

MAINE STATE LEGISLATURE

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April 5, 1922

To Hon. Fred F. Lawrence, Bank Commissioner
Re: Taxation of Stock of Trust and Banking Companies Held by Other
Banks and Trust Companies

You have asked the opinion of this department upon the following question:

Are trust and banking companies entitled to deduct as free from taxation the shares of other trust companies, and of national banks, which are held by them, in making their semi-annual returns under the provisions of section 71 of chapter 9 of the Revised Statutes?

In reply you are advised that said section authorizes the deduction as free from taxation of "the shares of corporation stocks such as are by the law of this state free from taxation to the stockholders", so that the answer to your question depends upon whether under the present statute of this State, the shares of trust companies and national banks are to be considered free from taxation to the stockholders.

Prior to 1921 such stocks were taxable to the holders, but by Chapter 197 of the Public Laws of 1921, the method of taxation of bank stocks was changed and now, instead of such stocks being assessed for municipal taxation, the banking institutions pay the State a tax of fifteen mills for each dollar, and the valuation is fixed by the state assessors.

If the statute went that far and stopped, there would be no question as to its meaning and such stocks would be deductible by banking institutions "as free from taxation to the stockholder"; but it is further provided that said "trust companies and banking institutions may charge the tax so paid pro rata to the individual stockholders thereof."

It seems perfectly clear that if the power given by the above provisions is exercised and the tax so paid is charged pro rata to the individual stockholder, then such individual stockholder pays a tax, indirectly to be sure, but none the less, he pays it, and such stock cannot, we think, properly be said to be "by law of this state free from taxation to the stockholders."

If it be said that this conclusion would result in double taxation to trust companies and banking institutions holding stock in other such companies, who exercise the right to pass the tax along to their stockholders, the answer is that they can avail themselves of the same privilege under the law. But if it is claimed that the law in its present form does work a hardship upon any class of stockholders, that is not a matter of interpretation of the statute, but rather one for which legislative relief should be asked.

An examination of the statutes will disclose the fact that corporations, the shares of whose stock are by law of this State free from taxation to stockholders, are of the class devoted to public services, such as public cemeteries, etc., and it has not hitherto seemed to be the policy of the legislature to include trust companies and banking institutions in that class, nor do we think the law of 1921 had that effect.

William H. Fisher
Deputy Attorney General