

# OHIO TAXATION OF THE PERSONAL PROPERTY OF FARMERS

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In November, 1929, the people of Ohio adopted an amendment to Article XII, Section 2 of the Constitution of this State which abolished the uniform rule of taxation in respect of personal property and enabled the General Assembly to tax such property on a classified basis. Commenting on this amendment, the Special Joint Taxation Committee of the General Assembly, which submitted its report in 1931, observed that "the taxation of tangible business and farm personal property, such as machinery, tools, and farm implements, has long been most unequal, and as applied to manufacturers and farmers has put Ohio business and agriculture at a considerable disadvantage in comparison to that of other States". Accordingly, the Committee said that one of the purposes which guided it in formulating its program was "to equalize the taxes of manufacture and agriculture, so that additional wealth may be developed in this State". In summarizing its recommendations, the Committee explained that tangible personal property used in business would be appraised at its true value in money, but treating depreciated book value as prima facie the actual value, and that all appraisals would be made "at seventy per cent of such value, except in the case of tools, machinery and inventory used in manufacturing and agriculture, in which case, to assist Ohio business in competition with other states, the rate is to be fifty per cent of such value".<sup>1</sup>

These recommendations were enacted into law and the objectives of the Joint Committee were thereby realized. The purpose of this paper is to review the statutory provisions as thus enacted in respect of agriculture, to discuss some of the problems of administration which have arisen, and to explain how these problems have been resolved both from a legal and practical viewpoint.

## THE STATUTORY PATTERN

Tangible personal property of farmers, like that of other tangible personalty, is subject to a general statutory rule or test of taxability. With certain exceptions not relevant here, the General Assembly has provided that all personal property located and used in business in this state, and all domestic animals kept in this state, whether or not used in business, are

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<sup>1</sup>The Special Joint Taxation Committee, which submitted its report to the Eighty-ninth General Assembly, consisted of the following members: Robert A. Taft, Chairman, William A. Greenlund, Frank E. Whittemore, Clarence H. Burk, Charles H. Jones and Earle L. Johnson.

subject to taxation, regardless of the residence of the owners thereof.<sup>2</sup> A recent amendment of this statutory provision exempts unmanufactured tobacco from taxation for state purposes to the extent of the value, or amounts, of any unpaid nonrecourse loan or loans thereon granted by the United States government or any agency thereof.<sup>3</sup>

Since, except for domestic animals, farm personalty must be used in business in order to be subject to taxation, the general statutory definitions should be clearly understood. With certain specified industrial exceptions, "personal property" includes every tangible thing which is the subject of ownership, whether animate or inanimate, and not forming part of a parcel of real property.<sup>4</sup> The term "business" includes all enterprises conducted for gain, profit or income.<sup>5</sup> Personal property is deemed to be "used" within the meaning of the phrase "used in business" when employed or utilized in connection with ordinary or special operations, when acquired or held as means or instruments for carrying on the business, or when stored or kept on hand as material, parts, products, or merchandise. However, agricultural products in storage in a grain elevator, a warehouse, or a place of storage where subject to control of the United States government and subject to shipment on order of the United States government, are not deemed to be used in business in this state. Likewise, agricultural products shipped from outside of this state and held in this state in a warehouse or other storage place for storage only preparatory to shipment outside of this state are not used in business and hence are not taxable in this state.<sup>6</sup> To cite a simple illustration of the "use in business"

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<sup>2</sup> OHIO REV. CODE §5709.01.

<sup>3</sup> Am. Sub. S. Bill 204, effective September 20, 1955.

<sup>4</sup> OHIO REV. CODE §5701.03. The term "real property" is defined in §5701.02 as including the land itself, all growing crops, including deciduous and evergreen trees, plants, and shrubs, and, unless otherwise specified, all buildings, structures, improvements, and fixtures of whatever kind on the land. The distinction between real and personal property, as a matter of both constitutional and statutory interpretation, has been the subject of extensive tax litigation in Ohio. *Zangerle v. Standard Oil Company*, 144 Ohio St. 506, 60 N.E. 2d 52 (1945); *Standard Oil Company v. Zangerle*, 144 Ohio St. 523, 60 N.E. 2d 59 (1945); *Zangerle v. Republic Steel Corporation*, 144 Ohio St. 529, 60 N.E. 2d 170 (1945); *Roseville Pottery, Inc. v. County Board of Revision of Muskingum County, et al.*, 149 Ohio St. 89, 77 N.E. 2d 608 (1948); *Cf. Reed v. County Board of Revision*, 152 Ohio St. 207, 88 N.E. 2d 701 (1949); 11 OHIO ST. L. J. 153.

<sup>5</sup> OHIO REV. CODE §5701.08 (B). The activities of a non-profit corporation may, under certain circumstances, constitute enterprises conducted for gain, profit or income, and hence the personal property of such corporation would be subject to taxation. *American Jersey Cattle Club v. Glander*, 152 Ohio St. 506, 90 N.E. 2d 433 (1950).

<sup>6</sup> OHIO REV. CODE §5701.08 (A), as amended effective September 30, 1955. On December 27, 1955, the Tax Commissioner issued Bulletin No. 100 for the purpose of clarifying the exemption of agricultural products in storage subject to the control of, and to shipment on order of, the United States government. This Bulletin states that agricultural products stored on the land where produced or in a warehouse on which a Commodity Credit Corporation loan has been issued,

test, the tangible personal property which consists of household goods in the farmer's home is not subject to taxation, whereas the tangible personal property which is used in the operation of the farm, such as tractors and other farm implements, is subject to taxation. In general, as hereinafter indicated, the taxable personal property of farmers may be grouped in three categories: (1) domestic animals, (2) agricultural products, and (3) machinery, equipment and implements used in agriculture.

The basis for listing and assessing tangible personal property of farmers, again like that of other tangible personalty, is also controlled by special statutory rules. First, it should be noted that, subject to certain non-relevant exceptions, all taxable property must be listed annually as to ownership or control, valuation, and taxing districts as of the beginning of the first day of January; and that the subsequent transfer thereof shall not authorize any taxpayer to omit the same from his return, nor the assessor to fail to assess the same, even though the return or assessment is not made until after such transfer.<sup>7</sup>

Second, except as otherwise provided, tangible personalty must be listed and assessed at seventy per cent of its true value in money on the tax listing date.<sup>8</sup> With respect to specified personalty of farmers (as also with respect to specified personalty of other industrial and commercial groups) the General Assembly has "otherwise provided" by establishing a fifty per cent classification. As to this classification, OHIO REV. CODE SECTION 5711.22 specifically provides:

Personal property, used in business, shall be listed and assessed at fifty per cent of its true value in money on the day that it is required to be listed . . . as follows:

(A) . . . all engines, machinery, tools, implements, and domestic animals used in agriculture, . . ., except as any of the kinds of property mentioned in this division may have been legally regarded as improvements on land and considered in arriving at the value of real property assessed for taxation;

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(3) Agricultural products on farms.

In addition to the foregoing, it should be recorded that an individual resident of this state may deduct a sum not exceeding one hundred dollars from the aggregate listed value of his domestic animals, whether used in business or not, as an exemption from taxation.<sup>9</sup>

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and agricultural products under a "Purchase Agreement Plan" with the Commodity Credit Corporation, are taxable to the owner thereof in the taxing district in Ohio where stored. In these instances it was pointed out that the government exerts no control; that such control does not occur until the government takes custody of the agricultural products after the farmer has decided to release the same by not redeeming his note; and further that the government has no authority to ship such products until the time when the farmer decided not to redeem the note, which event occurs after tax listing date.

<sup>7</sup> OHIO REV. CODE §5711.03.

<sup>8</sup> OHIO REV. CODE §5711.22.

<sup>9</sup> OHIO REV. CODE §5709.19.

Applying the foregoing statutory provisions, the listed values of the several groups of tangible personalty of farmers may be summarized as follows:

Machinery and equipment used in agriculture	50%
Agricultural products on farms	50%
Agricultural products not on farms	70%
Domestic animals used in agriculture*	50%
Domestic animals not used in agriculture*	70%

\*In each case minus the statutory deduction up to \$100, which may be taken by an individual resident of Ohio only, and not by corporations, trustees or others.

Whichever percentage, seventy or fifty per cent, may be applicable, the valuation base to which it is applied presents an especially troublesome administrative problem with respect to farm personalty. It will be noted that the statutory valuation base in either case is "true value in money", but what is true value in money?

Generally speaking, the General Assembly has provided a statutory guide to true value which is applicable to farm chattels as well as to other business chattels. That guide is depreciated book value. With respect to personal property used in business, the statute provides that book value less book depreciation shall be taken as the true value of the property unless the taxing authority finds that such depreciated book value is greater or less than the then true value of such property.<sup>10</sup> To explain the meaning of this provision, a brief digression is necessary.

First, the Supreme Court of Ohio has clearly defined the meaning of depreciated book value. Book value of personal property, it said, "is to be obtained from a capital account set up on the books of the taxpayer in the ordinary course of business wherein are recorded the costs of such personal property". Book depreciation, it held, "is to be obtained from the taxpayer's depreciation account set up in the ordinary course of business upon the books of the taxpayer and which account is regularly and consistently credited with depreciation under some generally recognized method of reflecting depreciation of the taxpayer's personal property".<sup>11</sup> In other words, the taxpayer is required, in preparing his return in the first instance, to list his property on the basis of its original cost less depreciation thereon as determined by the taxpayer himself.

Second, however, it will be observed that the statute grants the tax commissioner revisory jurisdiction to find that such depreciated book value does not actually represent the true value of the property in money, which is the ultimate statutory valuation standard. For example, the commissioner may determine that the taxpayer has chosen a higher rate of depreciation than that which would realistically reflect the useful life of the property and, by applying a lower rate, he may increase the valuation base

<sup>10</sup> OHIO REV. CODE §5711.18.

<sup>11</sup> *Wheeling Steel Corporation v. Evatt*, 143 Ohio St. 71, 54 N.E. 2d 132 (1944).

above the depreciated book figure.<sup>12</sup> On the other hand, the commissioner may find that the true value of the taxpayer's property is less than its depreciated book value as reflected on the taxpayer's books, and to this extent he may reduce the valuation base. However, the statute provides that claim for any deduction from depreciated book value of personal property must be made in writing by the taxpayer at the time of making his return.<sup>13</sup>

A mere recital of these provisions indicates that while the statutory guide of depreciated book value for determining true value is both practical and helpful in the case of business entities which keep books and records in the accounting sense, it is not easily applied in the case of taxpayers who do not keep such books and records. Herein lies the principal administrative problem in respect of the valuation of tangible personal property of farmers. To meet this situation, the tax commissioner has prescribed certain special procedures and forms which will be discussed in connection with the tax return of farmers next to be considered.

#### THE TAX RETURN

Taxpayers are required by statute to file annual returns listing all of their taxable property;<sup>14</sup> and such returns must be made between the fifteenth day of February and the thirty-first day of March in each year.<sup>15</sup> In the case of farm property, as in the case of all other taxable property, composite tax return forms prescribed by the Tax Commissioner must be used. These forms provide for the listing of all kinds of taxable property, both tangible and intangible, and cover all kinds of business pursuits. One of these forms is prescribed for use by corporations,<sup>16</sup> while another is prescribed for use by individuals, partnerships and unincorporated as-

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<sup>12</sup> The Tax Commissioner has prescribed a standard procedure by which this is done, known as the "302 computation method". It is based upon a schedule of prima facie composite rates. In the year of acquisition of the property, the allowable depreciation is one-half of the annual rate applicable. For subsequent years, depreciation is allowed at the annual rate until the net value of the property is thirty per cent of its original cost. This net value is maintained for one year. Thereafter an annual rate of two and one-half per cent (regardless of the prima facie annual rate) is applied until the net value of the property reaches twenty per cent of its original cost. From that point, so long as the property is held for use in business, further depreciation is not allowed. This computation method, it should be emphasized, cannot be arbitrarily applied, for the ultimate test in all cases is true value as determined from all the evidence.

<sup>13</sup> OHIO REV. CODE §5711.18. Moreover, the Supreme Court has held that the Tax Commissioner is without jurisdiction to entertain a claim for any deduction from depreciated book value unless such claim is made in writing by the taxpayer as required by the statute. *Willys-Overland Motors, Inc. v. Evatt*, 141 Ohio St. 402, 48 N.E. 2d 468 (1943); *Wright Aeronautical Corporation v. Glander*, 151 Ohio St. 29, 84 N.E. 2d 483 (1949).

<sup>14</sup> OHIO REV. CODE §5711.02.

<sup>15</sup> OHIO REV. CODE §5711.04.

<sup>16</sup> Tax Form No. 930.

sociations.<sup>17</sup> Since the latter form is employed by the great majority of taxpayers engaged in farming, the discussion which follows will be limited to its requirements.

While four of the ten Schedules of this return relate to tangible personalty, only Schedules 1 and 2 will ordinarily be applicable to tangible personal property of farmers. Schedule 1 provides for the listing of domestic animals and agricultural products according to their true values and also according to their appropriate listed values which, as heretofore shown, is either fifty per cent or seventy per cent of true value. Schedule 2 requires the listing of farm equipment (engines, machinery, tools and implements used in agriculture) according to its depreciated value and also its fifty per cent listed value. The taxable values reflected in both schedules are then carried to the tax computation section appearing on the face of the return where is applied the tax rate in effect in the taxing district where the property is located.<sup>18</sup>

In respect of unincorporated farm operators, the use of this return form alone proved to be inadequate from a sound administrative point of view. As hereinbefore indicated, the statutory requirements of listing on the basis of depreciated book value, as the prima facie test of true value, leave much to be desired in respect of taxpayers who do not keep books and records which clearly reflect depreciated cost values of personal property. Accordingly, the tax commissioner has promulgated a supplemental form for computing the taxable values of farm personalty to be carried to the tax return.<sup>19</sup> This supplemental form is to be used only by non-corporate taxpayers engaged in agriculture. It contains two Schedules, the first of which relates to domestic animals and agricultural products, and the second of which relates to machinery, equipment and implements used in agriculture.

The first part of Schedule 1 of the supplemental form calls for a quantitative listing of domestic animals owned by the taxpayer as of the beginning of January 1. The form itself lists, although not exclusively, the various kinds of domestic animals. It is interesting to note that this list includes not only such varieties of animals as horses, cows, sheep and hogs, but also such items as chickens, ducks, bees, minks and chinchillas. Each class must be listed according to the number of registered or pure bred animals, number of grade animals, and total true value thereof. For the purpose of providing a degree of uniformity throughout the state with respect to the listed true value, the tax commissioner publishes annually a minimum price list which is determined through conferences between the

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<sup>17</sup> Tax Form No. 910.

<sup>18</sup> The tax rate applicable to tangible personal property is identical with the rate on real estate and public utility property for any given tax district. OHIO REV. CODE §319.31.

<sup>19</sup> Tax Form No. 910 B.

personnel of the Department of Taxation and County Auditors, upon consideration of published and other pertinent data relative thereto.<sup>20</sup>

The second part of Schedule 1 of the supplemental form calls for a quantitative listing of agricultural products owned by the taxpayer as of the beginning of January 1. This listing is in two divisions, one relating to agricultural products not stored on the farm and not under the control of the United States government, and the other relating to all other agricultural products except such as are under the control of the United States government. This part of the Schedule lists, although not exclusively, the various types of agricultural products such as corn, oats, wheat, barley, hay, apples, potatoes and a variety of other products. Each class must be listed according to quantity, price per unit, and total true value. Again, for the purpose of obtaining uniformity in listing throughout the state, the tax commissioner's annual price list includes the minimum acceptable list price for each product.<sup>21</sup> Each part of Schedule 1 of the supplemental form is to be totalled separately, and the respective amounts are then carried to Schedule 1 of the tax return.

Schedule 2 of the supplemental farm form provides for an itemized listing of all machinery, equipment and implements used in agriculture, as of the beginning of January 1. Altogether, some seventy different kinds of agricultural equipment are specified, ranging from balers to weeders. Each item must be listed according to the year it was acquired, its original cost and its depreciated value. To arrive at such depreciated value, a precise formula is prescribed. From the cost of each item, there is to be deducted an amount representing ten per cent depreciation for each year such item was owned by the taxpayer until thirty per cent of the cost remains. This net amount (30% of cost) must then be used for tax purposes as long as the item is owned or used. The amounts so obtained are recorded in the column provided for listing depreciated value, and the aggregate amount thereof is then carried to Schedule 2 of the tax return.<sup>22</sup>

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<sup>20</sup> For example, see Bulletin No. 102, published by the Tax Commissioner on January 11, 1956. Typical price illustrations are: registered cows, \$150 per head up; grade milk cows (good), \$125 per head up; grade lambs, \$.14 lb. up. It should be emphasized that these are intended to be minimum, not maximum, prices for tax listing purposes.

<sup>21</sup> For example, Bulletin No. 102, dated January 11, 1956, provides the following typical price illustrations: wheat, \$1.90 bu.; ensilage, \$10 ton; wool, \$.45 lb.

<sup>22</sup> To illustrate application of the depreciation formula, the schedule provides two examples. (1) A tractor purchased in 1952 at a cost of \$2,000, and to be listed January 1, 1956, would have been owned four years. The sum of \$2,000 less 40% (10% for each year owned) produces a depreciated value of \$1,200. (2) A tractor purchased in 1947 at a cost of \$1,000, and to be listed January 1, 1956, would have been owned nine years. This tractor, however, would be listed at \$300, or 30% of cost. It will be observed that the foregoing valuation procedure is quite analogous to the commissioner's "302 computation method"

These procedures, while perhaps confusing and sometimes even annoying to some taxpayers, represent an earnest effort on the part of the taxing authorities to give effective recognition to the statutory mandate that property be assessed according to its true value in money, and also to obtain a reasonable degree of assessment uniformity throughout the state.

#### TAXATION OF INTANGIBLE PROPERTY

The taxation of intangible property owned by farmers is upon the same basis as that of all other classes of taxpayers, and presents no special classification problems. However, while it is not the purpose of this paper to develop a detailed analysis of intangible property taxation in Ohio, a brief summary of intangibles subject to taxation, and the basis of such taxation, is essential to a complete understanding of the impact of personal property taxation upon farmers.

The Special Joint Taxation Committee, in its report to the General Assembly in 1931,<sup>23</sup> criticized the taxation of intangible property as well as of tangible property under the system which obtained prior to the 1929 amendment of Article XII, Section 2, of the Ohio Constitution. It pointed out that this system, as applied to intangibles in particular, "attempted to impose a rate often amounting to more than fifty per cent of the income paid on such intangibles, and it was impossible to enforce such a rate against property as liquid and easy to hide as stocks, bonds, mortgages and the like". Moreover, it said that "the occasional imposition of a tax on securities caught in the estates of deceased persons only accentuated the injustice and inequality of this tax". Therefore, in order to develop a more equitable system of taxing intangible property, the Committee recommended legislation repealing all then existing taxes on intangible property, and substituting classified taxes at low rates.

These recommendations were substantially enacted into law with the result that all kinds of intangible property, whether or not used in business, are subject to taxation on a classified basis. In this regard, the statute generally provides that all money, credits, investments, deposits, and other intangible property of persons residing in this state shall be subject to taxation.<sup>24</sup> Subject to certain specified exceptions, such property must be listed for taxation as of the beginning of the first day of January, annually.<sup>25</sup>

The term "money" includes coin, national bank notes, United States legal tender notes, and other notes and certificates of the United States payable on demand and intended to circulate as currency.<sup>26</sup>

"Credits" means the excess of the sum of all current accounts referred to in Note 12. One point of variance is that farm property is not permitted to go below thirty per cent of cost whereas, in the 302 method, business property generally is permitted to reach twenty per cent of cost.

<sup>23</sup> See note 1 *supra*.

<sup>24</sup> OHIO REV. CODE §5709.02.

<sup>25</sup> OHIO REV. CODE §5711.03.

<sup>26</sup> OHIO REV. CODE §5701.04.



ceivable and prepaid items used in business over and above the sum of current accounts payable of the business, other than taxes and assessments.<sup>27</sup>

"Investments" fall in four categories: (1) shares of stock, with certain specified exceptions; (2) interest-bearing obligations for the payment of money, excepting obligations of the United States and specified obligations of the State of Ohio; (3) annuities, royalties, and other contractual obligations for the periodical payment of money and all contractual and other incorporeal rights of a pecuniary nature from which income is derived, excepting interests in lands and rents derived therefrom, contracts of employment or partnership, retirement annuities or plans, contracts of insurance, and stock purchase, pension, or profit-sharing plans; and (4) all equitable interests, life or other limited estates, and annuity interests in any investment, or in any fund made up in whole or in part of any such investments.<sup>28</sup> Investments are of two types, productive and unproductive. Productive investments are taxable on the basis of the income yield thereof, which means generally the aggregate amount paid as income by the obligor, trustee, or other source of payment to the owner or holder of an investment, whether including the taxpayer or not, during the year preceding the listing date.<sup>29</sup> On the other hand unproductive investments, which include those which have yielded no income during the year preceding listing date, are taxable on the basis of true value in money.<sup>30</sup>

The term "deposits" includes every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money, whether on demand or note, and whether evidenced by commercial or checking account, certificate of deposit, savings account, certificates of running or other withdrawable stock, or otherwise, with certain specified exceptions.<sup>31</sup> Under Ohio law, deposits in financial institutions in this state are taxed at the source.<sup>32</sup> Deposits in financial institutions outside this state, which are not taxed at the source, must be listed by the individual owner. Those yielding income by way of interest or dividends in excess of four per cent of the principal sum withdrawable are taxable as investments;<sup>33</sup> whereas those yielding a return of four per cent or less are taxable as deposits.<sup>34</sup>

Finally, "other intangible property", sometimes referred to as "other

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<sup>27</sup> OHIO REV. CODE §5701.07. This section also defines "current accounts" as including items receivable or payable on demand or within one year from the date of inception, however evidenced.

<sup>28</sup> OHIO REV. CODE §5701.06.

<sup>29</sup> OHIO REV. CODE §§5701.10, 5711.22.

<sup>30</sup> OHIO REV. CODE §5711.22.

<sup>31</sup> OHIO REV. CODE §5701.05.

<sup>32</sup> OHIO REV. CODE §§5725.03, 5725.04, 5725.07.

<sup>33</sup> OHIO REV. CODE §5701.06 (B).

<sup>34</sup> OHIO REV. CODE §5711.22.

taxable intangibles", includes every valuable right, title, or interest not comprised within or expressly excluded from any of the other statutory definitions.<sup>35</sup>

The statutory rates<sup>36</sup> of taxation for each class of intangibles above described are:

Productive investments: 5% of the income yield.

Unproductive investments: 2 mills on the dollar.

Deposits: 2 mills on the dollar.

Moneys, credits and all other taxable intangibles: 3 mills on the dollar.

There are many difficult problems which arise in connection with the listing and assessment of intangible property, and there are numerous decisions of the Board of Tax Appeals and the Supreme Court interpreting and construing the admittedly complex statutory provisions. These matters, however, are not properly within the scope of this analysis.

Suffice it to say that farmers, as well as all other classes of taxpayers, will be able upon examination of the tax return<sup>37</sup> to determine what intangibles must be listed for taxation and how they are to be listed. Separate schedules for each class of intangible property are provided and, while detailed, they are about as clear and explicit as the complexities of the law allow. In addition, instructions and other explanatory data may be obtained without charge from the Tax Commissioner or the several County Auditors of Ohio.

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<sup>35</sup> OHIO REV. CODE §5701.09. Examples of such items are uncollected checks, credit balance with a broker, and non-interest bearing accounts due after one year from date of inception.

<sup>36</sup> OHIO REV. CODE §§5707.03, 5707.04.

<sup>37</sup> TAX Form No. 910, for individuals, partnerships and unincorporated associations; Tax Form No. 930, for corporations.