

**Assessment of Banks, Deductions for Government Bonds.  
Bank Stock, Assessment Of.**

Shareholders in national or state banks are entitled to no reduction on the valuation of their shares of stock for government bonds owned by the bank.

Helena, Montana, August 1, 1908.

Hon. J. W. Speer,  
County Attorney,  
Great Falls, Montana.

Dear Sir:—

Your letter of August 1st received, in which you request an opinion upon the following question:

“Is a state bank entitled to deduct from its capital stock, the amount invested in government bonds, in arriving at the proper assessed valuation of the capital stock? The Cascade Bank of this city claims that it should be entitled to deduct from the cash value of its capital stock, \$25,000, which said bank has invested in government bonds.”

We also received, on the same date, a request from Hon. Thomas Nelson Marlowe, county attorney at Missoula, Montana, for an opinion as to whether a national bank, which has a part of its capital stock invested in government bonds of the United States, has a right to deduct the amount so invested, in determining the valuation of the bank's assessment.

As these two requests for opinions involve the same principle of law, we will answer them both in one opinion.

In the case of the Daly Bank & Trust Co. vs. Board of County Commissioners, 33 Mont. 101, our supreme court has laid down the rule for taxing state banks, as follows:

“To the extent that the capital stock is represented by property belonging to the state bank or trust company, and which properly is liable to taxation, to that extent the stock of that bank or trust company is not taxable. The real and personal property of a state bank or trust company is to be assessed as are the same kinds of property belonging to natural persons. ‘All taxable property must be assessed at its full cash value.’ (Section 3690, Political Code.) Stocks of a state bank or trust company fall within the definition of the term ‘property’ as given in Section 17 of Article XII of the constitution above, and in Section 3680, Subdivisions 1 and 4 of the Political Code, and are to be assessed to the owners at their full cash value, except to the extent that that value is represented in property which is assessed to the bank or trust company. (Section 17, Article XII, above.) \* \* \*

“However, as that section of the constitution is in the nature of a prohibition, it is so far self-executing as to prohibit the assessment upon the stocks of a bank or trust company of any greater valuation than the full cash value of such stocks, less the amount of the property representing that stock, which which is assessed to the bank or trust company itself.”

Section 3691 of the Political Code, (Section 2503, Revised Codes of Montana), provides the method of taxing national banks and the stockholders thereof. This section fully complies with the provisions of

Section 5219 of the U. S. Revised Statutes, which authorize the taxation of stockholders and national banks by the state, in the manner provided by said section.

Under the laws of this state, as construed by our supreme court above, providing for the taxation of state banks, and also under the provisions of said Section 3691 of the Political Code, providing for the taxation of national banks, it will be noticed that the shares of stock in each instance are taxed to the individual stockholder, at their actual value, after deducting the property otherwise taxed to the bank itself.

In the case of state banks, the property taxed to the bank itself is the real and personal property belonging to the bank; while in the case of national banks, the only property taxed to the bank is the real property belonging to the bank. This brings us to the question submitted in the above requests, viz: Can the stockholder make deductions from the actual value of his shares of stock for United States bonds which are owned by the bank and not taxed to the bank itself?

This question has been before the state courts and the supreme court of the United States many times, and so far as we are able to find, in every instance it has been held that the stockholder is not permitted to have the value of the bonds held by the bank deducted, in determining the actual value of his shares of stock.

In the case of *Palmer vs. McMahon*, 133 U. S. 660, a statute of New York almost identical with said Section 3691, was construed, in passing upon the same question presented above. In that case the court said:

"We have decided that so much of the capital of the national and state banks as is invested in United States securities, cannot be subjected to state taxation; but that shares of the bank stock may be taxed in the hands of their individual owners, at their actual, instead of their par value, without regard to the fact that part or the whole of the capital of the corporation might be invested in United States securities."

*People vs. The Commissioners*, 4 Wall. 244.

*Exchange National Bank vs. Miller*, 19 Fed. 372.

*Frazer vs. Seibern et al*, 16 O. State 614.

*Owensboro Nat. Bank vs. Owensboro*, 173 U. S. 664.

For a full collection of authorities on this question, see annotations to Section 5219, U. S. Revised Statutes, in Vol. 5, Federal Statutes Annotated, page 157.

Nor does the fact that government bonds, owned by private individuals, are exempt from taxation, make an unlawful discrimination against stockholders owning shares of stock in a state or national bank which owns government bonds.

*Exchange Nat. Bank vs. Miller*, 19 Fed. 372.

*People vs. The Commissioners*, 4 Wall. 244.

*Mercantile Bank vs. New York*, 121 U. S. 138.

*National State Bank vs. City of Burlington*, 119 Ia. 696.

You are therefore advised that neither the stockholders of a state or national bank are entitled to deductions for the amount the bank

itself has invested in United States bonds; but that on the other hand, the assessor, in determining the actual value of the shares of stock, must include the amount the bank itself has invested in such bonds, as the only deduction allowed in determining the actual value of the shares assessed to the stockholders, in the case of state banks, is the value of the real and personal property otherwise assessed and taxed, and in the case of national banks, the value of the real estate otherwise assessed and taxed.

Of course, what is said in the preceding paragraph has nothing to do with the right of the bank to make deductions of solvent debts from solvent credits, in the manner pointed out in the case of the Daly Bank & Trust Co. vs. Board of County Commissioners, cited above.

Yours very truly,

ALBERT J. GALEN,

Attorney General.