

818.

APPROVAL, NOTES OF BRADFORD VILLAGE SCHOOL DISTRICT,  
MIAMI COUNTY, OHIO—\$1,304.00.

COLUMBUS, OHIO, May 11, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

819.

TAX AND TAXATION—LAND CONTRACT OR JUDGMENT IF A CREDIT  
MUST BE LISTED FOR TAXATION AT "TRUE VALUE IN MONEY"  
—COUNTY AUDITOR AUTHORIZED TO ASSESS PENALTY—HOW  
"TRUE VALUE IN MONEY" DETERMINED.

**SYLLABUS:**

1. *A person owning a credit on the tax listing days of 1927, 1928, 1929 and 1930, whether in the nature of a land contract or of a judgment rendered thereon, was required to list such credit for taxation at its "true value in money" rather than at its face value.*

2. *When such credit was not returned for taxation during such years, but is subsequently reduced to judgment and collected, and such omission to list comes to the attention of the county auditor, he has the authority, by virtue of the provisions of Section 5389, General Code, to assess a tax against the owner of such credit at the true value thereof, on the dates when it should have been listed and at the tax rates for such years, and in addition thereto, to assess a penalty of fifty percent of the tax in the manner prescribed in such section.*

3. *The "true value in money" of such credit is its actual value as determined by applying modern rules of determining value or appraisal and is not to be measured solely by the face value thereof.*

COLUMBUS, OHIO, May 12, 1933.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

"It is desired to obtain the benefit of your opinion on several questions of law predicated upon the following facts:

In July of 1930 a corporation recovered and collected a judgment in the court of appeals in the sum of forty-eight hundred dollars (\$4800.00) and interest. The litigation has been pending on four (4) tax listing dates, the status on each of said dates being as follows:

1. Prior to January 1, 1927, the corporation had filed suit on a contract for the sale of real estate, claiming a balance of five thousand dollars (\$5,000.00) and interest. The suit was not listed by the corporation as a taxable credit as of January 1, 1927.

2. Prior to January 1, 1928, the vendee had filed an answer and

cross-petition, alleging breach of the contract, asking rescission, denying any liability to the corporation and claiming fifteen thousand dollars (\$15,000.00). Again the amount was not included in the listing by the corporation.

3. Prior to January 1, 1929, the case had been tried in the common pleas court, but not yet decided. The corporation again omitted the claim.

4. Prior to January 1, 1930, the common pleas court found in favor of the plaintiff in the sum of forty-seven hundred dollars (\$4700.00), and the case had been appealed and awaiting trial *de novo* in the court of appeals. The amount was again omitted from the corporation tax return, although it later developed, in July of the same year, that the corporation collected approximately forty-eight hundred dollars (\$4800.00) and interest.

On each of said tax listing dates, the corporation had debts amounting to slightly more than half of the amount of the judgment and deductible from the value in money of the judgment. The corporation claims that it was advised by counsel that under the circumstances there could be no tax, because the credit would be listed not at its face value but at its true value in money and that by reason of the dispute, litigation and cross-petition the value of the credit was so highly speculative that the true value in money that might be obtained for it was practically nothing.

I. Where a law suit has not been listed for taxation and after several years a judgment is rendered for one of the parties and collected, may the tax officials list this judgment, at a valuation equal to the net amount realized, on four preceding tax listing dates when the suit was pending? (The taxpayer contends that the subsequent evidence of the amount eventually realized would not establish, nor even be admissible to establish, the value of the claim on prior tax listing dates and that the valuation as of such prior dates must be determined from surrounding facts and circumstances existing at the time when the claim should have been evaluated and listed.)

II. Assuming that the judgment should never have been listed at a valuation equal to the *full amount eventually collected*, if it had been listed on tax listing dates, does not the taxpayer waive the right to list the claim at *less than the full amount collected* by waiting until the judgment is rendered and collected? (The taxpayer contends that under *Cameron vs. Cappeller*, 41 O. S. 533, the penalty for such omission is the statutory penalty of fifty per cent (50%) of the valuation as of the time and place it should have been listed.)

III. In the case of this credit, or of any other credit omitted on tax listing dates, may the taxing authorities (either in lieu of the statutory penalty of fifty per cent (50%) on the valuation or in addition to said statutory penalty) tax the credit at a valuation subsequently developed instead of the true value in money at the time and place when the credit should have been listed? (The taxpayer contends that under *Cameron vs. Cappeller*, 41 O. S. 533, the omitted credit can be taxed only at the true value in money at the time it should have been listed and that the tax and penalty, if any, must be based upon such valuation.)

IV. Would it be proper in this case to list the judgment as of

January 1, 1927, 1928, 1929 and 1930, at the full amount subsequently collected and then give the taxpayer an opportunity to deduct its actual expense of collection?

The taxpayer contends that under *Cameron vs. Cappeller* the omitted credit cannot be thus taxed but can only be taxed at its true value in money as of the dates when it should have been listed."

From the facts stated in your inquiry I assume that the item of taxable property is being assessed pursuant to the provisions of Section 5398, General Code. While your question is specifically, whether the judgment is taxable for the years 1927, 1928, 1929 and 1930, I assume that your inquiry is also as to whether the *credit* upon which the judgment entered in the common pleas court during the year 1929 and later rendered in the court of appeals, was founded is such a taxable credit. You state that the suit arose out of the unpaid balance of a land contract. Under the tax law as it existed in 1928 under former Section 5370, General Code, credits were taxable. Former Section 5327, General Code, defined credits. In the case of *Rheinboldt vs. Raine, Auditor, et al.*, 52 O. S. 160, the Supreme Court held that moneys owing on a land contract constituted a taxable credit within the meaning of such section. The syllabus of such case reads:

"A sum due the vendor of real estate from the vendee, as purchase money, to pay which the vendee has given an absolute obligation, is a credit and taxable as such, notwithstanding the vendor has retained the legal title of the land sold as his security.

Where sums due as such purchase money have been omitted from the tax return of the vendor, the county auditor is authorized to go back five years and place the same on the duplicate for taxation."

It is therefore evident that the claim on the land contract was a taxable credit even before being reduced to judgment. The judgment of the court on the contract merely confirmed the liability on the chose in action that formerly existed, and changed the character of the taxable credit from a chose in action to a judgment, that is the chose in action, by the rendition of the judgment, became merged into the superior right, the judgment being merely a legal step in the enforcement of the payment of a prior obligation, but for the existence of which the judgment could not have been rightfully rendered.

It is therefore evident that the credit should have been listed for taxation whether it was a claim founded on a land contract or had ripened into a judgment.

The Constitution, as effective during the tax years 1927, 1928, 1929 and 1930, provided that "credits" should be taxed at their "true value in money." (Former Section 2, Article XII, Constitution of Ohio.)

The face value of a credit is not necessarily its true value. The true value may be in excess of the face value of the credit, or it may be less than its face or par value. In the case of *McCurdy, Gdn. vs. Prugh, Treas.*, 59 O. S. 465, the Supreme Court held a law requiring credits to be taxed at their face value to be unconstitutional. The first paragraph of the syllabus of such case reads:

"1. Promissory notes, book accounts, and other credits are property and fall within that provision of section 2 of article XII of the Constitution of this state which declares that 'all real and personal property'

shall be taxed 'according to its true value in money,' and that clause of section 2739, Revised Statutes, which requires all credits payable in money to be listed for taxation at their face value, being repugnant to such constitutional provision, is void."

If having been established that the face value of a credit is not necessarily its real value in money, what is such value? It has been held that in some cases the real value is that price which a willing seller who is not obliged to sell, and a willing buyer who is not obliged to buy agree upon for the sale and purchase of an article. *Naftzger vs. State*, 24 O. App. 183, 184. It has also been held that all the elements of value should be taken into consideration in determining the true value in money of the tax item. *State vs. Jones, Auditor*, 51 O. S. 513; *Express Co. vs. Ohio*, 166 U. S. 220; *State ex rel. vs. Halliday*, 61 O. S. 352, 379.

It has been contended that the real value of land is that value upon which, if such land is improved suitably to its location, it will produce a fair income after deducting therefrom the value of the improvements located thereon.

It is evident, however, that the amount that is ultimately collected on a "credit" is not necessarily the real value thereof as contemplated by former Section 2 of Article XII of the Ohio Constitution. If such be the case the county auditor could not possibly determine the value of a credit for the purposes of taxation until it had become due and had been paid, for until such time he could not definitely determine the amount that would be paid thereon. If the credit in question had been listed for taxation in the tax year 1927 it should have been listed at its real value at that time, taking into consideration all elements of valuation apparent, such as the face amount thereof and the probable collectibility by reason of the solvency or collectibility of the debtor, etc. However, not having been listed at that time and having been omitted from taxation by the owner during the tax years 1927, 1928, 1929, 1930, and 1931, until additional evidence has clearly established that its actual value was \$4800.00 plus interest thereon at the rate of six percent per annum, it would appear that the value of such obligation or taxable credit bore some relation to the amount actually collected less reasonable interest during the time it was unpaid and reasonable allowance for expense of collection. That is, the fact that the court held the "credit" to be a valid obligation is some evidence that it had some value; the fact that \$4800.00 plus interest was paid on the credit is some evidence of the value thereof. The rule is well stated in the opinion of Bartley, C.J., in *Exchange Bank vs. Hines*, 3 O. S. 1, 25:

"In estimating the taxable value of credits they are not to be taken at their nominal amount, but like the valuation of other property, every circumstance affecting in any manner their value should be taken into consideration. If the debtor be wholly insolvent, the credit is of no value, and therefore has no basis for taxation. If the debtor be in doubtful or failing circumstances, if the claims be disputed, contested, or involved in liquidation, or if any defense by way of payment, or otherwise, be known to exist, it should be considered, and all proper allowances made, in estimating its taxable valuation."

Of like effect, see *Cameron vs. Cappeller, Auditor*, 41 O. S. 533.

You state that the taxpayer did not list the amount of the credits for taxation for the reason that he was advised that the value of the credit was such that

it had no taxable value. If this claim was in good faith, the ancient rule *ignorantia legis neminem excusat* (ignorance of the law excuses no one) would apply. However, the taxpayer must have been of the opinion that the claim had some value prior to January 1, 1927, or he would not have caused suit to be filed thereon. Prior to January 1, 1930, the taxpayer had recovered a judgment which he did not list for taxation and if a corporate taxpayer he should have caused the established judgment to be listed for taxation.

Former Section 5366, General Code, required that the taxpayer list all his personal property for taxation, including credits, on the forms prescribed by the Tax Commission of Ohio, and furnished by the county auditor. On such blank appeared a space for the listing of all accounts receivable, another for accounts payable, and such form indicated that a subtraction should be made and the difference carried into the column immediately to the right, as "taxable credits." Former Section 5369, General Code, provided a penalty of fifty percent of the tax assessed for the year in case of a wilful failure to list all property or to answer questions thereon. It was therefore the clear duty of the taxpayer to list the "credit" whether in the form of a land contract receivable, or a judgment, at its "true value in money."

Such property not having been listed for taxation, the county auditor should proceed to determine the true value of such credits, as distinguished from the face value pursuant to the provisions of Section 5398, General Code, beginning with the year 1926. The pertinent parts of such section 5398, General Code, read:

"\* \* If, upon such hearing, or examination, the auditor finds that the person so required by law to list property or to make a return thereof for taxation, has made a false return or has evaded making a return, or has withheld from or failed to include in, such return or statement any taxable property, either tangible or intangible, required by law to be listed, he shall determine as nearly as practicable the true amount or value of the personal property, moneys, credits and investments which such person failed to return or upon which he should have been, but was not, taxed for the year 1926, or for any year or years subsequent thereto up to and including the year 1931.

He shall assess the sum so omitted for any of said years at the rate of taxation belonging to such year and enter the amount accordingly on the proper tax list in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes.

To the amount so ascertained for any of said years he shall add fifty per cent., assess the omitted sum so increased by said penalty at the rate of taxation belonging to such year, and accordingly enter the amount on the proper tax list in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes.

If the auditor finds that the error or omission was made without intention to mislead, deceive or defraud for the purpose of evading taxation on the part of the person whose duty it was to make the return, he may remit any penalty for such year, but no such penalty shall be remitted unless such person shall first pay to the county all taxes lawfully due and payable within sixty days after the amount of said lawful taxes are determined and placed on the tax list."

It is therefore evident that the duty of the county auditor is to list the

"credit" in question, whether in the form of a land contract or a judgment, at the true value thereof, as of the date when it should have been listed. In determining such value he should take into consideration all the elements affecting its value, including, among others, its face value, the solvency of the debtor, the interest rate thereof and the expense of collection. The amount finally recovered, I believe, would be some evidence of its value at the earlier dates, however, the face value is not its true value, but merely one of the evidences of its value.

Specifically answering your inquiries it is my opinion that:

1. A person owning a credit on the tax listing days of 1927, 1928, 1929 and 1930, whether in the nature of a land contract or of a judgment rendered thereon, was required to list such credit for taxation at its "true value in money" rather than at its face value.

2. When such credit was not returned for taxation during such years but is subsequently reduced to judgment and collected, and such omission to list comes to the attention of the county auditor, he has the authority, by virtue of the provisions of Section 5389, General Code, to assess a tax against the owner of such credit at the true value thereof, on the dates when it should have been listed and at the tax rates for such years, and in addition thereto, to assess a penalty of fifty percent of the tax in the manner prescribed in such section.

3. The "true value in money" of such credit is its actual value as determined by applying modern rules of determining value or appraisal and is not to be measured solely by the face value thereof.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

820.

APPROVAL, NOTES OF TROY RURAL SCHOOL DISTRICT, GEAUGA COUNTY, OHIO—\$709.00.

COLUMBUS, OHIO, May 12, 1933.

*Retirement Board; State Teachers Retirement System, Columbus, Ohio.*

821.

APPROVAL, NOTES OF BUTLER VILLAGE SCHOOL DISTRICT, RICHLAND COUNTY, OHIO—\$249.00.

COLUMBUS, OHIO, May 12, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*