

**Banks, Assessment of. Assessment, of Banks. Corporations, Assessment of Stocks of. Stocks of Corporations, Assessment of.**

The construction of Sections 2503-4-5 is very materially limited by Sections 7 and 17 of Article XII. of the constitution. Such sections must be construed in conformity with the mandates of the constitution, and any provisions in them contrary to the constitution are of no effect. The only assessment

which can be made upon the stock of any corporation is upon any excess there may be in the aggregate market value of the shares over the value found for all property belonging to the corporation in this state and assessed thereto.

May 16th, 1913.

Hon. G. M. Houtz,  
State Tax Commissioner,  
Helena, Montana.

Dear Sir:

In as much as there seems to have been some question raised as to the exact meaning of the language used in my opinion to you under date of April 24th, 1913, upon the provisions of the law governing the assessment of banks for taxation purposes, and that several letters from various parts of the state have been addressed to me requesting an explanation of that opinion, I feel that a more detailed and fuller opinion would perhaps make the matter clearer to everyone.

The constitutional provisions relating to the subject of taxation are found in Art. XII of the Constitution of the State of Montana, and those which apply particularly to the subject in hand are found in Secs. 7 and 17 of that article, and they are respectively as follows:

"The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

"The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed), capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed."

The sections of the code which are involved in this question are 2498, 2501, 2502, 2503, 2504 and 2505. At the outset of this discussion it must be noticed that there are two different sorts of banking corporations doing business in this state, namely, national banking associations organized under the federal law, and state banks organized under the laws of this state. Under the provisions of the national banking act the State of Montana is prohibited from levying any direct tax upon the personal property belonging to national banks, and the only tax which can be levied directly on the property of such banks is against real property belonging to them situated in this state, and that, under the provisions of Sec. 7 of Art. XII of the Constitution, above quoted, must be taxed to the corporation. The state is not prohibited, however, from taxing the shares of national banks doing business in this state, in the hands of shareholders. Such

shares are property within the meaning of Sec. 1 of Art. XII of the Constitution. Sec. 2502 of the Revised Codes provides as follows:

"All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed."

The question then arises as to how the full cash value of the shares of a national banking corporation is to be estimated. Since the real property within the state, belonging to the bank, must be assessed to the bank, the assessment of the shares must be upon a valuation, the basis of which is all the other property in which the banking capital is invested. This includes (1) money on hand; (2) credits, i. e., those solvent debts secured or unsecured, owing to the bank, which would mean loans secured by mortgage, collateral or other lien unsecured; money due from other banks and reserve agents; stocks of other corporations; bonds, franchises and real estate without the state. The full cash value of stocks is due in part at least to the property which they represent, no matter what the nature of it is or where it may be located, and in determining the full cash value of the stocks, which are property, heed must be given to all of the property which gives them their value.

Sec. 2501 of the Revised Codes is in part as follows:

"In making up the amount of credits which any person is required to list, he will be entitled to deduct from the gross amount, the amount of all bona fide debts owing by him, but no such acknowledgment of indebtedness not founded upon actual consideration, and no such acknowledgment made for the purpose of being so deducted, must be considered a debt within the intent of this section."

The bona fide debts of a bank, which would be allowed to be deducted from the credits under this section, would be the current deposits, money due to other banks, bills payable, etc. These should be deducted from the credits before the cash value of the shares is made.

The procedure for taxing national banks in accordance with what has been said might be indicated as follows:

1. To tax all real estate owned by the bank within the state to the bank.

2. To tax the shares of such bank upon a valuation, the basis of which is the value of all the other property, namely, moneys, credits, stocks, bonds, franchises and real property, bona fide debts being deducted from the credits, owned or controlled by the bank, whether in this state or outside of it, to the share holders in the county, town, city or district where such bank or banking association is located.

Coming now to the subject of banking corporations, organized under the laws of this state, we find no disability in the state to tax them as ordinary corporations are taxed. And in this regard, Secs. 2503, 2504 and 2505 must be construed in accordance with the provisions of the constitution. Sec. 7 of Art. XII of the Constitution

makes them subject to be taxed upon all property owned or used by them. The result of this is that all of the property owned or used by banking corporation organized under the laws of the State of Montana, must be taxed to the corporation. This necessarily implies that the only assessment which can be levied against the shares of such a corporation in the hands of the share holders is upon the excess in their market value over the value represented by property within the state belonging to and taxed to the corporation. This would be whatever portion of the full cash value of the shares was due to property owned by the bank outside of the state.

To outline the procedure for taxation of such banks, as was done above, in the case of national banks:

1. To tax all the property within the state and belonging to the corporation to the corporation, making allowance for bona fide debts, as in the case of national banks.

2. To tax the shares of such corporation in the hands of the share holders upon any portion of the full cash value thereof, due to property not within the state.

Applying this to the case mentioned in your letter of April 12th, if the bank in question is a national bank, the full value of the real estate would be taxed to the bank and the shares would be taxed to the share holders at the full cash value given them by the remaining property of the bank. If, on the other hand, it happened to be a corporation organized under the laws of this state, all of the property within this state belonging to the corporation must be assessed to it and in the case of national banks where assessors deduct the value of the real estate from the total value of all the property in order to get at the proper valuation of the shares, the real estate should be given the same value in the deduction as it is for taxation purposes.

Very truly yours,

D. M. KELLY,  
Attorney General.