

levy made for school operation purposes. This levy, however, must be made within the fifteen mill limitation fixed by Section 5625-2, General Code.

Moreover, since the enactment of the so-called budget law in 1927 (102 O. L., 391) the making of tax levies is controlled by the provisions of that act. It is there provided, in Section 5625-6, General Code:

“The following special levies are hereby authorized without vote of the people

* * *

For the library purposes of the subdivision, in accordance with the provisions of the General Code authorizing a levy or levies for such purposes, but only to the extent so authorized.

* * *

Each such special levy shall be within the fifteen mill limitation and shall be subject to the control of the county budget commission as provided by this act.

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the fifteen mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses.”

The phrase “For the library purposes of the sub-division” is sufficiently broad to include, in my opinion, the purposes set forth in Section 7632, supra.

In specific answer to your questions, I am of the opinion:

First, the tax levy authorized by Section 7632, General Code, is a levy separate and distinct from other levies authorized by law.

Second, it is the duty of the county auditor to certify the amount collected of the tax authorized by Section 7632, General Code, or so much thereof as is needed to meet the contract of the subdivision for library service, to the fiscal officer of the board of education which has made the levy, and said fiscal officer shall forthwith draw his warrant for such amount on the treasurer of said school district, payable to the proper officer of the library, private corporation or library association with which the board of education had contracted for library service.

Respectfully,

GILBERT BETTMAN,

Attorney General.

348.

TAX AND TAXATION—CORPORATION FOR PROFIT—HOW VALUE OF STOCK OF HOLDING COMPANY DETERMINED.

SYLLABUS:

Where a corporation for profit reports under the provisions of Section 5495-2, General Code, that it is holding the stock of a subsidiary company, but transacts no business and has no property, except the shares of stock of the subsidiary company, the value of the shares of stock of the subsidiary company is determinative of the value of the stock of the holding company.

COLUMBUS, OHIO, April 25, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

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

"Under the provisions of Section 5498 of the General Code, the Tax Commission is required on or before the first Monday in May to determine the value of the issued and outstanding shares of stock of every domestic corporation for profit required to file report. Such determination is made as of the date shown by the report of the company to have been the beginning of the then current annual accounting period. The value of the issued and outstanding shares of stock is deemed to be the total value, as shows by the books of the company, of its capital stock, surplus, whether earned or unearned, undivided profits and reserves, but exclusive of reserves for depreciation, depletion and for taxes due and payable during the year for which report is made, and after deducting from such total value the value of the item of goodwill, if carried on the books of the company as an asset, and such further amount as, upon satisfactory proof furnished by the corporation, the tax commission may find to represent the amount, if any, by which the value of the assets, other than good will, as carried on its books exceeds the fair value thereof. Then if the corporation has property outside of this state, or transacts business outside of this state, the commission shall proceed to determine the proportionate value of the shares of issued and outstanding stock represented by property or business in Ohio.

Under the provisions of the above section, it is made clear that the value to be determined by the commission shall be the value as shown by the books of the company of its capital stock, surplus, undivided profits and reserves, less proper deductions therefrom.

The commission has had presented to it from reports submitted by two companies, the question as to how to value the stock of one of these companies, said companies for sake of example to be designated as THE A COMPANY and THE B COMPANY.

The A Company is merely a holding company and holds all of the capital stock of The B Company. Report of The B Company was filed showing capital stock, surplus and undivided profits of the value of \$285,000, of which amount \$60,000 represented capital stock issued and outstanding, \$195,000 surplus and \$30,000 undivided profits. As the company had no goodwill and made no claim for excess of book value over fair value, the value of its shares of issued and outstanding stock was determined by the commission to be \$285,000.

Report of The A Company which is the holding company was filed, but no figures are given in this report to represent the assets of the company, the only figure given being 600 shares of no par value stock. Statement is made in the report that this corporation holds all of the stock of The B Company, but transacts no business.

The commission desires advice from you as to how it should proceed under the provisions of Section 5498 of the General Code to determine the value of the shares of stock of The A Company.

It has been its custom in cases of this kind to determine the value of the stock of a holding company to be the value as represented by the assets of the subsidiary company, thus taxing the same assets twice.

Inasmuch as this question is of vital importance at the present time in auditing the reports for the year, we ask your advice as to whether the method which has been used is the proper one, and, if not, kindly set forth in detail how we may proceed to value the stock of a company which merely holds all of the capital stock of a subsidiary company.

We trust that you will favor us with your advice at as early a date as possible. For your guidance, copies of the reports mentioned are herewith submitted to you."

It is stated that it has been the custom in cases of this kind to determine the value of the holding company to be the value as represented by the assets of the subsidiary company, and you inquire whether this is a proper method.

The answer to your inquiry involves the consideration of Section 5495, 5495-2 and 5498, General Code. Section 5495, General Code, provides what fees shall be charged domestic corporations and foreign corporations, and reads as follows:

“The tax provided by this act for domestic corporations shall be the fee charged against each corporation organized for profit under the laws of this state, except as provided herein, for the privilege of exercising its franchise during the calendar year in which such fee is payable and 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 country 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 5495-2, General Code, requires the filing of an annual report in writing with the Tax Commission by each corporation for profit. Said section reads as follows:

“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. It shall be the duty of the commission to furnish corporations, on request, copies of the forms prescribed by it for the purpose of making such report.”

Section 5497, General Code, provides what said annual report shall contain, and reads in part as follows:

“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:

1. The name of the corporation;
* * * * *
5. The nature and kind of business in which such corporation is engaged;
* * * * *
7. The amount of its capital, surplus, whether earned or unearned, undivided profits and reserves, as shown by the books of the corporation. A complete schedule shall be filed with the report showing the object and amount of each such reserve;
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; and the total amount of business done and the amount of business done within the state by said corporation during its preceding annual accounting period, given separately. Business done within this state by domestic corporations shall include all business except extra-state business;
* * * .”

Section 5498, General Code, provides the rule for determining the value of issued and outstanding shares of stock; and also for the certification of said value to the Auditor of State. Said section reads as follows:

"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, but exclusive of reserves for depreciation, depletion, and taxes due and payable during the year for which such report was made, and after deducting from such total value the value of the item of goodwill if carried on the books of the corporation as an asset, and such further amount as, upon satisfactory proof furnished by the corporation, the tax commission may find to represent the amount, if any, by which the value of the assets (other than good will) of the corporation as carried on its books exceeds the fair value thereof. Claim for the deduction of such difference must be made by the corporation at the time of filing its report. 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. Provided, however, that the proportionate value of the issued and outstanding shares of stock of a domestic corporation as certified by the tax commission shall not be less than sixty per cent of the total value of such issued and outstanding shares.

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."

An examination of the foregoing sections will disclose that each corporation for profit doing business in this State or owning or using a part or all of its capital or property in this State, shall make an annual report in writing to the Tax Commission in such form as the Commission may prescribe, and in said report the corporation is required among other things to state the nature and kind of business in which said corporation is engaged, and the amount of its capital, surplus, undivided profits and reserves as shown by its books. It is made the duty of the Tax Commission from the annual report so filed with it, to determine the value of the issued and outstanding shares of stock of said corporation. The value of the issued and outstanding shares of stock shall be deemed to be the total value as shown by the books of the company, of its capital, surplus, undivided profits and reserves, after excluding from said total reserves for depreciation, depletion and certain taxes.

In the instant case the original company herein indicated as The B Company filed its report showing its capital stock, surplus and undivided profits of the value of \$285,000 of which amount \$60,000 represented capital stock issued and outstanding, \$195,000 surplus and \$30,000 undivided profits. The value of its shares of issued and

outstanding stock was determined by the Commission to be \$285,000. The name of said corporation is The Occo Realty Company, a domestic corporation incorporated in 1923 and the nature of the business in which it is engaged is real estate investments. In its annual report to the Tax Commission it states under Item No. 10 that its capital stock issued and outstanding consists of 600 shares of common stock at a par value of \$100 per share, totaling \$60,000. The name of the A Company so-called, is The Occo Realty Holding Company incorporated in July, 1927, and in its annual report it states that the nature of the business in which it is engaged is holding capital stock of the Occo Realty Company. Under item No. 10 in said report it states that its capital stock issued and outstanding consists of 600 shares of no par stock at no value. Said company makes no other answers to the various questions propounded by the Tax Commission, but states in said report that "this corporation holds all of Occo Realty Company's capital stock but transacts no business." It therefore reports no surplus, undivided profits or reserves and no other property except the 600 shares of the common stock of Occo Realty Company. In addition it states that it transacts no business. The executive officers and board of directors of the A Company are identical with those of the B Company. It is noted that the Tax Commission in cases of this kind has determined the value of the stock of the holding company to be the same value represented by the assets of the subsidiary company. This would appear to be the only method to be pursued by the Commission, inasmuch as the said holding company does not report anything else upon which the value of its shares of stock may be based. Said holding company is incorporated as a domestic corporation for profit and as such is required to report annually to the Tax Commission upon the form prescribed by said Commission. Said company has reported upon the form furnished by the Tax Commission but has not reported in the manner prescribed by said Commission.

Under the provisions of Section 5498, General Code, upon receipt of said annual report it is the duty of the Tax Commission to determine the value of the issued and outstanding shares of stock of said corporation. Said section requires that the value of the issued and outstanding shares of stock of said corporation shall be deemed to be the total value as shown by the books of the company of its capital, surplus, undivided profits and reserves exclusive of certain reserves, depreciation, depletion and taxes due and payable during the year for which such report was made.

As the report of said holding company is incomplete and not in accordance to the rules prescribed by the Tax Commission, said Commission may proceed under the provisions of Section 5461, General Code, which reads as follows:

"When any public utility or corporation fails to make any report to the Tax Commission required by law or makes such report and fails to report or reports erroneously any information essential to the determination of any amount, value, proportion or other fact to be determined by the Tax Commission pursuant to law which is necessary for the fixing of any fee, tax, or assessment, the Tax Commission shall proceed to determine such amount, value, proportion or other fact as nearly as practicable and shall certify the same as required by law. Such power and duty of the Tax Commission shall extend to and only to the five years next preceding the year in which such inquiry is made. Upon the determination and certification by the Tax Commission herein authorized a tax fee, or assessment shall be charged for collection from such public utility or corporation at the rate provided by law for the year or years when such tax, fee, or assessment was omitted, or erroneously charged so that the total tax, fee, or assessment paid and to be paid for such year or years shall be in the full amount chargeable to such

public utility or corporation by law. Such charge shall be without prejudice to the collection of any penalty authorized by law."

Said corporation reports that it transacts no business but is engaged in the business of holding the capital stock of the Occo Realty Company, which capital stock has been by the Commission determined to have a valuation of \$285,000. It must follow that for determining the value of the shares of the holding company, the shares of the subsidiary company represent capital, surplus, undivided profits or reserve of the holding company, and are subject to the tax as provided in Section 5499, General Code, which provides that:

"On or before June 15th the auditor of state shall charge for collection from each such corporation a fee of * * * one-tenth of one per cent for each year * * * upon such value so certified, and shall immediately certify the same to the treasurer of state. * * * "

As stated in your letter this seems to be taxing the same assets twice; however, under the present status of the law, there seems to be no other course. I may add, however, that Senate Bill No. 57, entitled, A Bill to amend Sections 5495, 5497, 5498, 5499, 5506 and 5509, and to repeal Section 5521 of the General Code, relative to the imposition and collection of corporate franchise taxes is pending in the Legislature. In Section 10 of said bill provision is made that whenever one corporation, domestic or foreign, owns fifty-five per cent or more of the outstanding shares of another corporation or other corporations, such corporations may, at their option, file a consolidated report as though their property and their business were owned and transacted by a single corporation; and the tax may be determined and collected as a single tax. This evidently is an attempt to correct any inequality in the requirement of the present statutes. However, the provisions of said bill if enacted into law will not be available for the current year.

In view of the foregoing discussion and statutes quoted, I am of the opinion that the Commission should continue to follow its present rule of determining the value of the shares of the capital stock of said holding companies as described in your communication.

Respectfully,
GILBERT BETTMAN,
Attorney General.

349.

JAIL MATRON—APPOINTMENT BY SHERIFF WITHOUT PROBATE JUDGE APPROVING AND FIXING COMPENSATION—NO FINDING—ILLEGALITY OF CONTRACTING TO FEED PRISONERS—NO CURING OF IRREGULARITIES.

SYLLABUS:

1. *Where a sheriff, under provisions of Section 3178, General Code, appoints a jail matron and said appointment is approved by the probate judge who does not fix the compensation of said matron, but the county commissioners appropriate six hundred dollars for the salary of said matron, which was paid to her in monthly installments of fifty dollars each, there should be no finding for recovery made against said jail*