National Banks—Taxation of Shares of Stock of Defunct Bank—Whether Lien on Realty of Shareholders—Remission of Taxes by Board of County Commissioners.

A tax against the shares of stock in a national bank is not collectable from the receiver of an insolvent bank.

Taxes upon the shares of capital stock of a national bank constitute a lien on the real estate of the owners of the shares of stock.

The fact that a bank fails does not establish the worthlessness of the shares of stock on the first Monday in March, and therefore the taxes should not be refunded by the Board of County Commissioners.

Max P. Kuhr, Esq.,
County Attorney,
Havre, Montana.

My dear Mr. Kuhr:

You have inquired (1) whether the tax assessed against the shares of stock of a national bank that has failed is collectable from the receiver; (2) whether taxes upon the shares of capital stock of such bank constitute a lien on the real estate of the owners of such stock; and (3) whether, in view of the failure of the bank and the consequent worthlessness of its stock, the tax is a legal claim on the part of the county against the various shareholders.

Under Section 5219, United States Revised Statutes, the power of the State to tax national banks is limited to the taxation of the shares of stock in the names of the shareholders, and in case the statute requires payment of same by the bank, such statute may only constitute the bank an agency for the collection of the taxes assessed to the shareholders.

Home Savings Bank v. Des Moines, 205 U. S. 503;
Home Insurance Company v. New York, 134 U. S. 594;
Hannan v. First National Bank, 269 Fed. 527, and cases cited;
Bank of California v. Richardson, 248 U. S. 476;
Owensboro National Bank v. Owensboro, 173 U. S. 664;
National Bank of Virginia v. City of Richmond, 42 Fed. 877;
County of San Francisco v. Crocker Woolworth National Bank, 92 Fed. 273.

It has been definitely held that the tax levied against the shares is not collectable from the receiver of an insolvent bank.

Baker v. King Co., 50 Pac. 481;
Hewitt v. Traders Bank, 51 Pac. 468;
Staplyton v. Thaggard, 91 Fed. 93.

The tax upon the shares is assessed to the individual shareholders, and occupies the same position with reference to liens upon the property of such shareholders and to methods of collection generally that any other tax against the individual occupies. If an individual shareholder, therefore, was on the first Monday of March the owner of real property, the tax will constitute a lien upon such property.

While the shares since the failure of the bank are undoubtedly of no value, it could hardly be said as a matter of law that they were of no value on the first Monday in March, merely from the fact that eight months later they are of no value as a result of the failure of the bank.

While Section 2669 gives authority to the County Commissioners to refund taxes erroneously or illegally collected, the question arising in connection with the shares of the suspended bank is rather one of error in assessment, and the situation is not one to which Section 2669 would ordinarily apply. Errors in assessment where the value placed upon property by an Assessor is considered to be too great are to be taken up before the County Board sitting as a Board of Equalization, and an application for reduction should there be seasonably made in order to entitle the taxpayer to relief.

Sections 2572 et seq., of the Revised Codes provide a method of adjustment of taxes, and limit the proceedings of the Board to "not later than the second Monday in August."

Section 2574 provides as follows:

> "No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made."

In Barrett v. Shannon, 19 Mont. 397, it was held that complaint in an action for recovery of taxes which failed to allege that the above section had been complied with was bad.

In Matador Land and Cattle Co. v. County of Custer, 28 Mont. 287, the court used the following language:

"On August 8th the board could not have given the plaintiff the ten days' notice required by Section 3789 of the Political Code, as its functions as a board of equalization expired on the second Monday of August, which was on the 10th of the month. Section 3780 of the Political Code reads as follows: 'The board of county commissioners is the county board of equalization and must meet on the third Monday of July in each year, to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the second Monday in August.' While boards of equalization are provided for in the constitution, their periods of life are prescribed by the legislature, and they cannot hold for any other or longer period than the legislature has fixed. So, when the board of equalization of Custer county adjourned on the second Monday of August, 1896, its term of existence for that year absolutely expired. (State v. Central Pacific Railroad Co., 21 Nev. 270, 30 Pac. 693; State ex rel. Evans v. McGinnis, 34 Ind. 452; Yocum v. First Nat'l Bank, 144 Ind. 272, 43 N. E. 231.)"

In Hewitt v. Traders Bank, 51 Pac. 468, it was held that the assessment having been made prior to insolvency and the Board of Equalization having adjourned without reducing it, the assessment became fixed.

It is therefore by opinion that the Commissioners after adjournment as a Board of Equalization are without jurisdiction to change the assessment or relieve the shareholders of the tax assessed.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.