

**Taxation, of Corporations. Banks, Taxation of. Corporations, Taxation of.**

Section 7 of Art. XII of the constitution requires that corporations shall be taxed upon all property owned or used by them, and Section 17 of the same Article forbids the taxation of stocks when the property represented by such stocks is within the state and has been taxed. The taxation of bank stock must therefore, be made upon the difference between the market value of stock and the value thereof due to property in this state, taxed to the corporation.

April 24, 1913.

Hon. G. M. Houtz,  
State Tax Commissioner,  
Helena, Montana.

Dear Sir:

Replying to yours of the 12th inst., asking for my opinion "as to the provisions of the law governing the assessment of banks for taxation purposes," I will say that Sec. 1 of Art. XII of the Constitution provides

for the revenue of the State. That section puts within the power of the legislature the right and duty to prescribe such regulations as will secure a just valuation and taxation of all property except that specially provided for in Art. XII.

Sec. 7 of Art. XII of the Constitution reads as follows:

"The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this State, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation."

Sec. 17 of Art. XII reads as follows:

"The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation where the property of such company or corporation represented by such stocks is within the state and has been taxed."

These two sections of the constitution very materially limit the construction to be placed upon Secs. 2503, 2504 and 2505. The first explicitly commands the taxation of property, both real and personal belonging to or used by the corporation, to the corporation. The section forbids the taxation of shares of stock when the property represented by such shares is within the state and has been taxed. The word "property" as defined by Sec. 17 of Art. XII of the constitution, includes every species of property with which a bank would carry on business, and which the stock of the bank would represent. Sec. 7 of Art. XII requires that it be taxed to the corporation. Sec. 17 forbids that stocks representing such property shall be taxed.

The result of these provisions is that the only assessment which can be made upon the stocks of any corporation is upon any excess there may be in the aggregate market value of the shares over the value found for all the property belonging to the corporation in this state and assessed thereto. For these reasons it is my opinion that neither of the methods outlined in your letter as to the method of assessing banks is in conformity with the constitutional provisions above quoted.

Secs. 2503, 2504 and 2505 must be construed in conformity to the explicit mandates of the constitution, and any provision in them contrary to the constitution is of no effect.

From what has already been said it will be seen that the method of enrolling stockholders outlined in the fourth paragraph of your letter would be valuable only in giving the assessor the information necessary to enable him to assess the stockholders as above outlined. Such an assessment would be against each shareholder for so much personal property, the value of which would be estimated upon the difference between the aggregate market value of the shares and the property, real and personal, of the corporation. Such assessment should be made and enrolled in the same manner as the assessment upon any other personal property.

Yours very truly,

D. M. KELLY,  
Attorney General.