National Banks—Corporation License Tax.

Chapter 79 of 1917 Session Laws, providing a license tax on net income of corporations doing business in Montana, is inoperative as to National Banks.

April 23, 1917.

Hon. H. L. Hart,
State Treasurer,
Helena, Montana.

Dear Sir:

You have submitted to me the question of whether or not Chapter 79 of the 1917 Session Laws, House Bill No. 345, applies to National Banks. This Act provides in part as follows: "Every corporation except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the State of Montana, shall annually pay for the exclusive use and benefit of the State of Montana a license fee for carrying on its business in the State of Montana of one per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the State of Montana, including the interest on bonds, notes or other interest bearing obligations."

The question of double taxation is not involved in this matter, for a tax may be levied on the income derived from property although the property yielding the income is also subject to taxation; and this does not violate the rule against double taxation, because the two interests or species of property are distinct and severable. 37 Cyc. 759. The question which you have presented is purely one of the right of the State to tax the income of the National Banks organized under the Act of Congress of 1864.

> "The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service.

They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge.

"Being such means, brought into existance for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.' Against the national will 'the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government.'"

Farmers' etc. Nat. Bank v. Deering, 91 U. S. 33-34.

Section 5219 of the Revised Statutes of the United States provides:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

By an Act of the Legislature of Pennsylvania the City Council of Pittsburgh was authorized to levy and collect an annual business tax upon banks and banking institutions doing business in the said city. It was held in the case of the City of Pittsburgh v. First National Bank, 55 Pa. St. 45, that taxation of national banks by the states in any other way than that excepted by the Act of Congress is unconstitutional.

The Supreme Court of the United States in the leading case of Owensboro National Bank v. Owensboro, 173 U. S. at 669, 43 Law Ed. at 852, after quoting the above Section 5219, and after declaring that, were it not for the permissive legislation of Congress, a state would be wholly without power to levy any tax, either direct or indirect, upon national banks, their property, assets, or franchises, says:

"This section, then, of the Revised Statutes is the measure of the power of a state to tax national banks, their property or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names

of the shareholders and to an assessment of the real estate of the bank. Any state tax therefore which is in excess of and not in conformity to these requirements is void."

The above language of the Supreme Court of the United States was quoted and followed in the case of First National Bank v. San Francisco, 129 Cal. 96, 61 Pac. 778, and in Weiser National Bank v. Jeffreys, 14 Ida. 659, 95 Pac. 23, where it was likewise held that the only power a state has to levy any taxation, either direct or indirect, upon national banks, their property, assets, or franchises, is that granted by the laws of the United States.

The rule is stated in 37 Cyc. at 830 as follows:

"As the national banks are agencies or instrumentalities of the general government, no state can exercise any control over them, nor subject them to taxation in any manner or to any extent, except only in so far as congress permits. The only concession congress has made to the states in this respect is to follow the taxation of shares of stock in the national banks and to permit their real estate to be taxed. Hence no state can require the payment of a license-tax by a national bank, nor impose a tax on its franchises, or on its furniture or other personal property, nor on its mortgages or other loans or investments."

It was stated in the recent case of Dexter-Horton National Bank v. McKenzie (Wash.), 124 Pac. at 916:

"However that may be as to state banks, the state has no power to tax national banks except to tax their real estate and their shares of stock; this being the only concession made by the national government to the states upon that subject. 37 Cyc. 830; Owensboro National Bank v. Owensboro, 173 U. S. 664, 19 Sup. Ct. 537; 43 L. Ed. 850; Pullman State Bank v. Manering, 18 Wash. 250, 51 Pac. 464."

It was held in Second National Bank v. Caldwell, 13 Fed. 429, that a license tax imposed by city ordinance upon a national bank being a tax upon the operations of the bank, and a direct obstruction to the exercise of its corporate powers is unconstitutional. It was also held in Third National Bank of Louisville v. Stone, 174 U. S. 432-43 Law Ed. 1035, that State taxes imposed upon the franchises and property of a national bank, and not upon the shares of stock in the names of the shareholders, are illegal, under U. S. Rev. Stat. 5219.

It was stated by the United States Supreme Court in the more recent case of First National Bank v. Albright, 208 U. S. 552-3, "We agree with the plaintiff that the only taxes contemplated by Section 5219 are taxes on the shares of stock and taxes on the real estate. Owensboro National Bank v. Owensboro, 173 U. S. 664, 669."

It was said by our Supreme Court in the case of First National Bank v. Province, 20 Mont. on page 377:

"The corporation is the legal owner of all the property of the bank. The interest of the shareholder is a distinct and independent property, held by him like any other property that

> may belong to him. This interest or property of the shareholder 'entitled him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares, and, upon its dissolution or termination, to his proportion of the property of the corporation that may remain after the payment of its debts. * * * Now, it is this interest which the act of congress has left subject to taxation by the states', and, in addition thereto, the real property of the corporation. (Van Allen v. Assessors, 3 Wall. 573.)"

In view of the foregoing authorities, it would appear to me to be a settled rule that the only power which a state has to tax national banks is the right to tax the shares of stock in the names of the individual shareholders and the assessment of the real estate belonging to a bank, and that therefore Chapter 79 of the 1917 Session Laws is inoperative in so far as its application to national banks doing business in Montana is concerned.

Respectfully,

S. C. FORD,

Attorney General.