Guard, there may be some complicated questions arise as to when such a member is in the active service. However, that question is not now before us.

You are therefore specifically advised that where one has served in the regular army of the United States for a period of three yars, during which time he devoted full time to his duties under the supervision and direction of superior regular army officers, has been honorably discharged and has been a resident of the state for a period of one year preceding his application, he may be admitted to the Ohio Soldiers' and Sailors' Home if his physical condition authorizes such admission as set forth in Section 1909 of the General Code.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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601.

TAX AND TAXATION—CLAIMS FOR RENEWAL PREMIUMS ON LIFE INSURANCE IN HANDS OF ADMINISTRATOR—EXEMPT.

*SYLLABUS:*

*Claims under a contract between a life insurance agent and the company for commissions on renewal premiums which come into the hands of the administrator of the estate of the deceased agent, not yet paid to the insurance company, and therefore not fixed and certain but indefinite, contingent and unliquidated as to amount, are not credits in the hands of said administrator, and therefore should not be listed by him for taxation.*

COLUMBUS, OHIO, July 6, 1929.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

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

> "We have in this county at the present time, the administration of an estate of a life insurance agent, and it seems that said agent had before his death and the same is payable to his heirs after his death, certain renewal commissions, payable under contract.
>
> The appraisers of his estate appraised said renewal commissions at $8,000.00, and the administrator of the estate refuses to pay any personal tax on said renewal commissions, as appraised by said appraisers, for the reason that he claims that life insurance renewal commissions are not taxable.
>
> This renewal commission contract, according to the terms of same, can be sold to any one outside of the heirs and it further provides that in case it is not sold the money is payable to the heirs of the deceased.
>
> Would you kindly give me your opinion as to whether or not said renewal commissions payable to the estate are taxable?"

You also at my request submitted for my consideration a copy of the contract under which said renewal commissions are payable. The contract is between the general manager of the life insurance company and the deceased agent. Under said contract the agent was appointed to represent the company in soliciting applications

for life insurance in said company, in collecting premiums for the first year of insurance upon policies issued upon such application, and in transacting such other business for said company as was required in connection with the general business of the company. The agent agreed to devote his entire time to the business, and that the first year and renewal commissions payable under the provisions of the contract should be accepted by him in full compensation for his services and all right, title and interest in the agency of the business.

The appointment and agreement was to take effect the first day of October, 1922, and was to govern all future business secured by the said agent thereafter.

The life insurance company agreed, in the event of said agent ceasing to represent the company in the territory covered by the agreement, to see that the provisions of the contract were fully carried out so far as they related to the payment of the net commissions on premiums paid and reported thereafter on business secured under said agreement. The agreemnt also contains the following:

> "Provided this agreement continues in full force and effect and its terms and conditions are fully complied with by second party, then during the second and subsequent eight years (9 renewals) of insurance there shall be payable to second party the following renewal commissions:
>
> Five per cent (5%) of the premiums paid and reported on all plans of insurance named on the first-year commission schedule referred to above, except that three per cent (3%) only will be allowed on all regular term plans and all forms of endowment calling for premiums during less than twenty years."

The contract also provided that in event of termination there should be payable to said agent (or his executors or administrators) net commissions as provided in the contract, as they should become due thereafter on the business written by the agent, prior to such termination, as follows:

> "Provided none of the conditions or provisions of this agreement has been violated by second party:
>
> A. In event of termination within one year from the date hereof, commissions hereinbefore named for the first year of insurance only; or,
>
> B. In event of termination at any time after the expiration of one year from the date hereof, the maximum first year and renewal commissions hereinbefore named, provided that if terminated by second party there shall be deducted a collection charge of one per cent (1%) of the premiums upon which the renewal commissions are based."

Under the provisions of the aforesaid contract it is evident that the estate of said deceased agent is entitled to certain commissions accruing upon the payment to said company of renewal premiums due upon policies of insurance, the applications to which were originally secured by the deceased agent. Said renewal commissions were payable to the agent and at his death were made payable to his executors or administrators and such as are paid to the administrator, or have accrued in the hands of the insurance company, are therefore assets in the estate of the deceased agent, and should be listed by the administrator for taxation.

Section 10638, General Code, provides as follows:

> "Within thirty days after his appointment, every executor and administrator, and administrator de bonis non shall make and return upon oath, into court, a true inventory of the goods, chattels, moneys, rights and credits of

the deceased, by law to be administered, and which have come to his possession or knowledge; except that if their probable value be less than five hundred dollars, the court may direct it to be omitted. If his predecessors have so done, an administrator de bonis non shall not be required to return and file an inventory, unless, in the opinion of the probate court, it is necessary."

Under this section it is the duty of the executor or administrator to make and return into court true inventory of the goods, chattels, moneys, rights and credits of the deceased which have come to his possession or knowledge.

Section 5370, General Code, reads as follows:

"Each person of full age and sound mind shall list the personal property of which he is the owner, and all moneys in his possession, all moneys invested, loaned, or otherwise controlled by him, as agent or attorney, or on account of any other person or persons, company or corporation, and all moneys deposited subject to his order, check, or draft; all credits due or owing from any person or persons, body corporate or politic, whether in or out of such county; and all money loaned on pledge or mortgage of real estate, althugh a deed or other instrument may have been given for it, if between the parties, it is considered as security merely. The property of a ward shall be listed by his guardian, of a minor child, idiot, or lunatic having no guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother is living, by the person having such property in charge; of a person for whose benefit property is held in trust, by the trustees; of an estate of a deceased person, by his executor or administrator; of corporations whose assets are in the hands of receivers, by such receivers; of a company, firm, or corporation, by the president or principal accounting officer, partner or agent thereof; and all surplus or undivided profits held by a society for savings or bank having no capital stock, by the president or principal accounting officer."

It is clear that the administrator must list the credits in his possession for taxation and must pay the personal property taxes assessed thereon.

The question arises whether or not the claims based upon said contract for the unaccrued renewal commissions may be classified as credits. The term "credits" is defined in Section 5327 of the General Code, which reads in part as follows:

"The term 'credits' as so used, means the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due or to become due to the person to pay taxes thereon, including deposits in banks or with persons in or out of the state, other than such as are held to be money, as hereinbefore defined, when added together estimating every such claim or demand at its true value in money, over and above the sum of legal bona fide debts owing by such person. * * * and no person shall be required to take into account in making up the amount of credits, a greater portion of any credits than he believes will be received or can be collected, * * * . "

It is noted that the term "credits" includes claims and demands for money to become due. Section 5327, General Code, is in conformity with the provisions of Article XII, Section 2 of the Constitution of Ohio which provides that, "laws shall be passed taxing by uniform rule, all moneys, credits, investments in bonds, stocks, joint stock

companies or otherwise; and also all real and personal property according to its true value in money * * * "

In 37 Cyc., page 783, under the heading Credits, Investments and Securities, it is stated:

> "Loans and investments of money and debts due to the taxpayer are assessable for taxation as is personal property, if within the terms of the statute, whether represented by accounts receivable, pecuniary interest under contracts, promissory notes, bonds, mortgages, or otherwise. To be thus taxable it is not necessary that a debt or claim should be immediately payable; but only that it should be a legal demand such as the law will recognize and enforce, fixed and certain and not indefinite or contingent, and liquidated as to its amount."

The claims arising under the terms and provisions of the contract for renewal commissions evidently do not come within the limitations of the aforesaid definition. Said commissions are fixed and certain as to the per cent to be paid, but are not fixed and certain as to the amount of premiums that will be paid. Said claims are indefinite and contingent upon said renewal premiums being paid by the policyholders and are therefore indefinite and contingent as to the amount, if any, that will be paid. Owing to the uncertain, indefinite and contingent condition of the said claims they are unliquidated as to amount.

In Cooley on Taxation, 4th Edition, Vol. 2, Section 575, it is stated:

> "In most states the statutes define, at some length, the term 'credits' as used in tax statutes * * * to be taxable. However, the debt must be fixed and certain, enforceable, and liquidated in amount, although it need not be immediately payable."

The claims to renewal commissions herein under consideration, as before stated, are not fixed and certain and are not liquidated in amount.

It is therefore my opinion, specifically answering your question, that any of the aforesaid commissions paid to the administrator and in his hands on tax listing day should be listed for taxation, as should also commissions that have accrued and which are in the hands of the life insurance company. But claims for commissions on renewal premiums not yet paid to the insurance company, and therefore not fixed and certain, but indefinite, contingent and unliquidated as to amount, are not credits in the hands of the administrator and therefore should not be listed by him for taxation.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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602.

## MOTOR VEHICLES—OPERATED ON HIGHWAYS—MUST NOT EXCEED THIRTY FEET IN LENGTH.

*SYLLABUS:*

*The operation of a truck and semi-trailer, whose total length is less than eighty-five feet but the length of the semi-trailer is greater than thirty feet, on the inter-county*