

IN THE SUPREME COURT OF OHIO

UBS Financial Services, Inc.
f/k/a Paine Webber, Inc.

Appellant,

v.

Thomas M. Zaino,
[Richard A. Levin]
Tax Commissioner of Ohio,

Appellee.

Supreme Court
Case No. 07-1129

Appeal from the
Ohio Board of Tax Appeals

BTA Case No. 2003-T-1139

BRIEF OF APPELLANT

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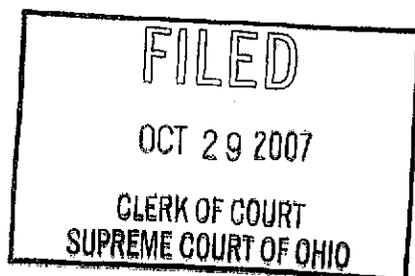


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Tax Commissioner of Ohio,	:	BTA Case No. 2003-T-1139
	:	
Appellee.	:	

BRIEF OF APPELLANT

I. INTRODUCTION

Two issues are presented in this case, one substantive and the other procedural. UBS Financial Services, Inc. f/k/a PaineWebber, Inc. (“UBS”) should be permitted to apply the gross receipts factor mandated by former R.C. 5725.14, i.e. gross receipts in Ohio divided by gross receipts everywhere, to apportion the value of its stock for the Dealer in Intangibles Tax purposes. The Ohio Board of Tax Appeals (“BTA”) was unjustified in selectively discounting certain receipts used in the gross receipts factor in a manner contrary to the statute. Further, the BTA erred when it concluded that the Tax Commissioner lacked even the authority to address the substantive issue on administrative review.

II. STATEMENT OF CASE

A. The Ohio Department of Taxation's Audit Determination and UBS' Refund Request

In 2001, the Ohio Department of Taxation conducted an audit of UBS' Dealer in Intangibles tax returns for the tax years 1999-2001. During the course of audit, the auditor made adjustments that: (1) disallowed the landlord contributions in determining the value of leasehold improvements;¹ and (2) increased the numerator of the gross receipts factor.

In addition, upon review of the auditor's adjustments, UBS determined it had incorrectly reported "gross receipts" for the apportionment calculation during each of the years under audit. The error was based on UBS' inclusions of 1% of "net trading" profits from inventory sales in both the numerator and denominator rather than 1% of the receipts from the inventory sales. A recalculation of the factor resulted in a refund claim for each of the years. These refund claims were denied by the auditor. Supplement ("Supp.") (Vol. I at 64-66).

B. Apportionment Adjustment – The Increase in the Numerator of the Gross Receipts Factor

During the audit of the tax returns the auditor adjusted the numerator of the gross receipts apportionment factor. In preparing a Dealer in Intangibles Tax Return, brokers are required to determine the "Ohio Proportion of Taxable Value of Shares or Invested Capital." In order to determine this amount, the taxpayer is required to multiply: (a) the Percentage allocable to Ohio times (b) the Taxable Value of Shares or Invested Capital. Supp. Vol. V at 1034. (Appellant's Ex. 1, 1999 Tax Return.)

The percentage allocable to Ohio is a fraction, the numerator of which is Ohio gross receipts and the denominator is "everywhere" gross receipts. "Gross receipts" are defined

¹ This issue is no longer being pursued.

statutorily as “commissions charged plus 1% of the aggregate of all other receipts.” The parties agree that gross and not net commissions are used.

The Ohio auditor upon review of the “commissions,” which were included in the numerator of the gross receipts factor, determined that UBS had included 60% of the total Ohio commissions. (Supp. Vol. III at 796 (Hearing Transcript [“TR.”] Vol. I, at. 241.) The company had taken the filing position that the balance of the commissions should be sourced to states other than Ohio based on costs of performance. The concept of “costs of performance” is an apportionment theory that permits the gross receipts derived from the performance of a service (i.e. the sale of a security in an agency capacity) to be sourced to the location where a majority of the service activity occurred. This audit adjustment resulted in a tax deficiency of \$784,082.24. UBS paid this amount in conjunction with the filing of its Petition for Reassessment and is not further contesting this adjustment.

C. UBS Requested an Adjustment to the Gross Receipts Factor for Inventory Sales at both the Audit Stage and the Petition for Reassessment

UBS, in preparing the 1999-2001 tax returns, calculated the numerator of the gross receipts factor by including the aggregate amount of Ohio commissions, plus 1% of the fees, interest income and net trading profits from the Ohio branch offices. In calculating the denominator of the apportionment calculation, UBS included the aggregate amount of commissions charged plus 1% of the net trading profits and other income items from all locations.

During the audit, UBS realized it had erred in failing to include 1% of “all other receipts” in the numerator and denominator of the apportionment factor. Rather than including 1% of “net trading profits” from inventory sales in the numerator and denominator, UBS determined it should have included 1% of “cash received” from inventory sales – in other

words, “all other receipts” from the sale of securities inventory. A recalculation of the numerator and denominator of the factor on this basis results in a tax refund.

UBS notified the auditor of the error in calculating the gross receipts factor and requested a tax refund. The auditor disagreed with the UBS re-calculation of the factor and took the position that the “aggregate of all other receipts” means the “aggregate of all other income” as set forth in the instructions to the Dealer in Intangibles Tax Return.

Upon administrative appeal, UBS again raised the issue of the proper use of “gross receipts” and again requested a tax refund. The Tax Commissioner considered the issue and denied the tax refund. The Board of Tax Appeals in turn affirmed the Commissioner.

III. STATEMENT OF FACTS

UBS is a Delaware corporation with its principal place of business in Weehawken, New Jersey. During the period 1998-2001, UBS’ principal line of business involved serving the investment and capital needs of individual and institutional clients through its broker/dealer network. The broker/dealer network consisted of approximately 300 offices throughout the United States. Supp. Vol. III at 607.1. (TR. Vol. I, p. 52.)

As a broker/dealer and trader in securities, UBS has two primary business units -- the Institutional Capital Market group and the Individual Client Group *a/k/a* the Private Client Group. UBS provides products and services to both the Individual Client Group and the Institutional Client Group in the form of equity stocks, securities, commodities, insurance, trusts, wrap products, mutual funds and other securities. Supp. Vol. III at 604-605 (TR. Vol. I, at 48-49.) In addition to providing the financial products outlined above to the Individual Client Group, UBS also provides these same products plus investment banking type activities for the institutional client group. Supp. Vol. III at 605 (TR. Vol. I, p. 49.)

The Individual Client Group is serviced through the branch office system. These offices, which are located throughout the United States, consist of an office manager, who is registered with the National Association of Securities Dealers ("NASD") and financial advisors or registered representatives who are also registered with the NASD. The institutional clients, on the other hand, are primarily serviced at the Capital Market Site in New York. Supp. Vol. III at 608 (TR. Vol. I, p. 53.)

The revenues derived from the UBS investment services include: (1) commissions; (2) inventory sales; (3) management fees; and (4) interest income. Supp. Vol. III at 633 (TR. Vol. I, p.78.) Commission revenues are derived through an agency-type transaction. In an agency transaction, the UBS registered representative purchases or sells stock on behalf of the individual or institutional client. Upon execution of the transaction, UBS charges a commission for its efforts. The commission is based upon both the number of shares of stock traded and the price of the stock. Supp. Vol. III at 612-613 (TR. Vol. I, p. 57-58.)

In addition to agency transactions, UBS also engages in outright sales of securities in which it acts as a principal. In a principal transaction, UBS sells a security from its own inventory. The company acquires securities, which are held in inventory either through the underwriting process or as a "market maker."

In the underwriting process, UBS enters into a contract with a company to assist the company in raising capital through the issuance of new or additional securities. The contract between the underwriter (UBS) and the company is structured as either a "firm commitment" or a "best efforts" type contract. Supp. Vol. III at 615 (TR. Vol. I, p. 60.) In a firm commitment contract, UBS guarantees to the issuer a specific dollar amount will be raised. In conjunction with this guarantee, UBS is required to purchase a certain number of

securities. These securities are held in inventory and sold by UBS in the secondary market.

UBS also holds inventory in its "market maker" securities activity. The company becomes a market maker when it is "firmly committed" to buy or sell an individual stock at a publicly traded price. As an example, during the period 1998-2001, UBS was a market maker in such stocks as Oracle, Intel and Microsoft. Supp. Vol. III at 623 (TR. Vol. I, p.68.) UBS bought a million shares and held the stock in inventory. Later these shares were sold to UBS customers, or customers of other brokers, at an increased price. Supp. Vol. III at 625 (TR. Vol. I, p. 70.)

IV. LAW AND ARGUMENT

Proposition of Law No. 1

One Percent of the Gross Receipts of Outright Sales Was Added to Gross Commissions in the Numerator and Denominator of the Apportionment Formula for Broker/Dealers Under Former R.C. 5725.14.

A. Introduction

UBS was a dealer in intangibles under Ohio tax law for the 1999 through 2001 tax years. The Dealer in Intangibles tax is the principal Ohio business tax for stockbrokers, securities dealers, mortgage brokers, finance companies, loan companies and similar operations.

In calculating the tax, the first step is to determine the tax base. The tax base is equivalent to the shares of stock or capital employed by the taxpayer in Ohio. If the taxpayer's business activity is confined to Ohio then the entire tax base is multiplied by the tax rate, which is eight (8) mills (\$8 per thousand) to determine the tax. R.C. 5707.03. If, however, the taxpayer is engaged in multi-state business activities then the tax base is determined using an apportionment factor. During the audit period, multi-state taxpayers like UBS apportioned their tax base using the gross receipts factor. The value of the tax base of UBS is not at issue; the sole issue is the proper method of apportioning the tax base of UBS within and outside Ohio.

In this appeal, UBS seeks application of the plain language of the statute. The dispute lies in the calculation of the gross receipts factor. "Gross receipts" is defined in the statute to mean gross commission plus one percent (1%) of other receipts, which in this case means the sale of inventory securities, fees and interest. The Tax Commissioner argued, and the BTA ruled, that "gross receipts" means gross commissions plus one percent of (1%) of other receipts except that "net gains and losses" is substituted for the gross receipts from the sale of inventory securities. The BTA erred in determining that the "gross receipts" test should be recast as "net gains and losses" for inventory security sales.

B. The Statute

The legal standard during the audit period for assigning the value of UBS within and outside Ohio was established pursuant to former R.C. 5725.14, which provided, in part, as follows:

Each dealer in intangibles shall return to the tax commissioner between the first and second Mondays of March, annually, a report exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December next preceding.

If a dealer in intangibles maintains separate business offices, whether within this state only or within and without this state, said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

"Gross receipts" as used in this section and section 5725.15 of the Revised Code, means. . . in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, and other similar securities either on his own account or as agent for another, gross receipts means the aggregate amount of all commissions charged plus one per cent of the aggregate amount of all other receipts.

...

The gross receipts factor can be depicted as the following ratio:

Ohio Gross Commissions + 1% of Other Gross Receipts
Everywhere Gross Commissions + 1% of Other Gross Receipts

By its express terms, the standard is the aggregate amount of all gross receipts for both commissions and outright sales with the provision that each one dollar (\$1) of commissions is weighted equally with one hundred dollars (\$100) of outright sales in assigning the value in and out of Ohio. Thus, the statute has a built-in bias toward commissions and against outright sales. Despite the overweighting of the commissions, the BTA concluded, that “gross receipts” in former R.C. 5725.14 must mean “net gains and losses” from the sale of the shares of securities which thereby reduced the volume of receipts from outright sales for Ohio and “Everywhere” contrary to the statute. The BTA should have upheld the use of gross receipts for both commissions and outright sales—the outright sales being counted only at one percent (1%) as provided in the statute.

C. Standard of Review

No facts are in dispute. The issue is solely one of law. This Court defers to the BTA on factual matters, but the Court consistently addresses legal issues de novo. The standard on review was expressed in *Gahanna-Jefferson Local School Dist. Bd. Of Edn. v. Zaino* (2001), 93 Ohio St.3d 231, at 232, 2001–Ohio–1335, 754 N.E.2d 789 as:

When reviewing an appeal from the BTA, we must ascertain whether the BTA's decision is reasonable and lawful. *Columbus City School Dist. Bd. of Edn. v. Zaino* (2001), 90 Ohio St.3d 496, 497, 739 N.E.2d 783, 785. Although we will generally not disturb the BTA's determinations on the weight of evidence and credibility of witnesses, we will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion. See *SFZ Transp., Inc. v. Limbach* (1993), 66 Ohio St.3d 602, 604, 613 N.E.2d 1037, 1039.

D. The Term “Gross Receipts” Means the “Total Amount of Money or Other Consideration Received” and Not “Net Trading Profits.”

Former R.C. 5725.14, used the word “receipts” and defined “gross receipts” for the apportionment factor as “the aggregate amount of all commissions charged plus one percent of the aggregate amount of all other receipts.” The on-line Oxford English dictionary defines “receipt” as “that which is received; the amount, sum or quantity received.” See Appendix at APP088-APP098. The on-line Merriam Webster’s Dictionary of Law defines “gross receipts” as the “total amount of money or other consideration received by a taxpayer in a given period for goods sold or services performed.” Appendix at APP099.

“Receipt” is a broad, general term and by its very nature is subject to no inherent limitation such that only a portion of the receipts (net gains or even net losses according the Tax Commissioner) would be deemed to be the aggregate amount of the receipts. The dictionary definitions reflect the common understanding of the word “receipts” while the decision of the BTA deviates markedly from that standard.

As an example, the sale of a stock for a price of \$15, which had been purchased earlier for \$10, yields a receipt from the sale of stock of \$15 and a net gain of \$5. No system of accounting or taxation would deem \$5 as the gross receipt rather than the \$15. The precise language of the statute relevant to receipts of other than commissions is ‘**aggregate amount of all other receipts.**’ It is most difficult to accept the decision of the BTA to treat the net gain (much less net loss) as the aggregate amount of all other receipts.

E. The Plain Language Doctrine Applies in this Case.

When the language of the statute is clear, the Court's interpretative effort ends and the statute is applied. In *Beau Brummell Tires, Inc. v. Lindley* (1978), 56 Ohio St.2d 310, at 312, 10 O.O.3d 438, 383 N.E.2d 907, the applicable rule of statutory construction was expressed as follows:

This court has aptly stated its role in construing a statute in *Slingluff v. Weaver* (1902), 66 Ohio St. 621, paragraphs one and two of the syllabus:

1. The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the lawmaking body which enacted it. * * *

2. But the intent of the law-makers is to be sought first of all in the language employed, and if words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.

The decision of the BTA below cannot be reconciled with the language employed in the statute. For its part, the BTA made no effort to apply the plain meaning of the statute. Instead the BTA assumed an ambiguity in the phrase "gross receipts" with no analysis of the statute's actual language. As discussed further below, the BTA did not so much decide the legal question as defer to an accounting professor's understanding of income reporting for financial purposes and the Tax Commissioner's assertion that the term "gross receipts" means whatever the Tax Commissioner says it means. Even if the BTA's search outside the four corners of the statute were accepted as appropriate, the application of meaningful aids in construction supports the plain meaning and countermands the BTA's conclusion.

F. A Tax Apportionment Statute Must Be Construed In Favor of the Taxpayer

In considering extrinsic aids in construction of an apportionment statute for tax

purposes, the statute must be read in favor of the taxpayer. *Borden, Inc. v. Limbach* (1990), 49 Ohio St.3d 240, at 241, 551 N.E.2d 1268 (franchise tax net income apportionment construed in favor of the taxpayer). Thus, if an ambiguity were found to exist, i.e. if it is concluded that the statute lacks a plain meaning, the BTA should have applied a favorable construction to the taxpayer, which the BTA plainly failed to do.

G. Historical Perspective: A Predecessor Ohio Tax Commissioner Published Useful Commentary Construing “Gross Receipts”

An understanding of the statute properly includes an examination of its history. The particular apportionment statute for assigning the value of the dealer’s capital within and outside Ohio traces its roots back to the enactment of the predecessor General Code (“G.C.”) 5414-4 in 1931.² The 1931 enactment and later amendments are included in the Appendix at APP027-APP081. A side-by-side comparison of the relevant 1931 language and the language in the statute during the audit period shows continuity for more than seventy (70) years.

... “Gross receipts” as used in this and the succeeding section shall,
... in the case of a dealer in intangibles, principally engaged in the business of selling or buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggregate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts.

G.C. 5414-4

“Gross receipts” as used in this section and section 5725.15 of the Revised Code, means, . . . ; in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, and other similar securities either on his own account or as agent for another, gross receipts means the aggregate amount of all commissions charged plus one per cent of the aggregate amount of all other receipts.

former R.C. 5725.14

² R.C. 5725.14 was amended after the audit period in question. Today only commissions are used for the apportionment and no part of the gross receipts from outright sales is used in apportioning capital within and outside Ohio for UBS and other securities brokers. Current R.C. 5725.14 is in the Appendix at APP032.

Because the language in the statute relevant to the audit essentially was the same as the language enacted in 1931, it is useful to consider the early constructions given to the statute.

In 1941, the Ohio Tax Commissioner published *Ohio Tax Laws Annotated*. Appendix at APP082-APP087. This publication was issued pursuant to a specific legislative directive to the Tax Commissioner to not only publish the tax statutes but to provide annotations. The legislative directive was set forth in G. C. 5624-6 in the following terms:

Sec. 5624-6. Compilation, publication and distribution of tax laws. The tax commissioner of Ohio shall from time to time as changes in the law require compile the laws of the state relating to the assessment of property for taxation and the levy and collection of taxes, with such annotations, instructions and references to the decisions of the courts concerning the same, as the commissioner may deem proper. The commissioner shall cause a sufficient number of copies of the same to be distributed to the several prosecuting attorneys, county auditors, and county treasurers in the state and to such other public officers or employees as the commissioner may deem proper. A charge shall be made for copies distributed other than as above, such charge not to exceed the total cost of such copies so distributed. Money realized from the sale of such copies shall be placed in the general revenue fund.

This work [Ohio Tax Laws Annotated] has been issued pursuant to the authority granted by this section.

Pursuant to this authority, the Tax Commissioner published a Commentary in which he interprets 1% of the aggregate of all other receipts to be equivalent to 1% of outright sales as gross receipts. The Comment for G.C. 5414-4 is as follows:

COMMENT: This section provides for returns by dealers in intangibles to show the gross receipts from the business done at each office in Ohio and outside of Ohio as the basis for apportioning the capital employed in the business. The definition of "gross receipts" for this purpose is intended in the case of finance companies to be based on the loans secured by mortgage on Ohio property, in the case of brokers to be based on gross commissions charged, and in the case of dealers in bonds and stocks on the aggregate amount of all receipts. **Since some**

brokers both deal and sell on commission, it was considered that one per cent of the gross receipts of outright sales should have approximately the same weight as the gross commissions charged....

Emphasis added.

The Commentary is worth consideration by the Court because: (1) it represents an analysis in an official publication pursuant to a legislative directive to the Tax Commissioner to provide such annotation, and (2) its issuance in 1941 is near in time to the 1931 original enactment and can provide useful historical context for the statute in place during the audit period.

The Commentary reveals that the Tax Commissioner's argument in the present appeal is totally unavailing. The 1941 Commentary makes clear that the use of 1% of the gross receipts of outright sales was designed to equate to 100% of gross commissions (a weighting of commissions to outright sales based on a ratio of \$1 of gross commissions equals \$100 of outright sales receipts). The Commentary forecloses the argument that the gross receipts from outright sales should be further discounted. The constancy of the language in former R.C. 5725.14 and its predecessor General Code section from 1931 through the audit period amply shows the error of the BTA's determination to equate gross receipts with net gains and losses.

H. The BTA Erred in Finding That a Long-Standing Administrative Practice Exists to Support the Tax Commissioner or That the Tax Commissioner's Instructions Supersede the Statute.

The BTA erred in substituting a purported long-standing administrative practice for the language of the statute. The BTA decided that the Tax Commissioner had a long-standing administrative interpretation that resulted in substituting a "net gains or losses" standard for a "gross receipts" standard in the apportionment. The BTA erred in this regard.

First, no such long-standing administrative practice existed as a matter of law as discussed below. Second, the Tax Commissioner cannot disregard the statute and cannot apply a rule of general application absent an amendment to the Ohio Administrative Code.

The first tax year at issue in this case is 1999. At the BTA, the Tax Commissioner submitted blank tax returns for the four years (1995-1998) before the audit period to display the instructions for completing the return and to show that the non-statutory word “income” was introduced into the instructions to alter the result of the application of the apportionment formula. Supp. beginning at 1204. Even more troubling, the BTA concluded that the administrative practice reflected in the instructions extended back decades before 1995. BTA Slip Op. below at 12; Appendix at APP021. The testimony with respect to the Forms 980, the Dealer in Intangibles Tax Returns, which likely influenced the BTA, was as follows:

[By Mr. Hubbard:]

Q. So if we were to look at the 1995 return [Form 980], it would be substantially similar to the returns for the prior years?

[By retired Tax Department employee Michael Sachs]

A. Yes.

Supp. Vol. IV at 1000 (TR. Vol. II at 202.)

The form books of the time, however, show otherwise. In 1994 and years prior, the instructions to the Dealer in Intangible returns mirrored the statute in the use of the word “receipts” and the instructions contained no reference to “income.” See the forms in the Appendix beginning at APP100 and in particular, pages APP106 and APP107. Thus, the changed administrative practice began only with the earliest return presented to the BTA by the Tax Commissioner. Contrary to the BTA’s understanding derived from the oral testimony of a

former tax agent supervisor of the Ohio Tax Department, the instructions for the very year immediately prior to 1995 reflected a different interpretation. A comparison of the consistent language for the return years 1980 and 1994 compared with the language for 1995 and after graphically shows the difference.

<u>1994 Form 980</u>	<u>1995 Form 980</u>
<p>In the case of a dealer engaged primarily in the business of dealing in securities as principal, broker, or both, gross receipts shall consist of the aggregate amount of commissions charged for the business done at each office, plus 1% of the aggregate amount of all other receipts from business done at each office.</p>	<p>In the case of a dealer engaged primarily in the business of dealing in securities as principal, broker, or both, gross receipts shall consist of the aggregate amount of commissions charged for business done at each office, plus 1% of the aggregate amount of all other receipts from business done at each office.</p> <p>Located at page 5 of Form 980, Exhibit C is used by brokers who have offices both in Ohio and out. To calculate the Ohio percentage of business for brokers, 100% of commissions charged plus 1% of all other income earned in Ohio, divided by 100% of commissions charged everywhere plus 1% of all other income everywhere. Line 3, Exhibit A, is then multiplied by the percentage obtained from this calculation.</p>

Compare Supp. pages 1214-1215 and Appendix page APP107. See also the 1980 Form 980 at Appendix page APP110. The second paragraph of the 1995 instructions for the first time reinterpreted “receipts” as “income.” Contrary to the assertion by the Tax Commissioner to the BTA, this interpretation (“receipts” means “income”) did not appear in the instructions for years prior to 1995.

An administrative practice of four years does not rise to the level of a long-standing administrative practice. Such a short period is even less compelling upon consideration of the consistency of the statutory language for more than seventy years—from 1931 through 2002. The administrative practice of just four years does not compare favorably to the lengths of time present in other situations in which the Court has applied long-standing administrative practices: *Recording Devices, Inc. v. Lindley* (1963), 174 Ohio St. 518, 23 O.O.2d 150, 190 N.E.2d 258 (25 years), *Ormet Corp. v. Lindley* (1982), 69 Ohio St.2d 263, 23 O.O.3d 257, 431 N.E.2d 686 (20 years) and *NLO, Inc. v. Limbach* (1993), 66 Ohio St.3d 389, 613 N.E.2d 193 (30 years). Four years should not be found to be a sufficient period to apply the administrative interpretation as a meaningful aid in interpreting the statute especially considering the dramatic difference the language of the instructions presents compared with the statute.

Beyond the instructions to the forms, nothing supports the existence of a long-standing administrative practice. It is most problematic as a matter of law to rely on speculations of Mr. Sachs—an audit supervisor and thus a non-executive employee of the Tax Department—as was done in this case, especially in light of the written instructions for years before 1995. Of course, the BTA likely would not have accepted the existence of a long-standing policy if the BTA were aware of the earlier return instructions.

Even if the administrative practice had existed, however, the Tax Commissioner cannot deviate so clearly and definitively from the statute. His administrative practice, irrespective of duration, cannot alter the statute and must be rejected when the administrative practice is contrary to the statute.

Yet another fundamental hurdle to the Tax Commissioner in this case is the requirement that rules of general application must be promulgated by the Tax Commissioner as

administrative rules to be effective. *McLean Trucking Co. v. Lindley* (1982), 70 Ohio St.2d 106, 204 O.O.3d 187 and 435 N.E.2d 414. In that case, the Tax Commissioner had a Special Instruction that directed the manner in which the franchise tax apportionment formula operated for trucking operations. This Court reasoned that an instruction that set forth a rule of general application required promulgation as a rule to be effective. The Court's ruling in *McLean Trucking* has resulted in the desired effect of channeling new interpretations through the Joint Committee on Agency Review with the promulgation of rules. Nothing has changed between 1982 and the present to suggest that the Court should retreat from its position in *McLean Trucking*. The BTA erred in its use of an administrative practice to support the outcome in this case.

I. The BTA's Reliance on Accounting Testimony In This Case To Interpret The Statute Constitutes Error.

The BTA also grounded its decision to disregard the statutory language based on the testimony of Professor Ray Stephens. His testimony was limited to describing how dealers report income for financial reporting purposes. No effort ever was made to tie the current accounting practices, much less the accounting practices in the 1930's, to the tax statute. Professor Stephens was candid that he possessed no expertise with respect to tax law or the statute as his testimony shows:

By MR. KENNY

Q. If the Ohio Dealers in Intangibles Tax references gross receipts, would you have any idea what they were referring to?

....[Interposing and overruling of objection]

THE WITNESS: I'd have to look in – From a financial accounting standpoint, I have no idea what they were referring to without referring to reading what was intended as part of the Legislation.

Supp. Vol. IV at 962 (TR. Vol. II at 164.)

The testimony of Professor Stephens was wholly lacking in concrete application to the legal question presented to the BTA.

Even if one assumes that the testimony of Professor Stephens is totally reflective of current accounting for income for financial purposes, absent some basis to relate that testimony to the Dealer in Intangibles statute makes the testimony unhelpful. Professor Stephens' own testimony shows that "gross receipts" is a phrase not used in financial reporting and thus the income statement accounting adds nothing to the analysis. Professor Stephens explained the non-application of the term "receipts" to financial reporting in his testimony.

By Mr. Kenny:

Q. Mr. Stevens, you indicated that your area of expertise is financial accounting; is that correct?

A. Yes

Q. And prior to lunch, Mr. Hubbard had asked you what your understanding of the term "receipts" was, and that's plural, "receipts," and my notes indicate that you indicated that "this term is not used in financial accounting."

Was that a misstatement, sir?

A. No, sir. It's not used in financial accounting in that particular sense. It's not recorded as that particular amount on a financial statement; that was my understanding of the question.

Q. So for financial accounting purposes, the term "receipts" isn't used at all?

A. It's not presented on the financial statement.

Supp. Vol. IV at 952 (TR. Vol. II at 154.)

Professor Stephens then described how the income statement deals with security sales but never explained how income statements that do not utilize the term or concept of "receipts"

could help the BTA determine the meaning of “receipts” for purposes of the tax on Dealers in Intangibles. Certainly, no reason existed for the BTA to defer to Professor Stephen’s accounting testimony in lieu of undertaking a rigorous legal interpretation of the statutory language.

Further, an inherent problem with using an accounting system as the guide for assigning the tax base within and outside Ohio is that an accounting system is set up to measure profitability and not to assign the tax base geographically among the states. This Court has refused to apply federal income tax accounting to the franchise tax net income apportionment formula even though the Ohio franchise tax incorporated by reference to the federal income tax. See former R.C. 5733.04(J). The income tax accounting principles are not designed to source income and therefore the reference to federal tax accounting should not control. *Borden, Inc. v. Limbach* (1990), 49 Ohio St.3d 240, at 241, 551 N.E.2d 1268 (definition of “capital gain” not used to source gains because the federal definition did not address sourcing questions). See also *Goodyear Tire & Rubber Co. v. Limbach* (1991), 61 Ohio St.3d 381, at 383-384, 575 N.E.2d 146 (federal income tax Safe Harbor Leasing standards not used to assign income within and outside of Ohio even for income accounted for under the Safe Harbor Leasing provisions).

The testimony of Professor Stephens concerning financial accounting for income is even less applicable to apportioning an intangible property tax than the federal income tax accounting would be for the net income measure of the franchise tax. At the hearing at the BTA, no effort was made to show how the financial accounting for income has any relevancy to assigning the value of UBS for Dealer in Intangibles purposes among the states. Absent such connection, Professor Stephens presented no competent testimony for the issue at hand. The BTA erred in

grounding its decision on accounting testimony while abdicating its responsibility to construe the statute as enacted.

Proposition of Law No. 2

The Tax Commissioner Has Jurisdiction to Reduce a Taxpayers' Total Taxable Value Below That Reflected on the Preliminary Assessment Certificates.

A. Introduction

Although the Tax Commissioner reached the merits on the administrative review of the request by UBS to revise its return, the BTA went a different direction. The BTA determined that the Tax Commissioner had been wrong to have considered the merits of UBS' claim and should have proceeded to increase the Ohio portion of "gross receipts" while ignoring the claim by UBS that the wrong definition of "gross receipts" was being used. Although UBS had properly raised the apportionment issue during the review process, the BTA determined that UBS should have done something different, speculating that UBS perhaps could have filed an amended return or filed a claim for refund. A review of the statutes and the case law fully demonstrates the errors of the BTA's conjectures.

B. Overview: Personal Property Tax Filing and Appeal Procedures

Before reviewing the statutes and the case law, it is useful to provide an overview of the procedures relevant to personal property tax, including the Dealer in Intangibles tax. The process begins with the taxpayer filing its return on Form 980 with the Tax Commissioner. This return is the means by which the taxpayer provides the information upon which the assessment is issued. The taxpayer does not pay the tax at that point.

Instead, the Tax Commissioner in every case issues a **preliminary assessment certificate**, which constitutes the assessment. The preliminary assessment certificate is sent to the taxpayer and the Treasurer of State who generates Tax bills. R.C. 5725.16 and 5725.22.

Unless the period within which an assessment can be issued is held open, the assessment becomes final either by (1) operation of law on the second Monday of August of the second year after the return is filed, or (2) upon the issuance of a final determination by the Tax Commissioner (subject to further appeals). R.C. 5711.25. If the Tax Commissioner determines that the taxpayer's return is not correct, he issues an **amended preliminary assessment certificate** that amends his earlier assessment. The taxpayer contests the amended preliminary assessment certificate by filing the **petition for reassessment** pursuant to R.C. 5711.31. Historically, petitions for reassessment were called **applications for review and redetermination**. The Tax Commissioner issues his **final determination** in response to the petition for reassessment. R.C. 5711.31. The filing of the petition for reassessment by the taxpayer constitutes a consent to the issuance of a **final assessment certificate** by the Tax Commissioner. Former R.C. 5711.25(C).

When only preliminary assessment certificates are issued and the Tax Commissioner has not issued amended preliminary assessment certificates, the taxpayer can seek a refund by filing an **application for final assessment**. R.C. 5711.26. In response to the application for final assessment, the Tax Commissioner issues a final determination, which is the final assessment of the taxpayer. The final assessment certificate reflects the Tax Commissioner's final determination.

C. The Relevant Statutes Permit Refunds on the Petition for Reassessment

Four statutes, with cross references that dictate that they be read in *pari materia*, provide a clear path to the refund. Each section will be considered in turn.

1. R.C. 5725.15 – The Tax Commissioner Assesses By Issuing Preliminary Assessment Certificates

The role of the Tax Commissioner in the administration of the Dealer in Intangibles tax is set forth in R.C. 5725.15. Under this section, the taxpayer files its return and the Tax Commissioner ascertains the share value of the Dealer in Intangibles properly apportioned to Ohio from the taxpayer's return. The Tax Commissioner issues a preliminary assessment certificate that conforms in all respects to the taxpayer's return. This preliminary assessment certificate is "the assessment" by the Tax Commissioner to which this and the companion sections of the Revised Code refer. The taxpayer does not pay any tax with the return because it is only after the Tax Commissioner assesses the property that the Treasurer of State issues a bill.

In this respect, the assessment and payment of the Dealer in Intangibles tax differs from the personal income tax or corporation franchise taxes. For those latter taxes, the taxpayer files the return and pays the tax and the Tax Commissioner does not routinely issue an assessment. The only assessment in the income and franchise tax arenas occurs if the Tax Commissioner disagrees with the taxpayer. In the case of the assessment of Dealer in Intangibles, however, the Tax Commissioner issues his assessment in every case in response to the return.

In the present case, the Tax Commissioner disagreed with UBS and therefore issued amended preliminary assessment certificates to reflect his corrections. Pursuant to R.C. 5725.15, the Tax Commissioner is instructed to proceed in accordance with R.C. 5711.31.

2. R.C. 5711.31 – The Tax Commissioner Must Make Corrections That Benefit the Taxpayer on the Petition for Reassessment When Issues Are Brought to His Attention

The Tax Commissioner effects changes to the assessment by issuing amended preliminary assessment certificates and correcting his assessment. The taxpayer can object to the assessment and can specifically raise additional objections as follows:

Within sixty days after the mailing of the notice of assessment prescribed in this section, the party assessed may file with the tax commissioner, in person or by certified mail, a petition for reassessment in writing. . . The petition also shall indicate the objections of the party assessed, but **additional objections may be raised in writing** if received prior to the date shown on the final determination by the commissioner.

UBS availed itself of this opportunity and raised the additional objection that the gross receipts standard should be employed in lieu of net gains and losses. The Tax Commissioner actually responded to the additional objection, albeit by denying the claimed relief. The Tax Commissioner was not free to decline to respond to an issue that had been raised. The statute sets forth the Tax Commissioner's obligation when it states that the **"commissioner may make such correction to the assessment, as the commissioner finds proper."** The Tax Commissioner thus can make any necessary correction to his assessment and is not limited to the types of corrections he can make so long as the objections are brought to his attention before the issuance of the final determination. The manner in which the Tax Commissioner conveys his resolution of the assessment is the final determination which is the final assessment and can be appealed by the taxpayer to the BTA.

R.C. 5711.31 specifically addresses the scope of the Tax Commissioner's review in the following terms:

The decision of the commissioner upon such petition for reassessment shall be final with respect to the assessment of **all taxable property listed in the return of the taxpayer** and shall constitute to that extent the final determination of the commissioner with respect to such assessment.

The statute thus provides explicitly that the determination issued in response to the petition for reassessment is final with respect to all of the property returned by the taxpayer and is not

limited to the deficiencies asserted by the Tax Commissioner in the amended preliminary assessment certificates.

3. R.C. 5711.25 – The Petition for Reassessment is an Application for Final Assessment

Pursuant to R.C. 5711.25(C), the filing of a petition for reassessment constitutes **“consent to the issuance of the petitioner’s final assessment certificate.”** Thus by statute, a petition for reassessment constitutes an application for final assessment, which is the means to obtain a refund under R.C. 5711.26. The petition for reassessment is a request for a refund under R.C. 5711.31 and 5711.25 to the extent that an excess (overpayment) exists with respect to the assessment and the taxpayer raises the issue in writing before the issuance of the final determination.

One further statute reflects the fact that a taxpayer can achieve a refund through the petition for reassessment. R.C. 5711.31 specifically references R.C. 5725.22 to which the discussion now turns.

4. R.C. 5725.22 – The Statutes Contemplate That Refunds May Be Made When The Petition for Reassessment Shows Excess Tax (An Overpayment)

Whenever the Tax Commissioners issues the amended preliminary assessment certificates and whenever he issues the final assessment, i.e. the final determination, the Tax Commissioner certifies the results to the Treasurer of State. the Treasurer of State shall refund taxes as provided in R.C. 5725.22, which reads in part as follows:

(B) Within twenty days after receipt of **any** amended or final assessment certified to him, the treasurer of state shall ascertain the difference between the total taxes computed on such assessment and the total taxes computed on the most recent assessment certified for the same tax year. If the difference is a deficiency, the treasurer of state shall add interest as provided in division (B)(1) of section 5725.221 of the Revised Code and issue a tax bill. **If the**

difference is an excess, the treasurer of state shall add interest as provided in division (B)(2) of section 5725.221 of the Revised Code and certify the name of the taxpayer and the amount to be refunded to the director of budget and management for payment to the taxpayer. If the taxpayer has a deficiency for one tax year and an excess for another tax year, or any combination thereof for more than two tax years, the treasurer of state may determine the net result after adding interest, if applicable, and, depending on such result, proceed to mail a tax bill or certify a refund.

....

In the present case, the Tax Commissioner issued his final determination which reflected his final assessment. R. C. 5725.22 expressly provides that whenever any final determination (once appeals are exhausted) shows an excess, the Treasurer shall refund the difference. Thus, an overpayment (called an “excess” in the statute) can be remedied upon the issuance of the final determination in response to a petition for reassessment. The statutes contemplate that the final determination—whether a response to a petition for reassessment or an application for final assessment—is the final assessment and can trigger corrections to both the assessment and any amendments to the assessment.

In the case of the Dealer in Intangible Tax, should the Tax Commissioner find a deficiency, he issues an amended preliminary assessment certificate that corrects his prior assessment (the preliminary assessment certificates). If the taxpayer contests the amended preliminary assessment certificate or, in the absence of amended preliminary assessment certificates, upon an application for final assessment, the Tax Commissioner then reviews the assessment and issues a final determination addressing all relevant issues in the assessment. Whether the case proceeds on a petition for reassessment (upon a correction issued by the Tax Commissioner) or on an application for final assessment (absent any correction by the Tax Commissioner), the resulting final assessment operates in the same manner.

D. The Tax Commissioner's Actions Speak Louder In This Case Than His Belated Argument

The actions of the Tax Commissioner in this case (in contrast to the arguments first raised on appeal) are entirely consistent with the analysis above in that the Tax Commissioner accepted jurisdiction over the issue in dispute. In particular, the Tax Commissioner's Final Determination specifically addressed the substantive issue. See Appendix at APP024. No alleged jurisdictional issue was raised by the Tax Commissioner during the administrative review because no such jurisdictional issue exists.

Even later, at the beginning of the hearing at the BTA, the Hearing Examiner pointedly asked counsel for the Tax Commissioner whether this was a refund claim. Counsel's response was very clear that the proceeding below was a refund claim in the following exchange:

"Examiner: Thank you Mr. Hubbard. I did have one question: Did you agree with interpretation that this [is] a refund claim case?"

Mr. Hubbard: Absolutely.

Examiner: Thank you. Normally, that's reflected in the final determination, and I don't recall seeing that. But both parties have indicated that, so that clarifies that for me. You may call your first witness. "

Supp. Vol. III at 597 (TR. Vol. at 41.)

UBS is entitled to its refund.

E. This Court's Case Law Recognizes The Ability of the Taxpayer to Seek Refund Through A Review of an Amended Preliminary Assessment Pursuant to R.C. 5711.31

1. This Court Has Permitted Taxpayers to Revise Their Property Tax Returns Pursuant to R.C. 5711.31

In *Procter & Gamble Company v. Evatt* (1943), 142 Ohio St. 373, 27 O.O. 287, 52 N.E. 2d 519, a taxpayer was permitted to file an amended report to correct mistakes. The taxpayer

had failed to include certain subsidiaries in its personal property tax return that prevented it from eliminating certain intercompany accounts from its intangible personal property tax.³ Independent of the mistake, the Tax Commissioner had issued an increased assessment and the taxpayer not only protested the increased assessment but sought to revise its original filing. The Tax Commissioner refused to consider the revisions (the including of additional subsidiaries in the return). The BTA affirmed but this Court reversed, finding that the Tax Commissioner should have accepted the revisions. The Court stated the proposition in 142 Ohio St. at 378 as follows:

Under such circumstances the Tax Commissioner had no power or authority to crystallize the defective return made by the appellant [taxpayer] and to assess it accordingly. On the other hand, the appellant had the right to correct what it claims was a mistake on its part in making the return, and to file an amended return which would comply with the statute.

In *Pittsburgh Steel Co. v. Bowers* (1961), 172 Ohio St.14, 15 O.O.2d 50, 173 N.E.2d 361, the taxpayer sought to amend its return because of a mistake of law as to whether certain inventory was taxable and filed a request that the Tax Commissioner issue a final assessment certificates. The BTA dismissed the appeal. This Court reversed the BTA and found that the BTA had jurisdiction to review the determination of the Tax Commissioner. The Court discussed the Tax Commissioner's role in reviewing a property tax assessment at 172 Ohio St. at 17, in the following respects:

...an examination of Chapter 5711, Revised Code, shows that the Tax Commissioner is the primary assessing officer in relation to tangible personal property, and it is upon his shoulders that the ultimate burden of assessment must fall and he clearly has the right to review any assessment previously made by him so long as the return is open.

³ Beginning with the 1986 return year, the intangible tax rate was reduced to zero for all but Dealers in Intangibles. R.C. 5707.03.

The Court then elaborated on the taxpayer's right to a review of errors before the assessment becomes final in the following respects:

The Attorney General urges that if the taxpayer had thought this property exempted from the tax it should have omitted it from the return in the first instance. Such an argument begs the question. At the time of filing the return, the taxpayer, having no reason to consider it other than taxable property, in good faith included it in its return. Due to subsequent interpretations of the tax statutes by this court, the taxpayer concluded that it was in error and made application for the deletion of such property from its return. Such application was filed with the Tax Commissioner, the officer upon whom the primary duty to make such a determination rests, at a time when the taxpayer's return was still open, no final assessment having been made by the Tax Commissioner and none having arisen by operation of law.

Certainly the taxpayer had the right to make such an application. The return was still open for final assessment due to the procurement of time waivers from the taxpayer by the Tax Commissioner. So long as such return was open for the Tax Commissioner to make a final assessment, it was equally open for the taxpayer to seek corrections therein as to property which subsequent legal developments caused it to believe it had improperly included in its return in the first instances.

Id.

In the present case, the Tax Commissioner was reviewing the assessment on the petition for reassessment and no final assessment had been issued. The Tax Commissioner had authority and the obligation to properly assess the property.

In *First Banc Group, Inc. v. Lindley* (1981), 68 Ohio St.2d 81, 22 O.O.3d 297, 428 N.E.2d 427, a property tax case that proceeded under R.C. 5711.31, the Tax Commissioner increased the intangible personal property tax against the taxpayer by requiring the listing of intercompany demand notes with an affiliate as taxable receivables thereby increasing the taxpayer's tax. The Tax Commissioner effected the change by the issuance of amended preliminary assessment certificates pursuant to R.C. 5711.31. The taxpayer filed its application

for review and redetermination, which is the same as the proceeding instituted by a petition for reassessment today.

The taxpayer also made application to amend its report to change the nature of the filing from an independent (stand-alone) return to a consolidated return. The Tax Commissioner refused to consider the amendment because, according to the Tax Commissioner, the R.C. 5711.31 proceeding could only correct the original return and could not change the nature of the original return (from stand-alone to consolidated return.) In that case, the BTA reversed the Tax Commissioner and found that when the Tax Commissioner amends the assessment, the taxpayer could affirmatively change the filing. This Court agreed.

The Tax Commissioner can cite no authority for the proposition that he is at liberty to adjust the apportionment factor while refusing to apply the statutory language directing how the apportionment is to proceed. To use the words of this Court in *Pittsburgh Steel*, the Tax Commissioner cannot “crystallize the defective return.” 142 Ohio St. at 378.

Most recently, in *Lincoln Elec. Co. v Limbach* (1993), 66 Ohio St.3d 176, 610 N.E.2d 990, motion for clarification granted (1993), 67 Ohio St.3d 1205, 616 N.E.2d 239, a taxpayer was assessed intangible tax for the 1984 return year. The taxpayer realized that it had overstated the value of its property and filed an amended report. The Tax Commissioner accepted some of the changes on the amended report but refused to reduce the value below that returned. The Tax Commissioner renewed the argument that his review was limited to items, numbers and computation as made on the original return tax. Once again, this Court upheld the principle that the Tax Commissioner can review the assessment and make corrections that benefit the taxpayer as well as the Tax Commissioner.

2. UBS Preserved Its Objection to The Original Assessment Based on Its Return

In this appeal, the BTA suggested that the Tax Commissioner lacked jurisdiction because UBS had not filed an “amended return.” In fact, however, UBS did seek to amend its return and did so in writing. UBS was in full compliance with R.C. 5711.31 that states that additional objections must be made in writing. Nowhere does the statute require that the written objection under R.C. 5711.31 be made on the Form 980. Moreover, it is not the customary practice to submit a new form 980 when the taxpayer is in the middle of an audit. Most damning, the Tax Commissioner reviewed the information about the mistake in the apportionment and acted on the request to amend while never suggesting that the Tax Commissioner had a preferred, much less required, format in which to submit the challenge to the apportionment.

F. The Reliance on Franchise Tax Procedures Does Not Support the Decision of the BTA

The BTA would deny jurisdiction on the basis of an absence of the filing of an application for refund even though the Tax Commissioner never raised the absence of an application for refund as a reason to deny the claim at the administrative level. The BTA cited two franchise tax cases: *International Business Machines Corporation v. Zaino* (2002), 94 Ohio St.3d 152, 743 N.E.2d 401 and *Lancaster Colony Corp. v. Lindley* (1980), 61 Ohio St.2d 268, 15 O.O.3d 270 and 400 N.E.2d 905⁴ to support the absence of the Tax Commissioner’s authority to correct his assessment.

⁴ The Board’s citation to the *Lancaster Colony* case was in error by referring to “Ohio St. 3d” instead of “Ohio St. 2d.”

In contrast to the administration of the property taxes, however, the franchise tax statutes specifically provide for the filing of applications for refund in R.C. 5733.12.⁵ Under the statute, the franchise tax refund claim must be filed on the form “prescribed by the Tax Commissioner.” In the present case, UBS cannot be found to be in default of filing a refund claim for the Dealer in Intangibles tax when no such provision appears in the law and accordingly, no form exists for such an application.

G. Other Rationales Advanced by the BTA Are Wholly Lacking In Support

Other objections raised by the by the BTA in this case are equally without merit. The obligation to file a claim for deduction from book value has no application to the determination of the apportionment factor. The purpose of that claim for deduction from book value requirement is to compel the taxpayer to alert the Tax Commissioner if the taxpayer is listing its property at a value below that established on the taxpayer’s books. The claim for deduction from book value is an audit tool for the Tax Commissioner with respect to valuation issues only. It is difficult to perceive how a thoughtful analysis of the issue could possibly lead the BTA to apply the requirement for filing a claim for deduction from book value to an apportionment issue.

Based on the language of the relevant statutes, the Tax Commissioner should have determined that an overpayment (an excess) in taxes existed. An additional objection to the BTA’s reasoning, however, further supports the obvious conclusion that the BTA did not

⁵ R. C. 5733.12(B) provides as follows:

(B)...an application to refund to the corporation the amount of taxes imposed under section 5733.06 of the Revised Code that are overpaid, paid illegally or erroneously, or paid on any illegal, erroneous, or excessive assessment, with interest thereon as provided by section 5733.26 of the Revised Code, shall be filed with the tax commissioner, **on the form prescribed by the commissioner**, within three years from the date of the illegal, erroneous, or excessive payment of the tax,

carefully consider its actions. Even if this appeal concerned franchise tax and not intangible property tax, UBS as the taxpayer could raise alternative adjustments in writing as a defense against the assessment to reduce the assessment to zero even in the absence of a refund claim. In both *Lancaster Colony* and *International Business Machines Corp.*, no question existed that the franchise taxpayers could defend against the assessment and reduce the assessments to zero despite the absence of a refund claim. The BTA cannot begin to defend the position that the Tax Commissioner can increase the Ohio portion of the apportionment factor while ignoring a request to conform that calculation to the statute.

The refusal of the BTA in this case to consider an issue that was properly preserved contradicts the provisions of R.C. 5711.31 that permit the taxpayer to raise additional objections in writing. The proper application of the apportionment factor is before the Court for resolution on the merits.

V. CONCLUSION

UBS was entitled to use the gross receipts factor prescribed by former R.C. 5725.14 to assign its Dealer in Intangibles base within and outside Ohio. The substitution by the BTA of a non-prescribed method—net gains and losses rather than gross receipts on the outright sales of securities—cannot be reconciled with the statute. The BTA further erred by finding that the Tax Commissioner lacked the authority to review the error on administrative appeal even though the Tax Commissioner accepted and acted on the error and addressed, although denied, the claim by UBS. The BTA should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief was served upon Barton A. Hubbard, Taxation Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, and Columbus, Ohio 43215 by hand delivery this 27th day of October, 2007.



Edward J. Bernert

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Taxation Section

IN THE SUPREME COURT OF OHIO

2007 JUN 22 PM 2:10

UBS Financial Services, Inc.
f/k/a Paine Webber, Inc.

Appellant,

v.

Thomas M. Zaino,
[Richard A. Levin]
Tax Commissioner of Ohio,

Appellee.

Supreme Court
Case No.

07-1129

Appeal from the
Ohio Board of Tax Appeals

BTA Case No. 2003-T-1139

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LEGAL DIVISION

NOTICE OF APPEAL

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FILED
JUN 22 2007
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

UBS Financial Services, Inc.	:	
f/k/a Paine Webber, Inc.	:	
	:	
Appellant,	:	Supreme Court
	:	Case No.
v.	:	
	:	Appeal from the
Thomas M. Zaino,	:	Ohio Board of Tax Appeals
[Richard A. Levin]	:	
Tax Commissioner of Ohio,	:	BTA Case No. 2003-T-1139
	:	
Appellee.	:	

NOTICE OF APPEAL

UBS Financial Services, Inc. f/k/a Paine Webber, Inc. ("Appellant"), hereby gives notice of its appeal to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals ("BTA") journalized in Case No. 2003-T-1139 on May 25, 2007, a true copy of which is attached hereto and incorporated herein by reference as Exhibit A. This appeal is filed as a matter of right pursuant to Revised Code ("R.C.") 5717.04.

Appellant complains of the following errors in the BTA's Decision and Order:

Apportionment Formula

1. The BTA erred in overstating the Ohio portion of Appellant's Dealer in Intangibles tax base.
2. The BTA erred in failing to apply former R.C. 5725.14 as drafted and in failing to apportion the tax base based, in part, on the proportion of (one percent of) other gross receipts assignable to Ohio compared with other gross receipts assigned everywhere.

3. The BTA erred in substituting other standards, such as “revenues”, “profits” and “net trading profits” for the then statutory standard of “receipts” (“gross receipts”) in former R.C. 5725.14.
4. The BTA erred by failing to apply former R.C. 5725.14 as written.
5. The BTA erred in failing to resolve any ambiguity found to exist in former R.C. 5725.14 in favor of the taxpayer.
6. The BTA erred in relying upon aids in construction of a statute not sanctioned by R.C. Chapter 1, including but not limited to, accounting testimony not relevant or germane to construction of the apportionment provisions of R.C. 5725.14.
7. The BTA erred in accepting a statement in the Tax Commissioner’s instructions and an internal policy of the Tax Commissioner as to the meaning of “gross receipts” when such internal policy applied a rule of general application but was not promulgated in accordance with the statutory provisions for administrative rules.

Calculation of Net Worth

8. The BTA erred in overstating the net worth of Appellant by improperly adding thereto the costs of certain real property leasehold improvements that were not owned by Appellant.

Jurisdictional Issue

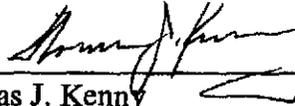
9. The BTA erred in finding that it lacked jurisdiction to consider the proper apportionment of Appellant’s tax base.
10. The BTA erred in concluding that Appellant did not properly raise the issue of the application of the “other gross receipts” issue in proceedings before the Tax Commissioner or that the Tax Commissioner lacked the authority to correct that error.

11. The BTA erred in failing to recognize that unlike other taxes, such as the Ohio franchise tax, the Dealer in Intangibles Tax is not self assessed by the taxpayer but is assessed by the Tax Commissioner in the first instance, *see* R.C. 5725.15, and thus on a petition for reassessment, the Tax Commissioner may correct his original assessment as well as the deficiency assessment.
12. The BTA erred in using the absence of a claim for deduction from book value, which has no bearing on an apportionment issue or the issue of whether the leasehold improvements should be added to net worth, neither of which issue implicates valuation or the book values of Appellant.
13. The BTA erred in requiring the filing of an “application for refund” to pursue additional issues when no such provision is required by the Ohio Revised Code.
14. The BTA erred in requiring the filing of an amended return, requesting a certificate of abatement, or any other action to pursue additional issues, when no such requirements are set forth in the Ohio Revised Code.
15. The BTA erred in finding that Appellant failed to take an action to preserve the issue of proper apportionment when the BTA can cite no statutory requirement that Appellant failed to meet.
16. In the alternative, the BTA erred in failing to determine that even if the refund could not be honored, the protest of the misapplication of former R.C. 5725.14 by failing to apply the gross receipts standard in any case would remain a defense against the increase in tax resulting from the deficiency assessment.

Claim for Relief

17. Wherefore, the order of the BTA is unreasonable and unlawful in these respects and should be reversed. Appellant requests such other relief as properly may be accorded by law.

Respectfully submitted,



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ACKNOWLEDGEMENT OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Notice of Appeal and Praeceptum was delivered to the Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215, by hand-delivery on this ____ day of June, 2007.

OHIO BOARD OF TAX APPEALS

By: _____

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appeal and Praecipe were served this 22nd day of June, 2007 by hand-delivery upon the Ohio Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215, and by certified mail upon Richard A. Levin, Tax Commissioner of Ohio, 30 East Broad Street, 22nd Floor, Columbus, Ohio 43215, and Barton A. Hubbard, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.



Edward J. Bernert

101760686

OHIO BOARD OF TAX APPEALS

UBS Financial Services, Inc.,)
f/k/a/ PaineWebber, Inc.,)
)
Appellant,)
)
vs.)
)
Thomas M. Zaino, Tax)
Commissioner of Ohio,)
)
Appellees.)

CASE NO. 2003-T-1139
(DEALER IN INTANGIBLES TAX)
DECISION AND ORDER

APPEARANCES:

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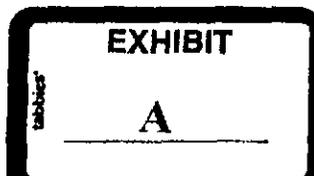
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Entered May 25, 2007

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

UBS Financial Services, Inc., appeals from a final determination of the Tax Commissioner, in which the commissioner affirmed three dealer in intangibles tax (“DIT”) assessments issued for tax years 1999, 2000, and 2001. UBS claims that the



commissioner erred by a) not allowing a deduction for “landlord contributions” when computing taxable value and b) failing to include in the DIT’s receipts factor all receipts from the sale of UBS’ securities inventory, including the original cost of the securities to UBS. For the following reasons, we affirm the commissioner’s determination in its entirety.

UBS is a Delaware corporation that is engaged in brokering various investment and capital products to its clients. It has its principal place of business located in New Jersey. In addition, UBS operates a “branch office” system throughout the United States, including Ohio. H.R., Vol. I, at 53. The branch offices service what UBS refers to as its “individual clients group.” Through its branch offices, UBS provides its individual clients with equity stocks, securities, commodities, insurance, trusts, wrap products,¹ mutual funds, other securities and related products and services. H.R., Vol. I, at 48 and 53. UBS’ “institutional clients” purchase similar products and services primarily through UBS’ New Jersey office. H.R., Vol. I, at 53. For its services, UBS charges or earns commissions, management fees, interest income, and gains on inventory sales. H.R., Vol. I, at 78.

In 2001, the Department of Taxation conducted an audit on UBS’ 1999-2001 DIT returns. As a result of the audit, the department disallowed certain landlord contributions in determining the value of UBS’ leasehold improvements and increased the numerator of the gross receipts factor. UBS was assessed an additional tax of

¹ Wrap products are those in which a client invests with a money manager who charges the client an annual fee based upon a percentage of the assets, rather than on each transaction conducted throughout the year. H.R., Vol. I, at 55.

\$195,287.68 for tax year 1999, \$228,437.04 for tax year 2000 and \$360,357.52 for tax year 2001. See S.T., Vol. II, at 517, 539, and 526.

UBS subsequently filed a petition for reassessment, challenging the deficiency assessments. In addition to challenging the assessments, UBS claimed in its petition that it had incorrectly reported "gross receipts" for the apportionment calculation during each of the assessed years. UBS claimed that it had erroneously included one percent of its net trading profits from inventory sales in both the numerator and denominator, rather than one percent of all of its gross receipts from the inventory sales. UBS claimed that a recalculation of the factor would result in a refund for each of the assessed years. UBS has not filed any amended DIT returns or filed an application for refund.²

Upon review of the petition for reassessment, the commissioner affirmed the three assessments in their entirety and further declined to make UBS' requested changes to the apportionment factor. UBS, on appeal, concedes the increases made to the numerator of the receipts factor, but argues that the commissioner erred in not permitting the landlord contributions and in not recalculating the factor using gross receipts from inventory sales.

We begin our review by observing that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a

² The record indicates that UBS did request the auditing agent to issue a refund based upon UBS' suggested changes to the apportionment factor. The agent, however, relied upon UBS' returns, as filed, in recommending the assessments. The assessments did not alter the apportionment factor, as reported by UBS.

determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

UBS is a "dealer in intangibles," as that term is defined in R.C. 5725.01(B).³ Pursuant to R.C. 5725.13, the property of a dealer in intangibles must be listed and assessed at its fair value and is to be taxed in the manner prescribed in R.C. 5725.01 to 5725.26, inclusive.⁴ Under R.C. 5725.14, a dealer is required to file an annual return with the Tax Commissioner that shows, in detail, the dealer's resources and liabilities. If the dealer maintains separate business offices, whether within Ohio only or within and without the state, the report must also show the gross receipts from business done at each office during the year ending on the thirty-first day of the preceding December.

³ R.C. 5725.01(B), as enacted during the assessment period, provided: "Dealer in intangibles' includes every person who keeps an office or other place of business in this state and engages at such office or other place in a business that consists primarily of *** buying or selling bonds, stocks, or other investment securities, whether on the person's own account with a view to profit, or as agent or broker for others, with a view to profit or personal earnings."

⁴ The DIT is a tax "distinguished from a franchise tax or other form of excise tax." *Bond & Mortgage Investment Co. v. Evatt* (Oct. 28, 1943), BTA No. 8061, unreported. The tax is not one on the entity as a corporation and a dealer in intangibles. *Id.* at 609; *Household Finance Corp. v. Porterfield* (1970), 24 Ohio St.2d 39. A dealer in intangibles does not pay Ohio franchise tax. R.C. 5733.09(A). The DIT "is imposed upon the dealer's capital *** to the extent that the capital is employed in Ohio." *Household Finance*, supra, at 43.

Upon receipt of the return, “the commissioner is to ascertain and assess all the shares of such dealers in intangibles, the capital stock of which is divided into shares, representing capital employed in this state, and the value of the property representing the capital, not divided into shares, employed in this state by such dealer in intangibles, according to the aggregate fair value of the capital, surplus, and undivided profits as shown in such report, including in the case of an unincorporated dealer, the value of property converted into nontaxable bonds or securities within the preceding year, without deduction for indebtedness created in the purchase of such nontaxable bonds or securities.” R.C. 5725.15.

R.C. 5725.15 further provides that, where the dealer has separate offices within and without Ohio, the amount of capital employed in Ohio shall bear the same ratio to the entire capital of the corporation, wherever employed, as the “gross receipts” of the Ohio offices bear to the entire gross receipts of the dealer, wherever arising. During the assessment years, R.C. 5725.14 defined “gross receipts,” for the purpose of allocation in the case of a dealer principally engaged in the business of selling or buying stocks, bonds, and other similar securities, as “the aggregate amount of all commissions charged plus one percent of the aggregate amount of all other receipts.”⁵

UBS’ primary specification of error relates to the proper interpretation of the phrase “aggregate amount of all other receipts” for purposes of defining “gross

⁵ Beginning with the 2003 tax year, R.C. 5725.14 now provides, at R.C. 5725.14(3)(b), that “gross receipts” means, “In the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, or other similar securities either on the dealer’s own account or as agent for another, the aggregate amount of all commissions charged.” See Am.Sub.H.B. No. 405, effective March 14, 2002, 149 Ohio Laws, Part IV, at 6624.

receipts” under former R.C. 5725.14. Nevertheless, before we can proceed to consider the merits of UBS’ contentions, we must address a jurisdictional issue raised by the commissioner. The commissioner maintains that UBS can seek a review of only the increased liability imposed pursuant to the audit of UBS’ returns. The commissioner argues that UBS is precluded from seeking, through its petition for reassessment, a refund on amounts UBS originally paid as a result of the information UBS voluntarily reported on its DIT returns. According to the commissioner, UBS must seek a refund on any alleged overpayments through an application for refund.

In reviewing the commissioner’s contention, we note that, in its 1999-2001 DIT returns, UBS voluntarily reported its receipts using its “net trading profits” from inventory sales in the numerator and denominator of the apportionment formula, as specified by the commissioner’s instructions on the returns, and voluntarily returned and paid the tax based upon its reporting. UBS did not contest the accuracy of the returns at the time they were filed, nor did UBS make any claim for any deduction from book value at the time of making its returns, as specifically required by R.C. 5725.15.⁶ During the department’s audit, UBS stated that it had erred in calculating the apportionment factor and claimed that it should have based its receipts on “cash received,” rather than on the “net trading profits.” The agent disagreed and finished the audit using the information reported by UBS in each of its returns. Although UBS informally advanced the issue during the department’s audit, UBS neither filed amended returns nor submitted an application for refund.

⁶ R.C. 5725.15 provides: “Claim for any deduction from book value of capital, surplus, and undivided profits must be made in writing by the dealer in intangibles at the time of making his return.”

R.C. 5725.15 provides, “Whenever the commissioner assesses the fair value of the capital, surplus, and undivided profits of a dealer in intangibles at an amount *in excess of the book value thereof as shown by its report*, or disallows any claim for deduction from book value of such capital, surplus, and undivided profits, he shall give notice and proceed as provided in section 5711.31 of the Revised Code.” (Emphasis added.) R.C. 5711.31 specifies both the manner in which the commissioner must give notice of the assessment and the requirements for the filing of a petition for reassessment. Under R.C. 5711.31, the commissioner, upon review of the petition for reassessment, “may make such correction *to the assessment*, as he finds proper.” (Emphasis added.)

The commissioner relies upon *Wright Aeronautical Corp. v. Glander* (1949), 151 Ohio St. 29, to support his claim that we lack subject-matter jurisdiction over UBS’ specification of error. We find *Wright* to be instructive, in that the court considered a situation where a taxpayer had voluntarily made a tax return and had paid the tax thereon without making any protest that the return was inaccurate, or without filing at the time the return was filed a written claim for a deduction in book value. Nevertheless, the utility of *Wright* is limited because the taxpayer raised its claim of error for the first time before this board, rather than in the proceedings before the commissioner.

We do find *Internatl. Business Machines Corp. v. Zaino* (2002), 94 Ohio St.3d 152, however, to be supportive of the commissioner’s position. In *IBM*, the court considered a situation in which a taxpayer sought a refund of an overpayment of

franchise tax through a petition for reassessment rather than through an application for refund. The commissioner had issued a deficiency assessment against the taxpayer. The taxpayer filed a petition for reassessment, seeking a review of the assessment. In addition, the taxpayer argued that changes should be made in the reporting of certain deferred tax asset accounts. The taxpayer argued that, if the entire debit balance was included in its net worth calculation, not only would its franchise tax liability be reduced to zero, but also it would be entitled to a refund. Upon review, the commissioner cancelled the assessment but did not grant the additional refund requested by IBM. The commissioner maintained that, in the absence of a refund application, his authority was limited to the amount of the deficiency assessment.

Upon appeal, the court agreed. In reviewing the assessment statute for franchise tax, the court stated, "There is no language in R.C. 5733.11 that grants the commissioner authority to refund any amount greater than that paid toward the deficiency assessment with the petition for reassessment. Therefore, when the commissioner has made an assessment under R.C. 5733.11, the amount that may be contested and refunded under that statute is limited to the amount paid on the deficiency assessment. No refund of the money paid with the filing of the franchise tax returns is available under R.C. 5733.11" *IBM*, supra, at 154-155.

We find the circumstances before us to be similar. R.C. 5711.31 limits the commissioner's authority to making "such correction *to the assessment*, as he finds proper." (Emphasis added.) Hence, as his authority is limited to the assessment itself, the commissioner is limited to the amount either paid or due on the deficiency

assessment.⁷ The commissioner could not go beyond the assessment to consider any other claim for refund not made at the time of filing or not made pursuant to an application for refund. *IBM*, supra. See, also, *Wright*, supra, at paragraph one of the syllabus.

We stress that this is not to say that UBS did not have an avenue to seek a refund of money paid with the filing of its DIT returns. UBS could have filed amended returns and then challenged any refusal by the commissioner to value UBS' property according to the amendments. *Lincoln Elec. Co. v. Limbach* (1993), 66 Ohio St.3d 176. Alternatively, UBS could have filed an application for refund under R.C. 5703.05(B), with any certificate of abatement issued on an overpayment being tendered as provided by R.C. 5725.16. See *IBM*, supra, at 155. Cf. *Lancaster Colony Corp. v. Lindley* (1980), 61 Ohio St.3d 268. UBS has filed neither an amended return for each of the years at issue nor an application for refund. As such, UBS has failed to comply with a specific requirement necessary for our review. *IBM*, supra, at 156.

Although we find jurisdiction wanting in this instance, if we had considered the contested issue, we would have found that the record before us supports the Tax Commissioner's interpretation of R.C. 5725.14. As previously stated, the issue raised by UBS concerns the proper interpretation of the phrase "aggregate amount of all other receipts" for purposes of defining "gross receipts" under former R.C. 5725.14. UBS maintains that the phrase "all other receipts" should include not only the gains and losses from the sale of securities on its own account (as opposed to

⁷ UBS had paid the assessment prior to the commissioner's issuance of his final determination. See R.C. 5725.22.

acting as an agent for its customers), but should also include the broker's cost of purchasing the securities. The commissioner counters that "receipts" means the aggregate gains or losses from the sale of securities. Although perhaps an oversimplification, the issue may be hypothetically illustrated by looking at a broker's purchase of stock for \$10.00 per share. The broker then sells the stock at a price of \$15.00 per share. Under UBS' theory, the "receipts" generated by the sale are \$15.00 per share, i.e., the cash received. According to the commissioner, the "receipts" are \$5.00 per share, i.e., the broker's gain.

For each of the tax years in question, UBS filed its DIT return (Tax Form 980) pursuant to the commissioner's instructions, which specified that income was to be used when calculating "receipts." This calculation was made in Exhibit C to the return. The instructions for Exhibit C provided:

"In the case of a dealer engaged primarily in the business of dealing in securities as principal, broker, or both, gross receipts shall consist of the aggregate amount of commissions charged for business done at each office, plus 1% of the aggregate amount of all other receipts from business done at each office.

"Exhibit 'C' is used by brokers who have offices both in Ohio and out. To calculate the Ohio percentage of business for brokers, 100% of commissions charged plus 1% of all other income earned in Ohio, divided by 100% of commissions charged elsewhere plus 1% of all other income everywhere. Line 3, Exhibit A, is then multiplied by the percentage obtained from this calculation."
Appellees Ex. F, at page 2 of Form 980-A.

While UBS acknowledges that it filed according to the instructions, it argues that the return is in error and that it should have reported using cash received rather than income. In support, UBS relies upon decisions from other jurisdictions and

the testimony of both Thomas Stampfli, who was UBS' Chief Financial Officer, Eastern Division, during the assessment period, and Louis DeVico, who is UBS' Manager of State and Local Taxes.

We find the cases relied upon by UBS to be unpersuasive. They concern other taxes, and one of the cited cases involves the definition of "total sales," which was defined as "gross receipts." As to the testimony, we do find the witnesses to be credible; however, the testimony, while knowledgeable, goes little beyond personal theory. Given the self-interested nature of the testimony, we do not find it sufficient to overcome the burden in favor of the commissioner. In this regard, we remind the parties that we will determine the weight and credibility to be accorded the testimony and other evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

In addition, the commissioner presented the testimony of Dr. Ray Stephens, a former Senior Academic Fellow of the Office of Chief Accountant, Securities and Exchange Commission, and currently the director of the School of Accountancy at Ohio University. Dr. Stephens testified as to the accounting principles that apply to brokers like UBS. Dr. Stephens testified that "receipts" would be defined as "revenue received in cash." H.R., Vol II, at 141. According to Dr. Stephens, the term "revenue" may have several meanings, depending upon the industry and the type of transaction. H.R., Vol. II, at 142 and 148. Dr. Stephens testified that accounting practice defines "revenue" for purposes of the sale of securities in the brokerage

industry as “the amount of gain or loss from the principal transactions.” H.R., Vol. II, at 174. See, also, H.R., Vol. II, at 143.

We agree with the commissioner that the term “receipts,” as used in R.C. 5725.14, contemplates factors intrinsic to both the DIT, a tax unique to Ohio, and the sale of securities in the brokerage industry. We find Dr. Stephens’ testimony to be credible and probative of the issue. We therefore accept the commissioner’s interpretation that, under R.C. 5725.14, “receipts” means the amount of gain or loss on the relevant transactions.

This definition also comports with the commissioner’s historical application of R.C. 5725.14 when calculating the gross factor for use in R.C. 5725.15. A review of DIT returns from several years, see Appellee’s Exs. B-J, along with the testimony of Michael Sachs, a former employee of the Department of Taxation who supervised the DIT audits, establishes that the commissioner has for several decades interpreted the term “receipts” to mean the gain or losses on the transactions. “Due deference should be given to statutory interpretations by an agency that has accumulated substantial expertise and to which the General Assembly has delegated enforcement responsibility.” *Weiss v. Pub. Util. Comm.* (2000), 90 Ohio St.3d 15, at 17-18, citing *Collinsworth v. W. Elec. Co.* (1992), 63 Ohio St.3d 268, at 272. See, also, *State ex rel. Clark v. Great Lakes Contr. Co.*, 99 Ohio St.3d 320, 2003-Ohio-3802, at ¶ 10 (“It is a fundamental tenet of administrative law that an agency’s interpretation of a statute that it has the duty to enforce will not be overturned unless the interpretation is unreasonable.”); *In re Estate of Packard* (1963), 174 Ohio St. 349,

at 356 (holding that “*** long standing administration practices are not only persuasive, but should not be set aside unless judicial construction makes it imperative to do so.”). There is nothing unreasonable in the commissioner’s interpretation of R.C. 5725.14.

In its final specification of error, UBS asserts that the commissioner erred in adding the landlord contributions portion of its leasehold improvements in UBS’ net worth. At the time it enters into a lease, UBS makes substantial renovations to the office. Improvements include new wiring to support UBS’ computer system. H.R., Vol. I, at 238. In such situations, UBS will enter into an arrangement in which the landlord agrees to pay for a portion of the improvements. For purposes of the DIT, UBS reported the cost of the improvements, less the amount of funds it received from the landlord. H.R., Vol. I, at 238. The commissioner counters that the total cost of the improvements should be included because the improvements themselves exist regardless of who pays for them. See S.T., Vol. I, at 1.⁸

Upon review, we agree with the commissioner. The improvements are part of UBS’ net worth, regardless of whether UBS received a discount in its lease as part of making the necessary improvements to its offices. Moreover, it is clear that UBS treated the landlord contributions as an asset in its financial statements. See S.T. at 126, 184, 185. In addition, UBS provided only general testimony as to the type of

⁸ The commissioner also argues that there is no jurisdiction to consider UBS’ specification because UBS failed to make a written claim for a deduction in book value at the time it filed each return. In support, the commissioner relies on *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St.402. However, the instant matter differs factually. The court specified in *Willys-Overland* that the commissioner was without jurisdiction to consider a request for a deduction from book value where the request was not made in writing at the time of filing *and* where the commissioner failed to assess any item in excess of the value reported. *Id.* at paragraph four of the syllabus. Here, the commissioner did assess UBS for property that the commissioner believed was omitted.

improvements involved. We reiterate that UBS has the burden of coming forward with probative evidence to support its claims. *Alcan*, supra. In considering the evidence before us, we are unable to conclude that UBS has met its burden of proving, with competent and probative evidence, that the commissioner's inclusion of the landlord contributions was in error.

In conclusion, we find that we are without jurisdiction to consider UBS' contention that the broker's cost of purchasing securities should be included in its "receipts" under R.C. 5725.14. We further find that UBS has failed to prove, by competent and probative evidence, that the commissioner's inclusion of landlord contributions is in error. Finally, upon review of the record before us, we conclude that the commissioner's final determination is supported by a preponderance of the evidence and is in accordance with law. Accordingly, we affirm the Tax Commissioner's final determination.

ohiosearchkeybta



FINAL DETERMINATION

Date: JUN 17 2003

PaineWebber Inc.
Attn: Ralph P. Ciaccia
Tax Dept. 9th Floor
1000 Harbor Blvd.
Weehawken, NJ 07087

Re: Case No. 01-04726
Dealer in Intangibles Tax
Tax Years: 1999, 2000 and 2001

This is the final determination of the Tax Commissioner on a petition for reassessment pursuant to R.C. 5725.15 and R.C. 5711.31 contesting three dealer in intangibles tax assessments. A hearing was held on these matters.

The subject assessments reflect an increase in the Ohio proportion of taxable value of petitioner's shares. The increases are a result of various adjustments made upon audit of the petitioner's returns. The petitioner now raises two issues which, while discussed during the audit, were not the cause for the increases and would, if granted, result in a reduction of taxable value below the amounts originally reported by the petitioner.

Landlord Contributions

The petitioner contends that the "landlord contributions" portion of its leasehold improvements costs are improperly included in the computation of taxable value since it "represents a payment to us by the landlord for (a portion of) the leasehold improvements that were made to the office space that we are leasing. We generally perform significant renovations to a location in order to place the essential telecommunication equipment necessary for the branch office. We negotiate with the landlord and for most of our locations obtain a contribution from the landlord for a portion of these improvements." The petitioner contends that since this contribution reduces its cost for leasehold improvements and the improvements must be reported on its books at the net amount, then the landlord paid portion should not be considered in computing the taxable value or the Ohio proportion of taxable value.

This contention is not well taken. The leasehold improvements still exist and the cost for the improvements is the same whether the petitioner, the landlord or some third party paid for them. The method of seeking a landlord contribution for improvements is just another way for the

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petitioner to get a 'rent reduction' or lease discount. Accounting, financial or tax benefits may result from different methods of rent reduction, but for this particular taxation scheme, i.e., the Ohio Dealer in Intangibles Tax, there is no difference in tax. The tax is levied on the aggregate book value of the capital, surplus, and undivided profits of the dealer in intangibles, i.e., the corporation's net worth. The landlord's contribution on the petitioner's books is an asset representing prepaid rent or some type of receivable. In any event, the "landlord contributions" amount is not deductible from the determination of taxable value under R.C. 5725.14 and 5725.15.

Sale of Security Inventory

The petitioner contends that its receipts factor should consist of not only the amounts previously reported and considered in computing the Dealer Tax, but all receipts from the sale of its securities inventory, including the original cost of the securities to the petitioner. Citing R.C. 5725.14, the petitioner contends that it "not only earns commissions as a broker, but also acts as a principal or underwriter on the sale of securities. We have provided the State with schedules summarizing the cost of securities inventory sold for each year under audit, both to Ohio residents (as determined from the business generated by our Ohio sales offices) and to customers located worldwide. This additional amount represents the cash received on sales of securities held in PaineWebber's inventory for sale to customers, and must be included in both the numerator and denominator of the receipt factor." This contention is not well taken.

The petitioner is misinterpreting the language of R.C. 5725.14. The commissions earned and the receipts received from business done are not inclusive of the cost of the "goods" sold, i.e., the securities inventory. For the years at issue, R.C. 5725.14 states, in pertinent part: "in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, and other similar securities either on his own account or as agent for another, gross receipts means the aggregate amount of all commissions charged plus one per cent of the aggregate amount of all other receipts."

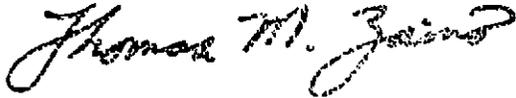
Under the petitioner's theory the gross proceeds of any and all transactions of any kind whatsoever are to be included in the calculation to determine the Ohio factor. The language in R.C. 5725.14 does not go that far, it simply provides for the commissions charged and one per cent of all other receipts to be added together. "All other receipts" doesn't mean, nor was it intended to measure, the proceeds from the sale of investments belonging to dealers in intangibles as the petitioner contends.

The commissions and management fees paid by customers to the petitioner are receipts that are properly included in determining the Ohio factor. The petitioner has already reported its investments, as is required, on Form 984-Analysis of Investment Account. The December 31st value of those investments is used in the balance sheet calculation to determine the book value of the shares of the petitioner. Proceeds from the sale of those investments are not reportable as "all other receipts."

Accordingly, the assessments are affirmed.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THESE MATTERS. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, NOTICE OF SUCH FINAL DETERMINATION WILL BE SENT PURSUANT TO R.C. 5711.31 TO THE TREASURER OF STATE, WHO SHALL PROCEED IN ACCORDANCE WITH R.C. 5725.22.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE AND CORRECT COPY OF THE ACTION OF THE TAX COMMISSIONER TAKEN THIS DAY WITH RESPECT TO THE ABOVE MATTER.



TAX COMMISSIONER

/S/ THOMAS M. ZAINO

Thomas M. Zaino
Tax Commissioner

§ 5707.03 Tax levy on property on intangible property tax list; rates.

Annual taxes are hereby levied on the kinds of intangible property, enumerated in this section, on the intangible property tax list in the office of the treasurer of state at the following rates:

(A) On investments, five per cent of income yield or of income as provided by section 5711.10 of the Revised Code for the 1983, 1984, and 1985 return years and no tax for subsequent return years;

(B) On unproductive investments, two mills on the dollar for the 1983, 1984, and 1985 return years and no tax for subsequent return years;

(C) On deposits, one and three-eighths mills on the dollar for the 1982 and 1983 return years and no tax for subsequent return years;

(D) On shares of, and capital employed by, dealers in intangibles, eight mills on the dollar;

(E) On money, credits, and all other taxable intangibles, three mills on the dollar for the 1983, 1984, and 1985 return years and no tax for subsequent return years.

The object and distribution of such taxes shall be as provided in section 5725.24 of the Revised Code.

HISTORY: GC § 5638-1; 115 v 592; 115 v PHL 341; 120 v 115; Bureau of Code Revision, 10-1-53; 126 v PHL 10 (EFF 7-6-56); 134 v H 475 (EFF 12-20-71); 139 v H 694 (EFF 11-15-81); 139 v H 552 (EFF 11-24-81); 140 v H 291 (EFF 7-1-83); 141 v H 201 (EFF 7-1-85); 142 v H 171. EFF 7-1-87.

§ 5711.25 Preliminary assessment certificates; final certificates.

On or before the second Monday of August, annually, the tax commissioner shall transmit to the county auditor of each county the preliminary assessment certificates pertaining to his county of taxpayers having taxable property in more than one county. The commissioner shall transmit to the auditor any amended assessment certificate issued by him, and the auditor shall transmit to the commissioner copies of all amended assessment certificates made and issued by him. Each preliminary assessment certificate, and if amended such preliminary assessment certificate as last amended, shall become final on the second Monday of August of the second year after the filing of a return with the county auditor or after the certification of the preliminary assessment certificate, or thirty days after the certification of an amended assessment certificate which has been issued less than thirty days prior to such second Monday of August; unless prior to the expiration of said period or extended period one of the following occurred:

(A) A final assessment certificate as to the taxpayer represented thereby has been issued pursuant to section 5711.26 of the Revised Code;

(B) Such taxpayer in writing has waived such time limitation and consented to the issuance of his assessment certificate after the expiration of such time limitation, in which case the assessment certificate issued after the expiration of such time limitation, if an amended preliminary assessment certificate, shall become final thirty days after the mailing of the notice of such assessment if no petition for reassessment of the assessment has been filed pursuant to section 5711.31 of the Revised Code;

(C) A petition for reassessment of the assessment represented thereby has been filed pursuant to section 5711.31 of the Revised Code, in which event the filing of such petition shall waive such time limitation and be a consent to the issuance of the Petitioner's final assessment certificate at the time, under the circumstances, and by the authority provided by any law relating to further administrative or judicial review of the assessment represented thereby; provided that in the event of the dismissal of such petition by the petitioner, the assessment shall become final as provided in this section as though no petition for reassessment had been filed. This section does not deprive any taxpayer who has not received the notice prescribed by section 5711.31 of the Revised Code at least thirty days prior to the expiration of such period of limitation of the right to file such petition for reassessment. This section shall apply to all assessments made and certified under sections 5711.01 to 5711.36, 5725.08, and 5725.16 of the Revised Code.

The assessment certificates and copies thereof mentioned in this section shall not be open to public inspection.

HISTORY: GC § 5377; 114 v 714(740); 115 v 562; 119 v 34; Bureau of Code Revision, 10-1-53; 126 v 52 (Eff 8-18-55); 135 v H 1338 (Eff 10-2-74); 139 v H 379 (Eff 9-21-82); 140 v S 334 (Eff 1-1-85); 144 v S 358. Eff 1-15-93.

Cross-References to Related Sections

Certificate of assessment—

Dealers in intangibles, RC § 5725.16.

Financial institutions, RC § 5725.08.

Combined return of taxpayer having taxable property in more than one county; certification, RC § 5711.13.

Delay in delivery of preliminary assessment certificates, RC § 5719.03.L.

Time limitation for filing, RC § 5711.26.

§ 5711.26 Making certain final assessments.

Except for taxable property concerning the assessment of which an appeal has been filed under section 5717.02 of the Revised Code, the tax commissioner may, within the time limitation in section 5711.25 of the Revised Code, and shall, upon application filed within such time limitation in accordance with the requirements of this section, finally assess the taxable property required to be returned by any taxpayer, financial institution, dealer in intangibles, or domestic insurance company as to which a preliminary or amended assessment has been made by or certified to a county treasurer or certified to the auditor of state or as to which the preliminary assessment is evidenced by a return filed with a county auditor for any prior year; and the commissioner may finally assess the taxable property of a taxpayer, financial institution, dealer in intangibles, or domestic insurance company who has failed to make a return to a county auditor or to the department of taxation in any such year. Application for final assessment shall be filed with the tax commissioner in person or by certified mail. If the application is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the application is presented shall be treated as the date of filing. The application shall have attached thereto and incorporated therein by reference a true copy of the most recent preliminary or amended assessment, whether evidenced by certificate or return, to which correction is sought through the issuance of a final assessment certificate. The application shall also have attached thereto and incorporated therein by reference evidence establishing that the taxes, and any penalties and interest thereon, due on such preliminary or amended assessment have been paid. By filing such application within the time prescribed by section 5711.25 of the Revised Code, the taxpayer has waived such time limitation and consented to the issuance of his assessment certificate after the expiration of such time limitation.

For the purpose of issuing a final assessment the commissioner may utilize all facts or information he possesses, and shall certify in the manner prescribed by law a final assessment certificate in such form as the case may require, giving notice thereof by mail to the taxpayer, financial institution, dealer in intangibles, or domestic insurance company. Such final assessment certificate shall set forth, as to each year covered, the amount of the final assessment as to each class of property and the amount of the corresponding preliminary or last amended assessment. If no preliminary or amended assessment was made, the amount listed in the taxpayer's return for each such class of property shall be shown. If the amount of any final assessment of any such class for any year exceeds the amount of the preliminary or amended assessment of such class for such year, the difference shall be designated a "deficiency," and if no preliminary or amended assessment has been made, each item in the final assessment certificate shall be so designated. If the final assessment of any such class for any such year is less in amount than the preliminary or amended assessment thereof for such year, the difference shall be designated an "excess." The commissioner shall add to each such deficiency assessment the penalty provided by law, computed on the amount of such deficiency.

A copy of the final assessment certificate shall be transmitted to the treasurer of state or the proper county auditor, who shall make any corrections to his records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

An appeal may be taken from any assessment authorized by this section to the board of tax appeals as provided by section 5717.02 of the Revised Code. When such an appeal is filed and the notice of appeal filed with the commissioner has attached thereto and incorporated therein by reference a true copy of any assessment authorized by this section as required by section 5717.02 of the Revised Code, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county having any part of such assessment entered on the tax list or duplicate.

Upon the final determination of an appeal which may be taken from an assessment authorized by this section, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. The notification may be in the form of a corrected assessment certificate. Upon receipt of the notification, the treasurer of state or the county auditor shall make any corrections to his records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

The assessment certificates mentioned in this section, and the copies thereof, shall not be open to public inspection.

HISTORY: GC § 5395; 114 v 714(744); 115 v 570; 119 v 34; Bureau of Code Revision, 10-1-53; 126 v 52 (EFF 8-18-55); 139 v H 379 (EFF 9-21-82); 140 v H 379 (EFF 7-2-84); 141 v H 201, EFF 7-1-85.

§ 5711.31 Appeal to commissioner from assessment; hearing; certificate of determination; "taxpayer."

Whenever the assessor assesses any property not listed in or omitted from a return, or whenever the assessor assesses any item or class of taxable property listed in a return by the taxpayer in excess of the value or amount thereof as so listed, or without allowing a claim duly made for deduction from the net book value of accounts receivable, or depreciated book value of personal property used in business, so listed, the assessor shall give notice of such assessment to the taxpayer by mail. The mailing of such notice of assessment shall be prima-facie evidence of the receipt of the same by the person to whom such notice is addressed.

Within thirty days after the mailing of the notice of assessment prescribed in this section, the party assessed may file with the tax commissioner, in person or by certified mail, a petition for reassessment in writing, signed by the party assessed, or by his authorized agent having knowledge of the facts. If the petition is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the petition is presented shall be treated as the date of filing. The petition shall have attached thereto and incorporated therein by reference a true copy of the notice of assessment complained of, but the failure to attach a copy of such notice and incorporate it by reference does not invalidate the petition. The petition also shall indicate the objections of the party assessed, but additional objections may be raised in writing if received prior to the date shown on the final determination by the commissioner.

Upon receipt of a properly filed petition, the commissioner shall notify the treasurer of state or the auditor and treasurer of each county having any part of the assessment entered on the tax list or duplicate.

Unless the petitioner waives a hearing, the commissioner shall assign a time and place for the hearing on the petition and notify the petitioner of the time and place of the hearing by personal service or certified mail, but the commissioner may continue the hearing from time to time if necessary.

The commissioner may make such correction to the assessment, as he finds proper. The commissioner shall serve a copy of his final determination on the petitioner by personal service or by certified mail, and his decision in the matter shall be final, subject to appeal as provided in section 5717.02 of the Revised Code. The commissioner also shall transmit a copy of his final determination to the treasurer of state or applicable county auditor. In the absence of any further appeal, or when a decision of the board of tax appeals or of any court to

which the decision has been appealed becomes final, the commissioner shall notify the treasurer of state or the proper county auditor of such final determination. If the final determination orders correction of the assessment, the notification may be in the form of a corrected assessment certificate. Upon receipt of the notification, the treasurer of state or the proper county auditor shall make any corrections to his records and tax lists and duplicates required in accordance therewith and proceed as prescribed by section 5711.32 or 5725.22 of the Revised Code.

The decision of the commissioner upon such Petition for reassessment shall be final with respect to the assessment of all taxable property listed in the return of the taxpayer and shall constitute to that extent the final determination of the commissioner with respect to such assessment. Neither this section nor a final judgment of the board of tax appeals or any court to which such final determination may be appealed shall preclude the subsequent assessment in the manner authorized by law of any taxable property which such taxpayer failed to list in such return, or which the assessor has not theretofore assessed.

As used in this section, "taxpayer" includes financial institutions, dealers in intangibles, and domestic insurance companies as defined in section 5725.01 of the Revised Code.

HISTORY: GC § 5394; 114 v 714(743); 115 v 569; 119 v 34; Bureau of Code Revision, 10-1-53; 127 v 703 (Eff 9-4-57); 130 v 1314 (Eff 9-24-63); 139 v H 379 (Eff 9-21-82); 140 v H 379 (Eff 7-2-84); 141 v S 126 (Eff 9-25-85); 141 v H 201 (Eff 7-1-85); 141 v H 428 (Eff 12-23-86); 144 v S 358. Eff 1-15-93.

§ 5725.14 Annual return of resources by dealer in intangibles; gross receipts; consolidated returns.

Each dealer in intangibles shall return to the tax commissioner between the first and second Mondays of March, annually, a report exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December next preceding.

If a dealer in intangibles maintains separate business offices, whether within this state only or within and without this state, said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

"Gross receipts" as used in this section and section 5725.15 of the Revised Code, means, in the case of a dealer in intangibles principally engaged in the business of lending money or discounting loans, the aggregate amount of loans effected or discounted; in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, and other similar securities either on his own account or as agent for another, gross receipts means the aggregate amount of all commissions charged plus one per cent of the aggregate amount of all other receipts.

As used in this section and section 5725.15 of the Revised Code business is considered done at an office when it originates at such office, but the receipts from business originating at one office and consummated at another office shall be divided equitably between such offices.

An incorporated dealer in intangibles which owns or controls fifty-one per cent or more of the common stock of another incorporated dealer in intangibles may, under uniform regulations prescribed by the tax commissioner, make a consolidated return for the purpose of sections 5725.01 to 5725.26, inclusive, of the Revised Code. In such case the parent corporation making such return is not required to include in its resources any of the stocks, securities, or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

HISTORY: CC § 5414-4; 114 v 714 (751); 115 v 574; 119 v 34; 122 v 375; 124 v 449, § 3; Bureau of Code Revision. Eff 10-1-53.

§ 5725.14 Annual return of resources by dealer in intangibles; gross receipts; consolidated returns.

(A) As used in this section and section 5725.15 of the Revised Code:

(1) "Billing address" of a customer means one of the following:

(a) The customer's address as set forth in any notice, statement, bill, or similar acknowledgment shall be presumed to be the address where the customer is located with respect to the transaction for which the dealer issued the notice, statement, bill, or acknowledgment.

(b) If the dealer issues any notice, statement, bill, or similar acknowledgment electronically to an address other than a street address or post office box address or if the dealer does not issue such a notice, statement, bill, or acknowledgment, the customer's street address as set forth in the records of the dealer at the time of the transaction shall be presumed to be the address where the customer is located.

(2) "Commissions" includes but is not limited to brokerage commissions, asset management fees, and similar fees charged in the regular course of business to a customer for the maintenance and management of the customer's account.

(3) "Gross receipts" means one of the following:

(a) In the case of a dealer in intangibles principally engaged in the business of lending money or discounting loans, the aggregate amount of loans effected or discounted;

(b) In the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, or other similar securities either on the dealer's own account or as agent for another, the aggregate amount of all commissions charged.

(B) Each dealer in intangibles shall return to the tax commissioner between the first and second Mondays of March, annually, a report exhibiting in detail, and under appropriate heads, the dealer's resources and liabilities at the close of business on the thirty-first day of December next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing, and on or after the first day of November converted into bonds or other securities not taxed to the extent such nontaxable bonds or securities may be

shown in the dealer's resources on such date, without deduction for indebtedness created in the purchase of such nontaxable bonds or securities.

If a dealer in intangibles maintains separate business offices, whether within this state only or within and without this state, the report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

For the purposes of this section and section 5725.15 of the Revised Code, business is considered done at an office when it originates at such office, but the receipts from business originating at one office and consummated at another office shall be divided equitably between such offices.

(C) For the purposes of this section and section 5725.15 of the Revised Code, in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, or other similar securities either on the dealer's own account or as agent for another, the dealer's capital, surplus, and undivided profits employed in this state shall bear the same ratio to the dealer's total capital, surplus, and undivided profits employed everywhere as the amount described in division (C)(1) of this section bears to the amount described in division (C)(2) of this section:

(1) The sum of the commissions earned during the year covered by the report from transactions with respect to brokerage accounts owned by customers having billing addresses in this state;

(2) The sum of the commissions earned during that year from transactions with respect to brokerage accounts owned by all of the dealer's customers.

(D) An incorporated dealer in intangibles which owns or controls fifty-one per cent or more of the common stock of another incorporated dealer in intangibles may, under uniform regulations prescribed by the tax commissioner, make a consolidated return for the purpose of sections 5725.01 to 5725.26, inclusive, of the Revised Code. In such case the parent corporation making such return is not required to include in its resources any of the stocks, securities, or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

HISTORY: GC § 5414-4; 114 v 714 (751); 115 v 574; 119 v 34; 122 v 375; 124 v 449, § 3; Bureau of Code Revision, 10-1-53; 149 v H 405. Eff 3-14-2002.

The effective date is set by section 44 of HB 405.

See provisions, § 40 of HB 405 (149 v —), following RC § 5739.01.

§ 5725.15 Tax commissioner to ascertain and assess all shares and capital of dealer in intangibles.

Upon receiving the report required by section 5725.14 of the Revised Code, the tax commissioner shall ascertain and assess all the shares of such dealers in intangibles, the capital stock of which is divided into shares, representing capital employed in this state, and the value of the property representing the capital, not divided into shares, employed in this state by such dealer in intangibles, according to the aggregate fair value of the capital, surplus, and undivided profits as shown in such report, including in the case of an unincorporated dealer, the value of property converted into nontaxable bonds or securities within the preceding year, without deduction for indebtedness created in the purchase of such nontaxable bonds or securities.

If a dealer has separate offices, whether within this state only or within and without this state, the commissioner shall find the amount of capital employed in each office in this state, which shall bear the same ratio to the entire capital of such dealer, wherever employed, as the gross receipts of such office bears to the entire gross receipts of such dealer, wherever arising.

The aggregate book value of the capital, surplus, and undivided profits of a dealer in intangibles as shown in such report shall be taken as the fair value thereof for the purpose of the assessment required by this section, unless the commissioner finds that such book value is greater or less than the then fair value of said capital, surplus, and undivided profits. Claim for any deduction from book value of capital, surplus, and undivided profits must be made in writing by the dealer in intangibles at the time of making his return.

Whenever the commissioner assesses the fair value of the capital, surplus, and undivided profits of a dealer in intangibles at an amount in excess of the book value thereof as shown by its report, or disallows any claim for deduction from book value of such capital, surplus, and undivided profits, he shall give notice and proceed as provided in section 5711.31 of the Revised Code.

HISTORY: GC § 5414-5; 114 v 714 (752); 115 v 575; 119 v 34 (52); 122 v 375; Bureau of Code Revision. Eff 10-1-53.

§ 5725.16 Certificate of assessment of dealers in intangibles; certificate of abatement.

On or before the first Monday of May, annually, the tax commissioner shall certify to the treasurer of state the assessment of the shares or property representing capital, or apportionment of either, of each dealer in intangibles doing business in the state, showing separately the amount representing capital employed in each county.

The treasurer of state shall place the amounts certified on the intangible property tax list in his office in the names of the dealers represented by those certificates.

Any certificate of abatement issued pursuant to section 5703.05 of the Revised Code for the overpayment of the tax on shares or property representing capital of a dealer in intangibles may be tendered by the payee or transferee thereof to the treasurer of state as payment for any taxes allocable to the county in which the claim for overpayment arose.

HISTORY: GC § 5414-6; 114 v 714(752); 115 v 576; 122 v 375; 124 v 64; Bureau of Code Revision, 10-1-53; 135 v H 1338 (Eff 10-2-74); 141 v H 201 (Eff 7-1-85); 142 v H 171. Eff 7-1-87.

§ 5725.22 **Treasurer of state to maintain intangible property tax lists; collection and payment of taxes.**

The treasurer of state shall maintain an intangible property tax list of taxes levied by section 5707.03 of the Revised Code and certified by the tax commissioner pursuant to sections 5711.13, 5725.08, 5725.16, and 5727.15 of the Revised Code, and a separate list of taxes levied by section 5725.18 of the Revised Code and certified by the superintendent of insurance pursuant to section 5725.20 of the Revised Code. Upon receipt of any assessment certified to him, the treasurer of state shall compute the taxes at the rates prescribed by law and enter the taxes on the proper tax list. He shall collect and the taxpayer shall pay all such taxes and any interest applicable thereto. Payments may be made by mail, in person, or by any other means authorized by the treasurer of state. The treasurer of state shall render a daily itemized statement to the tax commissioner of the amount of taxes collected and the name of the domestic insurance company or assessment certificate number of the person from whom collected. The treasurer of state may adopt rules concerning the methods and timeliness of payment.

Each tax bill issued pursuant to this section shall separately reflect the taxes due, interest, if any, due date, and any other information considered necessary. The last day on which payment may be made without penalty shall be at least twenty but not more than thirty days from the date of mailing the tax bill. The treasurer of state shall mail the tax bill, and the mailing thereof shall be prima-facie evidence of receipt thereof by the taxpayer.

The treasurer of state shall refund taxes as provided in this section, but no refund shall be made to a taxpayer having a delinquent claim certified pursuant to this section that remains unpaid. The treasurer of state may consult the attorney general regarding such claims. Refunds shall be paid from the tax refund fund created by section 5703.052 [5703.05.2] of the Revised Code.

(A) Within twenty days after receipt of any preliminary assessment certified to him, the treasurer of state shall issue a tax bill, but if such preliminary assessment reflects a late filed tax return, the treasurer of state shall add interest as provided in division (A) of section 5725.221 [5725.22.1] of the Revised Code and issue a tax bill.

(B) Within twenty days after receipt of any amended or final assessment certified to him, the treasurer of state shall ascertain the difference between the total taxes computed on such assessment and the total taxes computed on the most recent assessment certified for the same tax year. If the difference is a deficiency, the treasurer of state shall add interest as provided in division (B)(1) of section 5725.221 [5725.22.1] of the Revised Code and issue a tax bill. If the difference is an excess, the treasurer of state shall add interest as provided in division (B)(2) of section 5725.221 [5725.22.1] of the Revised Code and certify the name of the taxpayer and the amount to be refunded to the director of budget and management for payment to the taxpayer. If the taxpayer has a deficiency for one tax year and an excess for another tax year, or any combination thereof for more than two tax years, the treasurer of state may determine the net result after adding interest, if applicable, and, depending on such result, proceed to mail a tax bill or certify a refund.

(C) If a taxpayer fails to pay all taxes and interest, if any, on or before the due date shown on the tax bill but makes payment within ten calendar days of such date, the treasurer of state shall add a penalty equal to five per cent of the taxes due. If payment is not made within ten days of such date, the treasurer of state shall add a penalty equal to ten per cent of the taxes due. The treasurer of state shall prepare a delinquent claim for each tax bill on which penalties were added and certify such claims to the attorney general for collection. The attorney general shall transmit a copy of each claim to the tax commissioner or the superintendent of insurance and proceed to collect the delinquent taxes, penalties, and interest thereon in the manner prescribed by law.

HISTORY: 141 v H 201, Eff 7-1-85.

Analogous to former RC § 5725.22 (GC § 5414-17; 115 v 581; Bureau of Code Revision, 10-1-53; 126 v PH1, (12); 127 v 1254; 131 v 1343; 135 v H 1336; 137 v S 221; 139 v H 694; 139 v H 201; 139 v H 379), repealed 141 v H 201, § 2, eff 7-1-85.

§ 5733.04 Definitions.

As used in this chapter:

(A) "Issued and outstanding shares of stock" applies to nonprofit corporations, as provided in section 5733.01 of the Revised Code, and includes but is not limited to, membership certificates and other instruments evidencing ownership of an interest in such nonprofit corporations, and with respect to a financial institution which does not have capital stock, "issued and outstanding shares of stock" includes, but is not limited to, ownership interests of depositors in the capital employed in such an institution.

(B) "Taxpayer" means a corporation subject to the tax imposed by section 5733.06 of the Revised Code.

(C) "Resident" means a corporation organized under the laws of this state.

(D) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(E) "Taxable year" means the period prescribed by division (A) of section 5733.031 [5733.03.1] of the Revised Code upon the net income of which the value of the taxpayer's issued and outstanding shares of stock is determined under division (B) of section 5733.05 of the Revised Code or the period prescribed by division (A) of section 5733.031 [5733.03.1] of the Revised Code that immediately precedes the date as of which the total value of the corporation is determined under division (A) or (C) of section 5733.05 of the Revised Code.

(F) "Tax year" means the calendar year in and for which the tax imposed by section 5733.06 of the Revised Code is required to be paid.

(G) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(H) "Federal income tax" means the income tax imposed by the Internal Revenue Code.

(I) Except as provided in section 5733.058 [5733.05.8] of the Revised Code, "net income" means the taxpayer's taxable income before operating loss deduction and special deductions, as required to be reported for the taxpayer's taxable year under the Internal Revenue Code, subject to the following adjustments:

(1)(a) Deduct any net operating loss incurred in any taxable years ending in 1971 or thereafter but exclusive of any net operating loss incurred in taxable years ending prior to January 1, 1971. This deduction shall not be allowed in any tax year commencing before December 31, 1973, but shall be carried over and allowed in tax years commencing after December 31, 1973, until fully utilized in the next succeeding taxable year or years in which the taxpayer has net income, but in no case for more than the designated carryover period as described in division (I)(1)(b) of this section. The amount of such net operating loss, as determined under the allocation and apportionment provisions of section 5733.051 [5733.05.1] and division (B) of section 5733.05 of the Revised Code for the year in which the net operating loss occurs, shall be deducted from net income, as determined under the allocation and apportionment provisions of section 5733.051 [5733.05.1] and division (B) of section 5733.05 of the Revised Code, to the extent necessary to reduce net income to zero with the remaining unused portion of the deduction, if any, carried forward to the remaining years of the designated carryover period as described in division (I)(1)(b) of this section, or until fully utilized, whichever occurs first.

(b) For losses incurred in taxable years ending on or before December 31, 1981, the designated carryover period shall be the five consecutive taxable years after the taxable year in which the net operating loss occurred. For losses incurred in taxable years ending on or after January 1, 1982, the designated carryover period shall be the fifteen consecutive taxable years after the taxable year in which the net operating loss occurs.

(c) The tax commissioner may require a taxpayer to furnish any information necessary to support a claim for deduction under division (I)(1)(a) of this section and no deduction shall be allowed unless the information is furnished.

(2) Deduct any amount included in net income by application of section 78 or 951 of the Internal Revenue Code, amounts received for royalties, technical or other services derived from sources outside the United States, and dividends received from a subsidiary, associate, or affiliated corporation that neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its assets within the United States. For purposes of determining net foreign source income deductible under division (I)(2) of this section, the

amount of gross income from all such sources other than income derived by application of section 78 or 951 of the Internal Revenue Code shall be reduced by:

(a) The amount of any reimbursed expenses for personal services performed by employees of the taxpayer for the subsidiary, associate, or affiliated corporation;

(b) Ten per cent of the amount of royalty income and technical assistance fees;

(c) Fifteen per cent of the amount of dividends and all other income.

The amounts described in divisions (I)(2)(a) to (c) of this section are deemed to be the expenses attributable to the production of deductible foreign source income unless the taxpayer shows, by clear and convincing evidence, less actual expenses or the tax commissioner shows, by clear and convincing evidence, more actual expenses.

(3) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of a capital asset, or an asset described in section 1231 of the Internal Revenue Code, to the extent that such loss or gain occurred prior to the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. For purposes of division (I)(3) of this section, the amount of the prior loss or gain shall be measured by the difference between the original cost or other basis of the asset and the fair market value as of the beginning of the first taxable year on which the tax provided for in section 5733.06 of the Revised Code is computed on the corporation's net income. At the option of the taxpayer, the amount of the prior loss or gain may be a percentage of the gain or loss, which percentage shall be determined by multiplying the gain or loss by a fraction, the numerator of which is the number of months from the acquisition of the asset to the beginning of the first taxable year on which the fee provided in section 5733.06 of the Revised Code is computed on the corporation's net income, and the denominator of which is the number of months from the acquisition of the asset to the sale, exchange, or other disposition of the asset.

(4) Deduct the dividend received deduction provided by section 243 of the Internal Revenue Code.

(5) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent included in federal taxable income. As used in divisions (I)(5) and (6) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(6) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent included in federal taxable income.

(7) To the extent not otherwise allowed, deduct any dividends or distributions received by a taxpayer from a public utility, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the utility. As used in division (I)(7) of this section,

“public utility” or “utility” means a public utility as defined in Chapter 5727. of the Revised Code, whether or not the utility is doing business in the state.

(8) To the extent not otherwise allowed, deduct any dividends received by a taxpayer from an insurance company, if the taxpayer owns at least eighty per cent of the issued and outstanding common stock of the insurance company. As used in division (I)(8) of this section, “insurance company” means an insurance company which is taxable under Chapter 5725. or 5729. of the Revised Code.

(9) Deduct expenditures for modifying existing buildings or structures to meet American national standards institute standard A-117.1-1961 (R-1971), as amended; provided, that no deduction shall be allowed to the extent that such deduction is not permitted under federal law or under rules of the tax commissioner. Those deductions as are allowed may be taken over a period of five years. The tax commissioner shall adopt rules under Chapter 119. of the Revised Code establishing reasonable limitations on the extent that expenditures for modifying existing buildings or structures are attributable to the purpose of making the buildings or structures accessible to and usable by physically handicapped persons.

(10) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income before operating loss deduction and special deductions for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

(11) Deduct net interest income on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent the laws of the United States prohibit inclusion of the net interest for purposes of determining the value of the taxpayer's issued and outstanding shares of stock under division (B) of section 5733.05 of the Revised Code. As used in division (I)(11) of this section, “net interest” means interest net of any expenses taken on the federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code if the interest were exempt from federal income tax.

(12)(a) Except as set forth in division (I)(12)(d) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions, made by a related entity who is not a taxpayer, of the taxpayer's indirect, beneficial, or constructive investment in the stock or debt of another entity, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related investment in the

stock or debt of the other entity. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(b) Except as set forth in division (I)(12)(e) of this section, to the extent not included in computing the taxpayer's federal taxable income before operating loss deduction and special deductions, add gains and deduct losses from direct or indirect sales, exchanges, or other dispositions made by a related entity who is not a taxpayer, of intangible property other than stock, securities, and debt, if such property was owned, or used in whole or in part, at any time prior to or at the time of the sale, exchange, or disposition by either the taxpayer or by a related entity that was a taxpayer at any time during the related entity's ownership or use of such property, unless the gain or loss has been included in computing the federal taxable income before operating loss deduction and special deductions of another taxpayer with a more closely related ownership or use of such intangible property. The amount of gain added or loss deducted shall not exceed the product obtained by multiplying such gain or loss by the taxpayer's proportionate share, directly, indirectly, beneficially, or constructively, of the outstanding stock of the related entity immediately prior to the direct or indirect sale, exchange, or other disposition.

(c) As used in division (I)(12) of this section, “related entity” means those entities described in divisions (I)(12)(c)(i) to (iii) of this section:

(i) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(ii) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(iii) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (I)(12)(c)(iv) of this section, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock.

(iv) The attribution rules of section 318 of the Internal Revenue Code apply for purposes of determining whether the ownership requirements in divisions (I)(12)(c)(i) to (iii) of this section have been met.

(d) For purposes of the adjustments required by divi-

sion (I)(12)(a) of this section, the term "investment in the stock or debt of another entity" means only those investments where the taxpayer and the taxpayer's related entities directly, indirectly, beneficially, or constructively own, in the aggregate, at any time during the twenty-four month period commencing one year prior to the direct or indirect sale, exchange, or other disposition of such investment at least fifty per cent or more of the value of either the outstanding stock or such debt of such other entity.

(e) For purposes of the adjustments required by division (I)(12)(b) of this section, the term "related entity" excludes all of the following:

(i) Foreign corporations as defined in section 7701 of the Internal Revenue Code;

(ii) Foreign partnerships as defined in section 7701 of the Internal Revenue Code;

(iii) Corporations, partnerships, estates, and trusts created or organized in or under the laws of the Commonwealth of Puerto Rico or any possession of the United States;

(iv) Foreign estates and foreign trusts as defined in section 7701 of the Internal Revenue Code.

The exclusions described in divisions (I)(12)(e)(i) to (iv) of this section do not apply if the corporation, partnership, estate, or trust is described in any one of divisions (C)(1) to (5) of section 5733.042 [5733.04.2] of the Revised Code.

(f) Nothing in division (I)(12) of this section shall require or permit a taxpayer to add any gains or deduct any losses described in divisions (I)(12)(f)(i) and (ii) of this section:

(i) Gains or losses recognized for federal income tax purposes by an individual, estate, or trust without regard to the attribution rules described in division (I)(12)(c) of this section, and

(ii) A related entity's gains or losses described in division (I)(12)(b) if the taxpayer's ownership of or use of such intangible property was limited to a period not exceeding nine months and was attributable to a transaction or a series of transactions executed in accordance with the election or elections made by the taxpayer or a related entity pursuant to section 338 of the Internal Revenue Code.

(13) Any adjustment required by section 5733.042 [5733.04.2] of the Revised Code.

(14) Add any amount claimed as a credit under section 5733.0611 [5733.06.11] of the Revised Code to the extent that such amount satisfies either of the following:

(a) It was deducted or excluded from the computation of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for the corporation's taxable year under the Internal Revenue Code;

(b) It resulted in a reduction of the corporation's taxable income before operating loss deduction and special deductions as required to be reported for any of the corporation's taxable years under the Internal Revenue Code.

(15) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of human services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (I)(15) of this section.

(J) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(K) "Financial institution" has the meaning given by section 5725.01 of the Revised Code but does not include a production credit association as described in 85 Stat. 597, 12 U.S.C.A. 2091.

(L)(1) A "qualifying holding company" is any corporation satisfying all of the following requirements:

(a) Subject to divisions (L)(2) and (3) of this section, the net book value of the corporation's intangible assets is greater than or equal to ninety per cent of the net book value of all of its assets and at least fifty per cent of the net book value of all of its assets represents direct or indirect investments in the equity of, loans and advances to, and accounts receivable due from related members;

(b) At least ninety per cent of the corporation's gross income for the taxable year is attributable to the following:

(i) The maintenance, management, ownership, acquisition, use, and disposition of its intangible property, its aircraft the use of which is not subject to regulation under 14 C.F.R. part 121 or part 135, and any real property described in division (L)(2)(c) of this section;

(ii) The collection and distribution of income from such property.

(c) The corporation is not a financial institution on the last day of the taxable year ending prior to the first day of the tax year;

(d) The corporation's related members make a good faith and reasonable effort to make timely and fully the adjustments required by division (C)(2) of section 5733.05 of the Revised Code and to pay timely and fully all uncontested taxes, interest, penalties, and other fees and charges imposed under this chapter;

(e) Subject to division (L)(4) of this section, the corporation elects to be treated as a qualifying holding company for the tax year.

A corporation otherwise satisfying divisions (L)(1)(a) to (e) of this section that does not elect to be a qualifying holding company is not a qualifying holding company for the purposes of this chapter.

(2)(a)(i) For purposes of making the ninety per cent computation under division (L)(1)(a) of this section,

the net book value of the corporation's assets shall not include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(ii) For purposes of making the fifty per cent computation under division (L)(1)(a) of this section, the net book value of assets shall include the net book value of aircraft or real property described in division (L)(1)(b)(i) of this section.

(b)(i) As used in division (L) of this section, "intangible asset" includes, but is not limited to, the corporation's direct interest in each pass-through entity only if at all times during the corporation's taxable year ending prior to the first day of the tax year the corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of such pass-through entity do not exceed fifty per cent. If the corporation's interest in the pass-through entity is an intangible asset for that taxable year, then the distributive share of any income from the pass-through entity shall be income from an intangible asset for that taxable year.

(ii) If a corporation's and the corporation's related members' combined direct and indirect interests in the capital or profits of a pass-through entity exceed fifty per cent at any time during the corporation's taxable year ending prior to the first day of the tax year, "intangible asset" does not include the corporation's direct interest in the pass-through entity, and the corporation shall include in its assets its proportionate share of the assets of any such pass-through entity and shall include in its gross income its distributive share of the gross income of such pass-through entity in the same form as was earned by the pass-through entity.

(iii) A pass-through entity's direct or indirect proportionate share of any other pass-through entity's assets shall be included for the purpose of computing the corporation's proportionate share of the pass-through entity's assets under division (L)(2)(b)(ii) of this section, and such pass-through entity's distributive share of any other pass-through entity's gross income shall be included for purposes of computing the corporation's distributive share of the pass-through entity's gross income under division (L)(2)(b)(ii) of this section.

(c) For the purposes of divisions (L)(1)(b)(i), (1)(b)(ii), (2)(a)(i), and (2)(a)(ii) of this section, real property is described in division (L)(2)(c) of this section only if all of the following conditions are present at all times during the taxable year ending prior to the first day of the tax year:

(i) The real property serves as the headquarters of the corporation's trade or business, or is the place from which the corporation's trade or business is principally managed or directed;

(ii) Not more than ten per cent of the value of the real property and not more than ten per cent of the square footage of the building or buildings that are part of the real property is used, made available, or occupied for the purpose of providing, acquiring, transferring,

selling, or disposing of tangible property or services in the normal course of business to persons other than related members, the corporation's employees and their families, and such related members' employees and their families.

(d) As used in division (L) of this section, "related member" has the same meaning as in division (A)(6) of section 5733.042 [5733.04.2] of the Revised Code without regard to division (B) of that section.

(3) The percentages described in division (L)(1)(a) of this section shall be equal to the quarterly average of those percentages as calculated during the corporation's taxable year ending prior to the first day of the tax year.

(4) With respect to the election described in division (L)(1)(e) of this section:

(a) The election need not accompany a timely filed report;

(b) The election need not accompany the report; rather, the election may accompany a subsequently filed but timely application for refund and timely amended report, or a subsequently filed but timely petition for reassessment;

(c) The election is not irrevocable;

(d) The election applies only to the tax year specified by the corporation;

(e) The corporation's related members comply with division (L)(1)(d) of this section.

Nothing in division (L)(4) of this section shall be construed to extend any statute of limitations set forth in this chapter.

(M) "Qualifying controlled group" means two or more corporations that satisfy the ownership and control requirements of division (A) of section 5733.052 [5733.05.2] of the Revised Code.

(N) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.

(O) "Pass-through entity" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year under that code, or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.

HISTORY: GC § 5498-1; 122 v 161, § 2; Bureau of Code Revision, 10-1-53; 134 v H 475 (Eff 12-20-71); 135 v H 95 (Eff 7-20-73); 135 v S 277 (Eff 2-5-74); 136 v H 1 (Eff 6-13-75); 136 v S 162 (Eff 7-23-76); 138 v H 653 (Eff 5-29-80); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 140 v H 250 (Eff 7-30-84); 141 v H 1053 (Eff 12-19-86); 141 v H 428 (Eff 12-23-86); 142 v H 171 (Eff 7-1-87); 142 v S 386 (Eff 3-29-88); 143 v H 111 (Eff 7-1-89); 144 v H 298 (Eff 7-26-91); 147 v H 215 (Eff 9-29-97); 147 v H 408 (Eff 10-1-97); 147 v H 770, Eff 9-16-98.

§ 5733.12 Crediting of payments; refunds.

(A) Four and two-tenths per cent of all payments received by the treasurer of state under this chapter shall be credited to the local government fund for distribution in accordance with section 5747.50 of the Revised Code, six-tenths of one per cent shall be credited to the local government revenue assistance fund for distribution in accordance with section 5747.61 of the Revised Code, and ninety-five and two-tenths per cent shall be credited to the general revenue fund.

(B) An application to refund to the corporation the amount of taxes overpaid, paid illegally or erroneously, or paid on any illegal, erroneous, or excessive assessment, with interest thereon as provided by section 5733.26 of the Revised Code, shall be filed with the tax commissioner, on the form prescribed by him, within three years from the date of the illegal, erroneous, or excessive payment of the tax or within any additional period allowed by division (C)(2) of section 5733.031 [5733.03.1], division (D)(2) of section 5733.067 [5733.06.7], or division (A) of section 5733.11 of the Revised Code.

On the filing of the refund application, the commissioner shall determine the amount of refund due and certify such amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 [5703.05.2] of the Revised Code.

HISTORY: Bureau of Code Revision, 10-1-53; 134 v H 475 (Eff 12-20-71); 134 v H 1068 (Eff 1-1-73); 137 v S 221 (Eff 11-23-77); 139 v H 694 (Eff 11-15-81); 139 v H 38 (Eff 6-23-82); 140 v H 291 (Eff 7-1-83); 140 v S 293 (Eff 1-1-84); 141 v H 201 (Eff 7-1-85); 141 v S 127 (Eff 9-30-85); 141 v H 428 (Eff 12-23-86); 142 v H 171, § 1 (Eff 2-1-88); 142 v H 171, § 3.03 (Eff 7-1-89); 143 v H 111 (Eff 7-1-89); 144 v S 358 (Eff 1-15-93); 146 v H 117. Eff 6-30-95.

SEC. 5414-4. Annual report of resources and liabilities of dealer in intangibles; "gross receipts" defined; consolidated return may be made, when. Each dealer in intangibles shall return to the department of taxation between the first and second Mondays of March, annually, a report under oath, exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December, next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing and on or after the first day of November converted into bonds or other securities not taxed to the extent such non-taxable bonds or securities may be shown in his resources on such date, without deduction for indebtedness created in the purchase of such non-taxable bonds or securities.

If a dealer in intangibles maintains separate business offices within and outside of this state said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

The term "gross receipts" as used in this and the succeeding section shall, in the case of a dealer in intangibles, principally engaged in the business of lending money or discounting loans, mean the aggregate amount of loans effected or discounted; in the case of a dealer in intangibles, principally engaged in the business of selling or buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggregate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts.

Within the meaning of this and the succeeding section, business shall be considered to be done at an office when it originates at such office; but the receipts from business originating at one office and consummated at another office shall, for the purpose of such sections, be divided equitably between such offices.

An incorporated dealer in intangibles which owns or controls fifty-one per centum or more of the common stock of another incorporated dealer or dealers in intangibles may under uniform regulations to be prescribed by the com-

missioner make a consolidated return or returns for the purpose of this chapter. In such case the parent corporation making such return shall not be required to include in its resources any of the stocks, securities or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

HISTORY.—114 v. 714 (751); 115 v. 574, § 1; 119 v. 5. 77, § 1. **ER.** 7-4-41.

COMMENT: This section provides for returns by dealers in intangibles to show the gross receipts from the business done at each office in Ohio and outside of Ohio as the basis for apportioning the capital employed in the business. The definition of "gross receipts" for this purpose is intended in the case of finance companies to be based on the loans secured by mortgage on Ohio property, in the case of brokers to be based on gross commissions charged, and in the case of dealers in bonds and stocks on the aggregate amount of all receipts. Since some brokers both deal and sell on commission, it was considered that one per cent of the gross receipts of outright sales should have approximately the same weight as the gross commissions charged. The amendment in 1933 was to permit certain types of dealers in intangibles to file a consolidated return. Also the basis of allocating capital and surplus of dealers in intangibles between Ohio and outside of Ohio has been changed and made clearer.

"Gross receipts" defined: **PAGE** Words and Phrases; **O-JUR** Taxation § 203.

SEC. 5624-6. Compilation, publication and distribution of tax laws. The tax commissioner of Ohio shall from time to time as changes in the law require compile the laws of the state relating to the assessment of property for taxation and the levy and collection of taxes, with such annotations, instructions and references to the decisions of the courts concerning the same, as the commissioner may deem proper. The commissioner shall cause a sufficient number of copies of the same to be distributed to the several prosecuting attorneys, county auditors, and county treasurers in the state and to such other public officers or employees as the commissioner may deem proper. A charge shall be made for copies distributed other than as above, such charge not to exceed the total cost of such copies so distributed. Money realized from the sale of such copies shall be placed in the general revenue fund.

HISTORY.—106 v. 246 (208), § 81; 119 v. S. 77, § 1. Eff. 7-4-41. For an analogous section, see G.C. § 5624-19, which was 103 v. 786 (803), § 66. For a section analogous to the section bearing this number in 103 v. 786, see G. C. § 5624-14. G. C. § 5624-8 (103 v. 786 [800], § 53), which took effect second Monday of October, 1913, was repealed in 106 v. 246 (272), § 103.

AN ACT

Providing for the levy of taxes on intangible property at classified rates and for the assessment of tangible personal property for taxation and for said purposes amending sections 5323, 5324, 5325, 5326, 5327, 5328, 5400, 5382, 5385, 5386, 5388 and 5389 of the General Code, enacting supplemental sections 5325-1, 5328-1 and 5328-2 and section 5638 of the General Code, amending sections 2581, 2585, 2586, 2588, 2589, 2590, 2591, 2592, 2596, 2624, 2641, 2643, 2645, 2649, 2650, 2651, 2653, 2654, 2657, 2683, 2684, 2685, 2687, 2688, 2689, 2746, 5366, 5367, 5368, 5370, 5371, 5372, 5372-1, 5372-2, 5372-3, 5372-4, 5373, 5376, 5378, 5379, 5390, 5391, 5392, 5393, 5398, 5406, 5407, 5408, 5409, 5410, 5411, 5412, 5413, 5414, 5419, 5422, 5428, 5429, 5430, 5443, 5446, 5448, 5450, 5455, 5456, 5457, 5459, 5460, 5498, 5499, 5562, 5563, 5579, 5591, 5596, 5597, 5599, 5601, 5604, 5605, 5609, 5609, 5610, 5612, 5613, 5614, 5615, 5624-4, 5624-5, 5624-7, 5624-14, 5672, 5673, 10509-80, 10509-81, 10509-82, 10509-176, 12924-4, 12924-7, 12924-8, 12924-9, and 12924-10 of the General Code, enacting supplemental sections 2585-1, 2587-1, 2602-1, 2649-1, 5372-5, 5398-1, 5411-1, 5411-2, 5412-1, 5414-1, 5414-2, 5414-3, 5414-4, 5414-5, 5414-6, 5414-7, 5414-8, 5414-9, 5414-10, 5414-11, 5414-12, 5414-13, 5414-14, 5626-2, 5671-1, 5671-2, 5673-1, 5673-2, 5673-3, 5673-4 and 12924-11 and sections 2584, 2603, 2656, 5375, 5377, 5394 and 5395 of the General Code and repealing sections 192, 2588-1, 2595, 5321, 5366-1, 5369, 5371-1, 5371-2, 5371-3, 5371-4, 5371-5, 5374-1, 6375-1, 6375-4, 5384,

5387, 5387-1, 5397, 5399, 5400, 5401, 5402, 5403, 5403-1, 5404, 5404-1, 5405, 5651, 5674, 5702, 9675 and 12919 of the General Code.

Be it enacted by the General Assembly of the State of Ohio:

SECTION I. Sections 5323, 5324, 5325, 5326, 5327, 5328, 5360, 5382, 5385, 5386, 5388 and 5389 of the General Code, are hereby amended and supplemental sections 5325-1, 5328-1 and 5328-2 of the General Code, and section 5638 of the General Code are hereby enacted, said amended and enacted sections to read as follows:

"Investments" defined.

Sec. 5323. The term *** "investments" as *** used in this title, includes *** the following:

Shares of stock in corporations, associations and joint stock companies, under whatever laws organized or existing, excepting (1) those in such corporations and associations as constitute instrumentalities of the federal government for the taxation of which by the several states no provision is made by act of the congress of the United States, (2) those in financial institutions, dealers in intangibles and domestic insurance companies as defined by chapter four of this title, and (3) such as are defined in this chapter as "deposits."

Interest bearing obligations for the payment of money, such as bonds, certificates of indebtedness, debentures and notes; certificates of deposit, savings and other like deposits in financial institutions outside of this state yielding income by way of interest or dividends in excess of four per centum of the principal sum withdrawable; and other similar evidences of indebtedness, whether negotiable or not, and whether or not secured by mortgage of or lien upon real or personal property or income, by whomsoever issued, excepting such as have been issued (1) by the United States or any of its territories, districts, or dependencies, or (2) by any instrumentality of the federal government, or (3) prior to the first day of January, 1913, by the state of Ohio or any political or other subdivision or school district in this state and (4) bonds of the state of Ohio issued pursuant to article VIII, section 2a of the constitution of Ohio and (5) such as are defined in this chapter as "deposits" and "current accounts."

Annuities, royalties and other contractual obligations for the periodical payment of money and all contractual and other incorporeal rights of a pecuniary nature whatsoever from which income is or may be derived, however evidenced, excepting (1) patents and copyrights and royalties derived from each, (2) interests in land and rents and royalties derived therefrom, other than equitable interests divided into shares evidenced by transferable certificates and (3) employment and partnership contracts and salaries and wages derived therefrom.

All equitable interests, life or other limited estates and annuity interests in any investment hereinbefore described, or in any fund made up of any such investments, wherever located.

When any corporation provides and carries out a plan for the allot-

intangibles, having an actual place of business in this state, the capital stock of which is divided into shares held by the owners thereof, to the extent represented by capital employed in this state, or the property representing capital employed in this state by an unincorporated dealer in intangibles whose capital stock is not divided into shares, having an actual place of business in this state, shall be listed and assessed at the book value thereof and taxed only in the county where such actual place of business is located; excepting that if such a dealer in intangibles maintains separate business offices in more than one county in this state, the assessment of its shares of stock, or capital stock, or the property representing capital, as the case may be, shall be apportioned among such counties in the manner prescribed in this chapter.

Real estate of dealer in intangibles, where taxed.

Sec. 5414-3. The real estate of a dealer in intangibles shall be taxed in the place where it is located, in like manner as the real estate of other persons is taxed; but the tax provided for in this chapter shall be in lieu of all other taxes on the other property and assets used in the business of such a dealer.

Annual report of resources and liabilities of dealer in intangibles to county auditor, when made; statement to accompany same; report to tax commission; term "gross receipts" defined.

Sec. 5414-4. Each dealer in intangibles shall return to the auditor of the county in which his actual principal business office is located, between the first and second Mondays of March annually, a report in duplicate under oath, exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December, next preceding, with a full statement of the names and addresses of the stockholders, if a corporation, and the number of shares held by each and the par value of each share, if any, and the amount of capital employed by each dealer, if an individual, firm or corporation, association, and the name, share and other proportional interest of each partner or member. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the monthly average amount or value for the time such dealer held or controlled them within the year preceding the date of listing, of all property within that time invested in or converted into bonds or other securities not taxed, and of all other taxable property within that time converted into deposits to the extent such non-taxable bonds, securities or deposits may be shown in his resources on such date, without deduction for indebtedness created in the purchase of such non-taxable bonds or securities.

If a dealer in intangibles maintains separate business offices within and outside of this state, and/or maintains separate business offices in more than one county in this state, such dealer shall make return to the tax commission of Ohio and said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

ship park district in his county the amount of its respective share of such revenue, as the same appears on the certificate on file in his office, in the manner provided by law; and any surplus in such fund in any county remaining after such distribution, shall be held in the undivided classified property tax fund until otherwise provided by law. The amount so distributed to each shall be apportioned among the several funds thereof in the same proportions and for the same purposes as are taxes collected on the general tax lists and duplicates for the same fiscal year.

In executing the provisions of this section and of those of sections 6 and 7 of this act, the auditor of state may adjust payments to and drafts on county treasurers so as to avoid the duplication of warrants.

Appropriation.

SECTION 9. The following sums are hereby appropriated from any moneys in the state treasury for the uses and purposes designated in section 6 hereof, to-wit:

Department of finance—tax commission.

Personal service.

1931 \$100,000 1932 \$200,000 biennium \$300,000

Maintenance and equipment.

1931 \$20,000 1932 \$40,000 biennium \$60,000

The sums hereby appropriated shall be in addition to all other appropriations for the uses and purposes of the tax commission of Ohio. Said appropriations are hereby made from the general revenue fund; but any amounts withdrawn from the general revenue fund pursuant hereto shall be reimbursed from the fund created by section 6 of this act to the extent of the proceeds of such fund, when the same becomes available.

ARTHUR HAMILTON,

Speaker of the House of Representatives.

WILLIAM G. PICKREL,

President of the Senate.

Passed June 11, 1931.

Approved June 29, 1931.

GEORGE WHITE,

Governor.

The sectional numbers herein are in conformity to the General Code.

GILBERT BETTMAN,

Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 6th day of July, A. D. 1931.

CLARENCE J. BROWN,

Secretary of State.

File No. 142.

(Amended Senate Bill No. 30)

AN ACT

Providing for the levy of taxes on intangible property for the support of municipal corporations, counties, school districts and public libraries; for the levy of taxes on intangible property of public utilities and inter-county corporations, capital stock and surplus of financial institutions and dealers in intangibles and deposits taxed at the source, and of a franchise tax on domestic insurance companies, all for the purpose of reimbursing the state for the expense of administering such taxes and the taxes on personal property and for the support of common schools; and revising, simplifying and improving the method of assessing tangible and intangible personal property for local taxation; and for such purposes amending sections 1465-33, 2293-4, 2584, 2587-1, 2588, 2602, 2692, 5323, 5325-1, 5327, 5328-1, 5328-2, 5366, 5367, 5370, 5371, 5372-2, 5372-3, 5372-4, 5375, 5376, 5377, 5378, 5379, 5388, 5389, 5390, 5391, 5392, 5394, 5395, 5406, 5408, 5411, 5412, 5412-1, 5413, 5414, 5414-1, 5414-2, 5414-4, 5414-5, 5414-6, 5414-7, 5414-8, 5414-9, 5414-11, 5414-12, 5414-13, 5414-14, 5422, 5430, 5433-1, 5446, 5448, 5450, 5456, 5457, 5459, 5498, 5625-20, 5625-24, 5638, 5671-1, 5672, 5673-1, 5673-2, 5673-3, 5673-4, 5694 and 12077 of the General Code, and enacting sections and supplemental sections of the General Code designated as sections 154-38a, 5327-1, 5368-1, 5387, 5389-1, 5389-2, 5392-1, 5414-15, 5414-16, 5414-17, 5414-18, 5414-19, 5414-20, 5414-21, 5414-22, 5638-1, 5639, 5640, 5674 and 7787-1 of the General Code, and repealing sections 5383 and 10509-80 of the General Code, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION I. Sections 1465-33, 2293-4, 2584, 2587-1, 2588, 2602, 2692, 5323, 5325-1, 5327, 5328-1, 5328-2, 5366, 5367, 5370, 5371, 5372-2, 5372-3, 5372-4, 5375, 5376, 5377, 5378, 5379, 5388, 5389, 5390, 5391, 5392, 5394, 5395, 5406, 5408, 5411, 5412, 5412-1, 5413, 5414, 5414-1, 5414-2, 5414-4, 5414-5, 5414-6, 5414-7, 5414-8, 5414-9, 5414-11, 5414-12, 5414-13, 5414-14, 5422, 5430, 5433-1, 5446, 5448, 5450, 5456, 5457, 5459, 5498, 5625-20, 5625-24, 5638, 5671-1, 5672, 5673-1, 5673-2, 5673-3, 5673-4, 5694 and 12077 of the General Code are hereby amended and sections and supplemental sections to be designated as sections 154-38a, 5327-1, 5368-1, 5387, 5389-1, 5389-2, 5392-1, 5414-15, 5414-16, 5414-17, 5414-18, 5414-19, 5414-20, 5414-21, 5414-22, 5638-1, 5639, 5640, 5674 and 7787-1 of the General Code are hereby enacted to read as follows:

Appointment of deputy tax commissioners; compensation; unclassified service.

Sec. 154-38a. The tax commission of Ohio may appoint not more than fifteen deputy tax commissioners. Each of such deputy tax commissioners shall, under such regulations as may be prescribed by the tax

counting, buying, or selling bills of exchange, drafts, acceptances, notes or mortgages, or other evidences of indebtedness on his own account, remains in business for the purpose of realizing upon the assets of such business shall be deemed a dealer in intangibles though not presently engaged in lending money or discounting or buying such securities.

Taxable property of dealer in intangibles, how listed and assessed; where taxed.

Sec. 5414-2. All the shares of the stockholders in an incorporated dealer in intangibles having an actual place of business in this state, to the extent represented by capital employed in this state, all the shares of the stockholders, partners or members of an unincorporated dealer in intangibles, having an actual place of business in this state, the capital stock of which is divided into shares held by the owners thereof, to the extent represented by capital employed in this state, or the property representing capital employed in this state by an unincorporated dealer in intangibles whose capital stock is not divided into shares, having an actual place of business in this state, shall be listed and assessed at the *** fair value thereof and taxed only in the *** manner prescribed in this chapter.

Annual report of resources and liabilities of dealer in intangibles to tax commission; "gross receipts" defined; consolidated return may be made, when.

Sec. 5414-4. Each dealer in intangibles shall return to the *** *tax commission of Ohio* between the first and second Mondays of March annually, a report in duplicate under oath, exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December, next preceding ***. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the *** amount or value *** *as of the date of conversion* of all property within *** *the year preceding the date of listing and on or after the first day of November* converted into bonds or other securities not taxed *** to the extent such non-taxable bonds *** or securities *** may be shown in his resources on such date, without deduction for indebtedness created in the purchase of such non-taxable bonds or securities.

If a dealer in intangibles maintains separate business offices within and outside of this state *** said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

The term "gross receipts" as used in this and the succeeding section shall, in the case of a dealer in intangibles, principally engaged in the business of lending money and/or discounting loans ***; mean the aggregate amount of loans effected and/or discounted ***; in the case of a dealer in intangibles, principally engaged in the business of selling and/or buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggre-

gate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts.

Within the meaning of this and the succeeding section, business shall be considered to be done at an office when it originates at such office; but the receipts from business originating at one office and consummated at another office shall, for the purpose of such sections, be divided equitably between such offices.

An incorporated dealer in intangibles which owns or controls fifty-one per centum or more of the common stock of another incorporated dealer or dealers in intangibles may under uniform regulations to be prescribed by the commission make a consolidated return or returns for the purpose of this chapter. In such case the parent corporation making such return shall not be required to include in its resources any of the stocks, securities or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

Tax commission to ascertain and assess all shares and capital of dealer in intangibles.

Sec. 5414-5. Upon receiving such report the *** commission shall ascertain and assess all the shares of such dealer in intangibles, the capital stock of which is divided into shares, representing capital employed in this state, and the value of the property representing the capital employed in this state by such dealer in intangibles, not divided into shares, according to the aggregate *** fair value of the capital, the surplus and the undivided profits as shown in such report, including therein, in the case of an unincorporated dealer, the *** value of property converted into non-taxable bonds *** or securities *** within the preceding year without deduction, as shown in such report. In the case of a dealer having separate offices within and outside of this state, the commission shall determine the amount of capital employed in this state in the proportion that the gross receipts at the office or offices in this state, as shown by the report, bears to the entire gross receipts of such dealer, as so shown. ***

The aggregate book value of the capital, the surplus and the undivided profits of a dealer in intangibles as shown in such report shall be taken to be the fair value thereof for the purpose of the assessment required by this section unless the commission shall find that such book value is greater or less than the then fair value of said capital, surplus and undivided profits. Claim for any deduction from book value of capital, surplus and undivided profits must be made in writing by the dealer in intangibles at the time of making return.

Whenever the commission shall assess the fair value of the capital, surplus and undivided profits of a dealer in intangibles at an amount in excess of the book value thereof as shown by its report, or shall disallow any claim for deduction from book value of such capital, surplus and undivided profits, it shall give notice as provided in section 5414-15 of the General Code and proceed as therein required.

therefrom, obtain a stay of collection of the whole or any part of the amount of such assessment by filing with the county treasurer a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such surety as the county treasurer deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by the decision of the commission which has become final, and further conditioned that if an appeal is not filed within the period provided by law, then the amount of the collection which is stayed by the bond will be paid on notice and demand of the county treasurer, at any time after the expiration of such period. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as the result of such waiver, any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced.

Report of average daily attendance of pupils.

Sec. 7787-1. The reports of school statistics required by section 7787 of the General Code shall also show the average daily attendance of school pupils in each school district. In the case of districts situated in more than one county, the average daily attendance of school pupils in each part of such district lying in each county shall be ascertained by taking the total enrollment of pupils residing in such parts of districts, comparing such enrollment with the total enrollment of pupils in the entire school district, and applying the proportion thus obtained to the average daily attendance of pupils in the whole school district.

Actions to enjoin collection or to recover back taxes.

Sec. 12077. Actions to enjoin the collection of taxes and assessments must be brought against the officer whose duty it is to collect them. Actions to recover back taxes and assessments, must be brought against the officer who made the collection, or, if he be dead, against his personal representative. When they were not collected on the county duplicate, *** each corporation or board which *** is entitled to share in the revenue so collected must be joined in the action.

If a plaintiff in an action to recover back taxes or assessments or both alleges and proves that he or the corporation or deceased person whose estate he represents, at the time of paying such taxes or assessments, filed a written protest as to the portion sought to be recovered, specifying the nature of his claim as to the illegality thereof, together with notice of his intention to sue under this chapter, such action shall not be dismissed on the ground that the taxes or assessments, sought to be recovered, were voluntarily paid.

Repeal.

SECTION 2. That existing sections 1465-33, 2293-4, 2584, 2587-1, 2588, 2602, 2692, 5323, 5325-1, 5327, 5328-1, 5328-2, 5366, 5367, 5370, 5371, 5372-2, 5372-3, 5372-4, 5375, 5376, 5377, 5378, 5379, 5388, 5389,

5390, 5391, 5392, 5394, 5395, 5406, 5408, 5411, 5412, 5412-1, 5413, 5414, 5414-1, 5414-2, 5414-4, 5414-5, 5414-6, 5414-7, 5414-8, 5414-9, 5414-11, 5414-12, 5414-13, 5414-14, 5422, 5430, 5433-1, 5446, 5448, 5450, 5456, 5457, 5459, 5498, 5625-20, 5625-24, 5638, 5671-1, 5672, 5673-1, 5673-2, 5673-3, 5673-4, 5694 and 12077 of the General Code and sections 5383 and 10509-80 of the General Code are hereby repealed.

Provisions effective, when.

SECTION 3. The amendments of sections 1465-33, 2584, 2588, 2602, 5376, 5377, 5390, 5391, 5394, 5395 and 5694 of the General Code, made by this act, and the enactment herein of section 5674 of the General Code, shall affect assessments made in the year 1933.

The amendment of section 2587-1 made by this act shall affect assessments made in the year 1933, excepting as regards the listing and assessment of intangible property in taxing districts other than the county, in which respect said amendment shall not take effect until the year 1934. Sections 5414-21 and 7787-1 of the General Code as enacted herein and the amendments of sections 5625-20 and 5625-24, herein made, shall take effect at the earliest period allowed by the constitution.

In all other respects the provisions of this act, including all sections herein enacted and all amendments of existing sections herein made, other than those specified in the first two paragraphs of this section, shall not affect the listing, assessment, payment or collection of taxes in the year 1933, but all persons, financial institutions, dealers in intangibles, insurance companies, and public utilities as defined by the laws of which this act is amendatory, and the tax commission of Ohio and all other public officers in whom powers are vested by such laws, or having duties to perform thereunder, shall be governed by such prior laws, excepting as hereinbefore specifically provided, in and with respect to said year 1933; and the tax levies provided for by this act and all other provisions of this act, excepting as hereinbefore expressly mentioned, shall take effect upon and with respect to the listing, assessment, payment and collection of taxes for the year 1934.

No repeal or amendment of any section of the General Code made by this act, excepting the amendment of section 5694 of the General Code, shall affect any proceeding or cause of proceeding with respect to the assessment of property for taxation as of the year 1932, or the right to appeal from any such assessment, or any proceeding with respect to such appeal, or any proceeding or cause of proceeding for the collection of such taxes heretofore or hereafter assessed, pursuant to the laws in force when this act becomes effective; but, excepting as herein expressly provided, the powers and duties of the tax commission of Ohio and all other officers and the rights of all persons, firms and corporations, with respect to or in any manner affecting such taxes for the year 1932 shall be governed by such prior laws.

Tax commission may order taxes refunded, when and how.

SECTION 4. The tax commission of Ohio may order refunded taxes assessed and collected in the year 1932 if on application of the tax payer,

duly verified, it finds that such taxes have been erroneously or illegally assessed and collected, provided, however, that the tax commission of Ohio shall have no power to order a refund under the provisions of this section unless such application for refund shall have been filed within thirty days of the effective date of this act. The word "erroneous" shall be construed to include errors of the taxpayer in making his return or errors of the tax commission in making the assessment and shall not be construed to include only clerical errors. If the tax commission of Ohio finds that the taxes so erroneously assessed and collected should be refunded it shall order the auditor or the auditors of the proper county or counties to draw his warrant on the county treasurer in favor of the person paying such taxes for the full amount of the taxes so erroneously or illegally charged and collected. The county treasurer shall thereupon pay such warrant from the proper undivided tax funds in his possession, making such adjustments as between the undivided tax funds as the nature of the case may require.

Emergency.

SECTION 5. This act, being in part an act providing for tax levies, is hereby, as to the remaining parts thereof, declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that all the provisions of this act are so inter-related that the immediate going into effect of those of its provisions which relate to the levy of taxes at a date different from the going into effect of those of its provisions which relate to the assessment of property for taxation, excepting as provided in section 3 hereof, would be confusing and vexatious; and also in the fact that the amendments of sections of the General Code relating to the assessment of property for taxation, made by this act, supply deficiencies in existing laws which affect the public revenues and should be immediately corrected. Therefore, this act shall go into immediate effect, excepting as otherwise provided in section 3 hereof.

FRANK CAVE,
Speaker of the House of Representatives.

CHARLES SAWYER,
President of the Senate.

Passed July 1, 1933.

Approved July 18, 1933.

GEORGE WHITE,
Governor.

The sectional numbers herein are in conformity to the General Code.

JOHN W. BRICKER,
Attorney General.

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Filed in the office of the Secretary of State at Columbus, Ohio, on
the 20th day of July, A. D. 1933.

GEORGE S. MYERS,
Secretary of State.

File No. 201.

(Amended Senate Bill No. 77)

AN ACT

To amend sections 1464-1, 1464-3, 5377, 5389, 5392, 5394, 5395, 5411, 5414-4, 5414-12, 5414-15, 5544-9a, 5546-37, 5611, 5611-1, 5611-2, 5624-6, 5673, 6212-59 and 5414-5, and to repeal section 5414-15 of the General Code, relative to proceedings in taxation in the department of taxation and to make procedure uniform.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1464-1, 1464-3, 5377, 5389, 5392, 5394, 5395, 5411, 5414-4, 5544-12, 5544-15, 5546-9a, 5546-37, 5611, 5611-1, 5611-2, 5624-6, 5673, 6212-59 and 5414-5 of the General Code be amended to read as follows:

Powers and duties of board of tax appeals.

Sec. 1464-1. The board of tax appeals shall exercise the following powers and perform the following duties of the department of taxation:

1. To exercise the authority provided by law relative to consenting to the exempting of property from taxation, and revising the list of exempted property in any county;

2. To exercise the authority provided by law relative to determining the date as of which the taxable deposits in financial institutions shall be listed and assessed;

3. To exercise the authority provided by law relative to determining whether the real property, and the various classes thereof, in the several counties, cities, villages and taxing districts of the state, have been assessed at the true value thereof in money, and relative to increasing or decreasing the aggregate value of real property in the several counties, cities, villages and taxing districts in the state;

4. To exercise the authority provided by law relative to the action of local taxing authorities in levying taxes, collecting and receiving payment of taxes, borrowing money, refunding indebtedness, appropriating money or expending money;

5. To exercise the authority provided by law to hear and determine all appeals *** including, among others, appeals from the actions of county budget commissions, from the decisions of county boards of revision, and from the actions of any assessing officer or other public official, including appeals *** from any tax assessment, valuations, determinations, findings, computations or orders made by *** the tax commissioner or correction or redetermination made by him; and to hear and determine applications for review of rules of the department of taxation adopted and promulgated by the tax commissioner;

6. To appoint a secretary of the board of tax appeals, who shall serve in the unclassified civil service at the pleasure of the board and

entered. After receipt of such notice the treasurer of state or the treasurer of any such county may accept any amount tendered as taxes with respect to the assessment concerning which such *** application is then pending, and if such tender is not accepted no penalty shall be assessed because of the non-payment thereof. The acceptance of such tender, however, shall be without prejudice to the claim for taxes upon the balance of *** such assessment ***. As used in this section, the word "taxpayer" shall include financial institutions and dealers in intangibles, as defined respectively in sections 5407 and 5414-1 of the General Code.

Commissioner may make final assessment, when; certificate; contents; "deficiency" or "excess"; duty of state or county auditor; appeal.

Sec. 5395. Excepting as to any taxable property *** concerning the assessment of which an appeal has been filed under section 5611 of the General Code, the tax *** commissioner may finally assess the taxable property *** required to be returned by any taxpayer, financial institution or dealer in intangibles with respect to which a preliminary or amended assessment, as the case may be, has been made by or certified to a county auditor or certified to the auditor of state, as the case may be, for any prior year or years within the time limited therefor in section 5377 of the General Code; and, at any time, may finally assess the taxable property of a taxpayer, financial institution or dealer in intangibles who has failed to make a return to a county auditor or to the *** department of taxation in any such year or years. For such purpose the *** commissioner may utilize all facts or information coming to *** his knowledge or which *** he may acquire by the exercise of the powers vested in *** him by law, and shall certify a final assessment certificate in such form as the case may require in the manner prescribed by *** law, giving notice thereof by *** mail to the taxpayer *** financial institution or dealer in intangibles.

Such final assessment certificate shall set forth, as to each year covered thereby, the amount of the final assessment as to each class of property and the amount of the corresponding preliminary or last amended assessment, as the case may be; *** if no preliminary or amended assessment was made, the amount listed in the taxpayer's return for each such class of property shall be shown. *** If the amount of any final assessment of any such class for any year exceeds the amount of the preliminary *** or amended assessment, as the case may be, of such class for such year, the difference shall be designated *** a "deficiency", and in case no preliminary or amended assessment, as the case may be, has been made each item in the final assessment certificate shall be so designated. In case the final assessment of any such class for any such year is less in amount than the preliminary or amended assessment thereof for such year, *** the difference shall be *** designated *** an "excess". The *** commissioner shall add to each such "deficiency" assessment the penalty provided by *** law, computed on the amount of such "deficiency".

Note: The word "that" in the thirteenth line of the second paragraph of Sec. 5395 is as same appears in the enrolled bill.--(Error.)

*The auditor of state or the county auditor to whom any such final assessment certificate is transmitted shall compute the amount of taxes represented by each "deficiency" *** or "excess" item therein contained at the rate or rates of taxation belonging to the year or years as of which such final assessment is made. He shall enter all "deficiency" items comprised in such final assessment certificate on the proper tax lists in his office, together with the amount of taxes so computed thereon, and shall give a certificate of all such amounts to the treasurer of state or the county treasurer, as the case may be, who shall collect them as other like taxes. In case of assessments certified to the county auditor, if such final assessment certificate comprises any "excess" items he shall ascertain whether or not the taxes for the year or years thereby represented have been paid; if so, he shall draw his warrant on the county treasurer in favor of the person paying them, or his personal representative, for the full amount of the taxes computed upon such "excess" items and further proceedings therein shall be had as provided in sections 2589 and 2590 of the General Code; if not, he shall correct the tax lists and duplicates as under a corrected assessment certificate, adjusting any penalties thereon accordingly. If such final assessment certificate comprises both "deficiency" and "excess" items, the county auditor may, anything in this section to the contrary notwithstanding, after computing the amount of taxes represented by such "deficiency" and "excess" items, respectively, treat the difference between such amounts as a "deficiency" or "excess" for the purpose of this section, making such adjustments as between the undivided tax funds as the nature of the case may require. ****

In the case of final assessments certified to the auditor of state, he shall compute the amount of taxes represented by the "deficiency" or the "excess" items therein contained at the rate or rates of taxation belonging to the year or years as of which such final assessment is made. He shall enter all "deficiency" items comprised in such final assessment certificate on the proper intangible property tax lists in his office, together with the amount of taxes so computed thereon, and shall give a certificate of all such amounts to the treasurer of state who shall collect them as other like taxes. If such final assessment certificate comprises any "excess" items he shall ascertain whether or not the taxes for the year or years thereby represented have been paid and certify such fact to the tax commissioner and thereupon such proceedings may be had with respect to such "excess" items as provided in section 1464-3 of the General Code; if not he shall correct the intangible property tax lists and duplicates as under an amended assessment certificate, adjusting any penalties thereon accordingly. If such final assessment certificate comprises both "deficiency" and "excess" items, the auditor of state may, anything in this section to the contrary notwithstanding, after computing the amount of taxes represented by such "deficiency" and "excess" items, respectively, treat the difference between such amounts as a "deficiency" or "excess" for the purpose of this section.

An appeal may be taken from any "deficiency" assessment authorized by this section to the *** board of tax appeals as provided by section 5611 of the General Code. The assessment certificates mentioned in this section, and the copies thereof, shall not be open to public inspection.

Annual report of resources and liabilities of banks and financial institutions to department of taxation.

Sec. 5411. The cashier or other principal accounting officer of each incorporated bank, the secretary or other principal accounting officer of each other incorporated financial institution, the cashier, manager or owner of each unincorporated bank, and the manager, owner or owners of each other unincorporated financial institution, shall return to the *** *department of taxation* between the first and second Mondays of March, annually, a report *** under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such institution at the close of business on the thirty-first day of December next preceding.

Annual report of resources and liabilities of dealer in intangibles; "gross receipts" defined; consolidated return may be made, when.

Sec. 5414-4. Each dealer in intangibles shall return to the *** *department of taxation* between the first and second Mondays of March, annually, a report *** under oath, exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December, next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing and on or after the first day of November converted into bonds or other securities not taxed to the extent such non-taxable bonds or securities may be shown in his resources on such date, without deduction for indebtedness created in the purchase of such non-taxable bonds or securities.

If a dealer in intangibles maintains separate business offices within and outside of this state said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

The term "gross receipts" as used in this and the succeeding section shall, in the case of a dealer in intangibles, principally engaged in the business of lending money *** *or* discounting loans, mean the aggregate amount of loans effected *** *or* discounted; in the case of a dealer in intangibles, principally engaged in the business of selling *** *or* buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggregate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts.

Within the meaning of this and the succeeding section, business shall be considered to be done at an office when it originates at such office; but the receipts from business originating at one office and consummated at another office shall, for the purpose of such sections, be divided equitably between such offices.

An incorporated dealer in intangibles which owns or controls fifty-one per centum or more of the common stock of another incorporated dealer or dealers in intangibles may under uniform regulations to be prescribed by the *** *commissioner* make a consolidated return or returns for the

purpose of this chapter. In such case the parent corporation making such return shall not be required to include in its resources any of the stocks, securities or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

Application for reassessment.

Sec. 5544-12. Any person against whom an additional assessment, estimated assessment, or estimated additional assessment shall be made by the *** tax commissioner may file an application for reassessment with the tax commissioner in the manner and form and with like effect as is provided in section 5546-9a of the General Code. Thereupon further proceedings shall be had in the manner, and with like effect, as is prescribed in section 5546-9a of the General Code.

Refunds.

Sec. 5544-15. If within one year from the payment of any tax or penalty the payer thereof or his executors, administrators, successors or assigns shall make application for a refund thereof, for the benefit of the person from whom the same was collected, and the *** commissioner *** shall determine that such tax or penalty, or any portion thereof, was erroneously or illegally collected, and that the same can and will be duly refunded to the persons from whom the same was collected, the *** commissioner shall issue *** his certificate showing the amount so erroneously or illegally collected, in duplicate, to the auditor of state and the treasurer of state, and the treasurer of state shall refund the amount so certified, without interest, out of any moneys appropriated for that purpose upon such terms and conditions as to the making of proper refunds as the *** commissioner may impose. For like cause and within the same period, a refund may be so made on the initiative of the *** commissioner; but no refund shall be made of a tax or penalty paid pursuant to a determination of the *** commissioner as provided for in section *** 5544-12 of the General Code, unless the *** commissioner, after a hearing as in said section provided, or on *** his own motion, shall have reduced the tax or penalty or it shall have been established by an appeal to the *** board of tax appeals as provided in said section that such determination was erroneous or illegal, in which event a refund shall be made as herein provided upon the termination of such appeal. An application for a refund made as herein provided shall be deemed a petition for reassessment within the meaning of said section *** 5544-12 of the General Code and the *** commissioner may receive additional evidence with respect thereto. After making *** his determination the *** commissioner shall give notice thereof to the applicant and *** the applicant shall have the right to appeal to the *** board of tax appeals within the time and in the manner prescribed by *** section *** 5611 of the General Code.

Liability of vendor and consumer; assessment; petition for reassessment; penalties; appeal; judgment; execution.

Sec. 5546-9a. In case any vendor fails to collect the tax imposed by section 5546-2 of the General Code, or having collected the tax, fails to

the appeal is listed, or sought to be listed, if any such persons were not parties to the appeal before the board of tax appeals; or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from *** *final determinations* by the tax commissioner of any *preliminary, amended or final* tax assessments, *reassessments*, valuations, determinations, findings, computations or orders made by him, may be instituted: by any of the persons who were parties to the appeal or application before the board of tax appeals; by the person or persons in whose name the property is listed, or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such persons were not parties to the appeal or application before the board of tax appeals; by the taxpayer or any other person or persons to whom the decision of the board of tax appeals appealed from was, by law, required to be certified; by the director of finance of the state of Ohio if the *revenue* affected by the decision of the board of tax appeals appealed from would accrue primarily to the state treasury; by the county auditor of any county, to the undivided general tax funds of which the revenues affected by the decision of the board of tax appeals appealed from would primarily accrue; or by the tax commissioner.

Appeals from decisions of the board of tax appeals upon all other appeals or applications filed with and determined by the board of tax appeals may be instituted: by any of the persons who were parties to such appeal or application before the board of tax appeals; or by any other persons to whom the decision of the board of tax appeals appealed from was, by law, required to be certified; or by any other person to whom the board of tax appeals certified the decision appealed from, as authorized by section 5611-1 of the General Code of Ohio.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board of tax appeals on the journal of its proceedings, as provided by section 5611-1 of the General Code of Ohio, by the filing by appellant of a notice of appeal with the supreme court of Ohio and with the board of tax appeals. Such notice of appeal shall set forth the decision of the board of tax appeals appealed from and the errors therein complained of. Proof of the filing of such notice with the board of tax appeals shall be filed with the supreme court.

In all such appeals the tax commissioner *** or all persons to whom the decision of the board of tax appeals appealed from, is required by section 5611-1 of the General Code of Ohio to be certified, other than appellant or appellants, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by registered mail. The prosecuting attorney of the county shall represent the county auditor in any such appeal in which the county auditor is a party.

The board of tax appeals, upon written demand filed by an appellant, shall, within thirty days after the filing of such demand, file with the supreme court a certified transcript of the record of the proceedings of the board of tax appeals pertaining to the decision complained of, and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the supreme court is of the opinion that the decision of the board of tax appeals appealed from is reasonable and lawful it shall affirm the same, but if the supreme court is of the opinion that such decision of the board of tax appeals is unreasonable or unlawful, it shall reverse and vacate same or it may modify same and enter final judgment in accordance with such modification.

The clerk of the supreme court shall certify the judgment of the court to the board of tax appeals which shall certify such judgment to such other public officials or take such other action in connection therewith as may be required to give it effect.

Compilation, publication and distribution of tax laws.

Sec. 5624-6. The tax *** commissioner of Ohio shall from time to time as changes in the law require compile the laws of the state relating to the assessment of property for taxation and the levy and collection of taxes, with such annotations, instructions and references to the decisions of the courts concerning the same, as *** the commissioner may deem proper. The *** commissioner shall cause a sufficient number of copies of the same to be *** distributed to the several *** prosecuting attorneys, county auditors, and county treasurers in the state and to such other public officers *** or employees as the *** commissioner may deem proper. *** A charge shall be made for copies distributed other than as above, such charge not to exceed the total cost of such copies so distributed. Money realized from the sale of such copies shall be placed in the general revenue fund.

Financial institution may deduct taxes from dividends of shareholders, when; lien.

Sec. 5673. Such financial institution paying to the treasurer of *** state the taxes assessed upon its shares, in the hands of its shareholders respectively, as provided in the next preceding section, may deduct the amount thereof from dividends that are due or thereafter become due on such shares, and shall have a lien upon the shares of stock and on all funds in its possession belonging to such shareholders, or which may at any time come into its possession, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner.

Additional assessment, when; notice to permit holder; application for reassessment.

Sec. 6212-59. If the tax *** commissioner is not satisfied with payment of the tax imposed by sections 6212-48, 6212-49, 6212-49b, 6064-41 and 6064-41a of the General Code, as made by any permit holder, *** he shall make an additional assessment of the tax due from such taxpayer, based upon the facts contained in the report or upon any information otherwise acquired. When such assessment is for failure to

affix stamps or crowns provided in sections 6212-48, 6212-49, 6212-49c and 6064-42 of the General Code, a penalty of fifteen per cent (15%) of the total amount of the tax shall be assessed by the tax *** *commissioner*. Promptly after *** such additional assessment of tax and penalty the tax *** *commissioner* shall give by *** mail a notice thereof to the permit holder stating the reason for the assessment *** and the amount thereof.

Any person against whom such additional assessment is made may file an application for reassessment with the tax commissioner in the manner and form and with like effect as is provided by section 5546-9a of the General Code.

Tax commissioner to ascertain and assess all shares and capital of dealer in intangibles.

Sec. 5414-5. Upon receiving such report the *** *commissioner* shall ascertain and assess all the shares of such dealers in intangibles, the capital stock of which is divided into shares, representing capital employed in this state, and the value of the property representing the capital employed in this state by such dealer in intangibles, not divided into shares, according to the aggregate fair value of the capital, the surplus and the undivided profits as shown in such report, including therein, in the case of an unincorporated dealer, the value of property converted into non-taxable bonds or securities within the preceding year without deduction, as shown in such report. In the case of a dealer having separate offices within and outside of this state the *** *commissioner* shall determine the amount of capital employed in this state in the proportion that the gross receipts at the office or offices in this state, as shown by the report, bears to the entire gross receipts of such dealer, as so shown.

The aggregate book value of the capital, the surplus and the undivided profits of a dealer in intangibles as shown in such report shall be taken to be the fair value thereof for the purpose of the assessment required by this section unless the *** *commissioner* shall find that such book value is greater or less than the then fair value of said capital, surplus and undivided profits. Claim for any deduction from book value of capital, surplus and undivided profits must be made in writing by the dealer in intangibles at the time of making return.

Whenever the *** *commissioner* shall assess the fair value of the capital, surplus and undivided profits of a dealer in intangibles at an amount in excess of the book value thereof as shown by its report, or shall disallow any claim for deduction from book value of such capital, surplus and undivided profits, it shall give notice as provided in section *** 5394 of the General Code and proceed as therein required.

Repeal.

SECTION 2. That existing sections 1464-1, 1464-3, 5377, 5389, 5392, 5394, 5395, 5411, 5414-4, 5544-12, 5544-15, 5546-9a, 5546-37, 5611, 5611-1,

5611-2, 5624-6, 5673, 6212-59, 5414-5 and section 5414-15 of the General Code are hereby repealed.

WILLIAM M. McCULLOCH,
Speaker of the House of Representatives.

PAUL M. HERBERT,
President of the Senate.

Passed March 31, 1941.

Approved April 2, 1941.

JOHN W. BRICKER,
Governor.

The sectional numbers herein are in conformity to the General Code.

THOMAS J. HERBERT,
Attorney General.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 4th day of April, A. D. 1941.

JOHN E. SWEENEY,
Secretary of State.

File No. 24.

AN ACT

To amend sections 5411-2, 5412, 5412-1, 5414-4, 5414-5, 5414-6, 5414-19 of the General Code relating to the assessment, collection and applications of intangible taxes levied on deposits, on shares in and capital employed by financial institutions, and on shares in and capital employed by dealers in intangibles on the intangible property tax list of the state.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5411-2, 5412, 5412-1, 5414-4, 5414-5, 5414-6, 5414-19 of the General Code are hereby amended to read as follows:

Report of financial institution; contents.

Sec. 5411-2. The report of each financial institution *made pursuant to section 5411 of the General Code* shall also show the aggregate balances of the taxable deposits of its depositors, *in each county in which the institution maintained an office or offices for the receipt of deposits*, at the end of business on the day fixed by the *** board of tax appeals pursuant

Annual report of resources and liabilities of dealer in intangibles to department; "gross receipts" defined; receipts from business; consolidated return may be made, when.

Sec. 5414-4. Each dealer in intangibles shall return to the department of taxation between the first and second Mondays of March, annually, a report under oath, exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December, next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing and on or after the first day of November converted into bonds or other securities not taxed to the extent such non-taxable bonds or securities may be shown in his resources on such date, without deduction for indebtedness created in the purchase of such non-taxable bonds or securities.

If a dealer in intangibles maintains separate business offices, *whether within this state only or within and outside of this state* said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

The term "gross receipts" as used in this and the succeeding section shall, in the case of a dealer in intangibles, principally engaged in the business of lending money or discounting loans, mean the aggregate amount of loans effected or discounted; in the case of a dealer in intangibles, principally engaged in the business of selling or buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggregate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts.

Within the meaning of this and the succeeding section, business shall be considered to be done at an office when it originates at such office; but the receipts from business originating at one office and consummated at another office shall, for the purpose of such sections, be divided equitably between such offices.

An incorporated dealer in intangibles which owns or controls fifty-one per centum or more of the common stock of another incorporated dealer or dealers in intangibles may under uniform regulations to be prescribed by the *tax* commissioner make a consolidated return or returns for the purpose of this chapter. In such case the parent corporation making such return shall not be required to include in its resources any of the stocks, securities or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

Tax commissioner to ascertain and assess all shares and capital of dealer in intangibles.

Sec. 5414-5. Upon receiving such report the *tax* commissioner shall ascertain and assess all the shares of such dealers in intangibles, the capital stock of which is divided into shares, representing capital employed in this state, and the value of the property representing the capital em-

chapter shall be for the use of the general revenue fund of the state and shall be paid into the state treasury, *except as herein provided*. The taxes levied by said section 5638-1 of the General Code on deposits, on shares in and capital employed by financial institutions, and on shares in and capital employed by dealers in intangibles shall be for the use of the "local government funds" of the several counties in which said taxes originate as hereinafter provided. The treasurer of state shall be the custodian of the moneys received by him for the use of such "local government funds" under this section and shall disburse the same as hereinafter provided. He shall give a separate and additional bond in the sum of three hundred thousand dollars, the premium on which, if any, shall be paid by the treasurer of state and the sureties on which shall be approved by the auditor of state, conditioned upon the faithful performance of his duties as such custodian. Such bond shall be deposited in the office of the secretary of state.

On the first day of August, annually, and thereafter on the first day of each month on which there shall be moneys in his custody for disbursement under this section, the auditor of state shall draw his warrant on the treasurer of state in favor of the treasurer of each county for the amount of the taxes collected under the provision of this chapter and transmit such warrants to the several county auditors as follows:

To each county, the moneys so received and credited on account of taxes assessed on shares in and capital employed by financial institutions whose principal offices are located therein, as shown on the tax list and duplicate; the moneys so received and credited on account of taxes assessed on deposits of offices of financial institutions, located therein, as so shown; and the moneys so received and credited on account of shares in and capital employed by dealers in intangibles, representing capital employed therein, as so shown. For the purpose of this section, such taxes shall be deemed to have originated in the several counties wherein such financial institutions and dealers in intangibles have their office or offices.

Moneys received into the treasury of a county pursuant to this act shall be credited to the undivided local government fund of the county and shall be distributed by the budget commission as provided by law.

Repeal.

SECTION 2. That existing sections 5411-2, 5412, 5412-1, 5414-4, 5414-5, 5414-6, 5414-19 of the General Code are hereby repealed.

Effective date.

SECTION 3. This act shall become effective at the beginning of October 1, 1947.

C. WILLIAM O'NEILL,
Speaker of the House of Representatives.

PAUL M. HERBERT,
President of the Senate.

Passed June 10, 1947.

Approved June 17, 1947.

THOMAS J. HERBERT,
Governor.

The sectional numbers herein are in conformity to the General Code.

WILLARD D. CAMPBELL,
Director of Code Revision.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
18th day of June, A. D. 1947.

EDWARD J. HUMMEL,
Secretary of State.

File No. 130.

AN ACT

To provide for the signing of tax returns and reports and to impose a penalty for the making of false statements therein and for this purpose to amend sections 1465-20, 5372, 5372-2, 5372-5, 5372-6, 5411, 5414-4, 5421, 5449, 5462, 5470, 5496, 5529, 5546-12b and 6212-50 and to repeal section 5501 of the General Code, removing the requirement of an oath on tax returns.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 1465-20a. Returns need not be sworn to; statement subscribed.

SECTION 1. On and after the effective date of this act all tax returns or reports with respect to taxes, including accompanying schedules and statements, which are required by law to be filed with the department of

29 G. L.

Annual report of resources and liabilities of dealers in intangibles to department; "gross receipts" defined; receipts of business; consolidated return may be made, when.

Sec. 5414-4. Each dealer in intangibles shall return to the department of taxation between the first and second Mondays of March, annually, a report *** exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December, next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing and on or after the first day of November converted into bonds or other securities not taxed to the extent such non-taxable bonds or securities may be shown in his resources on such date, without deduction for indebtedness created in the purchase of such non-taxable bonds or securities.

If a dealer in intangibles maintains separate business offices, whether within this state only or within and outside of this state said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

The term "gross receipts" as used in this and the succeeding section shall, in the case of a dealer in intangibles, principally engaged in the business of lending money or discounting loans, mean the aggregate amount of loans effected or discounted; in the case of a dealer in intangibles, principally engaged in the business of selling or buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggregate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts.

Within the meaning of this and the succeeding section, business shall be considered to be done at an office when it originates at such office; but the receipts from business originating at one office and consummated at another office shall, for the purpose of such sections, be divided equitably between such offices.

An incorporated dealer in intangibles which owns or controls fifty-one per centum or more of the common stock of another incorporated dealer or dealers in intangibles may under uniform regulations to be prescribed by the tax commissioner make a consolidated return or returns for the purpose of this chapter. In such case the parent corporation making such return shall not be required to include in its resources any of the stocks, securities or other obligations of its subsidiary dealers, not permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

Statement to be signed.

Sec. 5421. Such statement shall be signed *** by the person constituting such public utility, if a person or under the oath of the president, secretary, treasurer, superintendent or principal accounting officers or person of such firm, association or corporation, if a firm, association or corporation.

shall immediately transmit all returns filed under the provisions of this section to the tax commissioner. Any vendor who fails or refuses to make and file a return under the provisions of this section and the rules and regulations of the tax commissioner shall, for each day he so fails, neglects or refuses, forfeit and pay into the state treasury the sum of one dollar, as revenue arising from the tax imposed by sections 5546-1 to 5546-24c, both inclusive, of the General Code, and such sum may be collected by assessment in the manner provided in section 5546-9a of the General Code. In case any vendor has collected in excess of three per cent of his receipts from sales which are taxable under section 5546-2 of the General Code as tax from consumers and failed to cancel tax receipts in the proper amount, such excess shall be remitted along with the remittance of the amount of tax due under section 5546-12a of the General Code. The tax commissioner, if he deems it necessary in order to insure the payment of the tax imposed by sections 5546-1 to 5546-24c, both inclusive, of the General Code, may require returns and payments to be made for other than semi-annual periods. The returns shall be signed by the vendor or his duly authorized agent ***.

Class A and Class B to report monthly.

Sec. 6212-50. It shall be the duty of every class A and class B permit holder or their executors, administrators, trustees in bankruptcy, receivers or assignees for the benefit of creditors, who may have sold or distributed in bottles, cans, barrels or other containers, wine or beer as defined in section 6064-1, of the General Code, or malt beverages or mixed beverages as defined in section 6064-41 and 6064-41a of the General Code, to transmit to the tax *** commissioner, on or before the tenth day of the calendar month, upon a form prescribed and furnished by the tax *** commissioner a report *** showing the amount of such wine, beer, malt beverages and mixed beverages produced, purchased, sold or distributed by such permit holder in Ohio and the number and denominations of all tax stamps and crowns purchased and used for tax payments thereon, for the preceding calendar month. Such report shall show such further information as the tax *** commissioner may require.

No such wine, beer, malt beverages or mixed beverages sold or distributed in Ohio shall be taxed more than once under the provisions of sections 6064-41, 6064-41a, 6212-48, 6212-49 and 6212-49b of the General Code.

Repeal.

SECTION 4. That existing sections 1465-20, 5372, 5372-2, 5372-5, 5372-6, 5411, 5414-4, 5421, 5449, 5462, 5470, 5496, 5501, 5529, 5546-12b, and 6212-50 of the General Code are hereby repealed.

GORDON RENNER,
Speaker of the House of Representatives.

GEORGE D. NYE,
President of the Senate.

Passed May 23, 1951.

Approved June 11, 1951.

FRANK J. LAUSCHE,
Governor.

The sectional numbers in this act are in conformity to the General Code, and the sectional numbers on the margin hereof are designated as provided by law.

WILLARD D. CAMPBELL,
Director of Code Revision.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 11th day of June, A. D. 1951.

TED W. BROWN,
Secretary of State.

File No. 175.

(124th General Assembly)
(Amended Substitute House Bill Number 405)

AN ACT

To amend sections 103.144, 103.145, 103.146, 122.15, 145.01, 149.07, 166.03, 183.02, 317.33, 742.01, 1309.528, 1333.11, 3307.01, 3309.01, 3313.37, 3313.375, 3318.31, 3353.07, 3353.11, 3770.02, 3770.03, 3770.06, 5111.34, 5111.872, 5123.043, 5123.046, 5123.048, 5123.049, 5123.0411, 5126.01, 5126.02, 5126.021, 5126.033, 5126.035, 5126.036, 5126.042, 5126.046, 5126.05, 5126.054, 5126.055, 5126.06, 5126.14, 5126.15, 5126.17, 5126.18, 5126.19, 5126.221, 5126.357, 5505.01, 5705.44, 5709.12, 5709.121, 5709.17, 5709.40, 5709.411, 5709.43, 5709.73, 5709.74, 5709.75, 5709.77, 5709.78, 5709.79, 5709.80, 5709.81, 5725.14, 5725.24, 5725.25, 5725.26, 5733.056, 5733.06, 5733.0610, 5733.09, 5733.11, 5733.98, 5739.01, 5741.01, 5743.05, 5747.058, 5747.13, 5747.98, 5923.05, and 5923.051; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 5126.056 (5126.057); to enact new section 5126.056 and sections 122.171, 122.60, 122.601, 122.602, 122.603, 122.604, 122.605, 307.6910, 5733.45, 5739.012, and 5741.011; to repeal section 103.147 of the Revised Code and to amend Section 11 of Am. Sub. S.B. 50 of the 121st General Assembly, to amend Section 3 of Am. Sub. H.B. 440 of the 121st General Assembly, as subsequently

amended, to amend Section 5.02 of Sub. H.B. 73 of the 124th General Assembly, to amend Section 41 of Am. Sub. H.B. 94 of the 124th General Assembly, as subsequently amended, to amend Sections 41.15, 45, 63.25, 74.01, 74.02, 94.11, 104, and 140 of Am. Sub. H.B. 94 of the 124th General Assembly, to amend Sections 41.10 and 63.09 of Am. Sub. H.B. 94 of the 124th General Assembly, as subsequently amended, to amend Section 10 of Am. Sub. S.B. 192 of the 123rd General Assembly, to amend Section 9 of Am. Sub. S.B. 192 of the 123rd General Assembly, as subsequently amended, and to repeal Section 11 of Sub. H.B. 73 of the 124th General Assembly, to revise provisions of Am. Sub. H.B. 94 of the 124th General Assembly regarding services for persons with mental retardation or other developmental disabilities, to revise the law governing membership of county boards of mental retardation and developmental disabilities, to grant property tax exemptions for Edison program grantees, to modify Local Government Fund and Tobacco Master Settlement Agreement Fund distributions, to increase the cigarette wholesaler's markup, to expand the uses of the Corporate and Uniform Commercial Code Filing Fund, to revise provisions of the TANF Housing Program within the Department of Development, to authorize transfers from the Budget Stabilization Fund to the General Revenue Fund, to clarify the application of the "in lieu of other tax" exemption regarding certain dealers in

intangibles, to modify the "deposits only" apportionment fraction for certain financial institutions, to establish the Capital Access Program in the Department of Development, to create a nonrefundable credit against the corporate franchise and personal income taxes for job retention, to exempt temporarily certain new high-technology companies from the net worth calculation of the corporate franchise tax, to establish the Rural Development Initiative Fund in the state treasury, and to permit the disbursement of grants from that fund in conjunction with loans from the Rural Industrial Park Loan Program, to extend the sunset of the Rural Industrial Park Loan Program to July 1, 2007, to permit political subdivisions in economically distressed areas to employ tax increment financing throughout a designated incentive district, to modify other tax increment financing provisions, to revise the criteria for the award and use of certain TANF Funds for Appalachia, to permit a county to enter into an agreement with a political subdivision authorizing the county to receive payments of certain revenue in the county treasury that are due a political subdivision as a credit against amounts otherwise owed to the county, to require the Department of Education in fiscal years 2002 and 2003 only to pay a subsidy to certain community schools in which at least half of the total number of students enrolled are severe behaviorally handicapped students, to specify control over Ohio

Government Telecommunications and associated funds, to require the State Lottery Commission to enter into a multistate lottery if the Governor so directs, modifies the liability of county recorders, to increase the membership of the Nursing Facility Reimbursement Study Council, to create a committee to study the impact of gambling, to permit certain nursing homes to apply for Medicare certification of certain beds, to revise the requirement for independent healthcare actuarial reviews of mandated benefits, to reduce the cigarette tax stamp discount, to eliminate a study of road and bridge funding mandates, to make corrections, to repeal section 307.6910 of the Revised Code effective July 1, 2007, and to make appropriations.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 103.144, 103.145, 103.146, 122.15, 145.01, 149.07, 166.03, 183.02, 317.33, 742.01, 1309.528, 1333.11, 3307.01, 3309.01, 3313.37, 3313.375, 3318.31, 3353.07, 3353.11, 3770.02, 3770.03, 3770.06, 5111.34, 5111.872, 5123.043, 5123.046, 5123.048, 5123.049, 5123.0411, 5126.01, 5126.02, 5126.021, 5126.033, 5126.035, 5126.036, 5126.042, 5126.046, 5126.05, 5126.054, 5126.055, 5126.06, 5126.14, 5126.15, 5126.17, 5126.18, 5126.19, 5126.221, 5126.357, 5505.01, 5705.44, 5709.12, 5709.121, 5709.17, 5709.40, 5709.411, 5709.43, 5709.73, 5709.74, 5709.75, 5709.77, 5709.78, 5709.79, 5709.80, 5709.81, 5725.14, 5725.24, 5725.25, 5725.26, 5733.056, 5733.06, 5733.0610, 5733.09, 5733.11, 5733.98, 5739.01, 5741.01, 5743.05, 5747.058, 5747.13, 5747.98, 5923.05, and 5923.051 be amended, section 5126.056 (5126.057) be amended for the purpose of adopting a new section number as indicated in parentheses, and new section 5126.056 and sections 122.171, 122.60, 122.601, 122.602, 122.603, 122.604, 122.605, 307.6910, 5733.45, 5739.012, and 5741.011 of the Revised Code be

enacted to read as follows:

Sec. 103.144. As used in sections 103.144 to ~~103.147~~ 103.146 of the Revised Code:

(A) "Mandated benefit" means the following, when considered in the context of a sickness and accident insurance policy or a health insuring corporation policy, contract, or agreement:

(1) Any required coverage for a specific medical or health-related service, treatment, medication, or practice;

(2) Any required coverage for the services of specific health care providers;

(3) Any requirement that an insurer or health insuring corporation offer coverage to specific individuals or groups;

(4) Any requirement that an insurer or health insuring corporation offer specific medical or health-related services, treatments, medications, or practices to existing insureds or enrollees;

(5) Any required expansion of, or addition to, existing coverage;

(6) Any mandated reimbursement amount to specific health care providers.

(B) "Mandated benefit" does not include any required coverage or offer of coverage, any required expansion of, or addition to, existing coverage, or any mandated reimbursement amount to specific providers, as described in division (A) of this section, within the context of any public health benefits arrangement, including but not limited to, the coverage of beneficiaries enrolled in Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, pursuant to a medicare risk contract or medicare cost contract, or to the coverage of beneficiaries enrolled in Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, known as the medical assistance program or medicaid, provided by the Ohio department of job and family services under Chapter 5111. of the Revised Code.

Sec. 103.145. (A) ~~Whenever any bill receives a second hearing in a standing committee in the~~ The chairperson of ~~of either house of the general assembly in which the bill originated may, at any time, request the director of the legislative budget officer shall service commission to review the any bill that is assigned to the chairperson's committee in order to determine whether the bill includes a mandated benefit. The director shall review the bill and~~

completed.

The resolution shall pledge only the funds of the account of the county redevelopment tax equivalent fund established for such public infrastructure improvements and housing renovations, to pay the interest on and principal of the bonds or notes issued pursuant to the resolution. The resolution shall specify the maturity date or dates, the interest payable in accordance with section 9.95 of the Revised Code, and such other terms to be included in the bonds or notes as are necessary for their issuance. The bonds and notes are not subject to Chapter 133. of the Revised Code.

Any bond or note issued under this division shall be deemed to be issued for the same purpose as the bond or note that it is being issued to refund. The proceeds of any bond or note issued under this division shall be used as determined by the board of county commissioners to pay the principal amount of the bond or note being refunded, any redemption premium, and any interest to redemption or maturity, and any expenses related to the outstanding obligations considered necessary by the board of county commissioners for the issuance of the bond or note.

Any bond or note issued to refund any other bond or note under this division may be issued whether or not such refunded bond or note was issued subject to call or redemption prior to maturity.

The authority granted by this division is in addition to and an alternative for, but not a limitation upon, other authorizations granted by or pursuant to law or the constitution for the same or similar purposes.

(B) In lieu of issuing bonds or notes under division (A) of this section, the board of county commissioners may, in a resolution adopted under section 5709.78 of the Revised Code, pledge the service payments collected under section 5709.79 of the Revised Code to secure payment of any obligation of the county issued to finance any public infrastructure improvements designated in the resolution ~~as directly benefiting the tract of land for which the service payments are paid.~~

Sec. 5725.14. (A) As used in this section and section 5725.15 of the Revised Code:

(1) "Billing address" of a customer means one of the following:

(a) The customer's address as set forth in any notice, statement, bill, or similar acknowledgment shall be presumed to be the address where the customer is located with respect to the transaction for which the dealer issued the notice, statement, bill, or

acknowledgment.

(b) If the dealer issues any notice, statement, bill, or similar acknowledgment electronically to an address other than a street address or post office box address or if the dealer does not issue such a notice, statement, bill, or acknowledgment, the customer's street address as set forth in the records of the dealer at the time of the transaction shall be presumed to be the address where the customer is located.

(2) "Commissions" includes but is not limited to brokerage commissions, asset management fees, and similar fees charged in the regular course of business to a customer for the maintenance and management of the customer's account.

;(3) "Gross receipts" means one of the following:

(a) In the case of a dealer in intangibles principally engaged in the business of lending money or discounting loans, the aggregate amount of loans effected or discounted;

(b) In the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, or other similar securities either on the dealer's own account or as agent for another, the aggregate amount of all commissions charged.

(B) Each dealer in intangibles shall return to the tax commissioner between the first and second Mondays of March, annually, a report exhibiting in detail, and under appropriate heads, his the dealer's resources and liabilities at the close of business on the thirty-first day of December next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing, and on or after the first day of November converted into bonds or other securities not taxed to the extent such nontaxable bonds or securities may be shown in his the dealer's resources on such date, without deduction for indebtedness created in the purchase of such nontaxable bonds or securities.

If a dealer in intangibles maintains separate business offices, whether within this state only or within and without this state, said the report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

"Gross receipts" as used in this section and section 5725.15 of the Revised Code, means, in the case of a dealer in intangibles principally engaged in the business of lending money or discounting

~~loans, the aggregate amount of loans effected or discounted, in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, and other similar securities either on his own account or as agent for another, gross receipts means the aggregate amount of all commissions charged plus one per cent of the aggregate amount of all other receipts:~~

~~As used in For the purposes of this section and section 5725.15 of the Revised Code, business is considered done at an office when it originates at such office, but the receipts from business originating at one office and consummated at another office shall be divided equitably between such offices.~~

~~(C) For the purposes of this section and section 5725.15 of the Revised Code, in the case of a dealer in intangibles principally engaged in the business of selling or buying stocks, bonds, or other similar securities either on the dealer's own account or as agent for another, the dealer's capital, surplus, and undivided profits employed in this state shall bear the same ratio to the dealer's total capital, surplus, and undivided profits employed everywhere as the amount described in division (C)(1) of this section bears to the amount described in division (C)(2) of this section:~~

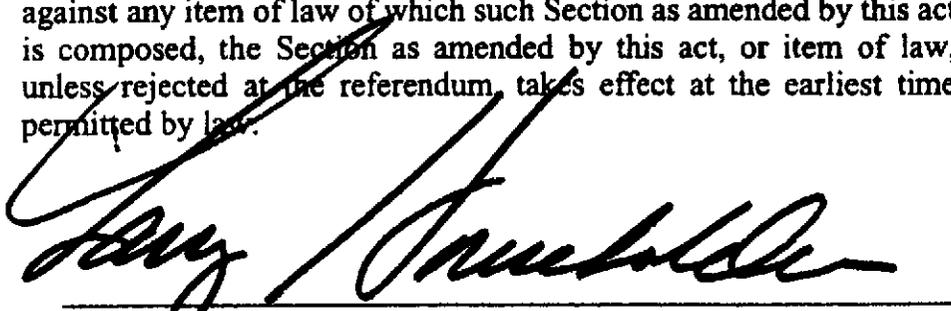
~~(1) The sum of the commissions earned during the year covered by the report from transactions with respect to brokerage accounts owned by customers having billing addresses in this state;~~

~~(2) The sum of the commissions earned during that year from transactions with respect to brokerage accounts owned by all of the dealer's customers.~~

~~(D) An incorporated dealer in intangibles which owns or controls fifty-one per cent or more of the common stock of another incorporated dealer in intangibles may, under uniform regulations prescribed by the tax commissioner, make a consolidated return for the purpose of sections 5725.01 to 5725.26, inclusive, of the Revised Code. In such case the parent corporation making such return is not required to include in its resources any of the stocks, securities, or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.~~

~~Sec. 5725.24. (A) As used in this section, "qualifying dealer" means a dealer in intangibles that is a qualifying dealer in intangibles as defined in section 5733.45 of the Revised Code or a member of a qualifying controlled group, as defined in section 5733.04 of the Revised Code, of which an insurance company also is a member on~~

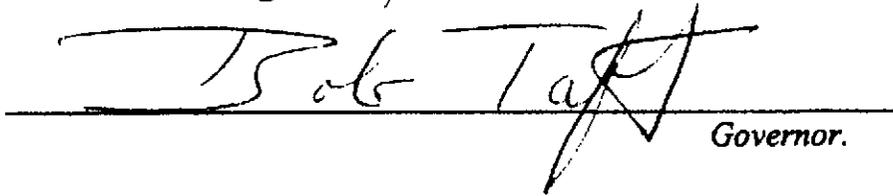
SECTION 45. Section 11 of Am. Sub. S.B. 50 of the 121st General Assembly as amended by this act, and the items of law of which such Section as amended by this act are composed, are subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1c and section 1.471 of the Revised Code, such Section as amended by this act, and the items of law of which such Section as amended by this act are composed, take effect on the ninety-first day after this act is filed with the Secretary of State. If, however, a referendum petition is filed against such Section as amended by this act, or against any item of law of which such Section as amended by this act is composed, the Section as amended by this act, or item of law, unless rejected at the referendum, takes effect at the earliest time permitted by law.


Speaker _____ of the House of Representatives.


President _____ of the Senate.

Passed December 5, 2001

Approved December 13, 2001
3:17 p.m.


Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Robert M. Shapiro

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 13th day of December, A. D. 20 01.

J. Kenneth Blackwell

Secretary of State.

File No. 74

Effective Date Immediate December 13, 2001;
certain sections effective on other
dates.

OHIO TAX LAWS

ANNOTATED

1941

CONTAINING ALL TAX LAWS OF THE STATE OF OHIO,
WITH ANNOTATIONS OF DECISIONS AND THE RULES OF
THE BOARD OF TAX APPEALS TO OCTOBER 1, 1941

ARRANGED, ANNOTATED, AND INDEXED

BY

The Publisher's Staff



ISSUED BY THE

DEPARTMENT OF TAXATION
STATE OF OHIO

WILLIAM S. EVATT, *Tax Commissioner*

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Foreword

This compilation of the laws of Ohio relating to the assessment of property for taxation and the levy and collection of taxes, with annotations, is made pursuant to the requirement of Section 5624-6, General Code, as amended effective July 4, 1941.

The last compilation of the tax laws of Ohio was made in 1929, since which date Ohio's taxation structure has undergone substantial and fundamental changes: Personal property has been classified for purposes of taxation, the constitutional ten mill limitation has been adopted, many new taxes have been imposed and the Tax Commission of Ohio has been superseded by the Department of Taxation.

The assistance, suggestions and criticisms of the Board of Tax Appeals, the office of the Attorney General of Ohio, as well as of the employes of the Department of Taxation, are gratefully acknowledged.

A handwritten signature in cursive script, reading "William R. Bennett".

Tax Commissioner

STATE OF OHIO
DEPARTMENT OF TAXATION

JOHN W. BRICKER
GOVERNOR

WILLIAM S. EVATT
Tax Commissioner

JOHN S. EDWARDS
Assistant Tax Commissioner

DIVISIONS

Cigarette.....	WILLIAM D. BAILEY
Corporation Franchise.....	WILLIAM A. PEARSON
Gasoline and Liquid Fuel.....	C. ELBERT BLACK
Inheritance.....	W. H. MIDDLETON, JR.
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Research and Statistics.....	JOHN N. HART
Sales and Excise	R. P. BARTHALOW

BOARD OF TAX APPEALS

HUGH S. JENKINS, Chairman
ROBERT M. HANCE WILLIAM J. FORD
HARRY J. ROSE, Secretary
County Affairs Division FERD F. BECKER

SEC. 5414-4. Annual report of resources and liabilities of dealer in intangibles; "gross receipts" defined; consolidated return may be made, when. Each dealer in intangibles shall return to the department of taxation between the first and second Mondays of March, annually, a report under oath, exhibiting in detail, and under appropriate heads, his resources and liabilities at the close of business on the thirty-first day of December, next preceding. In the case of an unincorporated dealer in intangibles, such report shall also exhibit the amount or value as of the date of conversion of all property within the year preceding the date of listing and on or after the first day of November converted into bonds or other securities not taxed to the extent such non-taxable bonds or securities may be shown in his resources on such date, without deduction for indebtedness created in the purchase of such non-taxable bonds or securities.

If a dealer in intangibles maintains separate business offices within and outside of this state said report shall also show the gross receipts from business done at each such office during the year ending on the thirty-first day of December next preceding.

The term "gross receipts" as used in this and the succeeding section shall, in the case of a dealer in intangibles, principally engaged in the business of lending money or discounting loans, mean the aggregate amount of loans effected or discounted; in the case of a dealer in intangibles, principally engaged in the business of selling or buying stocks, bonds and other similar securities either on his own account or as agent for another, said term as so used means the aggregate amount of all commissions charged plus one per centum of the aggregate amount of all other receipts.

Within the meaning of this and the succeeding section, business shall be considered to be done at an office when it originates at such office; but the receipts from business originating at one office and consummated at another office shall, for the purpose of such sections, be divided equitably between such offices.

An incorporated dealer in intangibles which owns or controls fifty-one per centum or more of the common stock of another incorporated dealer or dealers in intangibles may under uniform regulations to be prescribed by the com-

missioner make a consolidated return or returns for the purpose of this chapter. In such case the parent corporation making such return shall not be required to include in its resources any of the stocks, securities or other obligations of its subsidiary dealers, nor permitted to include in its liabilities any of its own securities or other obligations belonging to its subsidiaries.

HISTORY.—114 v. 714 (751); 115 v. 574, § 1; 119 v. 9, § 1. **ER.** 7-4-41.

COMMENT: This section provides for returns by dealers in intangibles to show the gross receipts from the business done at each office in Ohio and outside of Ohio as the basis for apportioning the capital employed in the business. The definition of "gross receipts" for this purpose is intended in the case of finance companies to be based on the loans secured by mortgage on Ohio property, in the case of brokers to be based on gross commissions charged, and in the case of dealers in bonds and stocks on the aggregate amount of all receipts. Since some brokers both deal and sell on commission, it was considered that one per cent of the gross receipts of outright sales should have approximately the same weight as the gross commissions charged. The amendment in 1933 was to permit certain types of dealers in intangibles to file a consolidated return. Also the basis of allocating capital and surplus of dealers in intangibles between Ohio and outside of Ohio has been changed and made clearer.

"Gross receipts" defined: PAGE Words and Phrases; O-JUR Taxation § 203.

SEC. 5624-6. **Compilation, publication and distribution of tax laws.** The tax commissioner of Ohio shall from time to time as changes in the law require compile the laws of the state relating to the assessment of property for taxation and the levy and collection of taxes, with such annotations, instructions and references to the decisions of the courts concerning the same, as the commissioner may deem proper. The commissioner shall cause a sufficient number of copies of the same to be distributed to the several prosecuting attorneys, county auditors, and county treasurers in the state and to such other public officers or employees as the commissioner may deem proper. A charge shall be made for copies distributed other than as above, such charge not to exceed the total cost of such copies so distributed. Money realized from the sale of such copies shall be placed in the general revenue fund.

HISTORY.—100 v. 246 (208), § 81; 119 v. S. 77, § 1. Eff. 7-1-41. For an analogous section, see G.C. § 5624-19, which was 103 v. 786 (803), § 66. For a section analogous to the section bearing this number in 103 v. 786, see G. C. § 5624-14. G. C. § 5624-6 (103 v. 786 [800], § 53), which took effect second Monday of October, 1912, was repealed in 106 v. 246 (272), § 103.

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receipt, *n.*

SECOND EDITION 1989

(rɪ'siːt) Forms: *α.* 4-6 **receyt**, (5-6 **-e**, 6 **receeyte**), 4-7 **receite**, 5-8 **receit**, (8 **reciet**); 4-5 **resceyte**, 5 (7) **resceyt**, 5, 7 (8) **resceit**, (5-6 **-e**); 4 **resseit**, 4-5 **reseit**, (6 **-e**), 5 **resseyt(e, -ayt, 5-6 resayte, -eyt, 6 -ayt, 6 (7 Sc.) ressait, (6 reseight)**; 5 **recyt(e; 6 receate, 7 -eat. β.** 4-7 **receipte, 5 resceipte, 5-6 receypte, 6- receipt.** [ME. *receite, receit*, a. AF. (ONF.) *receite, receyte* (1304-5) = OF. *reçoite*, var. of *recete* = Sp. *receta*, Pg. *receita*, It. *ricetta*:—L. *recepta*, fem. pa. pple. of *recip̄are* to RECEIVE.

The vowel of OF. *receite, reçoite* is app. due to the influence of such verbal forms as *receit, reçoit*. The normal OF. form is *recete*, the more usual *recepte* (whence mod.F. *recette*) being a learned reversion to the Latin form (cf. RECEPT *n.*⁴). In Eng., the spelling *receipt* (with *p* from Latin, as in OF. *reçoipte*) has prevailed in this word, in contrast to the related CONCEIT and DECEIT.]

I. 1. a. A formula or prescription, a statement of the ingredients (and mode of procedure) necessary for the making of some preparation, esp. in *Med.* (now rare) and *Cookery*; a RECIPE.

c1386 CHAUCER *Can. Yeom. Prol. & T.* 800 What schal this receyt coste? telleth now. **c1400** tr. *Secreta Secret., Gov. Lordsh.* 84 Off þe Receytes off Medicynes. **1530** PALSGR. 261/1 Receyte of dyvers thynges in a medycine, *drogges, recepte*. **1595** *Widowes Treasure* Bivb, A notable receite to make Ipocras. **1632** J. HAYWARD tr. *Biondi's Eromena* IV. 125 The severall antidotes by mee taken, whereof I shewed them the receipts. **1703** J. TIPPER in *Lett. Lit. Men* (Camden) 307 Medecinal and Cookery receipts collected from the best authors. **1791** HAMILTON *Berthollet's Dyeing* I. Pref. 5 A few books of receipts [for dyeing] taken from Hellot. **1828** SCOTT *F.M. Perth* vi, The thin soft cakes, made of flour and honey according to the family receipt. **1859** W. COLLINS *Q. of Hearts* (1875) 24 She spent hours in the kitchen, learning to make puddings and pies, and trying all sorts of receipts.

fig. **1647** COWLEY *Mistr. Wks.* 1710 I. 113 I'll teach him a Receipt to make Words that weep, and Tears that speak. **1709** POPE *Ess. Crit.* 115 Some..Write dull receipts how poems may be made. **1742** YOUNG *Nt. Th.* v. 94 Till the destin'd youth Stept in, with his receipt for making smiles.

b. The formula or description of a remedy *for* a disease, etc.; also *absol.*, a remedy, means of cure.

1586 T. B. *La Primaud. Fr. Acad.* (1589) 143 As surgeons do to cut off and to burne..when there is no way to finde or use any other receipt. **1612** BACON *Ess., Studies* (Arb.) 13 Euery defect of the mind may haue a speciall receipt. **a1656** BP. HALL *Soliloquies* 29 Dark rooms, and cords, and hellebore are meet receipts for these mental distempers. **1693** DRYDEN *Juvenal* Ded. (1697) 75 The Patients, who have open before them a Book of admirable Receipts for their Diseases. **1711** STEELE *Spect.* No. 52 ¶3 The most approved Receipt now extant for the Fever of the Spirits. **1809** MALKIN *Gil Blas* XII. iv. ¶5 There is not a receipt in the whole extent of chemistry which I have not tried.

fig. **1628** tr. Mathieu's *Powerfull Favorite* 108 Death is the onely receipt for her euils, and they keepe her by force from it. **1646** GATAKER *Mistake Removed* 39 [They have] made up all their receipts for distempered souls of so much Law and so much Gospel.

c. The formula of a preparation, or an account of the means, by which some effect may be produced; hence, the means to be adopted *for* attaining some end.

1621 T. WILLIAMSON tr. *Goulart's Wise Vieillard* 22 That hee had a receipt would preserue a man from growing old. **1646** SIR T. BROWNE *Pseud. Ep.* I. vi. 23 From the knowledge of simples shee had a receipt to make white haire black. **1707** *Curios. in Husb. & Gard.* 276 These Receipts for the Vegetation of Plants. **1827** POLLOK *Course T.* VII, [He] sought Receipts for health from all he met.

fig. **1691** HARTCLIFFE *Virtues* 166 The best Receipt, both for the amending our Manners, and the managing our Business, is the Admonition of a Friend. **1777** SHERIDAN *Sch. Scand.* IV. iii, Well certainly this is..the newest receipt for avoiding calumny. **a1868** BROUGHAM (Ogilvie), A more certain receipt for producing misgovernment of every kind..it would be difficult to devise.

†2. **a.** A drug or other mixture compounded in accordance with a receipt.
Obs.

1398 TREVISA *Barth. De P.R.* XVII. viii. (Bodl. MS.), In alle good receites and medicynes Amomum is ofte ido. **c1430** LYDG. *Min. Poems* (Percy Soc.) 69 This ressayt is bought of no poticarye,..To al indifferent, richest

diatorye. **c1500** *Sloane MS.* 2491 lf. 73 A Booke..teachinge the waye of making diuerse good and excellent Receiptez. **1560** *WHITEHORNE Ord. Souldiours* (1588) 40b, Fill the bottels halfe full of this foresaide receipt. **1605** *BACON Adv. Learn.* II. viii. §3 It can be done with the vse of a fewe drops or scruples of a liquor or receite. **a1631** *R. BOLTON Comf. Affl. Consc.* 64 He throws the glasse against the Wall, spills that precious Receipt, and drives the Physition out of doores. **1773** *GOLDSM. Stoops to Conq.* II. i, Did not I prescribe for you ever day, and weep while the receipt was operating?

transf. and fig. **c1430** *LYDG. Min. Poems* (Percy Soc.) 50 My lord may al my sorowe recure, With a receyte of plate and of coynnage. **1576** *FLEMING Panopl. Epist.* 27 Their noblenesse..quite quenched their calamitie, with preseruatiue receiptes of comforte.

†**b.** *pl.* Ingredients of a mixture. *Obs.*

1669 *STURMY Mariner's Mag.* V. xii. 65 Gun-powder of a..Russet colour is very good, and it may be judged to have all its Receipts well wrought.

II. 3. That which is received; the amount, sum, or quantity received. **a.** of money.

a1400 *Minor Poems fr. Vernon MS.* 225/145 þenk also..þat longe hast lyued and mucche reseiued,..hou þou hast spendet þat reseit. **c1483** *CAXTON Dialogues* 3/9 Your recyte and your gyuing oute Brynge it all in somme. **1570** *Act 13 Eliz.* c. 4 §8 Any Treasurer..whose whole Receipt from the begyning of his Charge, is not..above the Summe of Three Hundred Poundes. **1648** *BP. HALL Breathings of Devout Soul* §38 None of the approved servants..brought in an increase of less value than the receipt. **1800** *Asiat. Ann. Reg., Proc. Parl.* 16/2 The Tanjore subsidy is stated at something more than the receipt last year. *Ibid.*, The deficient receipt in 1797-8. **1849** *MACAULAY Hist. Eng.* vi. II. 102 The Commissioners of the Customs reported to the King that..the receipt in the port of the Thames had fallen off by some thousands of pounds.

pl. **1422** *tr. Secreta Secret., Priv. Priv.* 134 Whan the Myses & the expensis..ouer-Passyth..the receiptis, than moste the kynge of his Peple har goodis take. **1535** *Act 27 Hen. VIII*, c. 27 The said chauncellour shall..take reconisances of euery particular receiuour..for the sure paiement of his receites. **1589** *WARNER Alb. Eng.* VI. xxxi. (1612) 153, I spake of great accompts, Receites [etc.]. **1691** *HARTCLIFFE Virtues* 87 Liberality..is designed to be a Virtue moderating our Receipts, as well as

our Gifts. **1805** W. COOKE *Mem. Foote* I. 96 His own pieces, and Macklin's *Love-a-la-Mode*, brought great receipts to Crow-street theatre. **1863** *Sat. Rev.* 6 June 714 That a possible margin should be left for an excess of actual revenue over estimated receipts.

transf. and *fig.* **1612** T. TAYLOR *Comm. Titus* ii. 12 The end of all thy receipts is Gods glory in the service of the Church. **1692** RAY *Disc.* II. ii. (1732) 78 In the Mediterranean the Receipts from the rivers fall short of the expence in Vapour.

†**b.** of other things. *Obs. rare.*

1593 SHAKES. *Lucr.* 704 Drunken Desire must vomite his receipt, Ere he can see his owne abhominacion. **1607** — *Cor.* I. i. 116 The belly..taintingly replied To th' discontented Members,..That enuied his receite. **1623** LISLE *Test. Antiq. Anc. Faith Ch. Eng.* 13 He which will receive that housell, shall..take with chastitie that holy receipt.

III. 4. a. The act of receiving something given or handed to one; the fact of being received.

1399 LANGL. *Rich. Redeles* II. 98 Whedir the grounde of 3ifte were good other ille,..reson hath rehersed the resceyte of all. **1439** *Rolls of Parlt.* V. 16/2 After the date and receipt of the saide Writte. **1442** *Ibid.* 57/1 To see the bookes of receyte. **1494** FABYAN *Chron.* IV. lxxix. 47 After the receyte of thyse letters, he wrote answer to his moder. **1588** J. MELLIS *Briefe Instr.* Fvijb, Whan you pay money to another, cause the day of receite to be written in your booke of recorde. **1617** BAYNE *On Eph.* (1658) 20 The receipt of benefits, is the foundation of thankfulness. **1661** MARVELL *Corr.* Wks. 1872-5 II. 61 We thought it would be a good answer to giue you account of the receipt of your letter. **1774** JEFFERSON *Autobiog.* Wks. 1859 I. 133 On receipt of such a sum as the Governor shall think it reasonable for them to spend. **1831** T. HOPE *Ess. Origin Man* III. 341 The receipt of the radiance that..proceeds to us as its common centre and focus. **1848** MILL *Pol. Econ.* I. vii. §5 (1876) 69 Fit to be entrusted with the receipt and expenditure of large sums of money.

†**b.** *bill* or *ticket of receipt* = next. *Obs.*

1509-10 *Act 1 Hen. VIII*, c. 3 §1 All Acquittaunces and Billes of Receyte heretofore made by the seid John Heyron. **1551** *Reg. Privy Council Scot.* I. 114 Conforme to the tekate of ressaite maid betuix the saidis parteis thairupoun.

c. A written acknowledgement of money or goods received into possession or custody.

1602 in *Maitl. Cl. Misc.* (1840) I. 23 Certane buikis..gevin to Mr. Adam Newtoun for the Prince his use, as the said Mr. Adamis ressait thairof productit testifeis. **1651** J. MARIUS *Bills of Exchange* 13 Make a receipt for the same on the backside of the said Bill. **1721-41** CHAMBERS *Cycl.* s.v., Where the receipt is on the back of a bill, &c., it is usually called an indorsement. **1838** *Murray's Hand-Bk. N. Germ.* 190 The fare must be paid beforehand, and a receipt is always given for it.

fig. **1781** COWPER *Conv.* 202 Then each might..carry in contusions of his skull A satisfactory receipt in full.

5. The act or practice of receiving (stolen goods); reset. ? *Obs.*

1413 *Pilgr. Sowle* (Caxton 1483) III. v. 54 Had not be youre redy receyt, they had not be at al tymes so redy to stele. **1596** SPENSER *State Irel. Wks.* (Globe) 620/1 The stollen goodes are convayed to some husbandman or gentellman, which..liveth most by the receipt of such goodes stoln.

6. a. The act of receiving or taking in; admittance (of things) to a place or receptacle. ?*Obs.*

c1400 tr. *Secreta Secret., Gov. Lordsh.* 96 þe wirkyng of þis last..ys yn þe receyte of þe seed in þe mariz. *Ibid.* 101 As þe see waxis by þe receyt of fflodes and waters. **1561** T. NORTON *Calvin's Inst.* I. 53 Fiue senses..whereby al objectes are poured into common sense, as into a place of receite. **a1600** in Hakluyt *Voy.* (1810-12) III. 141 Shipping used among us either for warre or receipt. **1615** G. SANDYS *Trav.* 22 Ample cisternes for the receipt of raine. **1651** *Raleigh's Ghost* 200 It [the ark] was sufficient for the receite..of all living Creatures.

‡b. The act of taking in (food, medicine, etc.) by the mouth or otherwise. *Obs.*

c1400 tr. *Secreta Secret., Gov. Lordsh.* 82 Drynkes of swete wyn, and ressayt of hony moyst. **1522** MORE *De Quat. Noviss.* Wks. 74/2 The pleasure that men may finde by the receepte of this medicine. **1567** J. MAPLET *Gr. Forest* 26b, [Plants] by their more hid receipt of necessaries..have given great causes of doubting. **1599** B. JONSON *Every Man out of Hum.* III. i. (Rtldg.) 49/1 He shall receive the first, second,

and third whiffe [of tobacco-smoke].., and, upon the receipt [etc.].

†c. An act of taking; a definite amount taken.

1390 GOWER *Conf.* III. 11 If I myhte..Of such a drinke..have o receite.

1601 HOLLAND *Pliny* II. 36 A greater receipt than one Obulus, killeth him or her that taketh it.

†d. The act of receiving the sacrament. *Obs.*

1500-20 DUNBAR *Poems* ix. 92 Of ressait sinffull of The my Saluour,..I cry The mercy. **1552** R. HUTCHINSON *3rd Serm.* (1560) Gvi. A manifest deniall of the transubstantiation, and of all corporall, reall, and naturall receipt.

†7. a. The act of receiving or admitting (a person) to a place, shelter, accommodation, assistance, etc.; the fact of being so received; reception. *Obs.* (Common c 1600-50.)

1557 *Order of Hospitalls* Fviiij, Against Easter yow shall prepare a Booke for the receipt home of the children. **a1586** SIDNEY *Arcadia* III. (1598) 338 Come, death, and lend Receipt to me, within thy bosome darke. **1615** G. SANDYS *Trav.* 10 When all the earth at the intreatie of Juno, had abjured the receipt of Latona. **a1641** BP. R. MONTAGU *Acts & Mon.* (1642) 539 Speciall lodgings for receipt of women dedicated to God. **1676** HALE *Contempl.* I. 528, I have A little room,..not that I think it fit For thy Receipt or Majesty, but yet It is the best I have.

†b. The ordinary or habitual reception of strangers or travellers; esp. in *place of receipt*. *Obs.*

1608 HEYWOOD *Lucrece* Wks. 1874 V. 183 There is no newes there but at the Ale-house, ther's the most receipt. **1634** SIR T. HERBERT *Trav.* 154 Noble places of Receipt or Carrauans-rawes for Trauellors to rest in. **1642** ROGERS *Naaman* 846 Inne-Keepers who stand at their doors or gates of receipt..to welcome and lodge travellers. **1650** FULLER *Pisgah* II. ix. §25 The greatest place of receipt in Samaria.

†c. Receptiveness, welcome. Also with *a*: A (good or bad) reception. *Obs.* *rare.*

1596 in Nichols *Progr. Q. Eliz.* (1823) III. 384 This Master Dorstetell came and made his speach in Latin, full of receipt, love and curtesie. **1664**

PEPYS Diary 26 Feb., I had a kind receipt from both Lord and Lady as I could wish.

†**d. Law.** The admission of a third person to plead in a case between two others in which he is interested. Also, admittance of a plea in a court of justice. *Obs.*

1607 COWELL *Interpr. s.v. Resceyt*. **1628** COKE *On Litt.* II. iii. §96 As there may be a demurrer upon counts and pleas, so there may be of Aide prior, Voucher, Receite, waging of Law, and the like. **1658** in PHILLIPS.

†**8.** Acceptance of a person or thing. *Obs. rare.*

c1460 G. ASHBY *Dicta Philos.* 852 For kynge they wolde haue hym in Receite, Howe be it that they haue hym not in love. **1607** COWELL *Interpr., Resceyt of homage*, is a relatiue to doing homage, for as the Tenent, who oweth homage, doth it at his admission to the land: so the Lord receiueth it. **1621** BP. R. MONTAGU *Diatribæ* 569 Not so generall, euery where in vse, and receipt, because not so obuious euery where vnto the vnderstanding.

9. The fact of receiving (a blow, wound). ?*Obs.*

a1533 LD. BERNERS *Huon* lv. 186 They had neuer sene before so grete a stroke nor a goodlyer reseyt therof without fallynge to the erthe. **1615** G. SANDYS *Trav.* 28 Hearing his brother cry out at the receipt of a blow. **1651** *Life Father Sarpi* (1676) 62 The day after the receipt of his wounds [etc.]. **a1676** WISEMAN *Chirurg. Treat.* (J.).

†**10. to stand at receipt:** to stand ready to receive. *Obs.*

Perh. originally a hunting term; cf. sense 14.

1546 HEYWOOD *Prov.* II. v. (1867) 59 If ye can hunt, and stand at receite. **a1569** A. KINGSMILL *Man's Est.* x. (1580) 62 Happie it was that there stode some at receipte to receive the precious seede sowed by our Saviour. **1587** GREENE *Euphues his Censure* Wks. (Grosart) VI. 245 Yet hee would alwaies gyue the onset, saying that souldiers which stood at receipt, and felt the furious attempt of the enemy, were halfe discomfitted. **c1611** CHAPMAN *Iliad* VI. 375 Helen stood at receipt, And took up all great Hector's pow'rs t' attend her heavy words.

IV. 11. a. The chief place or office at which moneys are received on

behalf of the Crown or government; the public revenue-office. Also in Eng. use, **Receipt of the (King's) Exchequer**. Now only *Hist.*

1442 *Rolls of Parlt.* V. 62/2 Certayn Tailles reysid at the resceyt of your Eschequer. **1450** *Ibid.* 176/1 If Shirrefs, Eschetours, or eny other persones shall..paie eny sommes of money therof att Kynges receite at Westm.

1485 *Naval Acc. Hen. VII* (1896) 7 Thomas Roger hath receyved at the Receypt of the Kinges Exchequier..cc^{li}. **1596** *DANETT tr. Comines* (1614) 242 One other also being of the receipt was a furtherer thereof till his heart failed him. **1603** *KNOLLES Hist. Turks* (1621) 1277 The Magistrates in the publicke receipt. **1620** *WILKINSON Coroners & Sherifes* 75 To levie the Kings debts, and to pay them into the receipt duely and orderly. **1691** *LOCKE Lower. Interest Wks.* 1727 II. 93 Who will not receive clipp'd Money,..whilst he sees the great Receipt of the Exchequer admits it. **1765** *Act 5 Geo. III*, c. 26 Preamble, A fine of £101. 15s. 11d., paid into the receipt of his said Majesty's Exchequer. **1863** *H. COX Instit.* III. vii. 683 The officer..was to reside at the Receipt of Exchequer.

fig. **1684** *T. BURNET Th. Earth* II. 75 Thousands of lesser [rivers] that pay their tribute at the same time into the great receipt of the ocean.

b. The receiving-place of custom. Hence *fig.*

1539 *BIBLE* (Great) *Matt.* ix. 9 He sawe a man (named Mathew) syttyng at the receate of custome. **1847** *L. HUNT Men, Women & B.* II. vii. 96 The bird sat at the receipt of victory. **a1859** — *Bk. Sonnet* (1867) I. 87 Lamb..sat at the receipt of impressions, rather than commanded them.

†**12.** **a.** A place for the reception of things; a receptacle. *Obs.*

1388 *WYCLIF Exod.* xxxviii. 3 He made redi of bras dyuerse vessels, caudruns, tongis,..and resseittis of firis. **c1400** *MANDEVILLE* (1839) x. 112 Men han made a litylle Resceyt, besyde a Pylere of that Chirche, for to resceyve the Offrynges of Pilgrymes. **c1430** *LYDG. Compl. Bl. Knt.* xxxiii, The thought [is] resseyt of woo and of compleynt. **1593** *NASHE Christ's T.* 33b, Hauing her receipt of disgestion almost closed vp with fasting. **1601** *HOLLAND Pliny* I. 340 [The heart] contains within it certaine ventricles and hollow receipts, as the chiefe lodgings of the life, and bloud. **1605** *SHAKES. Macb.* I. vii. 66 Memorie..Shall be a Fume, and the Receipt of Reason A Lymbeck onely.

†**b.** *esp.* A receptacle for water; a basin or other part of a fountain; a reservoir. *Obs.*

c1450 *Plan Charterhouse Waterwks.* in *Archæologia* LVIII. (1902) 303
 Seint John receyte undir þe hegge. **c1512** *Ibid.* **a1548** *HALL Chron., Hen.*
VIII 166 The second receipt of this fountaine was enuironed with wynged
 serpentes all of golde. **1575** *LANEHAM Let.* (1871) 52 Sundrye fine pipez
 did liuely distill continuall streamz intoo the receipt of the Fountayn.
1601 *HOLLAND Pliny II.* 411 The least leuell for to carry and command
 water vp hill from the receipt, is one hundred foot. **1625** *BACON Ess.,*
Gardens (Arb.) 561 Fountaines I intend to be of two Natures: The One
 that, Sprinckleth or Spouteth Water; The Other a Faire Receipt of Water.
1646 *J. GREGORY Notes & Obs.* (1650) 114 The dry land
 appeared..recompensed with an extuberancy of Hills and Mountaines for
 the Receipts into which he had sunk the waters.

†c. A recess in a wall. *Obs.* ¹

1560 *WHITEHORNE Arte Warre* (1588) 94 To make the walles crooked,
 and full of tourninges, and of receiptes.

†13. a. A place of reception or accommodation for persons; a place of
 refuge. *Obs.*

1390 *GOWER Conf.* III. 118 Aries..is the receipte and the hous Of myhty
 Mars. **1430-40** *LYDG. Bochas VII.* viii. (1554) 172b, His tonne to hym
 [Diogenes] was receite and housholde. **1495** *Act 11 Hen. VII,* c. 5
 Preamble, The grettest haven succour and receite..for marchauntes and
 shippes. **1579-80** *NORTH Plutarch* (1895) III. 423 His house was a
 common receite for all them that came from Greece to Rome. **a1603** *T.*
CARTWRIGHT Confut. Rhem. N.T. (1618) 655 Their Munkeries are Receipts
 of children starting from their fathers. **1625** *MARKHAM Bk. Hon.* III. v. §4
 His House became as it were an Hospitall or Receipt for all that wanted.

†b. A chamber, apartment. *Obs. rare.*

1593 *NASHE Christ's T.* 28 In the inner receipt of the Temple, was hearde
 one stately stalking vp and downe. **1615** *CHAPMAN Odyss.* IV. 413 Atrides,
 and his..spouse,..In a retired receipt, together lay.

†14. *Hunting.* (Cf. 10.) A position taken up to await driven game with fresh
 hounds; a relay of men or dogs placed for this purpose. *Obs.*

1575 *TURBERV. Venerie* 244 They use their greyhounds only to set
 backsets or receytes for deare wolfe foxe or such like. **1580** *LYLY Euphues*

(Arb.) 419 In hunting I had as lief stand at the receite, as at the loosing. **1622** BACON *Hen. VII* (1876) 154 The lords that were appointed to circle the hill, had some days before planted themselves, as at the receipt, in places convenient. **1688** HOLME *Armoury* III. 187/1.

V. †15. a. Capability of receiving, accommodating, or containing; capacity, size. *Obs.* (Common in 17th c., esp. of houses or other buildings.)

1563 GOLDING *Cæsar* v. (1565) 108 Newe shippes to be buylded., and the olde to be mended, declaring of what receite and fasshyon he wold haue them made. **1592** *Nobody & Somebody* Cijb, To purchase me a name, Take a large house of infinite receipt. **1615** G. SANDYS *Trav.* 5 One only harbor..of a conuenient receipt for ships, respect we either their number or burthen. **1652** SIR C. COTTERELL *Cassandra* VI. (1676) 567 The Palace which was of receipt sufficient to lodge them all commodiously. **1657** R. LIGON *Barbadoes* (1673) 90 After much keeling, they take it..and put it into ladles that are of greater receipt. **1703** T. N. City & C. Purchaser 12 He that designs..the Building,.. must have respect to its due Situation, Contrivance, Receipt, Strength [etc.].

fig. **1642** FULLER *Holy & Prof. St.* v. xix. §11. 438 His popular manner was of such receipt that he had room to lodge all comers.

†b. Mental capacity; power of apprehension.

c1400 *tr. Secreta Secret., Gov. Lordsh.* 114 Many heres in þe brest..bytokyns..lessenyng of þe resceyt. **1605** BACON *Adv. Learn.* I. i. §3 If then such be the capacite and receipt of the mind of man [etc.]. **1607** HIERON *Wks.* I. 262 The heart of man is of great receipt and able to containe many things. **1628** BP. HALL *Old Relig.* (1686) 31 This justice being wrought in us by the holy Spirit according to the modell of our weak receipt.

†16. Accommodation or space provided. *Obs.*

1615 T. ADAMS *Leaven* 114 Do not..thrust it into a narrow corner in your conscience, while you give spacious receipt to lust and sin. **1627** CAPT. SMITH *Seaman's Gram.* x. 49 To make roome and receipt for the Sea.

VI. 17. attrib., as *receipt duty, form, side, stamp, tax; receipt-book*, (a) a book of medical or cooking receipts (also *fig.*); (b) a book containing receipts for payments made.

1654 WHITLOCK *Zootomia* 50 One Remedy shall serve..severall Diseases, and distempers.; Their *Receipt-Book is as universally indifferent, as a Church-Booke. **1797** *Encycl. Brit.* (ed. 3) III. 391/2 Receipt book. In this book a merchant takes receipts of the payments he makes. **1808** H. MORE *Cælebs* II. xlvii. 446, I now found her grand receipt-book was the Bible. **1873** R. BROUGHTON *Nancy* I. 6 Keep stirring always!..say I, closing the receipt-book.

1878 JEVONS *Prim. Pol. Econ.* 130 The penny *receipt duty..is..a good tax.

1898 *Engineering Mag.* XVI. 46 Further below is the *receipt form: Rec'd [etc.].

1800 *Asiat. Ann. Reg., Proc. Parl.* 41/2 The most prominent article on the *receipt side is that of the sale of goods.

1879 *Chambers' Encycl.* s.v., A penny *receipt stamp.

1787 DUKE OF DORSET in O. Browning *Despatches from Paris* (1909) I. 217 It is fear'd that the Duty is intended to include Stamp-receipts after the plan of the *Receipt-Tax in England. **1795** PITT in *G. Rose's Diaries* (1860) I. 203 Funds on the Receipt Tax.

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gross receipts

: the total amount of value in money or other consideration received by a taxpayer in a given period for goods sold or services performed

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Publisher's Editorial Staff

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§ 41.160 FORMS IN CURRENT USE
 § 41.161 Form 980, Dealer in Intangibles Tax
 Return

TAX FORM
980
 PRESCRIBED BY THE
 TAX COMMISSIONER

State of Ohio

1994

DEALER IN INTANGIBLES TAX RETURN

TAXPAYER NAME _____ ADDRESS _____ CITY _____ STATE _____ ZIP _____ BUSINESS NAME _____ OHIO BUSINESS LOCATION _____ DATE BUSINESS STARTED IN OHIO _____ DESCRIPTION OF BUSINESS _____ TAXPAYER WHO REPORTED THIS PROPERTY FOR 1993 _____ _____ Ohio Charter Number _____ Federal Employer Identification Number _____ Federal Industry Code Number _____ Date incorporated or Qualified in Ohio _____ Social Security Number _____ TYPE OF BUSINESS: CORPORATION <input type="checkbox"/> OTHER <input type="checkbox"/>	RECEIVED STAMP TIME EXTENSION PERMIT No. _____ granted to _____ 1984
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------

CONSOLIDATED RETURNS

Consolidated returns must include a list of the names and addresses of the subsidiary dealers in intangibles included therein and a consolidating balance sheet reflecting the inter-company eliminations (see instruction sheet and Section 5725.14, C.R.C.).

COMPUTATION OF TAX

1. OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (From Balance Sheet or Exhibits A, B or C) \$ _____ 2. VALUE OF NONTAXABLE BONDS & SECURITIES AS OF DATE OF CONVERSION \$ _____ 3. TOTAL TAXABLE VALUE IN OHIO (Line 1 plus Line 2) Rounded to the nearest TEN DOLLARS . \$ _____ 4. TAX PAYABLE (Rate of 8 mills per dollar of Line 3) \$ _____ (DO NOT SEND CHECK WITH THIS TAX RETURN)	_____ _____ _____ _____ _____	For office use only _____ _____ _____ _____ _____
5. PENALTY \$ _____	_____	_____
The Department of Taxation should receive this tax return no later than MARCH 14, 1994	Pre-assessment Verification	Data Entry Verification

DECLARATION

I/we declare under penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me/us and to the best of my/our knowledge and belief is a true, correct and complete return and report.

Person, other than taxpayer, preparing this return _____	Date _____	Signature of Taxpayer _____	Title _____	Date _____
Address _____		Name of Taxpayer (Please Print) _____		Date _____
Phone Number () - _____		Phone Number () - _____		

BALANCE SHEET AS OF DECEMBER 31, 1993

LINE NO.	ASSETS	
1.	CASH ON HAND AND IN BANKS	\$ _____
2.	INVESTMENTS (Complete enclosed Form 984)	
	a) Taxable	
	b) Nontaxable	
3.	ACCOUNTS AND NOTES RECEIVABLE	
	a) Accounts Receivable	Gross \$ _____
	Less Allowance for Bad Debts	_____
	b) Installment Loans	Gross \$ _____
	Less Allowance for Bad Debts	_____
	c) Chattel Mortgage Loans	Gross \$ _____
	Less Allowance for Bad Debts	_____
	d) Real Estate Loans	Gross \$ _____
	Less Allowance for Bad Debts	_____
	e) Other Receivables	Gross \$ _____
	Less Allowance for Bad Debts	_____
4.	CUSTOMERS DEBIT BALANCES	
5.	DUE FROM OTHER BROKERS	
6.	REAL ESTATE	Cost \$ _____
	Less Accumulated Depreciation	_____
7.	LEASEHOLD IMPROVEMENTS (Enclose Form 937) ...	Cost \$ _____
	Less Accumulated Depreciation	_____
8.	FURN., FIXT. & EQUIP. (Enclose Form 937)	Cost \$ _____
	Less Accumulated Depreciation	_____
9.	LEASED EQUIPMENT ... (See Exhibit "E", Page 4)	
10.	COMMISSIONS RECEIVABLE	
11.	MEMBERSHIPS (specify)	
12.	DEFERRED CHARGES	
	a) Prepaid Expenses	
	b) Other	
13.	ACCRUED EARNINGS	
14.	OTHER ASSETS (specify)	
15.	TOTAL ASSETS (Lines 1 through 14)	\$ _____

LINE NO.	LIABILITIES	
16.	NOTES AND ACCOUNTS PAYABLE	\$ _____
17.	DUE TO OTHER BROKERS	
18.	CUSTOMERS CREDIT BALANCES	
19.	COMMISSIONS PAYABLE	
20.	ACCRUED EXPENSES	
21.	DEFERRED CREDITS	
22.	OTHER LIABILITIES	
23.	TOTAL LIABILITIES (Lines 16 through 22)	\$ _____
	CAPITAL	
24.	CAPITAL STOCK (Less Treasury Shares)	\$ _____
25.	CAPITAL INVESTMENT (If not incorporated)	
26.	SURPLUS AND UNDIVIDED PROFITS	
27.	PARTNERS CREDIT BALANCES	
28.	GENERAL RESERVES (without definite evidence of imminent loss or liability)	
29.	BOOK VALUE OF SHARES OR INVESTED CAPITAL (Lines 24 thru 28)	\$ _____
	(Carry amount to applicable Exhibit Page 3, or to Page 1, if no adjustments.)	
30.	TOTAL LIABILITIES AND CAPITAL	\$ _____

Exhibit "A" — RECONCILIATION OF BOOK VALUE TO THE MARKET OR FAIR VALUE OF SHARES OR INVESTED CAPITAL (Section 5725.15, O.R.C.)

LINE NO.	ITEM	
1	BOOK VALUE OF SHARES OR INVESTED CAPITAL (B/S Line 29)	\$ _____
2	INCREASE OR DECREASE TO FAIR OR MARKET VALUE (Itemize On Separate Sheet)	\$ _____
3	TAXABLE VALUE (Carry to Page 1, Line 1, or Line 3, Exhibit "B" or "C" Below)	\$ _____

Exhibit "B" — OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (for dealers other than brokers)

Enter below the total of loans effected, discounted and renewed during the year ended December 31, 1993.

LINE NO.	ITEM	(1) OHIO	(2) TOTAL
1	TOTAL OF LOANS EFFECTED, DISCOUNTED & RENEWED	\$ _____	\$ _____
2	PERCENTAGE ALLOCABLE TO OHIO (Col. 1 ÷ Col. 2)	_____ %	_____ %
3	TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (B/S Line 29 or Line 3 of Exhibit "A")	\$ _____	\$ _____
4	OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (Line 2 x Line 3. Carry to Pg. 1 COMPUTATION OF TAX Line 1)	\$ _____	\$ _____

Exhibit "C" — OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (for brokers only)

Enter below the aggregate amount of all commissions charged plus one per centum of the aggregate of all other receipts during calendar year ended December 31, 1993.

LINE NO.	ITEM	(1) OHIO	(2) TOTAL
1	AGGREGATE AMOUNT OF COMMISSIONS CHARGED PLUS ONE PER CENT OF THE AGGREGATE OF ALL OTHER RECEIPTS	\$ _____	\$ _____
2	PERCENTAGE ALLOCABLE TO OHIO (Col. 1 ÷ Col. 2)	_____ %	_____ %
3	TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (B/S Line 29 or Line 3 of Exhibit "A")	\$ _____	\$ _____
4	OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (Line 2 x Line 3. Carry to Pg. 1 COMPUTATION OF TAX Line 1)	\$ _____	\$ _____

Exhibit "D" — Each dealer in Intangibles, other than brokers, must furnish the following information relative to aggregate amount of loans effected, discounted and renewed.

CALENDAR YEAR	AGGREGATE AMOUNT OF LOANS EFFECTED, DISCOUNTED & RENEWED	BAD DEBTS CHARGED OFF	RECOVERIES OF BAD DEBTS CHARGED OFF	
1989				
1990				
1991				
1992				
1993				
Total				

§ 41.162 Form 980-A, General Information and
Instructions Relating to Dealer in Intangibles
Tax Return

Tax Form
980-A
Prescribed by the
Tax Commissioner

GENERAL INFORMATION AND INSTRUCTIONS
RELATING TO DEALER IN INTANGIBLES TAX RETURN

STATE OF OHIO

**DEFINITION OF A DEALER IN INTANGIBLES—
Section 5725.01 (B)**

"Dealer in intangibles" includes every person who keeps an office or other place of business in this state and engages at such office or other place in the business of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness, or of buying or selling bonds, stocks, or other investment securities, whether on his own account with a view to profit, or as agent or broker for others, with a view to profit or personal earnings. Dealer in intangibles excludes institutions used exclusively for charitable purposes, insurance companies, and financial institutions. Neither casual nor isolated transactions of any of the kinds enumerated in this division of this section, nor the investment of funds as personal accumulations or as business reserves or working capital constitute engaging in business within the meaning of this division of this section; but a person who, having engaged in the business of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness on his own account, remains in business for the purpose of realizing upon the assets of such business is deemed a dealer in intangibles, though not presently engaged in lending money or discounting or buying such securities.

FILING REQUIREMENTS

All persons, partnerships, associations and corporations engaged in business as a dealer in intangibles at the close of business on December 31 must file a dealer in intangibles tax return. The return must be filed with the Tax Commissioner, Attn: Personal Property Tax, P.O. Box 530, Columbus, Ohio 43266-0030 no later than the second Monday of March, or as properly extended.

EXTENSION OF TIME

Dealers in intangibles who are unable to make the return by the date specified, may apply to the Tax Commissioner for an extension of time in which to file. Pursuant to statute, the Tax Commissioner may, upon receipt of an application showing good cause, extend the time for filing for a period not to exceed 30 days.

PENALTY FOR LATE FILING

As provided by Section 5725.17, Revised Code, a penalty equal to the greater of fifty dollars per month or fraction of a month, not to exceed five hundred dollars or five percent per month or fraction of a month, not to exceed fifty percent, of the tax required to be shown on the report, for each month or fraction of a month elapsing between the due date and the date on which the report is filed.

PAYMENT OF TAX

No payment should be submitted with the return. A statement of tax due will be issued by the Treasurer of State.

CONSOLIDATED RETURNS

An incorporated dealer in intangibles which owns or controls 51% or more of the common stock of another incorporated dealer in intangibles may, pursuant to Rule 5703-3-06 of the Administrative Code (formerly Rule TX 41-04), make a consolidated return including therein its subsidiary "dealer in intangibles" as that term is defined by statute. A consolidating balance sheet must be made a part of a consolidated return.

UNINCORPORATED DEALERS IN INTANGIBLES

Unincorporated dealers in intangibles may deduct investments exempt under Ohio law from the value of capital employed, provided such investments are held on December 31. Tax exempt investments include: obligations issued by the Federal government or its instrumentalities, territories or districts; shares of stock in financial institutions, dealers in intangibles, Ohio insurance companies and Ohio credit unions; the following Ohio bonds—Vietnam War Bonus, Turnpike, Major Thoroughfare Construction, Bridge Commission, Highway Improvement Construction, Underground Parking, Capital Improvement Construction, General Obligation, Public Housing Authority, etc. Municipal bonds are not exempt.

When taxable property has been converted into non-taxable bonds and securities after October 31 and is still held on December 31, the value of the non-taxable bonds and securities as of the date of conversion must be reflected on Line 2 of the Computation of Tax.

FAIR VALUE CLAIM

In the event the fair value of any item of taxable property is less than the book value as reflected on the balance sheet, a claim in writing must be submitted at the time of filing the tax return. The claim should disclose the reasons and computations for determining the claimed fair value. The burden of substantiating the claimed fair value rests with the taxpayer.

FAIR VALUE OF DEPRECIABLE PROPERTY

The Tax Commissioner has prescribed composite annual allowances for computing the fair value of personal property used in various types of business activities. For dealers in intangibles, personal property consisting of office furniture, fixtures and equipment, such as desks, files, safes and communication equipment; data handling equipment (except computers), such as typewriters, calculators, adding and accounting machines, copiers and duplicating equipment, and off-line computer hardware have been designated as Class 3 property. Computers and their on-line peripheral equipment have been designated as Class 2 property. The following valuation percentages should be used for the above mentioned classes:

(over)

Age	Class 3	Class 2
1	93.2%	92.0%
2	92.8%	76.3%
3	72.4%	60.6%
4	62.0%	46.1%
5	51.5%	37.9%
6	42.2%	29.8%
7	36.3%	21.6%
8	30.5%	20.0%
9	24.6%	20.0%
10	18.8%	20.0%
11	18.8%	20.0%
12	16.8%	20.0%

The smallest percentage in each allowance determines the minimum acceptable value so long as property is held for use in business.

Tax Form 937 must be used for supplying this information.

ALLOWABLE RESERVE FOR BAD ACCOUNTS

Accounts and notes receivable should be set forth in the balance sheet portion of the tax return indicating the gross amount, together with the amount of reserve for bad accounts maintained in accordance with the books and records.

An allowable percentage for bad accounts reserve has been adopted by the Tax Commissioner and is computed in the following manner: The total amount of bad debts charged off, less recoveries for the preceding five years divided by the total amount of business on account or loans effected, discounted or renewed for the preceding five years. To this is added 1/2 of 1% as a correction factor. The resulting percentage will be applied to the gross amount of accounts and notes receivable owned.

In the event the taxpayer contends that the book value of accounts and notes receivable is in excess of the fair value thereof, a claim for deduction from such book value must be submitted, in writing, at the time of filing the tax return. Should the reserve for bad accounts, as maintained in the books and records of the taxpayer, reflect a percentage in excess of that allowed by the Tax Commissioner, the resulting book value of accounts and notes receivable will be subject to a fair value increase.

ALLOCATION OF BUSINESS

Business may not be allocated within and without Ohio unless the dealer maintains separate office locations both within and without Ohio. The residence of the customer is not an operating factor. Where independent agents solicit business without Ohio and forward such business to an Ohio office, or where employees of the dealer are soliciting business without Ohio by traveling from and reporting to an Ohio office, such business must be allocated to Ohio.

In case of a dealer principally engaged in the business of lending money or discounting loans, gross receipts will consist of the aggregate amount of loans effected, discounted and renewed.

In the case of a dealer engaged primarily in the business of dealing in securities as principal, broker, or both, gross receipts shall consist of the aggregate amount of commissions charged for the business done at each office, plus 1% of the aggregate amount of all other receipts from business done at each office.

Receipts from business originating at one office and consummated at another office shall be divided equitably between such offices and a special memorandum or schedule must be furnished disclosing the amount of such receipts together with the office location.

EXCHANGE MEMBERSHIPS

Memberships and stock exchange seats used in business are items of taxable property and all dealers in intangibles must return the fair value of such seats or memberships as a part of capital employed.

LEASED PROPERTY

Any dealer in intangibles that leases tangible personal property to others or owns such property for the sole purpose of leasing it to others must separately list and return such property under the provisions of Chapter 5711, Revised Code. Form 920-A, prescribed by the Tax Commissioner, sets forth the instructions for filing the applicable personal property tax returns.

INFORMATION

Any questions relative to the filing of the Dealer in Intangibles Tax Return or the procurement of forms must be addressed to the Department of Taxation, Attn: Personal Property Tax, P.O. Box 530, Columbus, Ohio 43266-0030. (614) 466-6122.

TAX FORMS

Form 980, Dealer In Intangibles Tax Return - Must be completed, signed by an officer or owner, and submitted annually by each dealer in intangibles. The balance sheet portion must display the values as reflected on the books and records as of December 31.

Form 982, Schedule A - Must be completed and submitted by each dealer in intangibles maintaining an office in more than one Ohio county to provide a basis for allocation of tax.

Form 984, Analysis of Investment Account - Must be completed and submitted to reflect the market value or fair value of each investment in the investment account.

Form 937, True Value Computation - Must be completed and submitted to reflect the true value of the leasehold improvements and furniture and fixtures accounts.

TAXPAYER IDENTIFICATION

Please provide identification of the individual to be contacted during our examination of the return. See Page Four, Tax Form 980.

1981 Cumulative Service to Volume One

BALDWIN'S

**OHIO TAX LAW
and
RULES**

Third Edition

Published in cooperation with
Edgar L. Lindley, Tax Commissioner of Ohio

BANKS-BALDWIN LAW PUBLISHING COMPANY

Oldest Law Publishing House in America—Established 1804

CLEVELAND

1. Other (describe fully) _____ 20,740

TOTAL NONTAXABLE DEPOSITS _____ (DEDUCT) B 202,778

GROSS TAXABLE DEPOSITS _____ C 16,486,285

3. TOTAL UNCOLLECTED DEPOSIT ITEMS (FLOAT) _____ D \$ 361,655
 The portion of float (per Form 971) allocable this county. Same ratio as A above.

Percentage of C to A above _____ 98.78 %

Net Uncollected Deposit Items (% C to A above applied to D above) _____ \$ 357,260

50% of net uncollected deposit items above _____ (DEDUCT) 178,630

4. TOTAL NET TAXABLE DEPOSITS THIS COUNTY _____ \$ 16,307,655

5. COMPUTATION OF TAX

A. Deposits taxable as of November , 19 . (Item 4 above in rounded figures) _____ \$ 16,307,660

B. Amount of tax @ .002 _____ \$ 32,615.32

FORM 3.20 (Official 980) Dealer in intangibles tax return

Note: See general information and instructions at Form 3.21.

TAX FORM
980
 PRESCRIBED BY THE
 TAX COMMISSIONER

STATE OF OHIO
1980

DEALER IN INTANGIBLES TAX RETURN

DENOTE CAPACITY IN WHICH RETURN IS MADE <input checked="" type="checkbox"/> CORPORATION <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> INDIVIDUAL	A.B.C. FINANCE CORPORATION <small>(Name)</small>		FEDERAL EMPLOYER IDENTIFICATION No. 99-9999999 TIME EXTENSION PERMIT No. 105 was granted to MAY 12, 1980.
	2134 MAIN STREET <small>Number Street</small>		
	AUGTOWN, OHIO	43915 <small>City State Zip Code</small>	
	SAME <small>Ohio business address if other than above:</small>		
	_____ <small>Number Street</small>		
	_____ <small>City State Zip Code</small>		
	_____ <small>Name former owner if this business was returned by another in 1979</small>		
	CONSUMER LOANS <small>Principal business activity</small>		
7-30-59 OHIO <small>Date and state of incorporation or organization</small>			
6-30-60 123456 <small>Date of beginning business in Ohio Ohio Charter Number</small>			

CONSOLIDATED RETURNS

Consolidated returns must include a list of the names and addresses of the subsidiary dealers in intangibles included therein and a consolidating balance sheet reflecting the inter-company eliminations (see instruction sheet and Section 5725.14, O.R.C.).

COMPUTATION OF TAX

1. OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (From Balance Sheet or Exhibit A, Exhibit B or Exhibit C) -----	\$ 920,600
2. VALUE OF NONTAXABLE BONDS & SECURITIES AS OF DATE OF CONVERSION -----	\$ -0-
3. TOTAL TAXABLE VALUE IN OHIO (Line 1 plus Line 2) Rounded to the nearest <u>TEN</u> dollars -----	\$ 920,600
4. TAX PAYABLE (Rate of 6 mills per dollar of Line 3) -----	\$ 5,523.60

DECLARATION

I declare under penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return and report.

Signature _____	Title of Signer _____	Date _____
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(If this return was not prepared by dealer's personnel, show here name and address of firm or individual who prepared it.)
 This return must be filed with the Tax Commissioner, P. O. Box 530, Columbus, Ohio 43216, not later than March 10, 1980.

BALANCE SHEET AS OF DECEMBER 31, 1979

LINE NO.	ASSETS	
1.	CASH ON HAND AND IN BANKS -----	\$ 204,505
2.	INVESTMENTS (Complete enclosed Form 984)	
	a) Taxable -----	12,800
	b) Nontaxable -----	
3.	ACCOUNTS AND NOTES RECEIVABLE	
	a) Accounts Receivable ----- Gross \$	
	Less Allowance for Bad Debts -----	
	b) Installment Loans ----- Gross \$	7,332,876
	Less Allowance for Bad Debts -----	148,516
	c) Chattel Mortgage Loans ----- Gross \$	
	Less Allowance for Bad Debts -----	
	d) Real Estate Loans ----- Gross \$	
	Less Allowance for Bad Debts -----	
	e) Other Receivables ----- Gross \$	
	Less Allowance for Bad Debts -----	
4.	CUSTOMERS DEBIT BALANCES -----	
5.	DUE FROM OTHER BROKERS -----	
6.	REAL ESTATE ----- Cost \$	
	Less Accumulated Depreciation -----	
7.	LEASEHOLD IMPROVEMENTS ----- Cost \$	16,750
	Less Accumulated Depreciation -----	9,619
8.	FURN., FIXT. & EQUIP. ----- Cost \$	67,995
	Less Accumulated Depreciation -----	46,554
9.	LEASED EQUIPMENT (See Exhibit "E", Page 4) -----	463,535
10.	COMMISSIONS RECEIVABLE -----	
11.	MEMBERSHIPS (specify) -----	
12.	DEFERRED CHARGES	
	a) Prepaid Expenses -----	1,062
	b) Other -----	60
13.	ACCRUED EARNINGS -----	
14.	OTHER ASSETS (specify) -----	
15.	TOTAL ASSETS (Lines 1 through 14)	\$ 7,894,894

LINE NO.	LIABILITIES	
16.	NOTES AND ACCOUNTS PAYABLE -----	\$ 6,284,191
17.	DUE TO OTHER BROKERS -----	
18.	CUSTOMERS CREDIT BALANCES (See Note) -----	
19.	COMMISSIONS PAYABLE -----	
20.	ACCRUED EXPENSES -----	218,918
21.	DEFERRED CREDITS -----	
22.	OTHER LIABILITIES -----	348,342
23.	TOTAL LIABILITIES (Lines 16 through 22) -----	\$ 6,851,451
	CAPITAL	
24.	CAPITAL STOCK (Less Treasury Shares) -----	\$ 534,200
25.	CAPITAL INVESTMENT (If not incorporated) -----	
26.	SURPLUS AND UNDIVIDED PROFITS -----	469,243
27.	PARTNERS CREDIT BALANCES -----	
28.	GENERAL RESERVES (without definite evidence of imminent loss or liability) -----	40,000
29.	BOOK VALUE OF SHARES OR INVESTED CAPITAL (Lines 24 thru 28) (See Note) -----	\$ 1,043,443
30.	TOTAL LIABILITIES AND CAPITAL -----	\$ 7,894,894

NOTE: Line 18, Customers Credit Balances. Indicate number of notices mailed to Ohio residents advising of personal property tax liability _____.

NOTE: Line 29, Book Value of Shares or Invested Capital. Carry amount to applicable Exhibit on Page 3, or to Page 1, Line 1, if no adjustments are necessary.

Exhibit "A" - RECONCILIATION OF BOOK VALUE TO THE MARKET OR FAIR VALUE OF SHARES OR INVESTED CAPITAL (Section 5725.15, O.R.C.)

LINE NO.	ITEM	
1	BOOK VALUE OF SHARES OR INVESTED CAPITAL (B/S Line 29) -----	\$ 1,043,443
2	INCREASE OR DECREASE TO FAIR OR MARKET VALUE (Itemize On Separate Sheet) Increase Val. of Sec. \$12,454; Excessive Loan Reserve \$23,857 -----	\$ 36,311
3	TAXABLE VALUE (Carry to Page 1, Line 1, or Line 3, Exhibit "B" or "C" Below) -----	\$ 1,079,754

Exhibit "B" - OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (for dealers other than brokers)

Enter below the total of loans effected, discounted and renewed during year ended December 31, 1979.

LINE NO.	ITEM	(1) OHIO	(2) TOTAL
1	TOTAL OF LOANS EFFECTED, DISCOUNTED & RENEWED -----	\$ -----	\$ -----
2	PERCENTAGE ALLOCABLE TO OHIO (Col. 1 ÷ Col. 2) -----		%
3	TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (B/S Line 29 or Line 3 of Exhibit "A") -----		\$ -----
4	OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (Line 2 X Line 3. Carry to Pg. 1 COMPUTATION OF TAX Line 1) -----		\$ -----

Exhibit "C" - OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (for brokers only)

Enter below the aggregate amount of all commissions charged plus one per centum of the aggregate of all other receipts during calendar year ended December 31, 1979.

LINE NO.	ITEM	(1) OHIO	(2) TOTAL
1	AGGREGATE AMOUNT OF COMMISSIONS CHARGED PLUS ONE PER CENT OF THE AGGREGATE OF ALL OTHER RECEIPTS -----	\$ 6,561,463	\$ 7,695,474

LINE NO.	ITEM	(1) OHIO	(2) TOTAL
2	PERCENTAGE ALLOCABLE TO OHIO (Col. 1 ÷ Col. 2) _____	-----	85.26 %
3	TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (B/S Line 29 or Line 3 of Exhibit "A") _____	-----	\$ 1,079,754
4	OHIO PROPORTION OF TAXABLE VALUE OF SHARES OR INVESTED CAPITAL (Line 2 X Line 3. Carry to Pg. 1 COMPUTATION OF TAX Line 1) _____	-----	\$ 920,598

Exhibit "D" – Each dealer in intangibles, other than brokers, must furnish the following information relative to aggregate amount of loans effected, discounted and renewed.

CALENDAR YEAR	AGGREGATE AMOUNT OF LOANS EFFECTED, DISCOUNTED & RENEWED	BAD DEBTS CHARGED OFF	RECOVERIES OF BAD DEBTS CHARGED OFF	
1975	6,324,962	95,126	5,208	
1976	5,979,427	92,125	4,625	
1977	5,712,169	84,006	8,924	
1978	6,791,023	75,246	3,573	
1979	7,695,474	73,408	5,929	
Totals	32,503,005	419,911	28,259	

Exhibit "E" – LEASED EQUIPMENT

Dealers owning and leasing or holding for lease tangible personal property, shall enter a description of the property, including book value, the name and address of the lessee and the address where the property is physically located and used in business on December 31, 1979.

DESCRIPTION	BOOK VALUE	LESSEE	LOCATION
Computer Equip	240,120	The Mfg. Corp	28 Back Rd., Aughtown, OH
Computer Equip	223,415	The A & B Corp	28 Front St., Pitt, PA

FORM 3.21 (Official 980-A) General information and instructions relating to dealer in intangibles tax return

Tax Form
980-A
Prescribed by the
Tax Commissioner

STATE OF OHIO

GENERAL INFORMATION AND INSTRUCTIONS RELATING TO DEALER IN INTANGIBLES TAX RETURN

DEFINITION OF A DEALER IN INTANGIBLES - Section 5725.01 (B)

"Dealer in intangibles" includes every person who keeps an office or other place of business in this state and engages at such office or other place in the business of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness, or of buying or selling bonds, stocks, or other investment securities, whether on his own account with a view to profit, or as agent or broker for others, with a view to profit or personal earnings. Dealer in intangibles excludes institutions used exclusively for charitable purposes, insurance companies, and financial institutions. Neither casual nor isolated transactions of any of the kinds enumerated in this division of this section, nor the investment of funds as personal accumulations or as business reserves or working capital constitute engaging in business within the meaning of this division of this section; but a person who, having engaged in the business of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness on his own account, remains in business for the purpose of realizing upon the assets of such business is deemed a dealer in intangibles, though not presently engaged in lending money or discounting or buying such securities.

FILING REQUIREMENTS

All persons, partnerships, associations and corporations engaged in business as a dealer in intangibles at the close of business on December 31 must file a dealer in intangibles tax return. The return must be filed with the Tax Commissioner, Attn: Financial Institutions Section, P.O. Box 530, Columbus, Ohio 43216 no later than the second Monday of March, or as properly extended.

TAX FORMS

Form 980, Dealer In Intangibles Tax Return - Must be completed, signed by an officer or owner, and submitted annually by each dealer in intangibles. The balance sheet portion must display the values as reflected on the books and records as of December 31.

Form 982, Schedule A - Must be completed and submitted by each dealer in intangibles maintaining an office in more than one Ohio county to provide a basis for allocation of tax.

Form 984, Analysis of Investment Account - Must be completed and submitted to reflect the market value or fair value of each investment in the investment account.

Form 939, Ohio Resident Investor List - Must be completed and submitted for each Ohio payee of bonds, debentures, notes, loans on open account, etc., outstanding at January 1.

EXTENSION OF TIME

Dealers in intangibles who are unable to make the return by the date specified, may apply to the Tax Commissioner for an extension of time in which to file. Pursuant to statute, the Tax Commissioner may, upon receipt of an application showing good cause, extend the time for filing for a period not to exceed 60 days.

PENALTY FOR LATE FILING

As provided by Section 5725.17, Revised Code, a penalty of \$100.00 will be imposed on each dealer in intangibles who fails to make the required return by the second Monday in March, or as extended by the Tax Commissioner.

PAYMENT OF TAX

No payment should be submitted with the return. A statement of tax due will be issued by the Treasurer of State with the final date for payment being July 31.

CONSOLIDATED RETURNS

An incorporated dealer in intangibles which owns or controls 51% or more of the common stock of another incorporated dealer in intangibles may, pursuant to Rule 5703-3-06 of the Administrative Code (formerly Rule TX 41-04), make a consolidated return including therein its subsidiary "dealer in intangibles" as that term is defined by statute. A consolidating balance sheet must be made a part of a consolidated return.

UNINCORPORATED DEALERS IN INTANGIBLES

Unincorporated dealers in intangibles may deduct investments exempt under Ohio law from the value of capital employed, provided such investments are held on December 31. Tax exempt investments include: obligations issued by the Federal government or its instrumentalities, territories or districts; shares of stock in financial institutions, dealers in intangibles, Ohio insurance companies and Ohio credit unions; the following Ohio bonds- Vietnam War Bonus, Turnpike, Major Thoroughfare Construction, Bridge Commission, Highway Improvement Construction, Underground Parking, Capital Improvement Construction, General Obligation, Public Housing Authority, etc. Municipal bonds are not exempt.

When taxable property has been converted into non-taxable bonds and securities after October 31 and is still held on December 31, the value of the non-taxable bonds and securities as of the date of conversion must be reflected on Line 2 of the Computation of Tax.

FAIR VALUE CLAIM

In the event the fair value of any item of taxable property is less than the book value as reflected on the balance sheet, a claim in writing must be submitted at the time of filing the tax return. The claim should disclose the reasons and computations for determining the claimed fair value. The burden of substantiating the claimed fair value rests with the taxpayer.

FAIR VALUE OF DEPRECIABLE PROPERTY

The Tax Commissioner has prescribed composite annual allowances for computing the fair value of personal property used in various types of business activities. For dealers in intangibles, personal property consisting of office furniture, fixtures and equipment, such as desks, files, safes and communication equipment; data handling equipment (except computers), such as typewriters, calculators, adding and accounting machines, copiers and duplicating equipment, and off-line computer hardware have been designated as Class III property. Computers and their on-line peripheral equipment have

been designated as Class II property. The following valuation percentages should be used for the abovementioned classes:

Age	Class III	Class II
1	93.2%	92.0%
2	82.8%	76.3%
3	72.4%	60.6%
4	62.0%	46.1%
5	51.5%	37.9%
6	42.2%	29.8%
7	36.3%	21.6%
8	30.5%	20.0%
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The smallest percentage in each allowance determines the minimum acceptable value so long as property is held for use in business.

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Accounts and notes receivable should be set forth in the balance sheet portion of the tax return indicating the gross amount, together with the amount of reserve for bad accounts maintained in accordance with the books and records.

An allowable percentage for bad accounts reserve has been adopted by the Tax Commissioner and is computed in the following manner: The total amount of bad debts charged off, less recoveries for the preceding five years divided by the total amount of business on account or loans effected, discounted or renewed for the preceding five years. To this is added 1/2 of 1% as a correction factor. The resulting percentage will be applied to the gross amount of accounts and notes receivable owned.

In the event the taxpayer contends that the book value of accounts and notes receivable is in excess of the fair value thereof, a claim for deduction from such book value must be submitted, in writing, at the time of filing the tax return. Should the reserve for bad accounts, as maintained in the books and records of the taxpayer, reflect a percentage in excess of that allowed by the Tax Commissioner, the resulting book value of accounts and notes receivable will be subject to a fair value increase.

ALLOCATION OF BUSINESS

Business may not be allocated within and without Ohio unless the dealer maintains separate office locations both within and without Ohio. The residence of the customer is not an operating factor. Where independent agents solicit business without Ohio and forward such business to an Ohio office, or where employees of the dealer are soliciting business without Ohio by traveling from and reporting to an Ohio office, such business must be allocated to Ohio.

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In the case of a dealer engaged primarily in the business of dealing in securities as principal, broker, or both, gross receipts shall consist of the aggregate amount of commissions charged for the business done at each office, plus 1% of the aggregate amount of all other receipts from business done at each office.

Receipts from business originating at one office and consummated at another office shall be divided equitably between such offices and a special memorandum or schedule must be furnished disclosing the amount of such receipts together with the office location.

EXCHANGE MEMBERSHIPS

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INFORMATION

Any questions relative to the filing of the Dealer In Intangibles Tax Return or the procurement of forms must be addressed to the Department of Taxation, Attn: Financial Institutions Section, P.O. Box 530, Columbus, Ohio 43216.

FORM 3.22 (Official 982) Schedule A

Note: See general information and instructions at Form 3.21 (Official Form 980-A).

Tax Form 982 Prescribed by the Tax Commissioner

STATE OF OHIO

SCHEDULE A

RETURN YEAR 1980

Name of Dealer A.B.C. FINANCE CORPORATION

Address 2134 MAIN STREET, AUGTOWN, OHIO 43915

This form must be executed by each dealer in intangibles maintaining an office in more than one county in Ohio. For an explanation of gross receipts, see Page 2, of General Information and Instructions.

Table with columns: Name of Ohio County, Gross Receipts for County, PERCENT, VALUE, .008, AMOUNT OF TAX. Rows include ALLEN, CUYAHOGA, FRANKLIN, MONTGOMERY, SUMMIT, and totals for Ohio and without Ohio.

SIGNATURE _____

FORM 3.23 (Official 984) Analysis of Investment account

Note: See general information and instructions at Form 3.21 (Official Form 980-A).

Tax Form 984 Prescribed by the Tax Commissioner

STATE OF OHIO

RETURN YEAR 1980

ANALYSIS OF INVESTMENT ACCOUNT

Name of Dealer A.B.C. FINANCE CORPORATION

Address 2134 MAIN STREET, AULTOWN, OHIO 43915

This form must be completed by each dealer in support of Balance Sheet Line 2, Page 2, of Form 980.

Table with 5 columns: Number of Shares or Par Value, Name of Investment and Due Date, Interest Rate or Class, If Stock, Book Value, Fair or Market Value at Close of Business December 31, 1979. Includes rows for XYZ CORP., INTERSTATE, INC., ACE MFG. CO., and summary rows for MARKET VALUE, BOOK VALUE RETURNED, and INCREASE TAXABLE VALUE.

SIGNATURE _____