

**Taxation—Banks and Banking—Moneyed Capital—Protest
—County Commissioners—Tax Exempt Securities.**

The moneyed capital of state banks invested in tax-exempt securities is not taxable and should be deducted in computing the last installment of taxes, whether the first installment was paid under protest or not.

State Board of Equalization,
Helena, Montana.

June 8, 1925.

Gentlemen:

You have submitted to me the following statement of facts, to-wit:

"A number of state banks doing business in the state of Montana have paid the second installment of their 1924 taxes under protest, claiming that the taxes for 1924 are illegally demanded. They are paying these taxes under protest based upon the decision of the supreme court in the case of East Helena State Bank vs. Leslie M. Rogers, county treasurer, and claim that in computing their 1924 assessment, liberty bonds and other government securities were not allowed as a deduction in determining the moneyed capital employed."

You have requested my opinion on the following question based upon the facts stated by you:

"1. Can the second installment of taxes be paid under protest where the first installment has been paid without protest and appeal has not been taken on the assessment to the county board of equalization or the state board of equalization?"

Under the decision of the supreme court, referred to by you, the tax based upon moneyed capital invested in tax-exempt securities is illegal. If the tax be exacted over the protest of the taxpayer, it may be refunded under the provisions of section 2222, R. C. M. 1921.

The failure to pay the first installment under protest, or the failure to appeal to the county and state boards of equalization, can not serve to make legal a tax otherwise illegal. In my judgment, the case is not analogous to one where there is involved a dispute over the valuation of property. As to such cases, application for relief must first be made to the county and state boards of equalization. (Belknap Realty Co. vs. Simineo, 67 Mont. 359, and cases therein cited.)

You have also asked the following question based upon the same facts:

"2. If the second installment of taxes can be so paid under protest, have the county commissioners authority under law to make a compromise settlement, allowing such state bank to deduct liberty bonds and government securities from the moneyed capital employed owned by such bank on the first Monday in March, 1924?"

I see no reason why the county commissioners have not the authority to allow the deduction in accordance with the decision of the supreme court. They are merely releasing what the supreme court has held to be an illegal tax, and, in my opinion, may be coerced so to do by legal proceedings. Hence, I see no reason why they may not voluntarily do so.

You have also asked:

"3. If such state banks were illegally assessed in 1924 in not allowing liberty bonds and government securities as a deduction in computing moneyed capital employed, and only the second installment of taxes was paid under protest, can the full amount of such liberty bonds or government securities be deducted from the total assessment of moneyed capital employed in making such compromise settlement or only one-half of such liberty bonds or government securities owned by such banks on the first Monday in March, 1924, be deducted in determining the amount of taxes due under the second installment?"

This question is answered by the supreme court in *State vs. State Board of Equalization*, 67 Mont. 340, 352, where the court, in speaking of the powers of the state board of equalization, said:

"This board is not given power or authority, by direction or indirection, to reimburse a person for taxes which he has paid by mistake in former years, and that would be the direct effect of allowing this deduction to be made: it would suffer the company to get back from the county pro tanto the amount of taxes which it had mistakenly paid. In other words, it would, in effect, permit the company to say that it owed the county taxes on property valued at \$1,186,245.85 for the year 1920, but since during the past nine years it had mistakenly paid taxes on \$2,719,379.93 worth of property it did not own, and which should have been paid by others, therefore to partly reimburse itself it would retain the amount of taxes which were due from it for the year 1920. The law will not permit a taxpayer to correct his mistakes in this way."

The reasoning applied in that case governs the question you have submitted.

It is my opinion, therefore, that the board of county commissioners may not make a refund or deduction of the taxes paid for the first installment of taxes.

The full amount of the moneyed capital invested in tax-exempt securities on the first Monday of March, 1924, should be deducted and the last installment of taxes computed on the remainder.

Very truly yours,

L. A. FOOT,

Attorney General.