

Taxation—Banks and Banking—Insolvency.

A bank when operating as such is subject to taxation in the manner provided by law. After it ceases doing business its property is to be taxed in the manner that private corporations are taxed rather than under the statute specifically relating to the taxation of banks.

Where taxes are levied against an operating bank they may be collected even though thereafter and before collection the bank becomes insolvent and ceases to do business.

Mr. G. M. Robertson,
Superintendent of Banks,
Helena, Montana.

December 27, 1930.

My dear Mr. Robertson:

You have requested an opinion on the question of whether a liquidating agent under the jurisdiction of your office is required to pay taxes levied for the year 1930 upon the moneyed capital of a bank which closed on November 10, 1930, and the affairs of which are now in the hands of the liquidation agent.

At the time these taxes were levied the bank was a going concern and therefore was subject to taxation on its moneyed capital. The only statute that I find bearing upon the collection or levy of taxes in the case of defunct banks is section 95, chapter 89, session laws of 1927, which reads as follows:

“Whenever any bank ceases to do business as a bank no taxes shall be levied or collected in accordance with the laws governing the assessment of banks, but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.”

My construction of the above section is that so long as a bank is operating as such it is subject to be taxed in the manner provided by law for the taxation of banks. Under said laws the bank is taxed upon its moneyed capital, and other property. After a bank closes, however, its property is to be taxed in the manner that private corporations are taxed rather than under the statute specifically relating to the taxation

of banks. This statute does not, in my opinion, forbid or prevent the collection of taxes levied upon the moneyed capital of a bank which had been lawfully assessed and levied against it prior to the time it ceased to do business. In fact, any statute which attempts to abate taxes lawfully levied would, in my opinion, be unconstitutional and I do not think that by the above statute the legislature intended to prevent the collection of taxes which had been lawfully levied prior to the time the bank ceased to do business.

Therefore, inasmuch as the bank in question did not close until after the moneyed capital had been legally assessed and the tax levied against it, it is my opinion that the liquidation agent is required to pay the taxes levied out of the assets in his hands belonging to such a bank.

Very truly yours,

L. A. FOOT,

Attorney General.