

Taxation—Building and Loan Associations—Moneys—Deposits—Assessment.

Cash on hand is taxable to building and loan association as personal property. Money on general deposit in banks is taxable to the association as credits. Other deposits that are included in a contract in writing for repayment are taxable as a part of the moneyed credits of said association.

State Board of Equalization,
Helena, Montana,

May 27, 1929.

Gentlemen:

You have requested an opinion with reference to the taxation of building and loan associations which involves two questions, as follows:

1. Is cash on hand in the vault of the association assessable at all, and, if so, should it be computed as part of the moneyed capital of the association, or should it be assessed as money not a part of the moneyed capital?
2. Is money which a building and loan association has on deposit in a bank assessable at all, and, if so, should it be computed as part of the moneyed capital of said association, or should it be assessed as a credit belonging to said association?

The Twenty-first Legislative Assembly of Montana enacted Chapter 62 of the Laws of 1929 which amends Section 20 of Chapter 57 of the Laws of the Twentieth Legislative assembly relating to the taxation of building and loan associations. Said Chapter 62 provides as follows:

“Every association shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of such associations, the amount standing to the credit of the members of any such association, upon its books and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital as so ascertained shall be taxed at the same rate and take the same

classification as shares of stock in a National bank or moneyed capital coming into substantial competition therewith."

It will be observed that the association is assessed and pays taxes on three separate kinds of property, viz:

1. Real property owned by the association.
2. Personal property owned by the association.
3. The moneyed capital employed in the business of the association.

The act further states that "associations organized under or controlled by this act shall be subject to taxation in no other way." The manner of taxation set out in said act, therefore, is exclusive of all other statutory provisions upon the subject of taxation.

The act defines what constitutes moneyed capital employed by the association, and it will be observed that the definition does not include money or cash in the hands of the association. It is therefore evident that the legislature has not provided that the cash in the hands of the association should be taxed as part of the moneyed capital employed in the business of the association. Money or cash on hand is not specifically mentioned in the act. However, money or cash on hand is personal property. The direction of the statute that the association shall be assessed and pay taxes upon its personal property would therefore include within the terms of those words money or cash in the hands of the association.

All property must be assessed and taxed except such as is exempted therefrom by the constitution or which may be exempted by the legislature by virtue of authority contained in the constitution. (Sections 1 and 16 of Article XII, Montana Constitution).

The word "property" as used in said Article XII includes "moneys, credits" etc. (Section 17 of Article XII, Montana Constitution).

Inasmuch as the said Chapter 62, Laws of 1929, makes no specific direction for the assessment of moneys or cash in the hands of the association, and as such property must be assessed under the Constitution, and as money is personal property and is not exempted from taxation by the Constitution and is not permitted to be exempted by it, it follows that said moneys or cash in the hands of the association should be assessed as money, the same being personal property within the meaning of that term as used in said Chapter 62, Laws of 1929.

Moneys of an association on deposit in a bank are credits. (Clark vs. Maher, 34 Mont. 391). Certain kinds of credits, as mentioned in said Chapter 62, constitute the moneyed capital employed in the business of the association, but this kind is not specifically mentioned. It is not contained within any of the items stated in the definition unless it can be said that it is included within the term "evidences of indebtedness."

Moneys on general deposit in a bank subject to check are usually evidenced by a deposit slip or a pass book. Do these constitute evidences of indebtedness within the meaning of the statute? The overwhelming weight of authority is that they do not. The courts generally hold that they are receipts and nothing more. No promise is made to pay the sum

named nor are they proof of liability. They will not support an action against the bank. The action must be brought upon the debt, and in such a suit the pass book or the deposit slip would merely be evidence that at a certain time a certain deposit was made. This proof standing alone would not warrant recovery for the reason that thereafter the funds might have been withdrawn by the depositor, or have been seized on execution or have been offset against a liability owing the bank or in some other manner withdrawn from the bank, so that the deposit slip or the pass book itself is not evidence of existing credit.

England vs. Hughes, 213 S. W. 17;

American Home Life Ins. Co. vs. Citizens State Bank, 168
Pac. 437;

L. R. A. 1918 B. Note Page 298.

It is my opinion that moneys on general deposit in a bank evidenced by a deposit slip or pass book constitute credits and that the deposit slips or pass books are not evidence of the existing credit. They are therefore not evidences of indebtedness within the meaning of the term as used in the statute. It would be otherwise were the deposit in the nature of an investment as where it is deposited for a definite time at a rate of interest and the contract to repay is evidenced by a certificate in writing to that effect.

The statute itself would further seem to lend support to this view for the reason that the statute requires the building and loan association to furnish a statement of the resources and liabilities of the building and loan association and any moneys which the association has on deposit in a bank would be shown as of the first Monday in March of the particular year. There would only be shown the balance owing the association. A showing of deposit slips or pass books with mere entries of deposit would not disclose to the assessor the true amount of money on deposit at that time. They would be no evidence whatever of the amount owing to the association by the bank.

Such credits not being included within the term "moneyed capital" employed in the business of the association, and no other provision having been made by the statute for their assessment except as they are included within the term "personal property," and as the Constitution requires these credits to be assessed, it follows that they should be assessed as credits, the same constituting personal property.

Very truly yours,

L. A. FOOT,
Attorney General.

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