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Taxation

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merchantable coal owned and mined by the seller. In an action against the buyer by the seller for the purchase price of the coal delivered under the contract, the buyer admitted liability but filed a cross petition for damages suffered through the seller's failure to deliver all of its output. Held: the buyer has the burden of proving that it actually had a market for any coal not properly delivered by the seller.

WALTER PROBERT

TAXATION

Sales and Use Taxes

The cases arising under the sales and use taxes during the past year were concerned for the most part with the problem of whether the transactions in question came within the definition of a taxable sale, Section 5739.01 Ohio Revised Code (Section 5546-1, Ohio General Code), or within the exemption provisions of Section 5739.02 Ohio Revised Code (Section 5546-2, Ohio General Code)

For example, in one case[1] a retailer followed the practice of delivering goods to a prospective customer on approval. That is, the prospective customer was given a period of time within which he could accept or reject the goods, and until that time he neither paid, nor agreed to pay, anything for delivery. The supreme court held that no sales tax was due upon such a conditional delivery because there was no transfer of possession for a consideration within the meaning of sales tax act Section 5739.01 Ohio Revised Code (Section 5546-1, Ohio General Code) The term "consideration" is not to be given a highly technical definition the court said.

In a second case,[2] a lumber company entered into a quantity sale contract with builder to sell lumber at 90 per cent of the seller's list price. The contract provided, however, that if the dollar value of the lumber purchased reached a specified sum, the sales price would be reduced to 80 per cent of the seller's list price. Sales tax was billed and paid at the 90 per cent figure. Eventually the dollar value of the lumber sold reached the stipulated amount, and the purchaser were re-billed and the sales tax was recomputed. The seller then applied to the Tax Commissioner for a refund. The refund was allowed by the supreme court on the theory that the transaction was not consummated and completely performed within Section 5739.01 Ohio Revised Code (Section 5546-1, Ohio General Code) until the last materials were finally purchased. Therefore, the recomputation was not a "discount allowed after the sale is consummated" which under Section 5739.01 Ohio

[1] Kloepfer s, Inc. v. Peck, 158 Ohio St. 577, 110 N.E.2d 560 (1953).

[2] Columbus Southern Lumber Co. v. Peck, 159 Ohio St. 564, 113 N.E.2d 1 (1953)

Revised Code (Section 5546-1, Ohio General Code) could not be deducted from the "price" in determining the amount of tax which must be paid. The court found that the Tax Commissioner's Rule 50 was contrary in part to Section 5739.01 Ohio Revised Code (Section 5546-1, Ohio General Code) and therefore invalid. As a further proposition, the court held that the seller's overpayment was an "erroneous" mistake of fact within Section 5739.07 Ohio Revised Code (Section 5546-8, Ohio General Code) and that the seller did not first have to reimburse the buyer under this section before bringing his refund suit, but that the seller could bring his action, obtain a refund, and then reimburse the buyer.

Sales of specially designed and equipped motor vehicles which were necessary and used exclusively for keeping a public telephone or electric system in continuous operation or repair were not taxable "retail sales" within Section 5739.01 Ohio Revised Code (Section 5546-1, Ohio General Code) because such sales are within the exclusion of that section for property used "directly in the rendition of a public utility service." Rule 46 promulgated by the Tax Commissioner and holding contrary to this decision was declared invalid as contrary to the statute.

On the other hand, sales by a dental laboratory of dentures to dentists on their order were held taxable.[4] The court found that the dentists altered and fit the dentures to meet the patient's needs. Therefore the sales by the dental laboratory to the dentists were not excluded from tax under Section 5739.01 Ohio Revised Code (Section 5546-1, Ohio General Code) on the grounds that the "consumer [dentist] is to resell the thing transferred in the form on which the same is, or is to be, received by him." The court also stated that sales of dentures by dentists to patients were exempt under Section 5739.02 Ohio Revised Code (Section 5546-2, Ohio General Code) as "professional service transactions which involve sales as inconsequential elements, for which no separate charge is made." This time the court concurred with the Tax Commissioner's Rule 102 which states, inter alia, that dentists are exempt from sales tax when they install dentures in patients. Since the dentists are exempt in their "sales" of dentures the burden of collecting the tax falls on the dental laboratories.

The time within which the Tax Commissioner may make an assessment for sales taxes is the four year period prescribed in Section 5739.16 Ohio Revised Code (Section 5546-9d, Ohio General Code) [5] The court has held[6] that the Commissioner may make a second assessment within that period

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[3] Athens Home Tel. Co. v. Peck, 158 Ohio St. 557, 110 N.E.2d 571 (1953).

[4] Fritz v. Peck, 160 Ohio St. 90, 113 N.E.2d 627 (1953)

[5] See also, OHIO REV. CODE § 5703.05 (OHIO GEN. CODE § 1464-3 (9)).

[6] Daiquiri Club, Inc. v. Peck, 159 Ohio St. 52, 110 N.E.2d 705 (1953). *Accord,* Petrarca v. Peck, 159 Ohio St. 377, 112 N.E.2d 378 (1953).

based upon correct records made available to him upon a second audit of the taxpayer's books.

Inheritance and Estate Taxes

The majority of inheritance tax cases during the past year involved the question of whether the transfers qualified for a charitable exemption. A bequest was made to the National Holiness Missionary Society which was chartered to maintain and did maintain interdenominational missions at home and abroad "to spread Scriptural holiness" throughout the world, and to accomplish this purpose through evangelistic, medical, educational, and industrial service departments. The Society operated a number of schools in foreign countries and approximately 74 per cent of its expenditures were made in operation of its schools which are open to all. The court[7] found, however, that the schools were operated subservient to the religious purposes of the Society. Therefore, the Society was primarily a religious organization and transfers to it are not exempt under Section 5731.09, Ohio Revised Code (Section 5334, Ohio General Code) as bequests to a "public institution of learning." The Ohio courts have long held[8] that bequests to religious organizations are not exempt under Section 5731.09, Ohio Revised Code (Section 5334, Ohio General Code) as transfers "to or for the use of an institution for purposes only of public charity." In the principal case, the supreme court relied heavily upon a New Jersey case[9] in which the New Jersey court indicated that a bequest to one of the individual schools operated by a religious organization would be exempt. Perhaps the Ohio courts would accept this "exception" to the general rule of non-exemption of bequests to religious institutions.

The adoption of such an "exception" received support from the reasoning of another case[10] although a charitable exemption was ultimately denied by the court. A bequest was made to the "Archdiocese of Cincinnati and the Roman Catholic Archbishop of Cincinnati to be used for the support and furtherance of such charitable, benevolent, scientific and educational works and activities of such archdiocese as may be designated by said archbishop." The court had no doubt about the gift's being one for *public* charity within the requirement of Section 5731.09, Ohio Revised Code (Section 5334, Ohio General Code) that the bequest be to an "institution

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[7] *In re* Osborn's Estate, 159 Ohio St. 63, 110 N.E.2d 791 (1953), *affirming*, 65 Ohio L. Abs. 561, 115 N.E.2d 427 (Lorain Probate, 1951)

[8] *In re* Taylor's Estate, 139 Ohio St. 417, 40 N.E.2d 936 (1942); *In re* Julian's Estate, 93 Ohio App. 221, 113 N.E.2d 127 (1952); *In re* Weld, 71 Ohio App. 497, 50 N.E.2d 275 (1942)

[9] Board of Nat. Missions of Presbyterian Church v. Neeld, 9 N.J. 349, 88 A.2d 500 (1952)

[10] *In re* Julian's Estate, 93 Ohio App. 221, 113 N.E.2d 129 (1952)

for purposes only of public charity." But because one of the four classifications to which gifts could be made by the archbishop was for "charitable works," the court said the bequest was not exempt. Under the "charitable works" classification, the archbishop could use the bequest for religious purposes and such purposes are not those of "public charity" within Section 5731.09, Ohio Revised Code (Section 5334, Ohio General Code) according to the Ohio courts.[11] The decision does imply, however, that if the archbishop was limited to using the bequest for "scientific and educational" activities (and, perhaps, "benevolent" activities, if that term is not synonymous with "charitable") the bequest would have been exempt even though made to the head of a religious organization.

In re *Oglebay's Estate*[12] involved a split bequest. The residue of the estate was left to a bank as trustee to hold legal title and to distribute income and principal as the distribution committee of a charitable foundation directed. Because the distribution committee could direct that up to one-half of the income and corpus of the trust should go for out-of-state charitable purposes, the court held that the committee constituted two "institution[s] for purposes only of public charity" within Section 5731.09, Ohio Revised Code (Section 5334, Ohio General Code), one institution for distributing funds in Ohio, and, one for distributing funds out-of-state. Furthermore, the bequest to the institution which could distribute funds out-of-state was not exempt because the statute requires such an institution to operate substantially within Ohio. Thus since one of the "institutions" could spend one-half of the bequest out-of-state, the one-half over which that institution had the power of disposition was non-exempt.

The question of the taxation of bequests for the saying of masses came again before the supreme court this past year. A few years ago the court held[13] that where a sum was left in trust, the income or principal of which was to be paid in weekly installments to the pastors of designated churches for the purpose of saying masses for testatrix and designated relatives, the trust was a taxable succession. The trust was not exempt as one for public charity only within Section 5731.09, Ohio Revised Code (Section 5334, Ohio General Code). In the latest case[14] on this subject, the decedent's will appointed the executrix trustee of the residue of the estate and gave the executrix discretionary power to select priests to say masses for testatrix and her family, and to determine the amount to be paid priests until the fund was exhausted. The probate court held that although a "succession" to property occurred it was not a taxable "succession" within Section 5731.02, Ohio

[11] See cases *supra*, note 8.

[12] 113 N.E.2d 726 (Ohio App., 1953).

[13] *In re* Estate of Reilly, 138 Ohio St. 145, 33 N.E.2d 987 (1941).

[14] *In re* Shanahan's Estate, 159 Ohio St. 487, 112 N.E.2d 665 (1953)

Revised Code (Section 5332, Ohio General Code) because it was not a bequest to any identifiable person. The court of appeals affirmed. The supreme court reversed, however, on the theory that there was a passing of property to identifiable persons, that is, to the executrix as trustee and to the priest to be selected by the trustee. Therefore, the bequest was taxable under Section 5731.02, Ohio Revised Code (Section 5332, Ohio General Code)

The case of In re *Daniel's Estate*[15] again considered the problems of whether there was a taxable "passing" of property within the requirements of Section 5731.02, Ohio Revised Code (Section 5332, Ohio General Code) Here an employee pension fund was involved. The fund was administered by an independent trustee. All contributions to the fund were made by the employer, the amounts being credited to each employee's account according to his annual salary. The employer had no rights or powers over the fund except to require distribution according to the terms of the trust agreement. The trust provided for payments to the employee after reaching 65, and for payments to his designated beneficiary (or if none to his estate) if he died before reaching that age. Here the employee died at 54. The payment to the deceased employee's designated beneficiary was held a taxable passing of property by the deceased to the beneficiary within Section 5731.02, Ohio Revised Code (Section 5332, Ohio General Code). His power to designate the beneficiary was the controlling factor in making the transfer from the fund taxable. The court also emphasized that the employee could only be divested of his interest in the fund by discharge for fraud, dishonesty, or intentional damage or destruction of the employer's property. The fact that the fund was protected from assignment, attachment, or execution prior to the actual payment to employees or beneficiaries did not affect its subjection to inheritance taxation.

In two further cases, a probate court[16] reaffirmed the doctrine of *Y.M.-C.A. v. Davis*[17] that the residuary estate must bear the burden of estate taxes, debts and other charges where the testator makes no specific apportionment of such claims against the estate. The court did not think that the supreme court's decision in *McDougall v. Central Nat. Bank*[18] had changed the rule of *Y.M.C.A. v. Davis,* nor that the *McDougall* case has established a blanket apportionment rule in Ohio law. In the second case,[19] the court held two promissory notes owned by a decedent domiciled in Ohio subject to tax even

[15] *In re* Daniel's Estate, 159 Ohio St. 109, 111 N.E.2d 252 (1953), *affirming,* 93 Ohio L. Abs. 123, 112 N.E.2d 56 (App., 1952).
[16] *In re* Cole s Estate, 111 N.E.2d 35 (Clinton Probate, 1952).
[17] 106 Ohio St. 366, 140 N.E. 114 (1922), *aff'd.,* 264 U.S. 47, 44 Sup. Ct. 291 (1924)
[18] 157 Ohio St. 45, 104 N.E.2d 441 (1952).
[19] Dept. of Taxation v. Weber, 113 N.E.2d 141 (Ohio App. 1953).

though the notes were secured by mortgages on New York realty and the business sites of the notes was in New York. The court seems correct in stating that the tax does not violate the 14th Amendment of the Federal Constitution in accordance with the theory of *Curry v. McCanless*.[20]

Real Property

A number of cases under this heading involved the effect of the failure of county officers to follow statutory procedures in the forfeiture or sale of lands for nonpayment of real property taxes. *Magennis v. Myers*[21] involved a successful action by the former owner of land forfeited for nonpayment of taxes to set aside a sale by a county auditor. The auditor in the notice of sale failed to set forth the list of parcels separately, together with taxes and other charges remaining unpaid, as required by Section 5723.10 Ohio Revised Code (Section 5754, Ohio General Code) And, at the sale of the land the auditor failed to offer each tract of land, lot or part of lot separately under the requirement of Section 5723.06 Ohio Revised Code (Section 5752, Ohio General Code) In this case the action to set aside the auditor's sale was brought within one year from the date of the sale. In two other cases,[22] however, where actions were brought to restore lands to their former owner or declare his title superior after the auditor had failed to follow statutory procedures in the sale of tax delinquent land, the former owners were denied recovery. In both cases the owner's actions were held barred by Section 5723.13 Ohio Revised Code (Section 5762-1, Ohio General Code) which establishes a one year statute of limitations relating to actions for the restoration of lands due to irregularity, informality, or omission in proceedings relative to foreclosure, forfeiture or sale.

Taylor v. Monroe[23] arose out of a forfeiture and sale for nonpayment of taxes, but the former owner was not suing for restoration of his property. Instead the former owner claimed that whereas certain of the delinquent taxes assessed against his property were valid, on the other hand certain special assessments were invalid. Therefore, he maintained that he was entitled under Section 5723.11 Ohio Revised Code (Section 5757, Ohio General Code) to recover from the county treasurer any excess which the treasurer received on the sale of the land over the amount due for the admittedly valid delinquent taxes. That is, the former owner argued that he should recover from the treasurer any excess which the treasurer received

[20] 307 U.S. 357, 59 Sup. Ct. 900 (1939). See also Pearson v. McGraw 308 U.S. 313, 60 Sup. Ct. 211 (1939).

[21] 158 Ohio St. 405, 109 N.E.2d 849 (1952).

[22] Bliss Realty, Inc. v. Darash, 158 Ohio St. 287, 109 N.E.2d 276 (1952); Ulmer v. Honeywell, 113 N.E.2d 143 (Ohio App., 1952)

[23] 158 Ohio St. 266, 109 N.E.2d 271 (1952)

at the sale not necessary to reimburse the state for the taxes validly assessed. The county treasurer argued that even though the special assessments were invalid, the judgment[24] ordering the land forfeited to the state for non-payment of taxes, and the judgment[25] ordering issuance of a certificate of title under the Torrens Act to the purchaser at the tax sale barred the former owner from claiming that the special assessments were invalid. The court allowed recovery, however, noting that the plaintiff was not questioning the title, but only that certain of the assessments were void and that he should be entitled to the amount which the state collected from the sale of the property for the void assessments. Section 5723.11 Ohio Revised Code (Section 5757, Ohio General Code) permits suit within six years from date of the tax sale.

Two further real property tax cases of the past year involved problems of valuation and collection. In one matter[26] the City of Cleveland appealed to the court of common pleas for a reconsideration of the valuation which the county board of revision had placed on the city's municipal stadium. The court of common pleas merely reviewed the record made before the county board of revision and affirmed the board's decision. The court of appeals reversed holding that under Section 5717.05, Ohio Revised Code (Section 5611-5, Ohio General Code) the court of common pleas must try the matter *de novo* on appeal and arrive at its own determination of valuation based on the evidence in the record and other evidence introduced at the hearing before the court. In the second case,[27] a county treasurer was denied recovery in an action to subject rents and income from real property to payment of delinquent taxes under Section 5719.27 Ohio Revised Code (Section 5703, Ohio General Code) The real property had been devised to a life tenant with remainder to the United States. The court stated that the tax in Ohio is on the whole title; there is no tax on any lesser interest in the property. Furthermore, the court held that Ohio cannot constitutionally tax the interest of the United States. Thus, the court concluded that to collect taxes from the life tenant on the whole title would be invalid as a tax against the United States in part, and it also would be discriminatory and lacking in due process as to the life tenant. The only solution in this situation would seem to be the enactment of a special tax against the life tenant's interest.[28] Note that a similar situation could arise where the remainderman is an organization exempt from tax.[29]

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[24] OHIO REV. CODE § 5721.17 (OHIO GEN. CODE § 5718-1c)

[25] OHIO REV. CODE § 5309.60 (OHIO GEN. CODE § 8572-58).

[26] Cleveland v. Cuyahoga County Board of Revision, 115 N.E.2d 690 (Ohio App., 1953).

[27] O'Brien v. Givens, 91 Ohio App. 549, 109 N.E.2d 293 (1952).

[28] Compare OHIO REV. CODE § 5713.04 (OHIO GEN. CODE §§ 5560, 5561)

On the problem of exemption from the tax, the supreme court again faced the problem of whether exemption is permissible where a part of the property is used for non-exempt purposes. In 1949 the legislature amended former Section 5560, Ohio General Code (now Section 5713.04, Ohio Revised Code) to provide that if property under a single ownership were owned separately " so that part thereof, if separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance " shall be subject to tax. In 1952 the supreme court[30] rejected the contention that where part of a building was used for charitable purposes and part for noncharitable purposes, the building could be divided on a percentage basis and the part used for noncharitable purposes could be taxed and the remainder would be exempt. The court seemed to feel that a division would have to be made on an "entity" basis, that is, the charitable activities must be carried on in separate buildings, although on the same property, to receive different tax treatment. But in a recent case,[31] a majority of the supreme court seemed to overrule their 1952 decision without so stating. This case involved a church building which had a Sunday school room, baptistry, and furnace and laundry room in the basement; church auditorium and Sunday school rooms on the first floor and living quarters for the minister and family and the janitor and family on the second floor. The majority held[32] that the first floor and Sunday school room and baptistry in the basement were used for tax-exempt purposes and, therefore, under the above statute might be set off as exempt from taxation not on a percentage basis but by a "split valuation of the separate entities of the property." The decision seems in accord with the statute but impossible to reconcile except on highly formal grounds with the court's 1952 decision. In any event, the latest holding should prove a boon to charitable organizations which have feared losing their entire exemption if any noncharitable activities were carried on in their building.[33]

Tangible Personal Property Tax

Most of the problems arising under taxation of tangible personal property are those of exemption and exclusion. In *Colonial Foundry Co. v.*

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[29] See Mehne v. Dillon, 203 Ind. 346, 165 N.E. 908 (1929) cited in the *O'Brien* case, *supra.*

[30] Goldman v. The L. B. Harrison, 158 Ohio St. 181, 107 N.E.2d 530 (1952), discussed in Latcham, *Survey of Ohio Law — 1952, Taxation,* 4 WEST. RES. L. REV. 259, 263 (1953).

[31] Trustees of Church of God v. Board of Tax Appeals, 159 Ohio St. 517, 112 N.E.2d 633 (1953).

[32] Weygandt, C. J., and Matthias and Zimmerman, J.J., dissented.

Peck[34] the court upheld a decision of the Board of Tax Appeals that flasks, cast iron shapes, weights, and clamps are excluded from the tax on personal property under Section 5701.03, Ohio Revised Code (Section 5325, Ohio General Code) as "dies" where such articles are used in the manufacture of castings of special and varying designs and for the most part are not reused.[35] For tangible personal property (other than domestic animals) to be subject to tax it must be "used in business,"[36] a phrase which is variously defined by Section 5701.08, Ohio Revised Code (Section 5325-1, Ohio General Code) For example, under this section personal property is "used in business" and therefore taxable when " kept and maintained as a part of a plant capable of operation. " Machinery and equipment do not come within this description, and are therefore not taxable, where they are in the process of construction and erection for use in a manufacturing plant likewise in the process of construction and erection.[37] The distinguishing feature here is that the plant itself was not yet in operation. If it had been, the machinery, though not yet completely erected, would have been taxable.[38] As a second example, Section 5701.08, Ohio Revised Code (Section 5325-1, Ohio General Code) provides that " merchandise or agricultural products belonging to a nonresident of this state is not used in business in this state if held in a storage warehouse for storage only. " Tobacco was stored in a warehouse in Ohio for shipment out-of-state where the actual manufacturing process was conducted. Upon its arrival at the warehouse, the tobacco was heated, subjected to aeration, and then repacked to prevent disease. These processes had nothing to do with the actual manufacturing process. On these facts, the court held that the tobacco came within the above quoted exclusion and was not taxable.[39]

Exemption from tax was also granted to personal property used in the operation by the City of Cleveland of the Municipal Airport, Highland Park Golf Course, Seneca Golf Course, Public Markets, Municipal Water Works, Municipal Light Plant, and Public Auditorium.[40] The courts found the properties to be within the constitutional and statutory exemptions[41] because there was an absence of a profit motive in the operation of the

[33] See, *e.g.* Mussio v. Glander, 149 Ohio St. 423, 79 N.E.2d 233 (1948); Welfare Federation v. Glander, 146 Ohio St. 146, 64 N.E.2d 813 (1945)

[34] 158 Ohio St. 296, 109 N.E.2d 11 (1952)

[35] *Cf.* Wheeling Steel Corp. v. Evatt, 143 Ohio St. 71, 54 N.E.2d 132 (1944)

[36] OHIO REV. CODE § 5709.01 (OHIO GEN. CODE § 5328)

[37] Nat. Distillers Products Corp. v. Peck, 158 Ohio St. 369, 109 N.E.2d 493 (1952)

[38] See Standard Oil Co. v. Glander, 155 Ohio St. 61, 98 N.E.2d 8 (1951), distinguished in the *Nat. Distillers* case, *supra.*

[39] General Cigar Co. v. Peck, 159 Ohio St. 152, 111 N.E.2d 265 (1953)

[40] State *ex rel.* Hepperla v. Glander, 114 N.E.2d 573 (Ohio App., 1952), *aff'd per curiam,* 160 Ohio St. 59, 113 N.E.2d 357 (1953).

properties and they were conducted for public benefit and in furtherance of a public purpose. It was necessary to distinguish this case from *Cleveland v. Board of Appeals*[42] where the Cleveland Municipal stadium was held taxable as a proprietary function. The distinction was not clearly made, the court asserting that the tests are "not too well established" and that the "factual situation" of each case must be considered.[43]

The Code permits personal property to be taxed at 50 per cent (instead of 70 per cent) of its average value where it is held by a manufacturer to be used in the manufacturing process.[44] A company which purchases used but unusable machine tools which it rebuilds or reconditions for service by supplying needed parts and which it resells to the trade generally is a manufacturer[45] of such tools and they may be valued at 50 per cent of their average value for tax purposes. The company is not merely a "repairer" said the court.[46]

Other Taxes

A few cases arose under the tax on intangible personal property. In *Red Top Brewing Co. v. Peck*[47] the court held that where customers make deposits with a brewery for bottles, cases and cartons, and the brewery is obligated unconditionally to repay such deposits upon return to the brewery of the bottles, cases and cartons, in whatever condition they may be, such deposits constitute "current accounts payable" within the meaning of Section 5701.07, Ohio Revised Code (Section 5327, Ohio General Code) which defines the term "credits" which are taxable under the tax on intangible property.[48] In a second intangible property tax case the court[49] rejected the Tax Commissioner's Rule 224 which exempts from taxation accounts receivable arising out of business transacted out of Ohio and which are used in business transacted out of Ohio. The court relying on an earlier decision[50] stated Rule 224 conflicted with Section 5709.02, Ohio Revised Code (Section 5328-1, Ohio General Code) in that such accounts re-

[41] OHIO CONSTITUTION, Art. XII, § 2; OHIO REV. CODE §§ 5709.08, 5709.10, 5709.11 (OHIO GEN. CODE §§ 5351, 5356, 5357).

[42] 153 Ohio St. 97, 91 N.E.2d 480 (1950).

[43] State *ex rel.* Hepperla v. Glander, 114 N.E.2d 753, 759 (1952).

[44] OHIO REV. CODE § 5711.22 (OHIO GEN. CODE § 5388)

[45] OHIO REV. CODE § 5711.16 (OHIO GEN. CODE § 5385)

[46] Eastern Mach. Co. v. Peck, 160 Ohio St. 144, 114 N.E.2d 55 (1953).

[47] 158 Ohio St. 259, 109 N.E.2d 4 (1952).

[48] OHIO REV. CODE § 5709.02 (OHIO GEN. CODE § 5328-1).

[49] Hoover Co. v. Peck, 160 Ohio St. 64, 113 N.E.2d 85 (1953).

[50] Ransom & Randolph Co. v. Evatt, 142 Ohio St. 398, 52 N.E.2d 738 (1944). The Tax Commissioner argued that this case had been overruled by *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 69 Sup. Ct. 1291 (1949), but the court ruled otherwise.