

631.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN CLERMONT, MEIGS
AND VINTON COUNTIES.

COLUMBUS, OHIO, June 16, 1927.

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

632.

FRANCHISE TAX—A FOREIGN CORPORATION ORGANIZED FOR THE PURPOSE OF PURCHASING, IMPROVING AND SELLING LAND OUTSIDE OF OHIO, AND WHICH KEEPS ITS CASH, RECORDS, ETC., AND EXECUTES CONVEYANCES FOR FOREIGN REAL ESTATE, IN OHIO AND HOLDS DIRECTORS' MEETINGS IN OHIO, IS LIABLE FOR FRANCHISE TAX.

SYLLABUS:

Under the provisions of Enacted Amended Substitute Senate Bill No. 22, a foreign corporation organized for the purpose of purchasing, improving, and selling a tract of land outside of Ohio, and which keeps all of its cash, notes, papers and records, and executes conveyances for parcels of its foreign real estate, in Ohio and holds its directors' meetings in Ohio, is liable for the payment of the franchise tax.

COLUMBUS, OHIO, June 17, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

“The X company was organized under the laws of Virginia for the purpose of purchasing, improving and selling a tract of land in that state and has never been admitted to do business in Ohio. All of its stockholders, directors and officers (with one exception) are residents of Ohio, the exception being a resident of New York. All the cash, notes, papers and records of the company are kept in Ohio. The only other property consists of the unsold portions of the land in Virginia. Negotiations for the sales of land are conducted by an agent in Virginia, the conveyances being executed in Ohio. The annual meeting of the stockholders, attended almost entirely by proxy, is also held in Virginia. Few, if any, meetings of directors are held. When so held they are most informal and are in Ohio.

Is the company liable for franchise tax in this state under the new franchise tax law?”

Enacted Amended Substitute Senate Bill No. 22 which was filed in the office of the Secretary of State May 12, 1927, amends various sections of the General Code and is entitled An Act To provide for the determination, charging and collection of a corporation franchise tax for the privilege of exercising the corporate franchise and of doing business within this state.

Section 1 provides :

“* * * The tax provided by this act for foreign corporations shall be the fee charged against each corporation organized for profit under the laws of any state or county other than Ohio, except as provided herein, for the privilege of doing business in this state or owning or using a part or all of its capital or property in this state or for holding a certificate of compliance with the laws of this state authorizing it to do business in this state, during the calendar year in which such fee is payable.”

Section 2 provides :

“* * * Each domestic corporation shall be required to file its first report and pay the tax thereon in and for the calendar year immediately succeeding the date of its organization and each foreign corporation shall similarly report and pay in and for the calendar year immediately succeeding its admission. Failure on the part of any foreign corporation for profit to proceed according to law to obtain from the secretary of state proper authority to do business or to own or use property in this state shall not excuse such corporation from liability to make proper excise or franchise tax report or return or to pay a proper excise or franchise tax or penalty, if such liability would have attached had such proper authority been obtained.”

Section 3 provides :

“Within thirty days after the taking effect of this act, and annually, thereafter, between the first day of January and the thirty-first day of March each corporation, incorporated under the laws of this state for profit, and each foreign corporation for profit, doing business in this state or owning or using a part or all of its capital or property in this state, or having been authorized by the secretary of state to transact business in this state shall make a report in writing to the tax commission in such form as the commission may prescribe. * * *”

Section 5 provides :

“The annual corporation report shall include statements of the following facts as of the date of the beginning of the current annual accounting period of such corporation :

* * * * *

6. The date of the beginning of the current annual accounting period of the corporation.

* * * * *

8. The location and value of the property owned or used by the corporation as shown on its books, both within and without the state, given separately.”

Section 6 provides :

"After the filing of the annual corporation report the tax commission, if it shall find such report to be correct, shall on or before the first Monday in May determine the value of the issued and outstanding shares of stock of every corporation required to file such report. Such determination shall be made as of the date shown by the report to have been the beginning of the then current annual accounting period of such corporation. For the purpose of this act, the value of the issued and outstanding shares of stock of any such corporation shall be deemed to be the total value, as shown by the books of the company, of its capital, surplus, whether earned or unearned, undivided profits, and reserves. * * *

The commission shall then determine the proportionate value of the issued and outstanding shares of stock of each corporation filing such report, which proportionate value shall bear the same ratio to the entire value of such shares as the sum of all the property owned or used by it in this state and business done by it in this state during the year preceding the date of the commencement of its current annual accounting period, bears to the sum of the value of all its property and all of the business done by it during said year. * * *

On the first Monday in June the tax commission shall certify to the auditor of state the value or the proportionate value of the issued and outstanding shares of stock determined as aforesaid for each corporation."

Section 7 provides :

"On or before June 15 the auditor of state shall charge for collection from each such corporation a fee of one-eighth of one per cent for each of the years 1927 and 1928 * * *, and shall immediately certify the same to the treasurer of state, * * *.

Provided, further, if any foreign corporation elects, as provided by law, to exempt its shares of stock from taxation in Ohio as personal property, it shall pay in lieu of the franchise tax prescribed herein, a franchise tax upon the entire value of its issued and outstanding shares of stock determined as aforesaid and without apportionment. A foreign corporation making this election shall set forth such fact in its annual report to the tax commission and thereupon its franchise fee shall be computed upon the entire value of its issued and outstanding stock as herein provided. Promptly upon receipt of the certificate of the auditor of state the treasurer of state shall mail to each corporation at its principal office in the state of Ohio, or to such person in the state of Ohio as the corporation may designate in its report, a statement showing the value or the proportionate value of the shares of stock upon which such fee is charged and the amount of the fee. Such fee shall be payable to the treasurer of state on or before the 15th day of the following July. If such fee is not paid on or before that time, a penalty shall attach thereto as is provided in Section 5491 of the General Code. But no penalty shall attach prior to the expiration of thirty days from the date of the mailing of the statement to the treasurer of state."

A corporation may be deemed to be doing business in the state where it has an office and transacts therein a portion of its business for which it was incorporated: 9 Fletcher Cyc. of Corporations, Sec. 5932.

Judson on Taxation, Sec. 192, entitled "What is doing business in State," quotes from the decision in the case of *Cotton Oil Co., vs. Wemple*, 44 Fed. 24, as follows:

"If it (the foreign corporation) keeps funds here for maintaining its place of business, and to enable it to carry on the operations of its agents, such a foreign company would seem to be taxable under the statute. Certainly it cannot matter that the volume of business done is small, or that the location, instead of being a warehouse or a shop, is an office or a sample room."

It is stated in Cooley, Taxation, Sec. 920, that:

"What constitutes doing business, so far as the power to tax is concerned, is often a troublesome question. 'Business' is a very comprehensive term and embraces everything about which a person can be employed. Not only must the foreign corporation, in order to be taxable, be doing business, but also business for the doing of which it was incorporated, it has been held. Whether a foreign corporation is doing business in the state must be determined from the character of the business carried on, and not from the existence of any unexercised powers reserved to it by its contracts. It is not important that the business activities of a corporation in the state are small. A corporation is 'carrying on' or 'doing' business in a particular state if it is doing some of the work or is exercising some of its functions for which it was created."

This is a foreign corporation organized for the purpose of purchasing, improving and selling a tract of land not in Ohio. Said corporation has never been admitted to do business in Ohio. Negotiations for the sales of land are not conducted within, and the meetings of the stockholders are not held within this state.

The corporation's stockholders, directors and officers (with one exception) are residents of Ohio. All the cash, notes, papers and records are kept in Ohio. The only other property consists of unsold portions of said land. The conveyances are executed in Ohio. The only meetings of the directors are held in Ohio.

Although said corporation has not been admitted to do business in Ohio, it does some business in Ohio and owns or uses a part of its capital or property in this state and therefore comes within the provisions of Section 1 of Amended Substitute Senate Bill No. 22, supra, as enacted. The fact that said corporation has not been admitted to do business in this state, and that it does not file its report does not exempt it from the payment of the franchise tax because as provided in Section 2 of said act:

"Failure on the part of any foreign corporation for profit to proceed according to law to obtain from the Secretary of State proper authority to do business or to own or use property in this state shall not excuse such corporation from liability to make proper excise or franchise tax report or return or to pay a proper excise or franchise tax or penalty, if such liability would have attached had such proper authority been obtained."

I am not unmindful of my Opinion No. 1671, rendered to your Commission under date of June 12, 1916, in the matter of The Pittsburgh Block Coal Co., nor

of the opinion of my predecessor, Attorney General Hogan, which is referred to in my Opinion No. 1671.

The instant case differs from The Pittsburgh Block Coal Co. case as well as from the case passed upon by Attorney General Hogan in that in the instant case the company keeps all of its cash, notes, papers and records in Ohio, executes its conveyances and holds its directors' meetings. Certainly the holding of the directors' meetings in Ohio under such circumstances, is doing business in Ohio.

It is therefore my opinion that under the provisions of Enacted Amended Substitute Senate Bill No. 22, a foreign corporation organized for the purpose of purchasing, improving, and selling a tract of land outside of Ohio, and which keeps all of its cash, notes, papers and records, and executes conveyances for parcels of its foreign real estate, in Ohio and holds its directors' meetings in Ohio, is liable for the payment of the franchise tax.

Respectfully,
EDWARD C. TURNER,
Attorney General.

633.

APPROVAL, NOTE OF CLARK TOWNSHIP RURAL SCHOOL DISTRICT,
COSHOCTON COUNTY—\$1,045.00

COLUMBUS, OHIO, June 17, 1927.

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

634.

APPROVAL, LEASES TO MIAMI AND ERIE CANAL, OHIO AND ERIE
CANAL, HOCKING CANAL, LAKE ST. MARYS, INDIAN LAKE, PORT-
AGE LAKES AND BUCKEYE LAKE LANDS.

COLUMBUS, OHIO, June 17, 1927.

*Department of Highways and Public Works, Division of Public Works, Columbus,
Ohio.*

GENTLEMEN:—I am in receipt of your letter dated June 14th, in which you in-
close twenty-six leases hereinafter described, executed in triplicate, for my approval.

MIAMI AND ERIE CANAL.	Valuation.
J. H. Bricker, land lease-----	\$150.00
Cincinnati, Hamilton & Dayton Railway Company, pole line-----	100.00
Geo. C. Dirr, land lease-----	300.00
The Iron City Foundry Company, land lease-----	1,000.00