

Opinion No. 120.

**Banks and Banking—National Banks
—Capital Stock, Taxation of—
Taxation.**

HELD: Where a National Bank is

insolvent the County cannot collect a tax assessment against the bank's capital stock.

June 18, 1935.

Mr. Thomas E. Gilbert
County Attorney
Dillon, Montana

You have submitted the following facts:

"On the first Monday in March, 1934, the First National Bank of Lima, Montana, was transacting business as usual, and apparently was solvent. The County Assessor made an assessment of \$728.52 for the year 1934. The assessment was not divided but at the request of the bank it was stated by the County Treasurer that the sum of \$353.42 was upon the real estate and the banking house itself, and the sum of \$475.14 was the tax on the bank's capital stock.

"Months after the tax was levied one J. F. Angell was placed in charge of the bank as liquidator, said bank since the assessment having become insolvent.

"The liquidator, Mr. Angell, upon advice from the Federal Deposit Insurance Corporation of Washington, D. C., through its counsel, Mr. Francis C. Brown, has declined to pay the tax in full and insists that under the law as given him by Mr. Francis C. Brown the only amount which said First National Bank of Lima, Montana, will pay is the sum assessed against the real property belonging to the bank.

"Will you kindly give me your opinion as to the legality of this tax and whether or not we should accept the part of the tax which is levied against the real estate only, or whether we should insist upon the full payment of \$728.52?"

Banks of the United States, having been considered instrumentalities of the Federal Government, are not taxable by the states, except only by virtue of such consent as the Federal Government may give. *McCullough v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579; *Owensboro National Bank v. City of Owensboro*, 173 U. S. 664, 19 Sup. Ct. 537, 43 L. Ed. 850; *Citizens and*

Southern National Bank v. City of Atlanta, 46 Fed. (2d) 88.

An illegal tax will be restrained by an action in equity. *Brown v. French*, 80 Fed. 166.

The permission to tax National banks and their shareholders is found in 12 U. S. Code, as amended by the Act of March 25, 1926. It permits taxation of no property except real estate, but permits taxation of the shares to the owners which, however, is not considered taxation of the bank's property. *Citizens and Southern National Bank v. City of Atlanta*, supra; *Brown v. French*, supra.

The shareholders may be reached through the banks as their agents which may be properly done. *Home Savings Bank v. Des Moines*, 205 U. S. 503; *Citizens and Southern National Bank v. City of Atlanta*, supra.

In a similar situation considered by the Federal Court in *City of Boston v. Beal*, 51 Fed. 306, it was held that no suit for the tax on shares could be maintained against the receiver of an insolvent National Bank where the property represented by the shares had disappeared; for there being nothing from which the receiver can be reimbursed the tax will fall upon the assets of the bank, which belong to its creditors, and thereby violate the rule that a state cannot tax the capital stock of a National bank against the bank. This decision was affirmed by the Circuit Court of Appeals in 55 Fed. 26.

In *Stapylton v. Haggard*, 91 Fed. 93, this holding was again affirmed. The court in the latter case said: "As we construe the cases, from *First Nat. Bank v. Com.*, 9 Wall. 353, to *First Nat. Bank v. Chehalis Co.*, 166 U. S. 440, 17 Sup. Ct. 629, the bank is made to pay the taxes assessed by the state against its shareholders, when the state statutes lay such duty upon the bank, upon the theory that the shares are valuable, and that the bank has assets in its hands belonging to the shareholders from which it can recoup. Where a bank is insolvent, and has passed into the hands of a receiver, the shares are generally worse than worthless; and the receiver has no assets belonging to the shareholders which can be applied to the payment of taxes assessed on shares. In

such case, we are of opinion that the tax assessed against the shares of the bank cannot be collected from the receiver, or from assets in his hands. The case of *City of Boston v. Beal*, 51 Fed. 306, is directly in point; * * *

It is my opinion, therefore, that the tax on the capital stock cannot be collected, and that the offer to pay the tax on the real estate should be accepted.