1814.

INHERITANCE TAX LAW—WHERE NON-RESIDENT DECEDENT SENT BONDS OF FOREIGN CORPORATION TO TRUST COMPANY IN OHIO TO PROTECT RIGHTS OF BONDHOLDERS TO BE HELD BY SUCH TRUSTEE AS AGENT OF A BONDHOLDERS' COMMITTEE IN REORGANIZATION OF SUCH CORPORATION, SUCCESSION TO SUCH BONDS TAXABLE.

Where a decedent sent bonds of a foreign corporation to a trust company in Ohio for the purpose of protection and enforcement of the rights of bondholders, to be held by such trustee as the agent of a bondholders' committee in the reorganization of such corporation, the succession to such bonds is taxable under the inheritance tax law of this state, though the decedent was a non-resident of the state.

COLUMBUS, OHIO, January 26, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of the commission's letter of December 23 requesting the opinion of this department, as follows:

> "The 'A' Company made the 'B' Trust Company trustee under a mortgage securing an issue of bonds. The property covered by the mortgage is entirely outside the state of Ohio. The 'A' Company defaulted in the payment of interest upon its bonds. In order to protect the rights of bondholders under the mortgage, a bondholders committee was appointed. To clothe this committee with authority in the premises they requested all of the holders of the bonds to deposit them with a depository named by the committee, which was the same trust company who acted as trustee under the mortgage. The bondholders committee agreement conferred on the committee authority to take whatever action could be taken by the bondholders under the mortgage and also gave the committee the right to deal with the property under the mortgage as in its judgment seemed best. The 'A' Company is a non-resident corporation and was never admitted to do business in this state. The bonds are ordinary coupon bonds.
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> John Smith, a bondholder, who lived and kept his bonds outside the state of Ohio, sent them to the 'B' Trust Company to be deposited under the bondholders committee agreement. The Trust Company issued a certificate of deposit to him evidencing the deposit of his bonds under the agreement. Mr. Smith died and his executor, in the settlement of his estate, desires to make a distribution of the bonds and has asked the Trust Company to reissue to the distributees the certificate of deposit evidencing the bonds. These bonds would not have been in Ohio if it had not been at the request of the bondholders committee. Now that the executor of the estate of John Smith has asked the 'B' Trust Company to reissue its certificate of deposit, is it necessary to have a waiver from the tax commission of Ohio before this is done?"

The facts stated by the commission are within the letter of section 5348-2 of the General Code, which prohibits trust companies "having in possession or in control or custody, in whole or in part, securities, * * * belonging to or standing in the name of a decedent" from delivering or transferring the same "to any person whatsoever whether in a representative capacity or not, * * * without retaining

a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter" without the waiver or consent of the tax commission of Ohio. That is to say, the facts are within the letter of the section to the extent that it is true that the trust company which you designate as "B" Trust Company has possession of the bonds of the decedent. On the other hand, it is equally clear from the section that unless the possession of the trust company, or some other fact, is sufficient to render the succession to the bonds taxable under the act as a whole, the section does not apply. The sole purpose of the section is to create a means of securing the payment of inheritance taxes, and if is is possible to conceive of circumstances under which property might be in possession of an agent, trustee or depositary in Ohio without the succession thereto becoming subject to the inheritance tax law, then the section could have no application.

Ultimately, therefore, the question becomes one of the interpretation of section 5331 of the General Code, which defines the terms used in the chapter and subdivision as a whole, and particularly paragraph 3 thereof, which defines the phrase "within this state" * * * "When predicated of intangible property" to mean "that the succession thereto is, for any purpose, subject to, or governed by the law of this state." Conceivably, the executor of the estate of John Smith would have to resort to the law of this state to compel the "B" Trust Company to reissue to the distributees the certificate of deposit evidencing the bonds held by it or to take any action as trustee agreeably to the bondholders committee agreement in behalf of the executor or the distributees. In that sense it might be said that the succession to the bonds in question is for that limited purpose subject to the laws of this state.

On the other hand, this department has previously intimated in an opinion to the commission that the mere temporary or accidental presence of bonds or shares of stock of foreign corporations in this state would not be sufficient to subject their succession to the inheritance tax act of Ohio. (See Opinions of Attorney-General for the year 1919, Volume II, p. 1327).

The cases which have drawn the distinction between transient and habitual presence in the taxing jurisdiction for inheritance tax purposes do not furnish a precedent exactly in point on the question as to whether the facts stated by the commission show presence of the one kind or the other. The leading case is *Matter of Romaine,* 127 *N. Y.* 80, but the statements therein, as well as in the case of *In re Endson,* 113 N. Y. 174, are merely dicta. The cases where actual decisions against the jurisdiction to tax were rendered, such as *Matter of Leopold,* 35 Misc. 369; *Estate of McCahill,* 171 Cal. 483, and *People* vs. *Griffith,* 245 Ill. 532, were all of a decidedly more favorable character from the viewpoint of the taxpayer than the one presented by the commission.

It is believed that a careful examination of the decisions will show that what the courts have had in mind as a typical instance of transient presence is exemplified by the actual presence of the decedent himself in the jurisdiction for a purely temporary purpose, bringing with him the cash or securities the succession to which was in question. This is the kind of transactions referred to in the first two cases above cited, as where a foreigner comes to New York with cash or securities in his possession intending to seek profitable investment or reinvestment of them, and dies before his purpose is consummated; or where, as in the *Estate of McCahill,* a non-resident of the state comes into it for his health and brings along some of his securities for safekeeping and convenience in drawing interest, etc. Where the securities have been deliberately sent by the original owner to an agent or trustee within the state to hold for a business purpose, an entirely different question is presented. The presence of the securities in the state is, of course, not intended to be permanent, nor can the duration of that presence be even regarded as indefinite. On the other hand, the

presence of the securities in the state is far from accidental and the decedent's motive in sending them there is disassociated from any such primary motive as was involved in the cases which have been described. In short, the testator deliberately chose an Ohio trustee to administer a trust in respect of his bonds. He delivered the subject of the trust to a trustee in Ohio, thus giving Ohio's courts jurisdiction for the purpose of enforcing the trust and all rights growing out of it.

The conclusion of this department is, therefore, that the succession to the bonds in question is taxable under the inheritance tax law of this state, and that the "B" Trust Company is required to obtain the consent of the commission to the transfer of the certificates evidencing an interest therein.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1815.

SCHOOLS—COMPULSORY EDUCATION LAW ENFORCIBLE ON PART OF ALL BOYS BETWEEN EIGHT AND FIFTEEN YEARS OF AGE AND GIRLS BETWEEN EIGHT AND SIXTEEN YEARS OF AGE REGARDLESS OF GRADE OF SCHOOL—WHEN REGULAR ATTENDANCE AT BUSINESS COLLEGE SATISFIES COMPULSORY EDUCATION LAW.

1. *It is the duty of all officers charged with the enforcement of the compulsory education law to force and compel school attendance on the part of all boys between eight and fifteen years of age, and girls between eight and sixteen years of age, regardless of the grade or kind of school that they should attend or would attend if they properly attend school.*

2. *A child under fifteen years of age, if a boy, and under sixteen years of age, if a girl, who has finished the eighth grade of the public schools or its equivalent, and who is regularly attending a business college, is complying with the compulsory education laws.*

COLUMBUS, OHIO, January 26, 1921.

HON. DAHL B. COOPER, *Judge Common Pleas Court, Division of Domestic Relations, Youngstown, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following two questions:

> 1. Do the compulsory education statutes, to-wit, section 7762 and following, require children under sixteen years of age to attend the high school providing that prior to attaining that age they have completed the common school course?
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> 2. If your answer is that a child must attend school until sixteen years of age, would attending business college comply with the requirements?

Bearing upon your first question, attention is invited to an opinion of this department issued about six years ago upon practically the same question, under date of January 6, 1914, being No. 721, and appearing at page 101, Vol. 1, Annual Report of the Attorney-General for 1914, the syllabus of which reads as follows:

> "It is the duty of all truant officers to use legal procedure if that is