

331.

APPROVAL, ARTICLES OF INCORPORATION, JOHN ERICKSONS
SJUK OCK BEGRAFNINGSHJALP FORENING I AKRON, OHIO.

COLUMBUS, OHIO, May 11, 1923.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

Re: Approval, article of incorporation, John Ericksons Sjuk Ock
Begravnings-Hjälp Forening I Akron, Ohio—(John Ericksons Sick-
Benefit and Funeral Aid Association).

DEAR SIR:—The articles of incorporation of the John Ericksons Sjuk Ock
Begravnings-Hjälp Forening I Akron, Ohio—(John Ericksons Sick-Benefit and
Funeral Aid Association) are herewith returned to you with my approval endorsed
thereon.

Respectfully,
C. C. CRABBE,
Attorney General.

332.

STOCK IN FOREIGN CORPORATION—WHEN TAXABLE IN OHIO—
WHEN CONSENT OF TAX COMMISSION IS NECESSARY TO
TRANSFER STOCK.

COLUMBUS, OHIO, May 11, 1923.

SYLLABUS:

(a) *Stock in a foreign corporation owned by a non-resident is taxable under succession as provided in section 5348-2 G. C., if the certificate is permanently kept in this state, or if such corporation is admitted to do business in this state and maintains a transfer office here.*

(b) *Stock in a foreign corporation owned by a non-resident is subject to the consent of the Tax Commission as set forth in section 5348-2 G. C. when such corporation is admitted to do business in this state, and keeps its transfer books here.*

(c) *Stock in a foreign corporation owned by a resident of Ohio is subject to the consent of the Tax Commission when transfer is made in this state.*

(d) *Stock in a foreign corporation not admitted to do business in this state, and having no property in this state, is not subject to the consent of the Tax Commission as prescribed in this section.*

COLUMBUS, OHIO, May 11, 1923.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgement is made of the receipt of your communication requesting the opinion of this department on the following questions:

“In the administration of the inheritance tax act your predecessor advised us that a foreign corporation admitted to do business in Ohio, owning property here and maintaining its transfer office in this state, so came within the purview of section 5348-2 that in case of transfer of stock standing in the name of a decedent the consent of this commission was necessary and the succession taxable here even although such decedent was a non-resident of Ohio.

A case has now arisen involving the transfer of and succession to stock from a deceased non-resident in a foreign corporation admitted to do business in this state and maintaining its principal, if not its only place of business in this state and maintains two transfer offices, one in Ohio and one in New Jersey. Preferred stock is transferable at the Ohio office only and the common transferable only in New Jersey, that being the state in which the corporation is chartered.

To what extent is the consent of this commission necessary:

1. For the transfer of the preferred stock?
2. For the transfer of the common stock?

To what extent is the succession to this stock taxable in Ohio:

3. In case of the preferred stock?
4. In case of the common stock?

A similar case has arisen in case of another foreign corporation similarly situated and which transfers both its common and preferred stock indiscriminately either at its transfer office in Ohio or at its transfer office in New Jersey.

5. In the estate of a deceased resident, is our consent for transfer necessary?

6. In the estate of a deceased non-resident, to what extent is our consent necessary for transfer and to what extent is a succession in such stock taxable?

Another case arisen of a foreign corporation not admitted to do business in this state and not owning property here but maintaining a transfer office in Ohio.

7. To what extent does section 5348-2 apply when the stock is being transferred:

In the estate of an Ohio decedent?

8. In the estate of a non-resident decedent?

9. To what extent is a succession in such stock taxable in the estate of a non-resident decedent if the transfer is sought to be made at the Ohio transfer office?”

The section referred to in your communication, (5348-2 G. C.) is as follows:

“No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or

shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the tax commission of Ohio. No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or in control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interest, such safe deposit company, trust company, corporation, bank or other institution, shall deliver or transfer the same to any person whatsoever whether in a representative capacity or not, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio and the county auditor at least ten days prior to such delivery or transfer; but the tax commission of Ohio may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons, from the obligation to give such notice or to retain such portion. The tax commission or the county auditor, personally or by representatives, may examine such securities, deposits or other assets at the time of such delivery or otherwise. Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable for the amount of the taxes and interest due under this subdivision of this chapter on the succession of such securities, deposits, assets or property. Such liability may be enforced by action brought by the county treasurer in the name of the state in any court of competent jurisdiction."

That portion dealing with corporations other than those "organized or existing under the law of Ohio" is as follows:

"No * * * corporation, * * * having in possession * * * securities * * * or property belonging to or standing in the name of a decedent, * * * including the shares of the capital stock of * * * such * * * corporation, * * * shall deliver or transfer the same to any person * * * unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio * * *; but the tax commission * * * may consent in writing to such delivery or transfer, * * *."

Several opinions of this department have been rendered dealing with this section, two of which will be found in the Opinions of the Attorney General, Volume II, 1919, pages 1327 and 1332. What was true then it true now, that:

"The actual and theoretical situs of property subject to inheritance taxation presents some of the most perplexing questions in the entire scope of the subject." (Gleason and Otis, p. 307.)

We quote from the opinion found on page 1336, Volume II, 1919 as follows:

"A foreign corporation actually keeping its stock books in this state and making transfers here, would at least, if registered as a foreign corporation under the laws of this state, be within the terms of the statute (5348-2) and it is the opinion of this department that under such circumstances the statute would apply."

And again the same opinion holds:

"At the most, then, the section (5348-2) regulates transfers taking place in this state and involving action in this state on the part of the institution referred to therein. Therefore, a foreign corporation, admitted to do business in this state, transferring stock on its books, kept in another state, from the name of a decedent to that of his executor, administrator or other successor, would not come within the operation of this statute even though the decedent was domiciled in this state, whether the corporation had complied with the laws of this state or not."

From the other opinion found on page 1327 we quote:

"It is the advice of this department that if stocks of corporations are permanently kept in this state they are, on that account alone, in respect to their succession taxable in this state. As stated, this question must be regarded as doubtful, but it would seem to be proper to raise it for judicial determination in this way."

From these two opinions, and especially from the above quoted portions I find the opinion of this department on said section to be, in general terms, as follows:

(a) Stock in a foreign corporation owned by a non-resident is taxable under succession as referred to in your communication, if the certificate is permanently kept in this state, or if such corporation is admitted to do business in this state and maintains a transfer office here.

(b) Stock in a foreign corporation owned by a non-resident is subject to the consent of the Tax Commission as set forth in section 5348-2 G. C. when such corporation is admitted to do business in this state, and keeps its transfer books here.

(c) Stock in a foreign corporation owned by a resident of Ohio is subject to the consent of the Tax Commission when transfer is made in this state.

(d) Stock in a foreign corporation not admitted to do business in this state, and having no property in this state, is not subject to the consent of the Tax Commission as prescribed in this section.

Following these general principles, I shall endeavor to answer your questions.

To your *first* question: The case recited by you is such as is described in the quotation above given from page 1336, so far as the registered stock is concerned. If a foreign corporation's stock books are kept here for the transfer of preferred stock and the corporation is admitted to do business in this state, it would, therefore, appear that consent for transfer of preferred stock by the Tax Commission is necessary.

To your *second* question: In this case where the common stock is transferred in another state, we refer to the quotation as found on page 1336, as follows:

"A foreign corporation admitted to do business in this state transferring stock on its books kept in another state, from the name of the decedent to that of his executor, administrator or other successor would not come within the operation of this statute even though the decedent was domiciled in this state."

Consequently, the consent of the Ohio Tax Commission would not apply in the case of a non-resident where transfer is made in another state.

To your *third* question: Again we refer to a quotation above given, being that found on page 1327, wherein it states:

"It is the advice of this department that if stocks of corporations are permanently kept in this state they are, on that account alone, in respect to their succession taxable in this state."

It would, therefore, appear that if such stocks were permanently kept in this state, they are taxable, whether the stock be preferred or common stock, or if not permanently kept in this state, and being stock of a foreign corporation owned by a non-resident and transferable on the books of a corporation whose transfer records are maintained in Ohio, the succession thereto is also taxable in this state.

To your *fourth* question: In the case of the common stock, being owned by a non-resident and transferred in another state, it would, of course, not be taxable in this state.

To your *fifth* question: This case differs from the first one presented in that the transfer of the stock, both preferred and common are indiscriminately made, either in Ohio or in New Jersey. In conformity to the answers to the preceding questions, we are of the opinion that consent is necessary when the transfer is made in Ohio and the deceased had been a resident of this state, but if transfer be made in New Jersey, of course the consent of your Commission is not necessary.

To your *sixth* question: Here you present a case of a non-resident owning stock in a foreign corporation, and transfers of such stock to be made either in Ohio or New Jersey. Following the rule heretofore given, when the transfer is made in Ohio, the same answer would be as that given to your first question, namely, that the consent of the Commission is necessary, but of course, where the transfer is made in New Jersey, the consent of the Commission would not be necessary and the section would not apply.

To your *seventh* question: This presents a question relative to stock owned by a nonresident in a foreign corporation not admitted to do business nor owning property in this state, but maintaining a transfer office in Ohio.

In the former opinion we find the following:

"These conclusions leave open but one question, namely as to whether a foreign corporation not registered to do business in this state, but keeping its stock books here and making the transfer here, would be subject to the statute in case of the transfer of stock belonging to a resident decedent. This question is very doubtful, and it would seem hardly possible that it could ever arise in practice."

What the former Attorney General thought "hardly possible" is here presented, but the opinion further recites:

"One thing is certain: unless the corporation is authorized to transact business in this state, or unless it has property in this state subject to attachment, the courts of this state could not acquire jurisdiction over it for the purpose of enforcing the collection of the tax or penalty from the corporation."

This being a fact, of course section 5348-2 could not apply.

To your *eighth* question: What is true in the seventh answer wherein it relates to an Ohio decedent would apply with at least equal force to a non-resident decedent, and we are of the opinion that the section could not apply.

To your *ninth* question. In this question we have stock in a foreign corporation belonging to the estate of a nonresident decedent to be transferred in Ohio, when the corporation had not been authorized to do business in this state and has no property herein. If the stock be sent here merely for the purpose of transfer, it would not be taxable, for if the corporation be not authorized to do business in this state and has no property within the state, the courts of the state could not have jurisdiction over it. See Opinions of the Attorney General, 1919, Volume II, page 1336. It would, therefore, appear certain that the property is not taxable here.

Respectfully,

C. C. CRABBE,
Attorney General.

333.

APPROVAL, BONDS OF VILLAGE OF MINERAL CITY, TUSCARAWAS COUNTY, \$2,100.00, TO REPAIR AND IMPROVE CERTAIN STREETS.

COLUMBUS, OHIO, May 11, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

334.

TAFT BILL—HOUSE BILL NO. 20 IS SUBJECT TO REFERENDUM PROVISIONS OF CONSTITUTION—SECTION 1-D OF ARTICLE II OHIO CONSTITUTION CONSTRUED.

SYLLABUS:

House Bill No. 20, commonly called the Taft Bill, is not such a law as is included in the expression, "laws providing for tax levies," used in section 1-d of Article II of the Ohio Constitution.