

File No. 7356 Continued.

OPINION.

5549 same time be paid. Under the arrangement, the funding bond does pay the income coupon. It is not substituted for the income coupon. On the contrary the income coupon is kept alive, and under certain conditions is to be returned. I therefore think that when the funding bond is exchanged for the income coupon, the interest represented by the income coupon is not "actually paid", within the meaning of the statute, and that as a consequence the income bonds are not assessable for taxation.

5550 The fact that the funding bonds have a market value does not make their issue a payment of the interest. Any value which the funding bonds may have is simply a coincidence. The unpaid coupon of an undisputed bond is worth something and has value, but the interest represented by it is not paid. Similarly, as the funding bond does not of itself constitute a payment of the interest the fact that the funding bond is worth something on the market cannot convert it from what it is into what it is not.

5551 It is also to be noted that by the funding agreement the railroad and the bondholders agree that the interest from June 1, 1904, to December 1, 1910, shall not be paid on the deposited income bonds, (except through the funding bonds), even if that interest is really earned, and would have to be paid but for the execution of the funding agreement. The statute, however, does not make bonds assessable when interest can be paid, but only when interest is actually paid. Therefore, even if the company is earning interest on the income bonds to-day, I see nothing in that which ~~justifies~~ the assessment of the bonds.

5552 As a result of holding the bonds non-taxable, ~~if will,~~ it is true, follow that when the interest represented by the funding certificates is paid in 1936, then the company will have paid the interest on the income bonds from June 1, 1904, to December 1, 1910, and yet no taxes at all will have been paid on the bonds during that period. This, however, is something that cannot be avoided under the statute. When the statute requires the interest to be "actually paid", it means "actually paid" now, and not the possibility or the promise of actual payment in the future.

For the above reasons, I am of opinion that the income bonds of the United Railways and Electric Company are not assessable