by the provisions of Section 5327, General Code, known as a 'debt' by the provisions of Section 9357, General Code.

It may be stated at the outset that it is difficult to make a distinction between the terms above quoted; that is 'legal bona fide debt' and 'debt,' for if the fund in question is in fact and in law, a 'debt,' then it is a 'legal bona fide debt.' "

In the case of *Tax Commission of Ohio, et al., vs. The National Malleable Casting Company*, 111 O. S. 117, it was held in the second paragraph of the syllabus that:

"The Legislature in its definition of 'credits' in Section 5327, General Code, (95 O. L. 353) used the word 'debts' in the significance of an obligation based upon contract express or implied. \* \* \*"

Bouviere's Law Dictionary defines the word "debt":

"(1) A sum of money due by certain and express agreement. \* \* \*"

In the case of *Lane County vs. Oregon*, 7 Wall. 71, 19 L. Ed. 101, the Supreme Court of the United States construed the word debts as used in the constitution and the statutes in the following language:

"What then is its true sense? The most obvious, and, as it seems to us, the most rational answer to this question is, that Congress must have had in contemplation debts originating in contract or demands carried into judgment, and only debts of this character. This is the commonest and most natural use of the word."

In Cooley on Taxation, Vol. 3, 4th Ed., Section 1159, it is stated that:

"The right to have debts deducted from the value of taxable property is not absolute, but is in the nature of a favor, and no constitutional right is violated by a law that permits the deduction of some debts and not of others. It has been held that even though the constitution gives the right to deduct indebtedness from credits, yet that right can be secured only in the manner provided by law; \* \* \* statutes authorizing such deductions are to be strictly construed. \* \* \*"

In order to be deductible as a debt, the obligation must be a valid and subsisting one, and within the legal meaning of the word 'debt' or 'indebtedness'. For instance, an indebtedness existing merely as a convenience in book-keeping, and not a bona fide indebtedness, can not be deducted. So an agent or trustee can not deduct as a debt money in his hands as such, belonging to the principal or beneficiary. \* \* \* So contingent obligations are not deductible as debts."

In the case of *Heinz Company vs. Benham, Treasurer*, Court of Appeals of Franklin County, No. 359, rendered February 15, 1916, in construing Section 5327 and applying the ruling of the case of *Hubbard vs. Brush*, supra, to the facts in that case, it was said by Allread, J., that:

"The more difficult question arises out of the right of the plaintiff to deduct therefrom a proportion of the underlying indebtedness of the general plant from which the goods sold in Ohio were consigned."

The three branches of the syllabus of *Hubbard vs. Brush*, supra, were then quoted and the opinion continued as follows:

"We can not, however, escape the conclusion that the Supreme Court in adopting the syllabus above referred to intended to announce a general rule for the taxation of local crédits in cases where a foreign corporation had adopted a local situs in this state for the transaction of a part or all of its business. There has been no material change in the statutory law of this state since the announcement of this decision and we feel bound to follow and apply it."

The opinion then concluded as follows:

"Upon the whole, we are of the opinion that we are justified in following the syllabus above quoted from the case of *Hubbard vs. Brush*."

In substance the court held in the Heinz case that the taxable credits were those emanating from the business of the Columbus, Ohio, branch and that the deductible debts were those growing out of the business of the local branch and that there could not be deducted an amount as apportioned of the total indebtedness of said foreign corporation.

A similar question was before this department in 1914; see Annual Report of the Attorney General, 1914, Vol. II, page 1578. The question was as to whether or not the foreign corporation, for the purpose of arriving at its taxable credits, could deduct from the gross amount of all accounts payable to it at the Columbus office, a proportional share of the debts of the company incurred in the purchase of raw material and for other purposes in connection with the process of manufacturing, such debts being those of the corporation in general and not directly, at least, attributable to the Columbus branch. In other words, was the right of the company to deduct debts limited to such debts as were incurred by the Columbus office directly?

It was stated in the opinion of 1914, above cited, that:

"The laws of Ohio do not tax claims and demands as credits but merely the excess or difference between the sum of all claims and demands due or to become due in favor of the tax payer, and the sum of all legal bona fide debts by him owing."

After citing the case of *Barnes vs. Flummerfelt*, 21 Wash. 498, the opinion continued as follows:

"Of course, the firm claimed the right to deduct all its debts from its credits which were localized in Washington for the purpose of arriving at its taxable credits. The Supreme Court of Washington denied the right to make the deduction on the ground that the two businesses were separate and distinct and that the only debts which should be deducted from the business credits taxable in Washington were those debts arising out of the business there conducted.

\* \* \* As I have pointed out in dealing with the subject of situs, credits can be localized in a state, if belonging to a foreign corporation, only upon the theory that the business conducted by the company, or on its behalf, in the state, can be separated from the main business of the company and considered as a distinct undertaking. Once the separation is made it runs through the entire subject, so to speak, and serves as well to put out of the equation the debts assignable to the main office or manufactory as the credits pertaining to the main office as such. In other words, going back to the case of *Hubbard vs. Brush*, 'the business it transacts in this state' must be considered as a separate and distinct undertaking as well for the purpose of ascertaining the amount of the legal bona fide debts owing on account of the business

as for the purpose of ascertaining the sum of the claims and demands due to or to become due to the company on account of that business. \* \* \*

The opinion then concluded as follows:

"Admitting, then, the seeming injustice of the application of the rule to the case at hand, but being unable to find statutory or other ground for assigning to the business of the Columbus branch of the H. J. Heinz Company, any part of the indebtedness of the home office of the company for the purpose of deducting such part from the total sum of the claims and demands due to the Columbus office and arising out of the business conducted by it, I am of the opinion that the only debts of the company which may be deducted from such claims and demands, for the purpose of arriving at its credits taxable in Franklin County, Ohio, are the debts which have been incurred in the course of the business conducted at Columbus, considered as a separate undertaking; that is, such debts as have been incurred by the Columbus office in or by the corporation itself for and on behalf of the Columbus office in such a way as that the relation between a particular indebtedness and the business of the Columbus office can be definitely shown and ascertained. Inasmuch as the company does not claim the existence of any indebtedness of this class, but asserts merely the right to deduct either all debts of the company owing to persons residents in Ohio or a proportionate part of the debts of the company assigned to the Columbus office on the basis suggested by the sales of the Columbus office, as compared with the sales of all the other branch offices of the company, I am of the opinion that both of these claims of right, should be denied, and that the company should be limited to the deduction of such indebtedness as has been created by or in behalf of the Columbus agency and that only."

In an opinion to the Tax Commission of Ohio, No. 2254, rendered June 19, 1928, I held as stated in the syllabus that:

"A foreign corporation, in listing its 'credits' liable to taxation in Ohio, may under the provisions of Section 5327, General Code, deduct from its claims and demands that arise out of the business it transacts in this state, only such bona fide debts as arise from the same source."

Inasmuch as the accounts payable in this instance grew out of the business of the local plant, they are properly deductible from the accounts receivable growing out of the local business, although they are paid from the Providence office.

Specifically answering your question, I am therefore of the opinion that a foreign corporation which does business in Ohio is entitled to deduct from its outstanding credits arising from its Ohio business, all of its bona fide debts which arise from the same source.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2615.

BALLOT—DISPUTED BALLOTS—UNCOUNTED AND RETURNED TO BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS—DUTY OF BOARD TO COUNTY, DISCUSSED.

#### SYLLABUS

*Under the provisions of Section 5090, General Code, it is the duty of the board of deputy state supervisors of election to count the ballots placed in envelopes for uncounted*