

**Taxation, Banks and Bank Stock—Banks and Bank Stock, Taxation of.**

Since the adoption of Chapter 51, Laws 1919, the stock of banks is not taxed, but the moneyed capital of the bank is assessed to the bank as a corporation.

November 22, 1920.

Hon. James A. Walsh,  
Collector Internal Revenue,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 18th inst. in which you state that a controversy has arisen between State Banks in Montana, and the Commissioner of Internal Revenue, relative to a deduction of taxes paid in behalf of stockholders of such banks, and asking that I advise you regarding such matter.

Prior to 1919 no attempt was made in this state to assess any property belonging to State Banks, except real estate, the shares of stock in the hands of the stockholders being assessed to the stockholders, but being paid, as a matter of convenience, by the banks for the stockholders. In other words, the property of National Banks and State Banks and the shares of stock in National and State Banks being assessed in exactly the same manner, the only property of the banks, both National and State which was assessed was real estate, while the shares of stock of both National and State Banks was assessed to the stockholders and paid by the banks as a matter of convenience.

However, our Constitution, Sec. 17, Art. 12, contains a provision which prohibits "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." Under the provision it was very strenuously contended that all the property

of a state bank of every kind and description, being situated within the state, was required to be assessed and taxed, and when so assessed and taxed the property represented by the shares of stock was assessed and taxed, hence, under such constitutional provision, the shares of stock were not taxable.

In 1919 the legislature passed what is generally termed the "Classification Tax Law," (Chap. 51, Sess. Laws 1919) and having in mind the contention above set out, provided particularly the manner in which both National and State Banks should be taxed. This act provides for the taxation of the capital stock of National Banks, and for the taxation of the moneyed capital employed in conducting a banking business by any banking corporation, other than a National Bank, and provides that such moneyed capital shall be determined by deducting from the moneys and credits the amount of the deposits and any indebtedness representing money borrowed for use in said business.

Since the enactment of this law, that is for the years 1919 and 1920, none of the shares of capital stock of a State Bank have been assessed or taxed either to the bank or to the stockholder, but the moneyed capital of the State Bank has been assessed directly to the bank as a corporation, and the taxes have been levied on such moneyed capital directly against the bank, the taxes being due thereon from the bank as a corporation and not from any of its stockholders, and when paid constituting a payment of taxes are assessed and levied they constitute a lien against the property of the bank, and not against the property of any individual stockholder, and such lien is only removed by payment by the bank. In other words this assessment of moneyed capital is made against the taxes paid thereon by a State Bank in exactly the same manner as property owned by an individual is assessed to him and the taxes thereon paid by him.

Respectfully,

S. C. FORD,

Attorney General.