

OPINIONS TO STATE COMPTROLLER.

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BASES FOR TAXATION OF BANKS AND TRUST  
COMPANIES.

Tallahassee, Fla., April 7, 1913.

*Hon. W. V. Knott, Comptroller,  
Tallahassee, Fla.*

Sir:—

I am in receipt of your communication, inclosing letters of Tax Assessors of Alachua and Suwannee Counties, relative to the differences of opinion held by them, and others, as to the construction and application of the various provisions of law relating to the taxation of property of banks, bankers, banking and trust companies and of national banking associations; and inviting attention to the following statutes:

“Sections 2719 to 2722 of the General Statutes of Florida; Sections 3, 5, 6, 8, 9, 16 and 49 of Chapter 5596 of the Laws of Florida; Sections 13, 17, 18, 19, 20 and 22 of Chapter 5596 of the Laws of Florida.”

Your inquiry in reference to the questions involved, is stated as follows:

“In order to secure uniform action on the part of the Tax Assessors, I respectfully request that you define the nature and character of the property that is to be assessed to ‘banks, bankers, banking firms or brokers, or associations of any kind that receive money or other values of any kind on deposit,’ including banking and trust companies and national banking associations.”

The statute prescribing the manner in which the assessment is to be made, and the property to be assessed,

is Section 8 of Chapter 5596 of the Laws of Florida, and reads as follows:

"The owner or holder of stock in any incorporated company doing business under corporate name shall not be taxed for such stock; Provided, That such stock is returned for taxation by such incorporated company and taxes are paid thereon by such company, or the property of said corporation is assessed for taxes where located and taxes are then paid on such property. All shares of banking associations organized within this State, pursuant to the provisions of Congress to procure a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate, in the assessment of taxes in the town or city where such banking association is located and not elsewhere, whether the holder resides there or not; but not at a greater rate than is assessed on other moneyed capital in the hands of individuals; and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall pay the same as the agent of each of its shareholders, and the said association may retain so much of any dividend belonging to any shareholder as shall be necessary to pay any taxes levied upon its shares."

Other sections mentioned by you are referred to, I assume, for the purpose of throwing some light and bearing in some degree upon the subject, although not in terms applicable thereto.

In considering this matter, it is necessary to have in mind Section 1 of Article IX of the Constitution of the State of Florida, as follows:

"The Legislature shall provide for a *uniform and equal rate of taxation*, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, etc.

It is also necessary to have in mind that the statute above quoted, providing for the assessment of the property of banking and trust companies, applies not only to such banking institutions as are authorized by the State of Florida to do business, *but also to national banking associations*, created and existing under authority and by virtue of a Federal statute.

This being true, it is necessary to refer to the Federal law upon the subject.

The Federal statute in Section 5219 of the Revised Statutes of the United States, and is as follows:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to two restrictions, that the taxation shall not be at a greater rate than is assessed upon any other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of the associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

This section prescribes the power of the State to tax national banks, their shares, or their property, *and confines this power to a taxation of the shares of stock in the name of the shareholders and assessment of real estate in the name of and against the bank itself.*

Owensboro National Bank vs. Owensboro, 173 U. S. 664; 19 Sup. Ct. Rep. 537; 43 Law Ed. 850.

Albuquerque First National Bank vs. Albright, 200  
U. S. 548; 28 Sup. Ct. Rep. 349; 52 Law Ed. 614.

The States have such power of taxing national banks, and such only, as is granted or permitted to them by the Legislation of Congress.

The State statute above quoted applies to national banks as well as State banks, and therefore, in order not to discriminate, and thereby offend the Congressional inhibition, we should put the State and national banks on exactly the same footing in the matter of tax assessment.

By referring to the above quoted Section 8 of Chapter 5596 of the State statute, it will be seen that:

"The owner or holder of stock in any incorporated company doing business under corporate name shall not be taxed for such stock; Provided, That such stock is returned for taxation by such incorporated company and taxes are paid thereon by such company, or the *property* of said corporation is assessed for taxes where located and taxes are then paid on such property."

It is perfectly clear, under this Statute, that if the stock of an incorporated company is returned for taxation by such company, that the shareholders shall not also be taxed for such stock, and it is also clear that if all the property of such company is assessed where located, and taxes are paid on such property, that neither the company nor the shareholders shall be taxed for the stock.

It should be borne in mind that property, not responsibility, is taxable, and therefore, a bank should not be required to pay taxes upon deposits held by it since such deposits are subject to check by the owners thereof and are necessarily transient. This view is emphasized by the Statutory provision requiring the owners of such deposits to return them for taxation. This rule, however, should not be confused with the provision requiring persons,

acting as agents and having in their possession or control moneys or credits with a view to investing or loaning such moneys or credits for the owner, to make return thereof for taxation.

Bearing in mind the Constitutional provision and Statutory provisions, State and Federal, above quoted, I am of the opinion that the proper basis of valuation for the assessment and collection of taxes of banks, both state and national, in this State, and the nature and character of the property to be assessed to such banks, or shareholders, is the capital stock of such banks, to which should be added the surplus and undivided profits at the time of making an assessment for the purpose of ascertaining the value of the capital stock, but after deducting from the value of such capital stock, so ascertained, the assessed value of any real estate owned and held by such bank or banking company, which represents an investment of the capital stock, upon which taxes are paid by such bank or banking company.

The power of the State to tax a national bank, its property or its shares is, as we have seen, confined by Federal statute to a taxation of the shares of its stock in the names of and against the shareholders, and, of the real estate, in the name of and against the bank itself.

In view of this provision, I respectfully advise that, in order to meet the organic rule of uniformity, the property and stock of all banks, within this State, be assessed in this manner, the tax on the shares of stock, however, to be paid, if desirable, by the bank or banking company as agent of the shareholders as provided by the State statute quoted herein.

Respectfully submitted,

T. F. WEST,

Attorney General.