

## Opinion No. 17-2066

October 27, 1917

**BY:** C. A. HATCH, Assistant Attorney General

**TO:** Mr. Albert Blake, Artesia, N.M.

Capital Stock Invested in Liberty Bonds is Taxable.

### OPINION

We have your favor of October 24th, wherein you ask the following question: "Can a bank, which invests a portion of its capital stock in Liberty Bonds, deduct such amount from its capital stock when rendering for taxation? For illustration: If a bank has \$ 50,000 capital stock and buys \$ 10,000 Liberty Bonds, can it deduct the \$ 10,000 from the capital stock and only render \$ 40,000 for taxation?" In answer to this question we would first state that it is our understanding that the Liberty Bonds are exempted from taxation with certain exceptions. We will not deal with these exceptions, nor go into the question as to whether or not the Liberty Bonds are subject to taxation, but will advance upon the theory that they would be non-taxable in a case such as you mention.

An investment by a bank of any portion of its capital stock in non-taxable bonds, would not, in our opinion, entitle the bank to deduct such investment from its capital stock when rendering the same for taxation. Our reason for this opinion is, that the taxation of the capital stock of a bank, even though part of it were invested in non-taxable bonds, would not in any sense constitute a taxation of the bonds. There is a marked difference between taxing the capital stock of a bank and taxing the bonds. The bank by its investment in the bonds, has not decreased the value of its capital stock in any manner. Its value is the same as it was before the investment, and it is this value that is taxed and not the bonds. When such bonds become a part of the capital stock of a bank they lose, in a sense, their identity as bonds, in that of the capital stock of which they become a part. The Supreme Court of the State of Mississippi, in the case of *Bank v. Ozford*, reported in 70 Miss. Reports, page 504, passed upon an identical question; the court in its opinion said:

"The notion that a bank may deduct the amount of non-taxable securities it may own, because an individual may, arises from misconception, and is completely dispelled by considering that the bank is not taxed as an individual, but in its representative character--that the owners of the bank, share-holders, are the burden-bearers of these taxes, and the bank is named and used as an instrumentality for reaching the property of share-holders in this form. Individuals are entitled to deduct from the sum of their claims such as are not taxable, because the basis on which they are taxable in amount due them, for, as the bank (or its share-holders) is not taxable on the basis of what is due to it, but the capital is to be taxed at its value to the share-holders, no deduction is allowable for anything held by it. Its capital stock (and the shares into which it may be

divided) is one thing, and the form in which it may have invested it is quite a different thing. Its entire capital may be put in non-taxable indebtedness, and the shares of its capital stock may thereby be enhanced or diminished in value, but their character as property, and liability to taxation as such, is not in any manner affected by the investment of the capital of the bank. If a bank has added to its capital stock any sum, by whatever name, which augments the value of its stock, and puts that in non-taxable securities, that does not entitle it to any deduction in taxation, but the capital stock, at its increased value by reason of such accumulations, is the basis of taxation, the purpose of the law being to impose on holders of bank stock taxes according to value, as on other forms of property."

We believe the reasoning of the court in this case is sound, and the same principles therein enunciated should be applied to your inquiry. We, therefore, conclude, that portion of the capital stock of a bank, invested in non-taxable bonds, should be rendered for taxation the same as the rest of its capital stock, in order that a basis for the taxation of the shares of stock may be had, which accords with the true value thereof.

This is in accord with the decisions of the Supreme Court of the United States, which has held such method not violative of any of the laws or decisions of the United States. *First National Bank v. Com. of Ky.*, 9 Wall. 353, 19 L. Ed. 701.