

Taxation — State Board of Equalization — Banks and Banking—Cancellation—Refunds.

The state board of equalization has authority to direct the county and city treasurers to correct the assessment of national banks by reducing the assessment from a 40% to a 7% basis.

May 25, 1928.

Jas. H. Stewart, Esq.,
Chairman, State Board of Equalization.
Helena, Montana.

My dear Mr. Stewart:

You have requested my opinion whether the state board of equalization has the power and authority to make a general order cancelling the unpaid second installments of 1927 taxes on national bank shares, and directing the various county and city treasurers to strike the same from their assessment books and to correct their assessments accordingly.

From your letter the following facts appear: A number of the larger national banks, as well as a few of the smaller ones, learned of the decision of the United States Supreme Court in the case of Commercial National Bank vs. Custer County in time to pay the whole of their bank share taxes, computed on a 40% basis, in November, under protest. They then applied to their respective boards of county commissioners for refunds and in each case obtained a refund of the difference between the amount paid and the taxes computed on a 7% basis.

However, the great majority of the national banks did not learn of such decision in time to take similar action. Some of these latter have now applied to your board for an order cancelling the second half of such taxes.

As a matter of fairness to all national banks you are contemplating making an order cancelling the second installments of such taxes remain-

ing unpaid of all national banks and directing the various county and city treasurers to strike the same from their assessment books, but some question has been raised as to the power and authority of the board to make such an order.

Section 15 of article XII of the constitution, as amended at the 1922 general election, and chapter 3 of 1923 session laws vest in the state board of equalization supervision over the administration and enforcement of the tax laws and over all county and municipal officers having duties to perform in connection with such laws.

If, in either the month of October or November of any year after the assessment books had reached the treasurer, the state board of equalization should discover an error in such books due either to the placing of property in a wrong class, or the computation of a tax at an improper rate, or that a tax is unlawful, there can be no question that your board might before payment of the tax correct the error by changing the class or directing a recomputation of the tax at the proper rate or striking the unlawful tax from the assessment books. If that could be done at that time, and there is no question but that it could be, there is no reason why your board, under its broad supervisory powers, may not take a similar action or make a similar order at any time thereafter, provided such action is taken or order made before the tax is actually paid, or before it has become delinquent.

Here, if there were no question that the whole of the second installments of such taxes were unlawful so that if paid under protest suits might be brought and recovery obtained I am of the opinion that your board would have full power and authority to make the contemplated order. However, there is some question whether the whole of the second installments are unlawful; it is possible that each may be lawful to the extent of a tax computed on a 7% basis, and to that extent should be paid.

It is therefore my opinion that while you may not have the authority to cancel the whole of such second installments you do have full power and authority to cancel so much thereof as exceeds taxes computed on a 7% basis and to direct the county and city treasurers to correct the assessment of each national bank on his assessment books so as to require the payment only of so much of the second installment as the taxes on a 7% basis would amount to, the remainder thereof being cancelled and annulled.

Very truly yours,

L. A. FOOT,
Attorney General.