

sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board showing that such board has released funds for this project in accordance with section 1 of House Bill No. 69 of the second special session of the 90th General Assembly.

In addition, you have submitted a contract bond upon which the Hartford Accident and Indemnity Company of Hartford, Connecticut, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4969.

TAX AND TAXATION—"PREPAID ITEMS" DEFINING TERM "CREDITS" AS USED IN SECTION 5327, G. C., DISCUSSED.

SYLLABUS:

The term "prepaid items" as the same is used in section 5327, General Code, defining the term "credits" for purposes of taxation, includes all items of prepayment made by the taxpayer in the conduct of his business by which rights accrue to the taxpayer over the period of time covered by such prepayment, which, by recognized and proper accounting practice, may be set up as prepaid items as an asset of the taxpayer, and which on tax listing day have an actual value in money amortized as of said date.

COLUMBUS, OHIO, December 6, 1935.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your communication in which you request my opinion as to the meaning of the term "prepaid items" as the same is used in section 5327, General Code, which defines the term "credits" for purposes of taxation under the Intangible and Personal Property Tax Law. With your communication you list a number of items,

one or more or all of which as a matter of recognized accounting practice are set up as prepaid items on the asset side of the balance sheet of corporations engaged in business. My opinion is likewise requested with respect to the application of the term "prepaid items" as used in section 5327, General Code, to the different items listed by you, including such items as prepaid insurance, prepaid rent, prepaid interest on bank loans, advances to officers and salesmen and prepaid taxes of various kinds.

Section 5327, General Code, provides as follows:

"The term 'credits' as so used, means the excess of the sum of all current accounts receivable and prepaid items used in business when added together estimating every such account and item at its true value in money, over and above the sum of current accounts payable of the business, other than taxes and assessments. 'Current accounts' includes items receivable or payable on demand or within one year from the date of inception, however evidenced. 'Prepaid items' does not include tangible property. In making up the sum of such current accounts payable there shall not be taken into account an acknowledgement of indebtedness, unless founded on some consideration actually received, and believed at the time of making such acknowledgement to be a full consideration therefor; nor an acknowledgment for the purpose of diminishing the amount of credits to be listed for taxation."

Two views are suggested as to the meaning of the term "prepaid items" as used in the section of the General Code above quoted. The first view limits the meaning of this term to such prepayments as, when the same are made, create an actual or potential account receivable in favor of the corporation or other person making prepayment of the item in question. Thus, prepayment of premiums on certain kinds of insurance creates a right in the insured which may on cancellation of the insurance policy result in an account receivable in favor of such insured person. The other view which is suggested with respect to the meaning of this term is based upon a supposed recognition by the legislature of recognized accounting practice in setting up certain items as prepaid items on the asset side of the balance sheet of persons engaged in business, and leads to the conclusion that this term as used in the section of the General Code above quoted is intended to include all such items as according to recognized and proper accounting practice are thus set up as assets of the taxpayer. Looking to the theory upon which prepaid items in this view are made taxable, it is to be recognized, for example, that although a prepayment of rent for an extended period of time such as a year or more would not ordinarily result in an account receivable to the taxpayer making such prepayment in case of his removal from the leased premises before the expiration of the term of his

prepaid lease, such taxpayer but for such prepayment of rent would thereafter have in possession in the form of money, bank deposits or inventory, property or wealth of some kind which would be taxable. And in this view, it seems but right and just that the right thus accruing to the taxpayer by reason of such prepayment should be taxed at the amortized true value which such right may have on the day as of which the same is listed for taxation. This in my opinion is the purpose and legislative intent indicated by the inclusion in the term "credits" of the rights of the taxpayer therein designated as "prepaid items".

This view with respect to the meaning of this term as the same is used in section 5327, General Code, is supported to some extent by certain provisions contained in section 5328-2, General Code, which section, among other things, allocates to this state for purposes of taxation certain classes of intangible property accruing in the conduct of business in this State by non-residents and which but for the provisions of this section and of section 5328-1, General Code, might be taxable only in the state where the owner of such intangible property resides. Section 5328-2, General Code, in so far as the same is pertinent to the question here presented, provides:

"Property of the kinds and classes herein mentioned, when used in business, shall be considered to arise out of business transacted in a state other than that in which the owner thereof resides in the cases and under the circumstances following:

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In the case of prepaid items, when the right acquired thereby relates exclusively to the business to be transacted in such other state, or to property used in such business."

The above quoted language of section 5328-2, General Code, lends color to the view that the term "prepaid items" includes all continuing rights created by a prepayment made in the course of business conducted by such taxpayer and relating to such business.

Accordingly, I am of the opinion, by way of answer to the question presented in your communication with respect to the meaning of this term "prepaid items" as the same is used in section 5327, General Code, that the same includes all items of prepayment made by the taxpayer in the conduct of his business by which rights accrue to the taxpayer over the period of time covered by such prepayment, which, by recognized and proper accounting practice, may be set up as prepaid items as an asset of the taxpayer and which on tax listing day have an actual value in money amortized as of said date. No categorical answer as a matter of law can be made with respect to the application of this term as used in the statute, to each and all of the several items listed in your communication. Sufficient has been said, however, to

enable you to make proper application of the statute to such several items as they may arise, in light of such facts as may be presented to you touching the nature and character of the item in question as a prepaid item or otherwise.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4970.

DELINQUENT TAXES—WHEN COLLECTED DISTRIBUTED TO FUNDS FOR WHICH LEVIED.

SYLLABUS:

Taxes which in former years were levied by a municipal corporation or other political subdivision for the use of some particular fund or funds of such political subdivision, should be distributed to the fund or funds for which they were levied, when the same are thereafter collected as delinquent taxes.

COLUMBUS, OHIO, December 7, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your communication in which you request my opinion “as to the proper manner to be followed by the county auditor in distributing delinquent collections of real estate taxes levied in former years”. The question here presented is one with respect to the distribution of delinquent taxes of a municipal corporation or other political subdivision in the county which were levied in former years and which are collected by the county treasurer at the same time he collects current taxes of such political subdivision on the real property duplicate made up for his year.

Section 2655, General Code, provides that no person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except only when the collection of a particular tax is legally enjoined. By reason of this statutory provision, the county treasurer is not authorized or required to collect current taxes due and payable on the duplicate in his hands unless delinquent taxes on the property are paid in the full amount thereof or by installments in the manner indicated by section 2672, General Code, which provides:

“Delinquent taxes, assessments and penalties charged on the tax duplicate against any entry of real estate may be paid in install-