

**Taxation—Banks and Banking—National Banks—State Banks—Bank Stock—Moneyed Capital.**

All cash and moneys on hand of a state bank are a part of its moneyed capital which is taxable upon 30% of its full and true value.

Shares of federal reserve bank stock owned by member banks are not subject to taxation to the banks but the value of such stock may be considered in determining the value of the stock of the bank owning said federal reserve stock which shares of stock in the member bank are assessable to the share holders, and this applies to national as well as state banks.

State Board of Equalization,  
Helena, Montana.

March 23, 1929.

Gentlemen:

You have requested my opinion whether moneys and cash on hand in a bank are, under the provisions of house bill No. 181, passed by the Twenty-first Legislative Assembly of the State of Montana, subject to be taxed on thirty per cent of their value or seven per cent thereof.

Section 1 of said bill reads as follows:

“That moneys and credits are hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined, and all credits secured and unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that credits, as herein defined, shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the State of Montana.”

Section 2 of said bill reads as follows:

“Moneyed capital is hereby defined as moneys, bonds, notes and other evidence of indebtedness, including evidences of indebtedness secured by mortgage on real or personal property in the hands of the individual citizens and corporations coming in competition with the business of national banks or employed in conducting a banking or investment business; provided, however, that bonds, notes and other evidence of indebtedness in the hands of individuals and corporations not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital.”

By the above two sections moneys are divided into two classes, the first consisting of those moneys not coming in competition with the business of national banks or which are not employed in conducting

a banking or investment business, and the second class consisting of those moneys coming in competition with the business of national banks or that are employed in conducting a banking or investment business. The moneys in the latter class, together with the other property mentioned in Section 2, above, constitute "moneyed capital," while the moneys in the first class are designated merely as "money."

By the terms of the bill moneyed capital as above defined is taxed as such, and money not forming a part of moneyed capital is taxed as money.

As applied to a bank, moneyed capital consists, first, of moneys and cash on hand, and, second, of bonds, notes and other evidences of indebtedness owned by such bank. For the purpose of assessing and ascertaining the value of the moneyed capital Section 3 of said bill provides:

"In assessing and ascertaining the value of moneyed capital for taxation, there shall be deducted from the amount of bonds, notes, and other evidence of indebtedness the amount of any deposits and any indebtedness representing money borrowed for use as moneyed capital."

The above provision does not attempt to state a complete method of computation to be employed in determining the total amount of moneyed capital subject to taxation, but merely fixes the rule for determining the value of a constituent part of the moneyed capital, to-wit, the bonds, notes and other evidences of indebtedness, which value is arrived at by deducting from the amount of said bonds, notes and other evidences of indebtedness so owned by the bank the amount of deposits and any indebtedness representing money borrowed for use as moneyed capital. The balance, if any, is the value of the bonds, notes and other evidences of indebtedness owned by the bank for the purposes of taxation, which balance, added to the money or cash on hand (which is taken at its full face value without deduction) constitutes the entire moneyed capital of the bank subject to taxation.

Section 6 of the act provides:

"As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

"Moneys and credits, seven per cent (7%) of true and full value.

"Moneyed capital and shares of banks, both national and state, thirty per cent (30%) of true and full value."

Under this section all moneys not coming in competition with the business of national banks or not employed in conducting a banking or investment business would be taxed upon seven per cent of their true and full value, but moneyed capital, which includes money coming in competition with the business of national banks or employed in conducting a banking or investment business, is taxed upon thirty per cent of its true and full value. Money and cash on hand in a bank are employed in conducting a banking business and are therefore a part of

moneyed capital and become subject to taxation as a part of the moneyed capital of the bank and would be taxable upon thirty per cent of their full and true value.

What is said herein with reference to banks also applies in the case of individuals and corporations other than banks where the money is used in conducting an investment business or comes in competition with the business of national banks, so as to constitute the money a part of moneyed capital as defined in Section 2 of said bill.

You further ask an opinion whether a state banking institution is taxable for stock of a federal reserve bank owned by said state bank.

The federal reserve act provides that the shares of stock of the federal reserve bank and the income thereof are exempt from all national, state and local taxation, and by an act approved February 25, 1862, the Congress declared that all stocks, bonds and other securities of the United States held by individuals, corporations or associations within the United States shall be exempt from taxation by or under state authority, and in substantially the same terms the act has been carried forward to the present time. (Sec. 3701 U.S. Rev. Stats.).

The Supreme Court of the State of Montana in the case of East Helena State Bank vs. Rogers, 73 Mont. 210, held that in ascertaining the moneyed capital of a state bank for purposes of taxation that part of the capital which is represented by bonds of the United States owned by said bank and exempt from taxation should be deducted from the moneys and credits of the bank; that the tax upon the moneyed capital, the value of which included the value of the exempt securities, was in effect a tax upon the securities themselves. To the same effect is *Farmers and Merchants Bank vs. Minn.*, 232 U.S. 516.

However, I am of the opinion that the value of the federal reserve bank stock held by a state bank may be considered in ascertaining the value of the shares of stock of said state bank. Under Section 5 of House bill No. 181 the value of shares of stock in state banking corporations is the full cash value thereof less the value of the real estate, moneyed capital and other property of the bank assessed and taxed as the property of said bank. The value of the federal reserve stock is not included in any of these permissible deductions, and is not assessable to the bank and therefore, it should not be deducted in arriving at the full cash value of the shares of stock of the state bank, but should be considered in determining the full cash value of said state bank stock. The courts have held that a tax upon the shares of the bank is a tax against the shareholders and that even though part or all of the capital of a bank is invested in tax exempt securities the shareholders may be taxed upon the value of their shares even though such value consists in whole or in part of the value of the tax exempt securities owned by the bank.

*Bank of Memphis vs. Tenn.*, 161 U.S. 516;

*New Orleans vs. Louisiana*, 167 U.S. 371;

*Charleston National Bank vs. Melton*, 171 Fed. 743, and cases cited.

What is said above with reference to federal reserve bank stock in connection with the taxation of shares of stock in state banks applies also to the taxation of shares of stock in national banks.

Very truly yours,

L. A. FOOT,

Attorney General.

By L. V. Ketter, First Assistant.