

Opinion No. 607**Income Tax—R. F. C.—R. A. C. C.
—Spokane Bank for Cooperatives.**

HELD: Officers and employees of the Reconstruction Finance Corporation, the Spokane Bank for Cooperatives and similar institutions, who reside in the State of Montana or whose services are rendered in the State of Montana may be subject to payment of an income tax on their salaries or wages under our law since such institutions, while instrumentalities of the government, are entities separate and distinct from the United States and their agents and employees are not agents and employees of the United States.

September 10, 1934.

Your letter to us of recent date is as follows:

“An officer of the Spokane Bank for Co-operatives has raised the ques-

tion as to whether his compensation is subject to the Personal Income Tax Law, Chapter 181 of the Laws of 1933.

"Therefore, we request that you kindly advise this Department as to whether compensation paid to officers and employees of the Reconstruction Finance Corporation, Regional Agricultural Credit Corporation and the Spokane Bank for Co-operatives and similar organizations is subject to the Personal Income Tax Law of this state."

Under section 2 of Chapter 181, Laws of 1933, the net income of a resident of Montana of the requisite amount, and under section 3 thereof the net income of a non-resident of Montana of the requisite amount derived "from all property owned and from every business, trade, profession or occupation carried on in this state by such person" are subject to the payment of an income tax.

Section 7 of the same Act, provides:

"The term 'Gross Income' includes gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind, and in whatever form paid, * * * but does not include the following items which are exempt from taxation under this Act: * * *

"(f) Salaries, wages and other compensations received from the United States or (by) officials or employees thereof, including persons in the military or naval forces of the United States * * *."

The Reconstruction Finance Corporation Act of 1932, created a body corporate with the name "Reconstruction Finance Corporation." The principal office of the corporation is located in the District of Columbia, but it is authorized to establish "agencies or branch offices in any city or cities of the United States under rules and regulations to be prescribed by its board of directors." The entire capital stock of the corporation, amounting to \$500,000,000 is owned by the United States. The management of the corporation is vested in its board of directors. The corporation is empowered to sue and be sued; "to select, employ and fix the compensation of such officers, employees, attorneys and agents as shall be necessary for the transaction of its business, without regard to the provi-

sions of other laws applicable to the employment and compensation of officers or employees of the United States and to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys and agents." The board of directors of the corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid.

The Act as subsequently amended authorized the corporation "to create in any of the twelve Federal Land Bank Districts, where it may deem the same to be desirable, a regional agricultural credit corporation with a paid-up capital of not less than \$3,000,000, to be subscribed for by the former." The regional agricultural credit corporations so created "shall be managed by officers and agents to be appointed by the Reconstruction Finance Corporation."

The Farm Credit Act of 1933 directed the Governor of the Farm Credit Administration to organize and charter twelve banks to be known as "Banks for Cooperatives," one of which shall be established in each city in which there is located a Federal Land Bank. "The directors of the several Federal land banks shall be ex-officio the directors of the respective Banks for Cooperatives. Such directors shall have power, subject to the approval of the governor, to employ and fix the compensation of such officers and employees of such banks as may be necessary to carry out the powers and duties conferred upon such banks under the Act." The Banks for Cooperatives shall have power to sue and be sued in and court. The capital stock of each bank shall be in such amount as the governor determines is required for the purpose of meeting the credit needs of eligible borrowers therefrom. "The governor, on behalf of the United States, shall make payments for stock in the banks and such payments shall be subject to call in whole or in part by the board of directors of the bank with the approval of the governor." The banks are authorized to make loans to cooperative associations for any of the purposes set forth in the Agricultural Marketing Act as amended. Cooperative associations borrowing from any Bank for Cooperatives

shall be required to own, at the time the loan is made, an amount of stock of the bank equal in fair book value to five per cent of the amount of the loan. Upon default of any obligation of any Bank for Cooperatives such bank may be declared insolvent and placed in the hands of a receiver by the governor.

The institutions under consideration are instrumentalities of the government. (*Skinner & Eddy Corp. v. McCarl*, 275 U. S. 1, 72 L. Ed. 131; *Russell Wheel & Foundry Co. v. United States*, 31 Fed. (2d) 826; *North Dakota-Montana W. G. Ass'n. v. United States*, 66 Fed. (2d) 573.) Indeed the Banks for Cooperatives are made such by the Farm Credit Act of 1933. They are, however, entities separate and distinct from the United States and their agents and employees are not agents or employees of the United States. (*United States v. Strang*, 254 U. S. 491, 65 L. Ed. 368; *Krichman v. United States*, 256 U. S. 363, 65 L. Ed. 992; *Sloan Shipyards Corp. v. U. S. Fleet Corp.*, 258 U. S. 549, 66 L. Ed. 762; *Skinner & Eddy Corp. v. McCarl*, above; *Providence Engineering Corp. v. Downey Shipbuilding Corp.*, 294 Fed. 641; *Russell Wheel & Foundry Co., v. United States*, above; *North Dakota-Montana W. G. Ass'n. v. United States*, above.)

That congress recognized a distinction between officers and employees of the United States and employees of the Reconstruction Finance Corporation is apparent from the following sentence found in section 3 of the Reconstruction Finance Corporation Act as amended by section 208 (a) of the Emergency Relief and Construction Act of 1932: "Nothing contained in this chapter or in any Act shall be construed to prevent the appointment and compensation as an employee of the corporation of any officer or employee of the United States in any board, commission, independent establishment or executive department thereof."

That a Bank for Cooperatives is an entity distinct from the United States, its departments and boards cannot be gainsaid, in view of the provision which confers on the Governor of the Farm Credit Administration authority to declare such bank insolvent upon default of any of its obligations.

Our conclusion is, therefore, that officers and employees of the Reconstruc-

tion Finance Corporation, the Regional Agricultural Credit Corporation, the Spokane Bank for Cooperatives and similar institutions, who reside in the State of Montana or whose services are rendered in the State of Montana may be subject to payment of an income tax on their salaries or wages under our law.

Note: See *Pomeroy v. State Board of Equalization*, et al., 99 Mont. 534, 45 Pac. (2d) 316.