STATE AND LOCAL TAXATION OF BANKS IN MICHIGAN

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CHAPTER I

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There can be no taxation of national banks, their property, or their capital stock, by or under state authority, otherwise than in conformity with the terms and restrictions embodied in the consent given by Congress to such taxation.(1) And because the Michigan constitution requires uniformity of taxation upon all property in the same class, the state of Michigan must tax its state banks as it taxes national banks,(2) unless it enacts legislation classifying them differently for tax purposes.(3)

To present the development of the law in the state of Michigan upon bank stock (shares) taxation, it therefore is necessary to begin with the enabling enactments of Congress.

<u>Early Conflict between Federal and State Jurisdiction over Banking</u>

Our present laws regulating bank share taxation are rooted in the historic rivalry of Alexander Hamilton, championing a central bank, with central note-issue, and Thomas Jefferson, who opposed Hamilton's plan as unconstitutional, on the ground that local government would be superseded by the federal government under such a plan.

The First Bank of the United States was chartered by Congress for twenty years on February 25, 1791 as an essential part

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(1) McCulloch v. Maryland, 4 Wheaton [illegible]; [illegible] L. Ed. [illegible] ([illegible])
Des Moines Nat. Bank v. Fairweather, [illegible] S. Ct. [illegible]; [illegible] U.S. [illegible]
Security Savings & Com. Bank v. District of Col. [illegible] F. [illegible]
Fourth Atl. Nat. Bank of Boston v. City of Boston, [illegible] F. [illegible]
First Nat. Bank of St. Joseph v. St. Joseph Township, [illegible] Mich. [illegible]
(2) Art. X, Sec. [illegible], Constitution of Michigan. See [illegible] C[illegible]
(3) [illegible] Bank & Trust Co. v. Phelps, [illegible] U.S. [illegible]
[illegible] v. Board of State Tax Comm., [illegible] Mich. [illegible]

of the financial system inaugurated by Alexander Hamilton.[4] At the end of the twenty [illegible] opposition [illegible] centralized bank, [illegible] bank, that Congress [illegible] charter. [illegible] with England brought about [illegible] by the state banks in 181[illegible], [illegible] the Second Bank of the United States in 181[illegible], for twenty [illegible].[5] [illegible] this charter [illegible] Congress did not renew it; [illegible] because of the opposition of its [illegible], the [illegible] central bank, [illegible] by President Jackson.[6] The United States treasury [illegible] treasury system for the care of national funds that arose under President Van Buren.

In 1861, due to Civil War financing, the state banks had again suspended specie payments. There was no central bank through which the government could borrow funds. This situation forced the government to devise the national bank system as a means of [illegible] Federal loans. On February 25, 1863, Congress enacted the national bank law, supplemented by the Act of June third, eighteen sixty four.[7] A capital of at least fifty thousand dollars was required to obtain a charter as a national bank, and at least one-third of this capital had to be invested in United States bonds. These banks were [illegible] federally chartered; being also granted the right of issue of

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(4)U.S. Stat.III,ch. X.
(5)Fourteenth Congress,Sess. I, ch. 44, 1816
(6)Dowrie,G.W., Amer. Monetary and Banking Policies, p.1[illegible]7
(7)U.S. Stat. 1864 ch. 106

[illegible] in the [illegible] of the [illegible] of the U.S. bonds they held. A monopoly of the currency issue was granted these banks for investing in still more bonds.(8) Government bonds, at this time, [illegible] Congress to [illegible] action.(9)

Briefly this was the early background of political and economic rivalry existing between state and private banks aided by local government; as opposed to the Banks of the United States, national banks, and to centralized government. The state banks and local governments were victorious during the more normal periods, but in times of war and economic crises, the national banks and the central government prevailed.

The McCulloch Case (1819)

The chain of legal events started early in this rivalry between the federally chartered banks, and the states and state banks.

In 1817 the Second Bank of the United States established a branch at Baltimore, Maryland. In 1818 a Maryland statute subjected all banks in the state not chartered by the state legislature to a stamp tax upon their note issues. McCulloch, cashier of the branch bank, was held liable to penalties, by the Maryland state courts, for violating this act. The Supreme Court of the United States, however, in the leading case of McCulloch v. Maryland(10) held, in 1819, that the Maryland tax

(8)Dowrie, G.W., op. cit. p. 111
(9)Dowrie, G.W., op. cit. pp. 111 and 140
(10)4 Wheaton 316, 4 L. Ed. 579

was unconstitutional, on the ground that the power to tax is the power to destroy, and that the Constitution which set up the federal government could not be interpreted in a manner that would permit that government, or any of its instruments, to be taxed out of existence by the states. The court added that since the Bank of the United States was a convenient, useful, and essential instrument in the prosecution of the fiscal operations of the federal government, no particular reason could be assigned for excluding the use of a bank as an instrument of that government. The court also added that its decision did not deny the right of the state to tax the real property of the bank, in common with the other real property within the state, nor to tax the interest which the citizens of Maryland held in this national bank, in common with other property of the same description through out the state. Thus, at that time, the idea that Congressional consent was a pre-requisite to taxation by a state of national bank shares, seems not to have been the opinion of this court. Chief Justice Marshall laid down the principle, in the above case, that the property of the shareholders of national bank stock was taxable like other similar property in the state. This gives rise to the question, never clearly determined, as to the extent to which section 5219 is permissive with respect to the taxation of national banks by the states; and to what extent it is declaratory of existing rights of the states.(11) This question is discussed in chapter V.

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(11) Farmers' & Mechanics' Nat. Bank v. Dearing (1875) 91 U.S. 29
People v. Weaver (1879), 100 U.S. 539
Talbot v. Silver Bow County (1891) 139 U.S. 438

Congressional Acts of 1864 and 1868

On June 3, 1864, Congress enacted its first legislation granting to the various states the right to tax national banks within their respective borders. This act provided that national bank shares may be assessed at the place where the bank is located, but not elsewhere, against the holder, but not at a greater rate than assessed upon other moneyed capital in the hands of individual citizens of such state; nor at a greater rate than banks of the taxing state.(12) This act was intended to control comprehensively the subject with which it dealt, and thus furnish the exclusive rule governing state taxation of national banks.(13)

Conflicting decisions by the courts as to the meaning of the words, "place where the bank is located, and not elsewhere", resulted in Congress enacting the explanatory act of February 10, 1868,(14) to the effect that the quoted words be construed to mean "the state within which the bank is located"; and that the legislature of each state may determine and direct the manner and place of taxing all the shares of national banks located within its borders. This act also prevented the states from taxing national bank shares at a greater rate than moneyed capital not invested in state bank stock.(15) This provision

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(12) Sec. 41 Act of June 3,1864 ch. 106, 13 stat. 99, 111-112
For text, see appendix, A
(13) Bank of Cal. v. Richardson, 248 U.S. 476 (see also p. 1)
Owensboro Nat. Bank v. City of Owensboro 19 S.Ct. 577
173 U.S. 664
Des Moines Nat. Bank v. Fairweather, 44 S.Ct.23; 263 U.S. 103
(14) Act of Feb.10, 1868, C.7, 15 Stat. at L. 34, For text see appendix, A : Comp. Stat. sec. 9784; 6 stat. Anno. 2nd. Ed. p. 796
(15) Boyer v. Boyer (Ill. 1885) 113 U.S. 689, 691-2

was carried into the Revised Statutes as section 5219,[16] which prescribes that state taxation of shares in national banks, "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state." It also specifically permits the states to tax the real property of national banks, to the same extent as other real property in the state is taxed.

The Congressional motive for enacting the "other moneyed capital" limitation has been judicially set forth as follows:

"The purpose of the above limitation was to prevent any state, in taxing shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking, and the restriction comprehended a discrimination effected through rules for fixing valuations quite as much as one effected by using different percentages in computing taxes on fixed valuations."[17] And the words "greater rate" refer to the entire process of assessment as well as to the rate of percentage, and thus apply to any substantial discriminatory taxation of national bank shares.[18]

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(16) U.S. Comp. Stat. sec. 9784
(17) Des Moines Nat. Bank v. Fairweather 44 S.Ct. 23. 263 U.S. 103; (U.S.Sup.Iowa 1923)
Palmer v. McMahon, 10 S.Ct. 324; 133 U.S. 660
(18) People v. Weaver, (1879) 100 U.S. 539
Pelton v. Commercial Nat. Bank of Cleveland (1879) 101 U.S.1
Boyer v. Boyer (1885) 113 U.S. 689
Stanley v. Albany Co. (1887) 121 U.S. 535
Clement Nat. Bank v. Vermont (1913) 231 U.S. 120, 136

The Classified Tax System Develops In The United States

Section 5219, of the Revised Statutes of the United States, in addition to a tax on the real estate of national banks, authorized the taxation of the shares, subject to the restriction, "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state." This condition was inserted just after the Civil War and before the adoption of the fourteenth amendment to the federal constitution, with its "equal protection" clause. At that time virtually all the states employed the general property tax system, which still is in effect in Michigan. Under this system all property was taxed at rates which were uniform within each of the various local taxing districts, although varying perhaps between the different local units.(19)

Personal property, tangible and intangible, was subjected to the same tax-rate as applied to real property. So long as this system prevailed, the banks had no ground apparent on the face of the statute for complaining of discrimination. But it has been common knowledge that intangible personal property has not been declared for assessment by its owners, to any appreciable percentage, and that the assessors have been relatively unsuccessful in discovering it.

To encourage disclosure of such intangible property for

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(19) In 1935 the rate averaged $26 per $1,000 in Michigan. In the city of Bessemer, Gogebic county, the rate was $73 per $1,000 of assessed valuation (due to court order that a damage case judgment be spread on assessment in that year), while in Clinton county the rate was less than $10 per $1,000. In 1936 the rate averaged $25.65 per $1,000 of assessed value.

assessment, about one-half the states have adopted a classified tax system which permits a separate classification for such intangibles, with a low fixed millage, or income, rate which appears justified by sound fiscal policy, in that the lower rate has resulted in so much more intangible property being declared that the resultant taxes collected invariably have exceeded that under the older system.(20) This system, however, gave rise to the Richmond case.

The Richmond Case (1921)

The city of Richmond, Virginia, under a classified tax system and city ordinance, taxed bank stocks in 1915, at a rate of $1.75 per $100 of valuation, for state and city purposes, while taxing intangible personal property in general, including mortgages, bonds and notes, at a rate of but 95¢ per $100 of valuation. The Merchants National Bank of Richmond contested this tax as a violation of Revised Statutes section 5219. The United States Supreme Court over-ruled the state court and held the tax to be in violation of section 5219 on the ground that "moneyed capital in the hands of individual citizens," included not only moneys invested in private banking, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking. To quote the Court, "--It includes money in the hands of individuals---invested in loans, or in securities for the payment of money, either as an investment of a

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(20) 73rd. Congress, 2nd session, H.R. Report No. (1253), "State Taxation of National Banks", p.7, par. 3.

permanent character, or temporarily with a view to sale or repayment and re-investment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."(21) This decision was handed down in 1921, and it put only the investments in bonds and mortgages into a class with bank shares, all but demolishing bank share taxation in states using the classified tax system.(22) This case, followed since that time,(23) itself affirmed the earlier case of Boyer v. Boyer.(24)

Congressional Amendments of 1923 and 1926

In an attempt to meet the crisis caused by the Richmond case decision, Congress in 1923 amended section 5219, to permit the states to tax national banks by adopting any one of the following methods.(25)

(1) An ad valorem tax upon the shares, in the hands of individual owners;
(2) Include dividends derived from shares in the taxable income of the owner or holder thereof; or
(3) Tax the income of national banks.

Congress provided in this Act, however, that:

A. Only one of these three alternative methods be permitted the states;

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(21) Merchants Nat. Bk. of Richmond, Va. v. City of Richmond, 256 U.S. 635
(22) [illegible] Congress, Report No. [illegible], p. 7, [illegible].
(23) First Nat. Bk. v. Anderson, [illegible] U.S. [illegible]
First Nat. Bk. v. Hartford, 273 U.S. 548
Minnesota v. First Nat. Bk. 273 U.S. 561
Georgetown Nat. Bk. v. McFarland, 273 U.S. 568
Iowa-Des Moines Nat. Bk. v. Bennett, [illegible] U.S. [illegible]
First Nat. Bank of Shreveport v. Louisiana Tax Com.
(1933) [illegible] U.S. 60
(24) (1885) 113 U.S. 6[illegible].
(25) Chap. 267, 42 Stat. 1499. For text, see Appendix, A.

(a) If the tax were [illegible] the shares, the [illegible] individual citizens [illegible] of national banks.

(b) If the dividends [illegible] were taxed, the rate [illegible] not to exceed the [illegible] other moneyed capital.

(c) If the tax on net income of national banks were adopted, it was not to be any higher than on other financial corporations nor higher than the highest rate imposed upon manufacturing, mercantile and business corporations.

B. National bank shares owned by nonresidents of [illegible] state to be taxed only where the bank is located, and the tax may be paid by the bank, on account of the shareholder.

C. Real property of national banks to be taxable, if not exempt, but at rate no greater than that assessed on other real property within the state.

The constitutionality of this amendment has been upheld.[26]

This amendment did not solve the problem however, for in those states which adopted the income method of taxing the national banks, bank-tax revenue fell off heavily.[27] Because of this fact Congress, in 1926, again amended section 5219, by retaining the three optional methods of taxation outlined just above, while adding a fourth optional method, i.e., a tax on national banks according to or measured by their net income. This amendment retained the restrictions provided in the amendment of 1923, and in addition provided that the entire net income received from all sources by national banks might be taxed, if the rate were no greater than that assessed against other

(26) Buder et al. v. First Nat. Bank et al. (1927), 13 Fed. (2d.) [illegible], certiorari denied, 274 U.S. [illegible].
(27) 73rd. Congress, Report No. 1057 p. 7, pars. 2 and 3.

business. And, if the [illegible] on [illegible] basis, and their stockholders on income from dividends, it might be likewise with national banks, but at no greater rate. This amendment also had the proviso that claims [illegible] by non-residents of the state should be taxed where the bank is located, the tax to be paid by the bank as agent of the owner. It also continued the [illegible] est [illegible] in the amendment of 1923.[28] Both the

above amendments [illegible] had a clause to the effect: "Provided, that bonds, notes and other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

In the Anderson case[29] the court held that, "it, (the proviso above quoted) of course would exclude bonds, notes and other evidences of indebtedness when held merely as personal investments by individual citizens not engaged in the banking or investment business, for capital represented by this class of investment is not employed in substantial competition with the business of national banks. Thus in legal contemplation and practical effect the restriction has the [illegible] thereafter".

Thus the definition of "other moneyed capital" as declared in the Richmond case still prevails.

It was the intention of Congress, in enacting the 192[illegible] amendment, to permit the inclusion of income from tax-exempt securities by those states choosing to tax national banks on this basis.[30]

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(28) Chap. [illegible], U.S. Stat. [illegible], see appendix, A
(29) First Nat. Bank v. Anderson (Ia. 1926) 269 U.S. 341
(30) 7[illegible]nd. Congress, Report No. [illegible], page 8, par. 4

But in 1929 the United States Supreme Court held in the Macallen case, which was not a bank case and did not directly involve section 5219, that the imposition by the state of Massachusetts of an excise (privilege) tax on corporations, including the income from tax exempt securities of the United States, was void since its purpose was to reach the tax exempt securities.(31) The state had amended its general corporation tax act so as to repeal previous tax-exemption extended to all interest upon non-taxable securities. The repeal of the law under which such tax exempt securities had been freed from taxation thereby imposed a burden on these securities which, by express language, had theretofore been free. The court held that the purpose of the amendment was to tax the income of the tax-exempt securities and that therefore the act was void, regardless of the amount of the tax. The Court added that a state cannot tax the bonds of the United States, or the income therefrom, directly or indirectly, in any form, even by a privilege tax. But in the Educational Films Corporation case, it was held the state could include the United States bonds in the tax base. The Court stated the reason for the Macallen decision was that the Massachusetts legislature aimed at the United States bonds.(32) The later case of Pacific Co. v. Johnson held the California "act must be judged by its operation rather than by motives which inspired it.

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(31) Macallen Co. v. Mass. (1929) 279 U.S. 620.
(32) Educational Films Corp. v. Ward 282 U.S. 379

as it operates to measure the tax on the corporate's franchise by the entire net income of the corporation, without any discrimination between income which is exempt and that which is not, there is no infringement of any constitutional immunity."(33)

There were three dissenting justices in each of the three cases last cited above.. Yet it appears now from the Pacific Company case that United States tax exempt bonds may be included in the tax base by the states, by an excise or privilege tax, under the conditions quoted above.

Other Amendments Proposed in Congress

Yet these amendments failed to solve the bank (share) taxation problems of the states, for the tax yields resulting under the methods permitted by the 1923 and 1926 amendments were a disappointment. Many later bills have been introduced in Congress to correct the existing situation, notably the Steagall bill in the House(34) and the Fletcher bill in the senate.(35) The Fletcher bill was called the "banker's bill" because it provided for a tax rate on national banks based on the "average burden" on intangible property. Opponents of this bill claim such an average cannot be ascertained and that under such an amendment years of litigation and uncertainty would permit the banks to continue to escape fair taxation.

Representative Hancock introduced a bill.(36) And Senator Norbeck introduced one(37) which proposed to permit the states to tax national bank shares at no greater rate than that im-

(33)Pacific Co. v. Johnson (1932) 285 U.S. 480
(34)73rd. Congress, 2nd. sess., Union Calendar No. 472 H.R.9045, Report No. 1953
(35)S. 4209, 74th. Congress, 2nd. session
(36)H.R. 5045, 73rd. Congress, 2nd session
(37) [illegible] 1550, 73rd. Congress, 2nd [illegible]

posed on other unimpaired capital employed in the business of banking. The Steagall bill is similar to this bill. Both would apply to banks. Other recent bills introduced in Congress, to amend section 52[illegible], include the Stevenson bill in the House (H. R. 11765); the Shipstead bill in the Senate,(32) the Goodwin bill, and the compromise bill known as H. R. 12180, introduced by Mr. Goldsborough, which resulted from the conference of various state tax authorities and representatives of banker's organizations.

The late Senator Fletcher, former chairman of the United States Senate Banking and Currency Committee, in 1934 introduced another bill to amend section 5219, which proposed to limit taxation by the states of state banks or trust companies, which are members of a Federal Reserve Bank, to the same extent as the taxation of national banking associations. The purpose of this bill was, apparently, to encourage State banks and trust companies to become members of the Federal Reserve Banking System. Other bills also have been introduced.

The fact that so many bills for the still further amendment of section 5219 have been introduced in Congress since 1923, indicates that no satisfactory solution has yet been found for the taxation of bank shares. The further fact that Congress has been unable yet to enact any amendment which will effectually broaden the taxing base for the taxation of national banks by the various states indicates that the solution is difficult, even if not impossible.

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(32) S. 3002 (1934)

Up [illegible] in [illegible] various states, [illegible] position to profit from any such [illegible]. No early solution of the situation in [illegible] either [illegible] present [illegible]. This is true with or without [illegible] Congressional [illegible].

The Steagall Bill

The Steagall bill now before Congress, "recognizes that national banks are protected from [illegible], hurtful and substantial discrimination when they are put [illegible] equality with others engaged in the business of commercial banking"(33) i.e.- state banks.

The purpose of this bill is to wipe out the "other moneyed capital" rule of the Richmond case because of the chaotic condition which the decision in that case has brought into being in the various states. Since 1927 various states have joined in an attempt to secure from Congress an amendment which will accomplish this objective.

The objective of the bankers, however, is to keep the taxation of bank shares on the basis that the rate shall not be any greater than the rate on "other moneyed capital." Bankers fear that, once banks are put into a class by themselves, there will be no tax limitation except that provided

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(33) Report No. [illegible], 73rd Congress, [illegible] Session, H. of R. [illegible]
[illegible]

by the various legislatures, which may not uniformly be friendly to commercial capital. If the bankers are credited, at least in some quarters, with a congressional lobby so strong that they have so far prevented any congressional amendment unfavorable to banking interests.(40)

Segregation of Commercial Banks for Tax Purposes.

Supporters of the Steagall bill argue that banks should be segregated for taxation purposes, under present day conditions. Checking accounts were not in general use when section 5219 was enacted. The stock of metallic and paper money available then determined the supply of the medium of exchange. But since the Civil war, checking accounts have come into general use in the United States and about nine-tenths of all payments are now made by checks. Thus the ability to create deposit credits is of much more importance than the status of the money supply.(41) Checking deposits arise, not merely through the deposit of cash or cash items (checks on other banks, drafts for collection, etc.) by customers, but mainly through the creation of credit deposits through the process of loans and discounts and investments by commercial banks themselves. In other words primary deposits afford a basis upon which banks can build up a superstructure of secondary or derivative deposits, the pyramiding of which is held in check only by legal minimum cash reserve requirements against

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(40) Ibid., p. 14
(41) Dowrie, American Monetary & Banking Policies, p. 167

total demand deposit liabilities. This power of deriving an interest income from manufactured credit dollars as well as actual cash dollars is one which no financial institution, other than commercial banks, are legally entitled to exercise. On these grounds it can be argued that commercial banks operate on a different basis than "other borrowed capital," and should therefore properly be placed in a special classification for taxation purposes.[42]

To the point that banks should be segregated for tax purposes is the fact that a poll of fifty-seven senior professors in public finance, in fifty-two of the country's leading universities and colleges, upon the question as to whether the banking business should be taxed in a different way than incorporated business generally, resulted in an affirmative vote of thirty-five to thirteen, with four indefinite.[43]

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(43) [illegible] of the Banks, [illegible], p. 385

CHAPTER II

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<u>Bank Shares Brought Under General Property Tax, 18[illegible]</u>

The Michigan legislature levied a tax on national banks in 18[illegible], as a part of its general property tax law, by enacting that for purposes of taxation, personal property should include, "all shares in banks organized within this state, under the laws of this state or of the United States, at their cash value, after deducting the assessed value of real property owned by and assessed to such banks."(1)

It is important here to note that the constitution of the state of Michigan requires uniformity of taxation upon institutions within the same classification,(2) and due process of law.(3) The constitution of the United States likewise requires there be uniformity of taxation upon institutions within the same classification, due process, and equal protection of the laws.(4) Because of these requirements the state of Michigan must, under the present tax Act, tax all banks alike. Therefore whatever restrictions Congress places upon the taxation of national banks by a state also must be extended to state banks; and whatever exemptions state banks are entitled to must be extended to national banks.

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(1) Act 206, Sec. 8, par. 3, Public Acts of Michigan, 18[illegible]
(2) Art. X, sec. 3, Michigan Constitution. See Appendix C
(3) Art. II, sec. 16, Michigan Constitution
(4) 14th. Amendment, Constitution of U.S.
Quaker City Cab Co. v. Penn. 277 U.S. 389

The Stroh Case (1902)

In 1902 the Michigan supreme court held in the Stroh case that under the constitution of the state of Michigan the shares of stock of a corporation and the property of that corporation are identical for taxation purposes, and not separate properties which may both be taxed. This case has established the law in Michigan on this issue.(5) Therefore, if the property of a corporation is taxed in Michigan, the shares of stock of that corporation cannot also be taxed in Michigan. The fact that in many other states both the property of the corporations and also their shares may be taxed causes Michigan's bank taxing power to be less than it is in such other states.

The Stroh decision makes useless in Michigan the express provision of the congressional statute(6) enabling the states to tax the real property of national banks, as well as the shares.

Prior to the Stroh case decision the states of California, Maryland, Minnesota, Missouri, New Hampshire, New Jersey, Pennsylvania, Rhode Island and Texas were limited by the same rule established in Michigan by this case.(7)

The Stroh case has itself been used as authority and followed by the courts of Kentucky, Maine and Washington. The principle established in these decisions is also supported by the more recent decision of the United States Supreme Court in

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(5) Stroh v. City of Detroit, 131 Mich. 109, also see First Nat. Bank v. Common Council, 253 Mich. 89, (34).
(6) Revised Stats. U.S. sec. 5219.
(7) Cited in Stroh case.

the case of Farmers Loan and Trust Co. v. Minnesota.(8)

<u>Broadening of Exemptions Applicable to Bank Shares</u>

From this point on, we will find that court decisions in the various states and by the Federal Courts, and the U.S. Supreme Court, construing "Section 5219", and the various state constitutions and statutes, have continually been enlarging the exemptions extended to the banks on their shares. To offset this trend, Congress amended Section 5219 in 1923,(9) and again in 1926,(10) in an effort to broaden the base upon which the various states might tax the shares of national banks. These amendments have not kept Michigan exemptions from increasing. In fact, the Michigan court decisions, upon questions involving the State constitution and statutes, protect all bank shares in Michigan as fully as the original federal statutes and amendments protect the shares of national banks against discriminatory taxation by the states.

The series of enactments and decisions which have continued to build up exemptions in Michigan against bank-share taxation, following the Stroh case in 1902, follow:

(1909) Act 83 of the Public Acts of Michigan for 1909, expressly exempting from taxation all the obligations of the political sub-divisions of the state of Michigan.

(1911) Act 91 of Public Acts of Michigan for 1911 and Acts [illegible]
(1913) and 1[illegible]2 of Public Acts of Michigan for 1913 provide that the holder of a mortgage upon real property sit-

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(8) 280 U.S. 204
(9) For text see Appendix [illegible]
(10) For text see Appendix [illegible]

uated within the state of Michigan, and the holder of any negotiable bond secured by a mortgage upon real property situated within the state; and the holder of secured debts, other than debts secured by mortgages upon real property, may pay a specific tax of one-half of one percent upon the principal of the mortgage or securities mentioned, and that upon such payment, such mortgages and securities shall be exempt from further general taxes under the laws of the state of Michigan.

(1917) In 1917 the Michigan legislature [illegible] to include, "the value of any buildings erected upon [illegible], and the value of such real property is also assessed to said bank."(11) The legislature of 1923 had specifically [illegible] real estate [illegible] the [illegible].(12)

(1921) Act No. 297, Public Acts of 1921 further [illegible] Section 8 of Act 206, P.A. of 1893, as amended, to read; "All shares in banks [illegible] within this state, under the laws of this State, or of the United States, at their cash value, after deducting the assessed value of real property [illegible] by them and assessed to such banks."

(1925) In 1925 the legislature [illegible] the real estate [illegible] the value of land and buildings [illegible].(13)

Banks [illegible] leasing the land and/or buildings used by themselves [illegible] by having [illegible] the [illegible] the other. This had a tendency [illegible] the landlord to [illegible] the tax [illegible] to reduce the [illegible]. In [illegible] property [illegible] upon the bank's shares, as [illegible] is the case [illegible] in an office building, it is only [illegible] that such proportion of the property [illegible]. This [illegible] is within the spirit of the constitutional rule of uniformity [illegible] of the [illegible], for it [illegible] the [illegible] bank-leased buildings [illegible] accorded the bank [illegible] its [illegible] property.

(1925) In 1925 the Supreme Court of Michigan held [illegible] the [illegible]

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(11) Act No. 8, P.A. 1917
(12) Act 206, P.A. 1893, Sec. 8
(13) Act No. 1?3, P.A. 1925

ous, (14) [illegible] directly, or indirectly, [illegible] in levying [illegible] In [illegible] 17, Public Acts [illegible] was levied [illegible] interference with the power of the United States [illegible] obligations, [illegible] because it was in conflict with [illegible] constitution [illegible].

(1930.) The Packard Case [illegible] of Michigan [illegible] (15) to bring the statute within the limits of that decision. This amendment further diminished the [illegible] by exemption from [illegible] all, the securities of the United States government, Federal Land Banks and joint-stock banks, or any state or political subdivision thereof. The [illegible] of Detroit alone [illegible] half a million dollars in 1930, through this amendment, it has been estimated.
Still, legal counsel for various bankers, believed the Michigan bank shares tax law, as amended, did not bring the Michigan tax within the decisions of the United States Supreme Court,(16) because it did not entirely exempt securities of the United States, Federal Reserve Bank stock, bonds of the State of Michigan and those tax-exempt securities upon which a specific tax had been paid, and because it is double taxation to tax the shares of stock of a corporation which has already paid a tax to the state of Michigan upon its property. Further they believed the law as amended failed to comply with the requirements of Section 5219 of the Revised Statutes of the United States, making it invalid as to the taxation of national banks, and therefore invalid as to state banks, under the state constitutional requirement of uniformity.(17)

(1931) The Supreme Court of Michigan in January 1931 held(18) that by its failure to allow deduction of credits secured by lien on real property on which specific tax has been paid, the amendment of 1929(19) was unconstitutional and void because; (a) it permitted double tax-

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(14) Packard Motor Car Co. v. City of Detroit (Oct. 1925) 232 Mich. 215
(15) Public Acts of Mich. 1929, Act No.322, Sec. 3396, ch.9
(16) Farmers Loan & Trust Co. v. Minnesota, 280 U.S., 204
The Macallen Co. v. Massachusetts, 279 U.S. 620
(17) Art. 10, sec.3 Mich. Constitution
(18) First Nat. Bank of Wyndotte v. Common Council City of Detroit
253 Mich. 89, (97), (98).
(19) Act No. 322 Public Acts 1929

ation and contravened article ten, section three of the state constitution; (b) discriminated against the shares of national banks contrary to the United States code title twelve, section five forty eight,(20) and (c) denied the exemption given by Act ninety one, Public Acts of 1911 to securities paying a specific tax.(21)

The Amendment of 1931

This situation resulted in another amendment of the General Tax Law of Michigan in 1931,(22) under which the procedure in assessing bank shares for taxation is based upon the amount of capital, surplus and undivided profits of the bank, whose shares are being assessed, after deducting the assessed value of real estate and the value of tax-exempt securities. In determining the extent to which tax-exempt securities are deductible, the law provides that unless it is established by the bank that such securities were purchased directly out of capital, surplus or undivided profits, rather than out of the general funds of the bank (capital, surplus, undivided profits and deposits), the bank is entitled to the benefit of a deduction of only a proportionate value of such tax-exempt securities. Municipal bonds which are tax free either by reason of their being Michigan municipals, or by reason of the specific tax of one-half of one percent having been paid upon them are deductible. Likewise, United States government securities, real estate mortgages upon which the specific mortgage tax of one-half of one percent has been paid, and other securities

(20) U.S. Revised Statutes Sec. 5219
(21) Also Acts 138 & 142, P.A. 1913
(22) Par. 3, of sec. 8, of Act 91 of Pub. Acts of Mich. for 1931
National Bank of Detroit v. City of Detroit, 272 Mich. 571

which are either tax free or are exempt by reason of the payment of a specific tax are likewise deductible, as provided in this amendment.

In determining the proportion of the value of such tax-exempt securities which may be deducted, in arriving at the proper assessed valuation of the shares of stock of a bank, the ratio between its capital, surplus and undivided profits and its capital, surplus, undivided profits and deposits, less legal deductions, is computed, and the percentage so obtained is applied to the value of the tax exempt securities, and the amount resulting is the figure which is deductible. In determining the value of such tax-exempt securities, the law requires that the monthly average thereof during the preceding calendar year be used, rather than the value of the holdings thereof on the date of making the tax assessments. Therefore, if the holdings of tax-exempt securities fluctuate during the year, the bank must compute the monthly average of these holdings and then apply the percentage determined as above to the average holdings. This provision was inserted in the Act to prevent banks from loading up with tax-exempt securities at assessment time.(23) It has been held however that it constitutes a fraud when an attempt is made to avoid taxation by the acquisition of tax-exempt securities for that purpose, both in equity(24) and at law.(25) Yet other courts hold that a party cannot be

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(23) Nat. Bank of Detroit v. City of Detroit (1936) 277 Mich. 571
(24) Mitchell v. Bd. of Commrs. (1875) 91 U.S. 206
Sisler v. Foster (1905) 72 Ohio Stat. 437
(25) People's Bank (1903) 203 Ill. 300, 67 N.E. 777 (purchase of tax exempt securities, reconverted shortly after assessment date). Automobile Acceptance Corp. v. Hopkins (1932) 63 Cal. App. sec. 915

guilty of a fraud in doing what he has a legal right to do.[26]

The Act makes no requirement, upon its face, that the average of deposits be also used in computing the assessments, and the practice has been to take deposits as of the end of the year. However, it has recently been held by the Supreme Court of Michigan that the average of deposits must be taken in computing the assessments.[27]

Basic Theories Underlying Act of 1931

In drafting the amendment of 1931,[28] it was regarded as reasonably certain under the authorities, that tax-exempt securities which represented the investment of capital, surplus and undivided profits could not be taxed either directly or indirectly as any part of the cash value of the shares of the bank.[29] But, of course, the deposits (debts) of a bank are invested in these tax exempt securities and while in some instances, like the investment of a part of the capital of a national bank in the stock of the Federal Reserve Bank, or in government bonds, it can be definitely allocated to capital accounts, yet a great part of the tax-exempt securities a bank buys cannot be so allocated and undoubtedly are derived from an investment in whole or in part of its deposits. To remedy this situation, the rule of the pro rata deduction was set up,

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(26) City of Louisville v. Y.M.C.A. (1915) 166 Ky. 104
Board of Commissioners v. State Board (1930) 107 N.J. L. 35
(27) National Bank of Detroit v. City of Detroit (1936) 277 Mich. 571
(28) Par. 8 of sec. 8, Act 94, P.A. Mich. 1931 (see Appendix B.)
(29) Union Trust Co. v. Detroit Common Council, 170 Mich. 402
Packard Motor Car Co. v. City of Detroit, (232 Mich.) 245
First Nat. Bank of Wyandotte v. Detroit Common Council 277 Mich. 73

i.e., only the proportion of the tax [illegible] to the proportion that the capital, surplus and undivided profit, bear to the total capital, surplus, undivided profits and deposits [illegible] as tax-exempt.

This amendment of 1921 is an attempt to avoid the rule of the cases which forbid taxation of tax-exempts in any way, directly or indirectly.(30) Complete exemption of all tax-exempts would, and [illegible], [illegible] practically all bank share tax yield, for if the deposits and other obligations of a bank are added to the tax exempt securities, the sum will in practically every case exceed the capital, surplus and undivided profits, plus the credits; for banks usually have very large [illegible] to offset their credits, and usually invest in tax exempt securities an amount equal to their capital and surplus.

In [illegible] the act of 1921 [illegible] although banks had not been [illegible] would [illegible] that to the [illegible] of their funds invested in tax-exempt securities, [illegible] done by the banks. And the act provides [illegible] such funds. [illegible], the act provides that [illegible] of [illegible] the [illegible] tax-exempt securities which are [illegible] to be eliminated from the computation of the assessable value of the stock [illegible] through the investment of capital, surplus and undivided profit, [illegible] tax-exempt securities [illegible] entirely [illegible], [illegible]

(30) Union Trust Co. v. Detroit [illegible], [illegible] Mich. [illegible]
People's [illegible] Co. v. City of Detroit (Oct. [illegible]) [illegible] Mich. [illegible]

[illegible]

[illegible]

To conform with the [illegible] ity, the Act of [illegible], by subdivision fifth of section nine,(71) has [illegible]

[illegible] previously [illegible] from credit, [illegible] [illegible] [illegible] The [illegible] tal [illegible] tax [illegible].(72)

[illegible] list [illegible] by [illegible], [illegible] [illegible], [illegible] the [illegible] if it qualifies as a "debit" and is deducted from "credit", under subdivision [illegible]

Subdivision-fifth of section nine of the Act of [illegible] [illegible] application, [illegible] in calculating [illegible] [illegible]. It [illegible]

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(71) Act No. [illegible], P.A. of [illegible] as amended by Act No. [illegible], P.A. of 1931, subdiv. [illegible], sec. [illegible], [illegible] B.
(72) [illegible], Letter from [illegible] to [illegible], dated July [illegible], 1931

of 1931 is to subject [illegible] equality with the rule [illegible] provided by [illegible] subdivision eight of section eight [illegible]. Had subdivision "Fifth" [illegible], [illegible] would have thereby [illegible] substantial advantage over the holders of bank shares, [illegible] discrimination against the latter, [illegible] 5219 [illegible] constitutional requirement of uniformity. Subdivision Fifth exists to prevent discrimination, but has no direct application in the taxation of bank shares.(33) In Michigan the foregoing is now the situation legally, in the case of individual citizens who own tax exempt securities and also bank shares. Actually this is not the case however, due to the widespread failure by individual owners to disclose such securities for taxation. Nor is the rule of subdivision Fifth being applied by the assessors or the Tax Commission.

It is possible that subdivision Fifth might be held unconstitutional because it violates the constitutional requirement of uniformity, in that it provides for taxation of tax-exempts upon which the owner is indebted, but not those owned outright. Further, other taxpayers are not actually assessed and taxed on tax-exempts they own, as required under the provisions of this subdivision thereby creating a situation which has voided other acts under similar circumstances.(34) The effect of this sub-

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(33) P.3 par. 2, of letter from Mr. Thomas G. Long to Mr. Edward B. Clark, dated July 27, 1931. Mr. Long drafted the 1931 Amendment. (Mr. Long's letter to Mr. Clark, July 20, 1931, par. 2, p.4
(34) Lindsey v. First Nat. Bank, 156 U.S. 485
First Nat. Bank v. Hamlin (1914) 226 U.S. 838

division is such that [illegible] tax exempt securities held results in an increased assessment in case the securities are tax-exempt. But it has been held that "one may not be subjected to greater burdens upon his taxable property solely because he owns some that is free."(35) This subdivision fifth may be an invalid provision.

<u>Act of 1931 and Economic Equality of Tax Burden</u>

In case of holders of bank shares, the theory in drafting the Act of 1931 was that the debts of the bank are of necessity deducted in arriving at the value of the shares. If then the tax exempt securities in which the proceeds of debts are invested are also deducted, there is then a double deduction, one of which deductions is not allowed to other taxpayers, and hence would constitute a discrimination against such other taxpayers. The only way to avoid such discrimination is to provide, as does item (h) of subdivision (3) of section (2), that the holder of bank shares, having had the benefit of the deduction of the bank's debts, shall not also have a deduction of the tax exempt securities in which the proceeds of the debts are invested.(36) This provision is based upon the position that there is no reason why a bank cannot earmark the funds which come into its hands as readily as does a trust company, which is required to do so for other than tax reasons.

The 1931 amendment is further based upon the reasoning that there is equality of tax burden between bank shares, and other moneyed capital under its provisions. For even though the rate on the various types of tax exempt investments varies, and even

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(35) Nat.Life Ins.Co. v. United States, (1928) 277 U.S. 508,519
Farmers & Mechanics Sav.Bank v. Minnesota, 232 U.S. 516
(36) Ibid. (33, July 20, 1931, p. 1. [illegible], see Appendix B

though b[illegible] it l[illegible] held, and b[illegible], or unequal holdings of these respective securities, in percentage of their total taxable investments yet all have the same opportunity for use of these various types of investment at the same level of tax burden.[37] For example, it would be of no consequence that of the capital represented by bank shares ten percent is in municipal bonds, twenty percent in real estate mortgages and seventy percent in commercial loans, while of other invested capital in the hands of individuals (or of building and loan associations, for instance), twenty percent is in municipal bonds, fifty percent in real estate mortgages and thirty percent in commercial loans, for each bears an equal burden on the particular type of investment into which it chooses to put its capital.[38]

This amendment was also drawn in the belief that there could not possibly be any basis or method of taxation of bank shares more fair or equitable in relation to the taxation of other business, whether taxed to the corporation conducting such other business or to the stockholders, i.e. that an absolute economic equality of tax burden between banks and other taxpayers had been achieved by this Act.[39]

Moreover, the amendment of 1931 was drawn so as to leave to the Courts the settlement of the question as to the necessity in law for the deduction of debts from bank shares, to the same extent as from credits. If the courts should hold that

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(37) First Nat. Bank v. Anderson, 269 U.S. 341 [illegible] points (1) and (4) particularly.
(38) Letter of Mr. Thomas G. Long to Merlin Wiley, dated Jan. 1[illegible], 1[illegible]
(39) Letter of Mr. Thomas G. Long to Edward J. Clark," July 27, 1[illegible]

such deduction [illegible], [illegible] that this [illegible] would not [illegible] [illegible], [illegible] it [illegible] [illegible] of 1 [illegible].

Further, the [illegible] that [illegible] capital [illegible] [illegible] will [illegible] of credit, [illegible] of [illegible]. The [illegible] ital [illegible] the debits of the bank. When these debits are deducted as provided for in the Act of 1921, then from the point of view of economics, the capital represented by [illegible] had its full benefit of credit possibilities.

CHAPTER III

[illegible]

As indicated in the previous chapter the tax amendment legislation of 1931 was designed to clarify the status of bank shares as taxable objects, in the light of previous court decisions, and to establish a definite basis and procedure for the assessment of such property and the computation of taxes thereon. The underlying theory and the practical application of the method of bank taxation at present in effect in Michigan are discussed in this chapter.

<u>Taxation of Banks and Bank Shares Under General Property Tax</u>

Under the Michigan general property tax law, banks as institutions are taxed only upon their real property. The United States Supreme Court has held that the personal property of a national bank cannot be directly assessed for taxation by state authorities.(1) This prohibition includes the furniture and fixtures,(2) and in Michigan the constitutional requirement of uniformity therefore prevents taxation of such personal property of state banks,(3) since under Michigan law both national and state banks are classified together for purposes of taxation. In Michigan the intangible assets of banks

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(1) City of San Francisco v. Crocker-Woolworth Nat. Bk. 92 Fed. [illegible]
Owensboro Nat. Bk. v Owensboro, 173 U.S. 664

(2) Covington City Nat. Bank v. City of Covington, 21 F. 4[illegible]
Lenawee County Sav. Bank v. City of Adrian, 66 Mich. 273
First Nat. Bank v. Albright, 28 S.Ct. 349; 208 U.S.

(3) Art. X, Sec. 3, Mich. Const. (Vaults, shelving and other fixtures so attached to the building as to legally become part of it, are [illegible] realty.)

are sought to be reached through the taxation of bank shares in the hands of holders, and the amendment of 1931 embraces the shares of national banks, state banks,(4) trust companies,(5)(7) and industrial banks,(6) assessed against the owners thereof.

Of these types of institutions, there have been operating in Michigan, in recent years, the following numbers, taken as of December 31 and as listed in the Annual Reports of the State Banking Department for the respective years indicated:

Number and kind of Institutions included in Michigan's bank share tax act.

Table I

	1928	1929	1930	1931	1932	1933	1934	1935	1936
National Banks	135	[illegible]	126	113	103	62	55	65	[illegible]
State Banks									
Member Fed. Res.	175	144	137	100	69	57	72	91	107
Non- " " "	504	[illegible]	432	352	301	270	275	264	[illegible]
Trust Companies	22	23	21	15	14	12	13	13	[illegible]
Industrial Banks	10	9	8	9	7	6	6	6	7

Percentage of total Resources of state banks in Michigan held by state banks which are members of the Federal Reserve System.
(Source: State Banking Department Annual Reports)

Table II

1928	1929	1930	1931	1932	1933	1934	1935	1936
76.0	71.6	72.3	77.2	53.7	52.3	52.2	53.3	60.2

As noted in the preceding chapter the Supreme Court of this state has held in the Stroh case that the property and the shares of a corporation cannot both be taxed in Michigan, as

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(4) Sec. [illegible], Act No. [illegible], P.A. [illegible] (Gen'l tax law)
(5) Sec. [illegible], Act No. [illegible], P.A. [illegible] ([illegible] Gen'l Tax Act)
(6) Act No. 308 Public Acts Mich. 1917 (Industrial Banks)
(7) Act No. 64 Public Acts Mich. 1931.

this would constitute [illegible].(2) [illegible]
tute provides that [illegible]

[illegible]

The [illegible]

[illegible] built [illegible]

[illegible] (1) recognizes [illegible] the trouble [illegible] [illegible] the [illegible] with [illegible] that such "t[illegible]t" securities, [illegible] only that [illegible]

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(2) See above, p. 10

[illegible], [illegible] profits [illegible], [illegible], [illegible] [illegible].

[illegible]

[illegible] of instruction [illegible] 1931.

[illegible]:

Resources

Loans and Discounts:	
Commercial	326,555.01
Savings	15[illegible],[illegible]01.91
Real estate mortgages:	
Commercial	10,771.42
Savings	443,091.37
Bonds and securities:	
Commercial	[illegible]94,000.00
Savings	55,000.00
Due from Federal Reserve Bank:	
Commercial	[illegible],[illegible]06.71
Savings	20,000.00
Due from banks in reserve cities:	
Commercial	[illegible],447.57
Total [illegible]:	
Commercial	17,[illegible]05.[illegible]
Savings	[illegible],250.50
Overdrafts	1,[illegible]
Building [illegible]	[illegible],[illegible]00.00
Furniture and fixtures	15,000.00
Other real estate	10,[illegible]00.00
Customers' bonds left with bank	
for safe keeping	1,150.00
Stock of Federal Reserve Bank	[illegible],100.00
Accrued interest, receivable (net)	11,7[illegible].37
	$1,53[illegible],202.07

Liabilities

Capital Stock paid in..........................	$ 40,000.00	
Surplus fund..........................	50,[illegible]	
Undivided profits, net..........................	1[illegible],[illegible]22.91	
Dividends unpaid..........................	[illegible]	
Reserved for taxes, interest, depreciation, etc..........................	[illegible]	115,[illegible].72
Commercial deposits subject to check..........	405,[illegible].[illegible]1	
Certified checks..........................	[illegible]75.[illegible]	
Cashier's checks..........................	[illegible]	
State moneys on deposit..........................	5,[illegible]	
Time certificates of deposit..........................	[illegible]	
Savings deposits (book account)..........................	[illegible],[illegible]52.[illegible]	
Savings certificates of deposit..........................	[illegible],[illegible].10	
Club savings deposits..........................	5,[illegible].20	
Bills payable..........................	[illegible]	1,41[illegible].[illegible]5
Customers' bonds left with bank for safe keeping..........................		1,1[illegible]
		$1,[illegible],[illegible]2.[illegible]7

* * * * * * * * * * *

Capital..........................	40,000.00	
Surplus..........................	50,[illegible]	
Undivided Profits..........................	1[illegible],[illegible]22.91	
	[illegible],[illegible]22.91	(a)
Deposits..........................	1,416,99[illegible].85	
Total Capital, Surplus, Undivided Profits, Deposits..........................	1,5[illegible],[illegible]21.73	(b)
Capital, Surplus and Undivided Profits.		[illegible],[illegible].91

Percentage of (a) to (b) = 5.50

	Book value	Appraised value	
Banking House	2[illegible],[illegible].00	[illegible],[illegible].00	
Other Real Estate	1[illegible],000.00	12,[illegible].00	
Stock of Federal Reserve Bank		[illegible],1[illegible].00	
Assets which represent the investment of Capital, Surplus and Undivided Profits and which are wholly deductible			[illegible],1[illegible].[illegible]0
			$[illegible]7,[illegible]2.[illegible]1

**Real Estate Mortgages..........................	*[illegible]5,[illegible].[illegible]
**U.S. Bonds..........................	5[illegible],000.00
**Bonds secured by mortgages on which real estate	* [illegible]5,[illegible].00

**Michigan municipal bonds 4% rates [illegible] .... [illegible]
**Bonds which have been [illegible] exempt from taxation by [illegible] of specific 2% tax to Country [illegible] [illegible]

$5[illegible]4,[illegible]03.20

5.5[illegible]% of 501,303.1[illegible] .... [illegible]

NET ASSESSED VALUE	1[illegible],[illegible]
ASSESSED VALUE PER SHARE (4[illegible]0 shares)	[illegible]

*No deduction [illegible] for these items under [illegible] law.
**The amounts for such deductions [illegible] is the monthly average amounts during the preceding calendar year."

....

It will thus be noticed that the tax is on the shares (stockholders), and not on the bank, and that the maximum assessed value can not therefore exceed the book value of the shares (i.e. = $\frac{\text{capital + surplus + undivided profits}}{\text{number of shares}}$ less exemptions legally deductible on account of:

(a) Banking house and other real estate owned by the bank.
(b) Stock of Federal Reserve Bank purchased out of stockholders' funds.
(c) Any other tax-exempt securities purchased solely from funds of stockholders, if this can be legally established.
(d) In the actual formula pursuant to deduction, to exclude shareholders' share of the tax-exempts owned by the bank.

Thus, so far as the shareholder is concerned, the tax is on his gross equity in the bank, less deductions. But so far as the bank is concerned, the tax is on its net assets.

Much confusion arises in the taxation of bank shares because of the fact that the tax is so often thought of as a tax upon the bank itself. From a practical standpoint, though not a legal one, this is perhaps true, in that while the tax is collateral in full recognition of the fact that it is on the shareholder, yet in operation, the bank is dealt with practically as though the tax were on it, since it pays the tax on behalf of its shareholders collectively.

It is accordingly held in Michigan that, though the tax is on the shareholder, all the items which are only of interest to the bank (capital, surplus and undivided profits) in directly concerned in assessing the tax, and that all local assessments are deducted from the shareholders' interests, and not from the assets of the bank.(9)

To further avoid confusion, it must be kept in mind that the tax exempt securities held by the bank belong to the bank, and not to the shareholders. Therefore the shareholders cannot claim deduction from their assets of the proportionate part of the tax-exempt securities held by the bank, for the reason that they do not belong to the shareholders, but to the bank, which has acquired them from the use of depositors' funds or through creating deposits. (Hubbard v. Assessors, [illegible])

<u>Assessment and Collection Procedure.</u>

The routine of present state bank-share taxation in Michigan may be said to originate and center in the office of the State Tax Commission. For the uniformity there is throughout the state in assessment procedure is due to the instructions

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(9) It has been held that, "--the <u>capital</u> of a bank is the aggregate of its property invested or employed in its business, having regard to the market value of the various items, rather than to the number and par value of its shares; while its <u>capital stock</u> consists of the total amount contributed or paid in by shareholders in exchange for their certificates of stock." 37 Cyc. 117 and cases there cited.

[illegible] of this state [illegible]. [illegible] officers of the [illegible], [illegible] er with the [illegible] should be [illegible] compute the [illegible] value per share of the stock, [illegible].

The [illegible] the institutions [illegible], [illegible] jurisdiction, [illegible] out of their [illegible].[10] [illegible] provides [illegible] this state [illegible]. This statement should [illegible] during the preceding year of such [illegible] "tax exempts" [illegible] United States bonds; preferred stock in banks held by the Reconstruction Finance Corporation; bonds secured by mortgages on Michigan real estate; Michigan municipal bonds and/or notes; and bonds which have been made exempt from taxation by payment of the specific one-half of one percent tax to county treasurers. The law provides a penalty against any bank cashier who does not supply the information required.[11]

In addition Section 3513 not only requires shares of non-residents to be taxed at the situs of the bank, but requires the bank to [illegible] such shares [illegible] the [illegible] agent of the [illegible]. Moreover the National Bank Act[12] requires

(10) C.L. of Mich. 1929, Sec.3435 et.seq. and sec.3513 (sec.10). Personalty required [illegible] also be listed. See Op. Atty Gen. [illegible] p.417, 418, [illegible] 419.
(11) Comp.Laws of Mich., 1929, sec. 3513
(12) Sec.40, Nat. Banking Act, U.S.Rev.Stats. Sec.5210; [illegible] U.S./
C.L. 62

every national bank to submit in a full and correct list of names and addresses of all shareholders, which shall be [illegible] to state and county officials. The statutes of the State require national banks to return all shares, both residents and non-residents, [illegible].(13)

The township officers then compute the total taxable value of the shares for each bank within their jurisdiction, after deducting the real estate owned by each respective bank,(14) together with other legal deductions, before dividing by the number of shares outstanding to arrive at the assessable value per share. This figure having been determined, the tax is entered to the individual shareholders of the respective banks according to the number of shares held by each. Those shareholders who reside in the town or city where the bank is located are assessed in that location; likewise with all shares whose owners live outside the county in which the bank is located. All shares whose owners live outside the town or city where the bank is located, but within the same county, are listed and sent to the various supervisors of the county, who then assess the shares of their own respective jurisdictions, wherever said shares are [illegible]. This proced-

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(13) White v. [illegible] (1877) [illegible] U.S. [illegible]
Citizens Nat. Bank et. al. v. Kentucky (1910) 217 U.S. 443
(14) Comp. Laws of Mich. [illegible]. Strohl v. City of Detroit, [illegible] Mich. [illegible].
It has been held that no deduction can be made on account of realty acquired in ordinary transaction of business, which is retained beyond [illegible] limit. First Nat. Bank v. [illegible].
Nor for real estate [illegible]. [illegible] v. Chambers (1901) [illegible] U.S. [illegible]

ure [illegible] by law.(15)

Most [illegible], [illegible] by the [illegible] to the [illegible] [illegible] tax [illegible] that the bank [illegible] itself pay all back [illegible]. In such [illegible] the [illegible] value of the [illegible] in each [illegible] district may be [illegible] against the bank.(16) Unless the bank [illegible] to pay the tax, it has been held that the [illegible] in the [illegible] of the individual [illegible], and [illegible] on the assessment rolls as required by law.(17)

It is legal, [illegible], to require the [illegible] to be [illegible] in the first instance by the bank, with the right to reimbursement from the stockholders.(18) In such instances the shares are to be assessed against the [illegible] in his official capacity.(19) It has been held in Michigan and elsewhere, however, that [illegible] to pay a tax on certain [illegible] of its stock, [illegible] it [illegible] reimburse itself

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(15)Howell v. Village of Ca[illegible], [illegible] Mich. 471
[illegible] C.L. of Mich. [illegible], sec. [illegible], [illegible]
Op. Atty. Gen., [illegible], p 535; [illegible], pp. [illegible]
(16)1 C.L. of Mich. [illegible], sec. [illegible], subd. 3
(17)Albany City Nat. Bank v. [illegible], 6 F. [illegible]7
(18)C.L. of Mich. [illegible], sec. 3[illegible]. [illegible] Nat. Bank v. F[illegible], [illegible] S. Ct. [illegible]; [illegible] U.S. [illegible] (19[illegible]), [illegible] N.W. [illegible]; [illegible] Bank of Commerce [illegible] v. Allen, [illegible] F. 47[illegible] (C.C.A. [illegible]) [illegible] F. [illegible], certiorari [illegible] S.Ct. [illegible] ([illegible] U.S. [illegible])
Nat. Bank of Detroit v. County of [illegible], [illegible] Mich. [illegible]
Citizens Nat. Bank v. [illegible] (19[illegible]) [illegible] U.S. [illegible]
(19)City of [illegible] v. [illegible], [illegible] Mich. [illegible] ([illegible])

[illegible] (20)

It [illegible]

[illegible] (21)

[illegible] ( ) [illegible]

[illegible] final [illegible]

[illegible] in the city of [illegible] County. [illegible]

[illegible] village [illegible].

The law [illegible] township and school [illegible]

[illegible]

(20) St. [illegible] v. [illegible] 117 [illegible]
(21) [illegible] v. D[illegible]

[illegible] (22)

[illegible] (23)

[illegible], it [illegible]: (25)

1. [illegible]
   (a) [illegible]
   (b) [illegible]
   (c) [illegible] (26)
2. [illegible]

In case [illegible] before [illegible] is finally settled, they [illegible] suit to recover [illegible] thirty days [illegible] etc. The protest [illegible] stated. (27)

It is [illegible]

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(22) Mich. C.L., [illegible], sec. [illegible] (7107)
(23) Ibid., sec. [illegible]
(24) Idem, [illegible] sec. [illegible]
(25) C.L. of Mich. 1915, sec. [illegible]
(26) Ibid. sec. [illegible]
(27) Detroit River Savings Bank v. Detroit, 114 Mich. [illegible]
Nat. Bank of Detroit v. City of Detroit, [illegible] Mich. [illegible]
C.L. of Mich. [illegible] sec. 3444: [illegible] v. [illegible] Twp. [illegible] Mich. [illegible]

[illegible] - [illegible] Court has held that no relief [illegible] in the Court's, [illegible] [illegible] t.[28]

Local charter [illegible] procedure for bringing suit, [illegible] used by the banks in paying the tax on bank stocks.

It is generally recognized that where property is taxed at a greater rate than is authorized by law, the tax is not entirely void but is invalid only as to the excess beyond that legally authorized.[29] Therefore it is necessary that as a condition precedent to the granting of an injunction to restrain the collection of excessive taxes, that the part which is not excessive must be paid or tendered.[30] But injunction proceedings to restrain tax collection are now prohibited.[31] The federal courts also have equitable jurisdiction of suits to enjoin collection of taxes assessed on national bank shares by discriminatory state law.[32]

Is The Act of 1931 Constitutional?

Quite probably there will be some change made in the Michigan bank share tax act, for, whether justifiably or not, the constitutionality of this Act is questioned on several grounds;

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(28) C.L. of Mich. 1929 sec. 3413 et. seq. (see notes under 'Review')
(29) State Railroad Cases (1875) 92 U.S. 575
(30) Idem: Pelton v. Com. Nat. Bank of Cleveland, 101 U.S. 143
People's Nat. Bank v. Marye (1903) 191 U.S. 272
Mobile & O.R.Co. v. Schnipper (1929) 31 F. (2d) 587
(31) C.L. of Mich. 1929, sec. 3507:
Birmingham v. Oakland City. Sup'rs. 276 Mich. 1.
(32) Pub. Nat. Bank of N.Y. v. Keating (CCA. N.Y. 1931) 47 Fed. (2d) 561; 284 U.S. 587.

among them the following:

1. The requirement that the banks, when being taxed, must prove the amount of the assets with which they purchased their tax-exempt securities, as well as the extent of their [illegible], in attempts to justify deductions by tracing the purchase of tax-exempt securities. This is claimed, since once a bank has raised funds for business it is thereafter impossible to earmark or trace its funds. This was the claim of the dissenting officials in the National Bank of Detroit case.(33) Under this theory it is claimed that the 1931 Act sets up such an arbitrary and impossible pre-requisite to the deduction of tax-exempts that no operating bank can possibly meet it, and that this denies equal protection of the law and due process of the law.
2. The Act lacks uniformity in that it does not sufficiently tax competing capital in the hands of other corporations and local personalities--including building and loan associations, partnerships and individuals--to comply with section 5219 of the Revised Statutes of the United States.(34)
3. The Act does not permit deduction of personal debts by shareholders, as required under the Michigan general tax law, and as has been held by the Courts.(35) There appears to be a lack of uniformity in Michigan on the allowance of debits from credits, both in assessment practice, and in the opinion of various attorneys. It has been held, however, that it is no violation of section 5219 to deny debt deductions from bank shares in states which holds shares of stock are not credits,(36) as is the practice in Michigan.
4. The Act sets up a rigid method of arriving at the cash value of the shares, which is in reality the book value.

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(33) Nat. Bank of Detroit v. City of Detroit (1935) 272 Mich. 610
(34) See above, pp.29-30. See also Public Nat. Bank v. Keating 42 F. (2d) [illegible] 511, aff'd. [illegible] U.S. [illegible]
Hoesli v. Huntington Nat. Bank 59 F. (2d) 47[illegible], certiorari denied (1932) 287 U.S. [illegible], which denied relief because of insufficient proof that those concerns were in substantial competition with national banks. It would be necessary for the bank not only to prove authority to compete with the concerns complained of, but also that the bank's capital was so employed in substantial amount.
First Nat. Bank of Shreveport v. Louisiana Tax Comm. (19[illegible]) 289 U.S. 60
(35) Comm. Nat. Bank of Columbus v. Treasr. of Franklin City. (Ohio), decided by U.S. District Ct., Southern Dist. of Ohio, [illegible], 19[illegible], but see First Nat. Bank of St. Joseph v. St. Joseph Twp. 46 Mich. 526, which held that taxation of bank stock at full value is not necessarily in violation of section 5219.
(36) Commercial Bank v. Chambers (1901) 182 U.S. 556.

The [illegible] -
st[illegible]. [illegible]
[illegible] is [illegible] to be [illegible]
[illegible] at the f[illegible] value, if the land [illegible] is [illegible]
less than the [illegible] of the [illegible].(37) If this is t[illegible]
[illegible]
[illegible]
[illegible] its [illegible].
The constitution requires that [illegible] all
[illegible] property [illegible] cash value,(38) and the statute pro-
vides that, "the term 'cash value', whenever used in
this act shall be held to mean the usual selling value
at the place where the property to which the term is
applied shall be at the time of assessment, being the
price which could be obtained therefor at private sale,
and not at forced or auction sale."(39) In 1915 the
attorney general ruled that shares of bank stock hav-
ing a definite market value should be assessed in accord-
ance therewith,(40) but after the enactment of 1921
with its formula provision for determining
the value of the shares, the attorney general declared
that the cash value of each share of stock in a bank or
trust company shall be determined by use of the formula
provision in the act of 1921.(41)

It is questionable whether any such formula may be used as a substitute for the provision of the constitution and the statute, for the assessment of bank shares, especially if such shares have a known and definite cash value. Even were the Tax Commission to figure all shares in the state, by the formula method, and forward such assessments to the various assessors of the state, at least some of these assessors would modify the Commission's figures to make them conform to their own local judgment of the cash value of the shares. Thus the formula method in practice cannot be said to be uniform. It has also been held that national banks cannot be discriminated against by establishing rules for fixing value,(42) nor by assessing their shares on a higher basis than used in computing assessments of others.(43)

5. It is common knowledge that intangible personal property has not been, and is not being, declared by its owners for assessment. Nor have the assessors been discovering

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(37) People v. [illegible] Supervisors, 71 Mich. 16;
Section 7412 C.L. of Mich. 1929, note on "cash value".
Section 7415 C.L. of Mich. 1929.
(38) Mich. Const. 1908, Art. X. Sec. 7
(39) C.L. of Mich. 1929 Sec. 7415
(40) O.A.G. 1915, p. [illegible]; 1917, p. 151
(41) O.A.G. 1920-22, p. 209
(42) Des Moines Nat. Bank v. Fairweather, 263 U.S. 103, (Iowa, 1923)
Palmer v. McMahon, 133 U.S. 660
(43) Idem.; Pelton v. Co[illegible] Bank of Cleveland.(1880)101 U.S. 143.
Covington v. First Nat. Bank of Covington (1905)198 U.S. 100

it [illegible] ally. [illegible] of this class of [illegible] that is [illegible] "[illegible] capital", [illegible] defined in the [illegible]. On this [illegible] there exists a chance [illegible] times, for it has been held that, "Where national bank shares have been assessed at their [illegible] value, estimated by their relation to the [illegible] capital, while several hundred thousand dollars of [illegible] capital in the [illegible] by reason of [illegible] negligence or willful [illegible] of the [illegible], the bank [illegible] is entitled to have the entire [illegible] annulled". (14)

It has also been held that "money of individuals, firms, and corporations employed in the business of lending on the security of notes, bonds, and [illegible] and buying and selling securities, is in competition with the business of national banks which lend money, buy and sell notes [illegible] and other bonds, and [illegible] so that under the provisions of U.S. Rev. Stat., sec. 5219, shares of national banks cannot be taxed if such money in substantial [illegible]." (45)

6. Due to the fact that in the First National Bank case the trial court [illegible] its ruling [illegible] the finding that the [illegible], "[illegible] the regulations of the comptroller make it impossible to receive any deposits until after the investment [illegible] in Federal Reserve Bank stock, (46) it would seem doubtful if a

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(14) First Nat. Bank v. Lindsay, 45 F. 619, reversed; Lindsay v. First Nat. Bank of Shreveport, 15 S.Ct. 127; 156 U.S. 485 [illegible] v. First Nat. Bank, 260 F. 537, appeal dismissed [illegible] Nat. Bank v. [illegible] et al. (1921) 2[illegible] U.S. [illegible] (1924) First Nat. Bank v. [illegible] 45 S. Ct. 9; [illegible] U.S. [illegible] [illegible] Bank v. [illegible] County, 1[illegible] U.S. [illegible]

(45) Hartford First Nat. Bank v. Hartford, 273 U.S. 54[illegible] Minnesota v. St. Paul First Nat. Bank, 273 U.S. 561 First Nat. Bank v. [illegible] Tax Com., 2[illegible] U.S. 60-[illegible], Georgetown Nat. Bank v. McFarland, 273 U.S. 568, (1927) which held substantial competition was not proven, in that the money of individuals was [illegible] in larger [illegible] than the banks [illegible] willing to make, and therefore [illegible] not [illegible].

(46) Nat. Bank of Detroit v. City of Detroit (19[illegible]) 2[illegible] Mich. [illegible] [illegible] Bank stock [illegible] of capital [illegible]; before [illegible] business (deposits) [illegible] ducted in [illegible]. But [illegible] the RFC., the bank [illegible] not [illegible] [illegible] R.F.C. shares.)

[illegible]

[illegible] he conceded the same proof, [illegible]

[illegible]

(47) [illegible]
(48) See page 43
(49) [illegible]

CHAPTER IV

[illegible]

It has been pointed out in chapter [illegible], that national banks are instrumentalities of the federal government and, as such, are protected by Congress from destructive taxation by the states. Under section 5219 of the Revised Statutes of the United States the various state governments are permitted to tax national banks only in ways specifically permitted by Congress. This limitation upon the taxing power of the various states has resulted in very confusing taxation problems for the states. These problems arise largely under the restrictions of the "other moneyed capital" requirements as defined in the [illegible]; and of the "uniformity of taxation" requirements of various state constitutions.

The Competitive Other Moneyed Capital Rule and the Expansion of National Banking Activities into New Fields.

National banks have been gradually expanding their operations into additional fields such, for example, as trust company activities and farm mortgage financing. When national banks enter any new fields, state governments may not thereafter tax them at any greater rate than they tax these new competitors. This is because of the "other moneyed capital" limitation. State taxation in some of these new fields may be very low, as in the case of mortgage investments. This fact may ultimately force Michigan, and those other states taxing bank shares at the general property rate ad valorem, to abandon this method for lack of yield. To il-

Instate [illegible] United States Supreme Court [illegible] trust banks.(1) This [illegible].(2) [illegible] recognized trust [illegible] capital [illegible] this case).(3)

In 19[illegible] the court [illegible] trust [illegible] national banks into the [illegible] in the case of First National Bank v. [illegible].(4) Prior to 19[illegible](5) [illegible] bility to national banks,(6) [illegible] tion. [illegible] national bank [illegible] mortgage [illegible] were in competition with national banks, [illegible] bank [illegible] the requirement of the [illegible] rule.

In 1927 the [illegible] Act(7) still further extended the field of activities of national banks to include trust operations, in-

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(1) Mercantile Bank v. New York (18[illegible]) 1[illegible] U.S. 1[illegible]
(2) Jenkins v. N[illegible] (1[illegible]) 1[illegible] U.S. [illegible]
(3) [illegible] v. Fu[illegible] (19[illegible]) [illegible] U.S. [illegible]
(4) (1[illegible]) [illegible] U.S. [illegible]. But see contra: [illegible] v. [illegible] Nat. Bank (1[illegible]) 5[illegible] F. ([illegible]) 47[illegible], First Nat. Bank of Shreveport v. Louisiana Tax Com. (1[illegible]) 2[illegible] U.S. [illegible], which held that not only the field, but the methods of operation must be similar.
(5) [illegible] Stat. [illegible], C.[illegible], sec [illegible], Dec.[illegible], 1[illegible]
3[illegible] Stat. 75[illegible]. C. [illegible], Sept.7, 1916
(6) Rev. Stat. Sec. 51[illegible], First Union Nat. Bank v. Matthews, [illegible] U.S. [illegible]21, [illegible]
(7) U.S. Statutes at Large XLIV, 1224ff.

creased real estate loans, savings deposits and investment trans-actions. But national banks need not participate in these activ-ities, or any others which they [illegible], at the same rate as others in those activities. Under the rule of the Hartford case discussed above national banks need only pay the [illegible] [illegible]. Thus the rule works to the advantage of national banks in two ways. By [illegible] into the lowest [illegible] busi-ness these banks [illegible] a low tax rate. By expanding into activ-ities of higher yield and higher tax rates, the banks share the privileges enjoyed by others in these fields, but do not share their tax rates.

<u>Competition with Some, but not All Phases of the Business of National Banks is Sufficient to be "Competitive."</u>

The United States Supreme Court in affirming the definition of "Other moneyed capital," as declared in the Anderson case, added still another restriction in the Wisconsin case of First National Bank of Hartford v. Hartford.(8) The Court held that "competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of Section 5219, even though the compe-tition be with some, but not all phases of the business of na-tional banks. Section 5219 is not directed merely at discrimin-atory taxation which favors a competing banking business. Com-petition in the sense intended arises not from the character of the business of those who compete but from the manner of employ-

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(8) (1927) 273 U.S. 548. See Chap. II, note 23.

ment of the c[illegible]". Apparently, therefore, a national bank can obtain practical tax immunity upon all its assets or income simply by placing a part of its funds in important l[illegible].

Thus, it will be seen that through the expansion of national banking activities into the investment field, these banks have potentially gained a position of practical tax exemption. They apparently need only to force this legal issue in the courts to compel the various states to limit their taxation of national banks to that imposed upon [illegible]. The rate on mortgages is usually very low for equitable reasons.

Income Taxes and the Questions of "Uniformity" and "Double Taxation"

Some states have found it legally impossible to impose upon national bank shares any of the income tax methods permitted by the congressional amendments of 1923 and 1926 which were enumerated in chapter one. The prohibition in all these cases revolves around the judicial finding that an income tax is a property tax. Being a property tax the constitutions of these respective states require that the tax imposed must be uniform upon all property assessed. Such a restriction prohibits a graduated income tax, although it permits a "flat rate" income tax. Furthermore many states because of constitutional or judicial restrictions are unable to impose both an ad valorem property tax, and also an income tax upon the same property because their respective courts would rule this prohibited as double taxation.

For instance it has been held by the United States Supreme Court that a tax on the income derived from property is a tax on the property from which the income is derived. The Pollock case[9] has [illegible]. Also in the [illegible] (10) [illegible] Court [illegible] (11) [illegible] His income [illegible] be [illegible] time, [illegible]. The Court [illegible].

[illegible]

The [illegible]

[illegible]

(9) [illegible] v. [illegible] (1915) [illegible]
(10) [illegible] v. [illegible]
(11) [illegible] 57 S.Ct. 433 [illegible]

[illegible]

In [illegible] C[illegible] that the [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible]. [13] [illegible] that, "[illegible] that [illegible], [illegible] tax."[14] [illegible], in [illegible], the [illegible] that the [illegible] legislative [illegible][14] [illegible] and other [illegible].[15] [illegible] the issue [illegible] whether [illegible]. The Court stated that the Act of 1935 ([illegible] for the privi- lege of exercising its corporate [illegible] in the state, or for the privilege of doing business in the state, in addition to [illegible] license fee) raised the same issue as did the Ab- erdeen Savings & Loan case[16] and that it was unconstitutional, on the basis that the [illegible] income tax [illegible] involved double taxation.

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(12) Aberdeen Savings & Loan Assn. v. Chase, 157 Wash. 351.
(13) Jolliton v. Chase, 174 Wash. 363.
(14) Title 17, ch. 180, Wash. Laws of 1935, p. 706 Rem. 1935 Supp., Sec. 8370 - 1 et. seq.
(15) Petroleum Nav. Co. v. Henneford et. al. (1936) 185 Wash. 495
(16) Supra.

In the Kelley v. Kalodner case, the Supreme Court of Penn- sylvania held [illegible], [illegible].[17] This court [illegible] the Pollock case,[18] [illegible] United States Supreme Court [illegible] little [illegible] to the fact [illegible]. In other cases [illegible], [illegible], Illinois, [illegible], California [illegible] for the point [illegible].

In Illinois [illegible] constitutional [illegible] that it was a property tax and did not comply with the uniformity requirement of the state constitution applying to property taxes.[19]

As stated earlier, the reasoning in these cases revolved around the finding that an income tax is a property tax, and, because the state constitution in the respective states required uniformity in property taxation, the acts were unconstitutional because they did not provide for uniformity. Similar constitutional requirements exist in Michigan. And in addition the State [illegible] probably would [illegible] a tax on income from property that also was taxed as property, on the ruling that this would constitute double taxation. Therefore, it appears doubtful if Michigan may legally enact either of the income tax methods permitted by Congress upon national banks.

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(17) Kelley et.al. v. Kalodner et. al. (1935) 320 Pa. 180.
(18) Supra.
(19) Bachrach et.al. v. Nelson et. al. (1932) 349 Ill. 579.

An Intangibles Classification [illegible]
[illegible]

In Michigan at the present time state tax officials are apparently desiring a change in the general tax law which will provide for the separation of intangible personal property from that of real property and tangible personal property. This change is desired on the ground that it is impossible to reach such intangibles for taxation at the general property rate because those who own the intangibles feel the rate to be confiscatory, and do not disclose their ownership to the assessors. It is also felt by tax officials quite generally that since intangibles merely represent tangible property which is itself being taxed at the property rate, it is but just that intangibles be taxed at a low rate.

Again, however, the Federal act sets the almost insolvable problems. If an intangibles tax is enacted in Michigan it will become legally necessary to include national bank shares in this group because of various court decisions, such as the Richmond and [illegible] cases previously discussed. These decisions are based upon the requirement of the federal act limiting the tax rate upon national bank shares to that imposed by the states upon other moneyed capital or, in other words, upon intangibles. Such a rate would be only about ten to twenty percent of the present rate. The percentage would be at the will of the legislature. But even so this would be greater than the mortgage tax and national banks still would be in apparently good position legally to insist that their shares could not be taxed at a greater rate than are mortgages. This would be equally the case whether the State were imposing an ad valorem tax or a franchise tax upon the separately classified intangibles.

<u>An Intangibles Classification and the "Uniformity" and "Double Taxation" Rules.</u>

Additional problems arise under the state constitutional requirement of uniformity of tax burden upon property within the same taxing district, and because of the rule against double taxation. For instance, if the tax upon intangibles were to be imposed upon an ad valorem basis, it would be illegal in Illinois under the double taxation restriction to tax the real property and also the shares of corporations, including banks. Moreover, government securities would be exempt and mortgage holders would need pay only the amount [illegible] of the present recording tax. There would thus be but little the tax would reach. However it might be possible under Illinois law to enact a specific tax upon these intangibles which would be in essence a duplicate of the ad valorem property tax. Such procedure would be open to the doubt however,[20] and would result in new problems. Since it is legally required that a specific tax be imposed by count and number and not by ad valorem methods of assessment, it would be necessary to impose the tax upon the face value of the intangibles included in the law, regardless of their cash value. Such a law must also impose a uniform tax, under the constitution. [illegible] then tax money or shares?

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(20) It has been held that a [illegible] [illegible] the [illegible] [illegible] be in lieu of all [illegible]. First Nat. Bank of Covington v. City of Covington, [illegible] Fed. 523; State v. Penny, 17 N.J.L. 30

CHAPTER V

[illegible]

The [illegible] to [illegible], [illegible] or bank shares [illegible] national banks [illegible], [illegible] those object [illegible] to [illegible] on other [illegible]. [illegible] restriction [illegible]. [illegible] national bank [illegible] mitted by section 5219 of the Revised Statutes of the United States.

C[illegible] section 5219 [illegible] to [illegible] another method [illegible]. [illegible] -ly from national banks [illegible] differently than national banks. [illegible] the Supreme Court [illegible] banks without [illegible].

The four [illegible] to the states for taxing national banks or their shares [illegible] follows: Methods, [illegible] limitations [illegible]:

1. [illegible]

2. [illegible]

3. [illegible]

4. "[illegible]

[illegible]

will [illegible]

the [illegible]

will be [illegible].

[illegible]

[illegible]

Table III

(I) [illegible]

1. [illegible]	(I), ([illegible])	[illegible]. In[illegible]	([illegible])
2. Arkansas	([illegible]), ([illegible])	[illegible]	([illegible]), ([illegible])
3. [illegible]		10. [illegible]	(I), ([illegible])
4. Delaware	(I), ([illegible])	11. [illegible]	(I)
5. Florida		12. [illegible]	([illegible]), ([illegible])
6. Georgia	(I), ([illegible])	13. [illegible]	
7. Illinois		14. [illegible]	([illegible])

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(1) [illegible]

(2) [illegible]:

(I) [illegible]

([illegible]) [illegible]

([illegible]) [illegible]

[illegible]		[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	
[illegible]		[illegible] V[illegible]	[illegible]
[illegible]	[illegible]	[illegible] V[illegible]	[illegible]
[illegible] C [illegible]	[illegible]	[illegible]	

(II) [illegible]

[illegible]

(III) [illegible]

[illegible]

(IV) [illegible] ([illegible])

1. A[illegible] ([illegible])
2. C[illegible] ([illegible])
3. C[illegible] ([illegible])
4. I[illegible] ([illegible])
5. [illegible] ([illegible])
6. [illegible] ([illegible])
7. C[illegible] ([illegible])
8. [illegible] ([illegible])
9. Ut[illegible] ([illegible])

[illegible] (3)

[illegible]

[illegible] (5)

[illegible]

[illegible] Ohio [illegible]

The [illegible] is [illegible]

[illegible] (wife [illegible]) [illegible] in Nebraska; [illegible] Ohio; [illegible]

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(3) Cullit[illegible] v. [illegible], 17[illegible] 377. [illegible]
(4) Petroleum [illegible] Co. v. [illegible] 115 [illegible] 445
(5) Source: State Tax Guide Service, [illegible]

classified list [illegible]

as in [illegible].

The second [illegible] by Congress [illegible], [illegible], that of including "dividends [illegible] derived therefrom [illegible] of an owner or holder thereof", [illegible] the principal method of taxation in only one state [illegible], Vermont, [illegible] dividends [illegible] subject to income taxation in the [illegible] dividends of other corporations. The dividend tax, [illegible] other [illegible] of taxation of national banks permitted by section 5219, is not [illegible], but [illegible] with either the tax [illegible] franchise tax [illegible] by net income, [illegible] corresponding taxes are imposed [illegible] other taxpayers. Thus, [illegible] states, [illegible] or income taxes [illegible] the banks, also include, for personal income taxation, [illegible] dividends either of banks within the state, as in California, or of banks outside the state, as in Wisconsin.

The third option [illegible] added by Congress in 1926, that of taxing "such associations on their net income," excluding the income from tax-exempts held by them has been applied at one time or another in several states, but at the present time is confined to Wisconsin. It's disadvantage is in not permitting inclusion of income from tax-exempts in the base. This is particularly disadvantageous to the states in the case of banking institutions in view of the unusually high proportion of such securities held. Also, while this point has never been directly decided, this [illegible] of direct taxation is constituted by the [illegible], holding [illegible] States [illegible] Tax Co. v. [illegible] (1.7[illegible]) [illegible] U.S. [illegible], of allowing deduction [illegible] provided [illegible] able and [illegible].

The fourth method [illegible] by Congress in 1.[illegible], that of taxing national [illegible] by their net income", including the income from [illegible] held by them [illegible] in the several states, in which net income [illegible] the established subject of taxation. While this tax is in [illegible] instance an income tax, it can be said to be a franchise or privilege tax only as to state institutions, since the [illegible] have no authority or privileges to national banks, [illegible] no such control over them.

Whichever [illegible] is [illegible], very similar to excise taxes upon income of other corporations, with the following [illegible] in taxation. Although section 5219 provides that "the rate shall not be higher than the highest of the rates assessed by the taxing state upon mercantile, manufacturing, and business corporations doing business within its limits", the states [illegible] may impose a higher percentage upon banks in order to equalize the burden between banks, which are not taxable upon their personal property, and corporations which are subject to personal property tax and other levies. The Massachusetts and California each provide for [illegible] to be fixed by the taxing official, subject to [illegible] and appeal, [illegible] in [illegible]. This is [illegible] (T) [illegible] ies [illegible]

[illegible]

[illegible]

stated, these intangibles are taxed at this low rate, [illegible] separately classified, because of the fact that they really are but evidences of tangible property which already has been taxed at the full property rate. Whatever the value of such intangibles as bonds, mortgages, or contracts of [illegible] is largely determined by their income. To tax them at the general property rate (about 2%), would amount to practical confiscation of most of their income, and ruin their value.

Under the rule of the Richmond case national bank shares cannot be taxed at any greater rate than such intangibles. Therefore, were Michigan to enact a separate classification for intangibles and tax them upon a low ad valorem basis, national bank shares would thereupon be required to pay only about one tenth the tax they now pay. Under the state constitutional requirement of uniformity state bank shares would of legal necessity also be taxed upon this same low basis. Such a solution might be proper as far as intangibles are concerned but there are on [illegible] revenue to the [illegible] of intangibles in the state to [illegible], as to the [illegible]. It is [illegible] shares [illegible], [illegible] tangibles [illegible]. Whatever the [illegible], it is [illegible] that if [illegible] equality with other [illegible], [illegible] equality [illegible] to be turned [illegible] this state. This being true, [illegible] solution [illegible] in dispute.

(II) Under the second form of taxation permitted by Congress, Michigan may include dividends derived from the shares of national banks in the taxable income of [illegible] thereof. Section 5219 provides as a limitation to this form of tax that, "in case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital." Michigan would probably need to create a special tax classification for intangibles, and tax the owners upon their net income, to become legally able to include [illegible] the dividends from national bank shares. It must also be kept in mind that the State Constitution requires uniformity of taxation.(6) Apparently this fact leads to difficulties. It has been held in other states which have constitutional requirements of uniformity in tax matters that a tax upon the income from property is

(6) Mich. Const. Art.X, Sec. 3. See Appendix C, for text.

[illegible], [illegible]. [illegible] tax would not [illegible].(7) [illegible] even a flat-rate [illegible].(8) [illegible] tax [illegible] to corporations ([illegible]) [illegible] [illegible] titute [illegible].(9) This [illegible] [illegible] Richardson,(10) [illegible] the requirement [illegible] that "the tax shall not [illegible] not [illegible]." This [illegible] to another [illegible] n. [illegible] case(11) this [illegible] tax but [illegible] [illegible] of [illegible]. [illegible] property tax ([illegible] tax, [illegible] by Michigan courts) upon [illegible] to the tax upon the [illegible] property. [illegible] specific [illegible]. [illegible] tax [illegible] by [illegible] and not by value, [illegible] possible.(12) But there [illegible], outside of judicial determination, [illegible] specific tax [illegible] –

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(7) Kelly v. [illegible], ([illegible]) [illegible] Pa. [illegible]
Aberdeen [illegible] Co. v. [illegible] ([illegible]), 157 Wash. [illegible]
Culliton v. Chase ([illegible]), 174 [illegible]
[illegible] v. [illegible], [illegible] Ore. [illegible]
(8) [illegible] v. [illegible] ([illegible]) [illegible] Ill. 573
(9) [illegible] v. [illegible] ([illegible]) [illegible]
Kelly v. [illegible] ([illegible] C [illegible], [illegible], C [illegible], [illegible].
(10) Merchants' [illegible] v. Richardson, [illegible] U.S. [illegible]
(11) [illegible] v. City of Detroit, [illegible] Mich. [illegible]
(12) [illegible] v. [illegible], [illegible], [illegible], [illegible], [illegible].

[illegible] (25) [illegible] (26) [illegible]

requi[illegible]

[illegible] First [illegible]

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(13) First [illegible] v. City [illegible]
(14) First [illegible] v. City [illegible]
(15) [illegible]
(16) [illegible]
First [illegible]
George [illegible]
First [illegible]
V[illegible]
V[illegible]

[illegible]

[illegible] legislature. It, [illegible]

[illegible]

[illegible] res. Section 5[illegible] provides, "I[illegible], t[illegible] tax shall [illegible] the net [illegible]"(17) [illegible] also [illegible] valid [illegible]

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(17) Section 5[illegible], [illegible] of 1 2[illegible], [illegible] (d). [illegible] J.L. Simpson, Inc. v O'[illegible], [illegible] construction

of the other [illegible] [illegible] bill [illegible] because of the fact that the bill [illegible] [illegible], [illegible] [illegible] it [illegible]. [illegible] the other [illegible] [illegible] [illegible] be [illegible] [illegible] [illegible] its [illegible].

This bill [illegible] to be [illegible] invalid because of the fact that [illegible] specific tax [illegible] uniform, [illegible] the [illegible] to constitution.(18) But a tax on gross income is not a uniform tax for it does not impose a uniform burden upon net income.(19) "Senate Bill No. 42" was [illegible] "Senate Bill No. 243." This bill also included [illegible] within its definition of intangibles. The bill is of further interest because of the fact that it would impose a twofold classification upon the intangibles included within its provisions. It would impose an annual "specific tax" upon the ownership of "unproductive intangible personal property" a burden equal to one-quarter of one per cent upon the face value of the property. This "unproductive" group is defined as including "all intangible personal property which has a definite face value and which yields no income." The bill also sets up a classification of "productive intangible personal property" which "includes all other intangible personal property". It would tax this group "an amount equal to five per cent of the income derived from the property during the calendar year."

Among the legal problems involved was the fact that the Stroh case held it unconstitutional to tax both the property

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(18) Michigan Constitution Art. X Sec.4. [illegible]
(19) [illegible] v. [illegible], (1932) 51 [illegible] 815, [illegible] Stewart Dry Goods Co. v. Lewis (19[illegible]) [illegible] U.S. [illegible]

and the [illegible] of [illegible] property [illegible], [illegible] that this would be double taxation. This [illegible] would [illegible] ad valorem tax upon the property, [illegible] tax upon the shares, in the same year. [illegible] avoiding double taxation [illegible], the bill [illegible] to [illegible] "specific" tax. But [illegible] there would be no reason [illegible].(20) This [illegible] limitation [illegible] the [illegible] of this bill to specify that [illegible] value shares [illegible] be [illegible]ed without resorting to [illegible] of tax, [illegible] re-ductive shares having [illegible] value [illegible] upon that of [illegible] value, without [illegible] to [illegible] of their [illegible], [illegible] is the [illegible] ad valorem taxation. But this [illegible] of the [illegible] the bill to another [illegible]. The tax [illegible] be "[illegible] upon the class [illegible] which they apply to".(21) But the bill fails to impose [illegible] value shares which also [illegible] in any year to be unproductive. Thus a stock which has a face value but [illegible] is [illegible] upon its face value, while a non-par value share of stock which produces no income [illegible] at all. Thus the tax is not uniform and appears to be in violation of the [illegible] of the constitution permitting [illegible] specific tax.(21) A better solution to the problem of non-par value shares might be to provide that for the purposes of this bill such shares be regarded as of a fixed

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(20) Fletcher v. Auditor General, 1[illegible] Mich. [illegible]5, 1[illegible]7, 1[illegible], [illegible].
(21) Mich. Const. Art. X sec. 4. See Appendix C, [illegible].

[illegible] Under [illegible]

[illegible] the bill.

It is [illegible]

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(33) [illegible] (19[illegible]) [illegible] U.S. [illegible]

Contra: [illegible] (19[illegible]7) [illegible]

[illegible] U.S. v. [illegible] (19[illegible]) [illegible] U.S. [illegible]

(3[illegible]) [illegible] 1, (2)

(34) See foot note (10), supra.

[illegible] ([illegible]). [illegible] . [illegible] , [illegible] will [illegible] tive [illegible] . [illegible] . [illegible] .

It [illegible] . [illegible] Constitution [illegible] it, but [illegible] . [illegible] securities. [illegible] , [illegible] if, like [illegible] bill [illegible] , it [illegible] "in lieu" of [illegible].(25) Under these [illegible] bills, [illegible] t [illegible] shares in [illegible].

(III) Under the third form of taxation permitted by Congress a state may levy a tax upon the net income of national banks, but the tax [illegible] the taxable base. Since this form [illegible] in [illegible] of the fourth method, the two will be considered together.

(IV) Under the fourth alternative form of taxation permitted by Congress to the states [illegible] national banks,

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(25) See footnote (14) supra.

[illegible] at the [illegible] [illegible] [illegible]

by the [illegible] national banks. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 1927, [illegible]

[illegible] [illegible]

securities held by national banks. [illegible]

this method, [illegible]

Under both the third and the fourth [illegible]

that [illegible].

The restrictions as to the [illegible] upon national banks under the fourth [illegible] is that "the [illegible] shall not be higher than the [illegible] rate assessed upon other financial corporations, nor higher than the highest of the rates assessed by the taxing state upon mercantile, manufacturing, and business corporations doing business within its limits. This clause apparently permits the states to impose a higher rate upon national banks in order to equalize the burden between banks, which pay a tax upon their personal property, and corporations which are subject to [illegible] by [illegible] other bodies. Since the use of [illegible] Michigan [illegible] it is needless to discuss [illegible] further.

Theoretically, by a combination of [illegible] the use of methods of taxing national banks, a state [illegible] a basis of equality of [illegible] effective [illegible] title "Income Tax [illegible]" [illegible] in Chapter Five [illegible]

The [illegible] is indicated by the following table:

[illegible]

Table IV

[illegible]

During the [illegible] the ratio of federal, state, [illegible];([illegible])

[illegible]	[illegible] %
[illegible]	[illegible] %
[illegible] Banks	[illegible] %

For the [illegible] national banks; [illegible]:

U.S. Average	21.8 [illegible]
General Property Tax States	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible] States	[illegible]

([illegible]) [illegible]

[illegible]

TABLE V

[illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

TABLE VI

[illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	.49	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

TABLE VII

[illegible]

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(27) Ibid., p. [illegible]
([illegible]) [illegible], p. [illegible]
([illegible]) [illegible], p. [illegible]

	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

Table VIII

[illegible], Years [illegible], 19[illegible] - 19[illegible].(70)

Per Cent

	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
United States	0.67	0.[illegible]	0.[illegible]	0.[illegible]	0.[illegible]	0.[illegible]	0.[illegible]
General Property Tax States	0.44	0.45	0.45	0.43	0.[illegible]	0.[illegible]	0.[illegible]
Michigan	0.[illegible]	0.[illegible]	0.[illegible]	0.45	0.[illegible]	0.[illegible]	0.[illegible]
Low Special Tax States	0.[illegible]	0.[illegible]	0.[illegible]	0.[illegible]	0.[illegible]	0.[illegible]	0.[illegible]
Income Tax States	None	None	0.[illegible]	0.[illegible]	0.21	0.[illegible]	0.[illegible]

Table IX

Ratio of Taxes to Total Expenses, National Banks, Years Ending June 30, 1925 - 1931.(71)

Per Cent

	1925	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1931
United States	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
General Property Tax States	[illegible]	[illegible]	[illegible]	[illegible]	7.9	[illegible]	[illegible]
Michigan	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Low Special Tax States	7.3	7.4	7.1	[illegible]	[illegible]	[illegible]	[illegible]
Income Tax States	None	None	[illegible]	5.1	[illegible]	4.[illegible]	5.1

The ratios [illegible] show that there was [illegible] [illegible] in taxes [illegible] by all national [illegible] during the period 1925 to 1930. Changes in the [illegible] of taxation [illegible] state and local [illegible] [illegible] [illegible] [illegible] for the [illegible] [illegible] these ratios.

(70) Ibid., p. 79
(71) Ibid., pp. 85-[illegible]

[illegible] is [illegible], [illegible] built f[illegible] [illegible].

[illegible] tanks [illegible] special [illegible], [illegible] f[illegible]r b[illegible].(14)

[illegible] yield [illegible] in C[illegible], [illegible] of [illegible]. [illegible] (15) [illegible] follows:

TABLE [illegible]

Year	[illegible]	Year	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	1930	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
Totals	[illegible]		[illegible]

The tables above show [illegible] that the [illegible] third and fourth [illegible] (i[illegible]) [illegible] consistently in [illegible]. [illegible] (i[illegible]) dividends). This is self [illegible], since this [illegible] is not a [illegible], [illegible] either of methods [illegible]. These tables also very clearly [illegible] that [illegible] in the "[illegible] special [illegible]" is [illegible]. This [illegible]. [illegible]

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(14) Ibid., p. 90

(15) [illegible], p. 77.

[illegible]

Classification [illegible]

In [illegible] classified [illegible] the best solution [illegible] classified [illegible] state banks [illegible] all other [illegible] financial institutions. This [illegible] classification. State banks [illegible] financial institutions [illegible] taxed at [illegible] budget, [illegible]. [illegible] would be the [illegible] established [illegible] the state. [illegible], [illegible]; [illegible] imposed by the [illegible]. The [illegible] would in all probability [illegible] by the inclusion of all other financial institutions in the classification [illegible] state banks.

The [illegible] would [illegible] national banks [illegible] of the [illegible], [illegible] for [illegible] the [illegible] of the state bank [illegible]

[illegible]

demonstrated [illegible] that [illegible]

[illegible]

[illegible] it. Such classification [illegible] court, [illegible] classification [illegible] arbitrary, [illegible] or unreasonable. The [illegible] held that it may not inquire into the motives of the legislature in [illegible] its taxing power.(34) The Supreme Court of the United States has held that a state may classify broadly the subjects of taxation if it does so on a rational basis, [illegible] classification that is palpably arbitrary, and that the Fourteenth Amendment [illegible] the rule of equality [illegible] flexibility and variety appropriate to schemes of state taxation;(35) and that substantial equality and fair equivalence are important factors in determining the presence or absence of [illegible] discrimination in state taxation.(36)

How [illegible] national banks from such a classification [illegible] be fatal, for, within the intendment of the Fourteenth Amendment, shares of national and state banks are not essentially the same when considered in connection with taxation. Nor do they become so merely because the state has attempted to subject them to like treatment. It was held in the Union Bank and Trust Company Case that "The power of the legislature to tax national banks [illegible] except as expressly permitted by Congress. This is [illegible] to

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(34) C.F. Smith Co. v. Fitzgerald, 270 Mich. 659
(35) Union Bank & Trust Co. v Phelps 288 U.S. 181
Puget Sound Co. v. Seattle, 291 U.S. 619 (624)
See also: Davenport Nat. Bank v. Davenport Board of Equalization (1887) 123 U.S. 83
Cleveland Trust Co. v. Lander (1900) [illegible] U.S. 111
(36) Connecticut Ins. Co. v. Illinois, [illegible] U.S. 545 (548)

negative the idea that shares of national and state banks are essentially "the same for purposes of taxation." Thus the Alabama Supreme Court has held that under the [illegible] constitution, although the legislature [illegible] intangibles [illegible] class of taxable subjects, there is no [illegible] distinction between them.(37)

Likewise, where a state's scheme of taxation includes taxes on shares of state and national banks and less onerous burdens on other competing moneyed capital, so that the tax as to national banks is invalid and not enforced, the resulting discrimination against the state banks does not violate the equal protection clause of the XIV Amendment.(38)

As stated by the United States Supreme Court, "It may be vastly more important for the state to [illegible] national bank shares and tax other moneyed capital according to a plan not permissible in respect of national bank shares rather than conform to the standard prescribed by Congress."(39)

It might be to the advantage of the banks in Michigan to permit such separate classification, for under the present law intangibles contribute relatively little to tax revenues. Under an intangibles classification they would contribute, and so would help reduce the rate on other property, including bank shares.

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(37) Union Bank & Trust Co. v. Phelps, [illegible] U.S. 181
Davenport Nat. Bank v. Davenport Bd. of Equalization, [illegible] U.S. [illegible]
Com. v. Covington Nat. Bank, 7 Ky.L. Rep. 4[illegible]
Covington v. Covington First Nat. Bank, [illegible] U.S. 100
(38) Idem: note 32
(39) Union Bank and Trust Co. v. Phelps, [illegible] U.S. 181

In [illegible]

[illegible]

During [illegible] (40) [illegible] It [illegible] that [illegible]:

[illegible]

Table XI

[illegible]

(40) [illegible] H.R. [illegible]

[illegible]

[illegible] $1.05 ($[illegible]) [illegible]

[illegible] this [illegible].

In addition, [illegible] (for [illegible]), [illegible] also is taxed at the [illegible]. [illegible], [illegible] Michigan, this constitutes a form of double taxation which [illegible].

Multiple Rate Taxation of [illegible]

[illegible]

bill, [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] it is [illegible]
[illegible]
[illegible]
[illegible]
[illegible]. For instance, [illegible]
[illegible]
[illegible]. But it [illegible]
[illegible] to [illegible]
[illegible] usually have but
[illegible] their funds in [illegible]. It [illegible]
[illegible] of the states
[illegible] national [illegible],
[illegible]
[illegible], [illegible] is [illegible]
[illegible]
[illegible]. [illegible]
[illegible]
[illegible].

[illegible]

It may be that the state will [illegible]

[illegible]

[illegible], only by [illegible].[11] [illegible]

[illegible] is [illegible], [illegible] still [illegible].

[illegible]

The [illegible] Court [illegible] of [illegible], [illegible] if [illegible] of [illegible]. (The [illegible] Indians.) The Court [illegible] direct [illegible].[12] [illegible] It is [illegible].

(11) [illegible]

(12) [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] charter. [illegible] previous existence [illegible] the state [illegible] functions [illegible] by the state [illegible], [illegible] of the Court, [illegible] previously [illegible] the states. To quote the Court:

"This [illegible] states [illegible]. It [illegible] real [illegible], [illegible] property [illegible] in the state, [illegible] institution, [illegible] the state. [illegible] the operation of the bank, [illegible] constitutional."

The court [illegible] here of the tax [illegible] by the state of [illegible] of the [illegible] United States. The right to issue bank notes [illegible] function granted the bank by its charter, [illegible] within the state, [illegible] previously [illegible]. [illegible]

[illegible]

existed [illegible]

other [illegible]

Thus [illegible]

[illegible] Chief Justice [illegible] to issue currency, but [illegible] citizens [illegible], i.e. [illegible] Chief Justice [illegible] (41) that " [illegible], it divests itself, [illegible] of its [illegible] character, [illegible] citizen.------ [illegible] corporation, [illegible]

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(41) Flint v. Stone Tracy Co., 220 U.S. 107

[illegible] ," [illegible]

[illegible] of Child [illegible]

[illegible] .

[illegible] (15), [illegible] in [illegible]

[illegible] that [illegible]

[illegible] Still [illegible] Justice [illegible] (16) [illegible] by the other Justices of the Court) [illegible] principle [illegible] ; [illegible] that if [illegible] of [illegible] .

[illegible]

If it [illegible] taxation [illegible] , [illegible] , [illegible]

---

(15) [illegible] U.S. [illegible] , [illegible]

(16) [illegible] Co., [illegible] U.S. [illegible] (19[illegible])

one, [illegible]

[illegible]. In [illegible]

[illegible].

It [illegible] ([illegible]) [illegible] in Chapter III.

Possibly [illegible] the Reconstruction Finance Corporation, [illegible] that the RFC i[illegible] in [illegible]. (The basis of this [illegible] in Appendix E.)

Further the [illegible] legislature may [illegible], for [illegible] other than bank taxation, to [illegible] the classification of intangible personal property. [illegible] classification [illegible] at the rate [illegible] personal property. [illegible] it would be [illegible] to extend the intangibles tax to national bank shares, the banks would thereafter be required to pay only about [illegible] they now pay. This [illegible] appear to be [illegible] business corporations since they must pay [illegible] which national banks cannot be made to pay, [illegible] on intangible personal property. There is considerable doubt as to the [illegible] right of the [illegible] such a classification in Michigan [illegible], [illegible]. The int[illegible] could be enacted without [illegible] constitutional difficulties if the tax [illegible] be

[illegible]

[illegible] classification [illegible]

[illegible] national banks [illegible] other [illegible] that [illegible] classification [illegible] that [illegible]

[illegible] classification of "[illegible]" [illegible] subject [illegible] to [illegible] the [illegible] through [illegible] without practical [illegible]. So long [illegible] the state [illegible] that it [illegible] will affect the state banks just as it [illegible] national banks. [illegible] types of [illegible], [illegible] of [illegible].

[illegible] ability [illegible] states, [illegible] to banks, [illegible] invested in state [illegible].

[illegible] v. [illegible] [illegible] U.S. [illegible]

1878

Revised Statutes Sec. 5219, as reported at time of general revision of Federal Statutes in 1878:

"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 the two restrictions, that the taxation shall not be at a greater rate than is assessed upon 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 associations from either state, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

1923

Revised Statute Sec. 5219 - Amended, Mar. 4, 1923. Chap. 267, 42 Stat. 1499

Chap. 267 - An Act to amend Sec. 5219 of Revised Statutes of U.S.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 5219 of the Revised Statutes of the U.S. be, and the same is hereby, amended so as to read as follows:

Sec. 5219. The legislature of each state may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, (3) or tax the income of such associations, provided the following conditions are complied with:

"1. (a) The imposition by said state of any one of the above three forms of taxation shall be in lieu of the others.
(b) In the case of a tax on said shares, the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.
(c) In case of a tax on the net income of an association, the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing state upon the net income of mercantile, manufacturing, and business corporations doing business within its limits.
(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.
"2. The shares or the net income as above provided of any national banking association owned by non-residents of any state, or the dividends from such shares owned by such non-residents, shall be taxed in the taxing district where the association is located and not elsewhere; and such association shall make return of such income and pay the tax thereon as agent of such non-resident shareholder.
"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any state or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.
"4. The provisions of section 5219 of the Revised Statutes of the U.S. as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the states of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section.

Approved Mar. 4, 1923.

1926

Chap. 88 (Mar. 25, 1926)
An Act to Amend Sec. 5219 of R. S. of U. S.

Be it enacted - etc. that sec. 5219 is hereby amended to read as follows:

Sec. 5219. The legislature of each state may determine and direct, subject to the provisions of this section, the manner [illegible] its limits. [illegible] (1) [illegible] (2) [illegible] (3) [illegible] such as [illegible] (4) [illegible] with:

"1. (a) The imposition [illegible] (b) [illegible]

(b) [illegible]

(c) [illegible] upon the [illegible] of [illegible]

(d) [illegible]

"2. The [illegible]

A P P E N D I X   B

[illegible]

1893

Act 206, Public Acts of Michigan, 1893.
Sec. 8 "For purposes of taxation, personal property shall include------------"

(1) "3. All shares in banks organized within this state, under the laws of this state or of the United States, at their cash value, after deducting the assessed value of real property owned by and taxed as real to such banks."

"4. All shares of foreign corporations, except national banks, owned by citizens of this state.

1929

Compiled Laws of Michigan, 1929, Section 3396, chap. 8.
For Purposes of Taxation, personal property shall include.

(2) All shares in banks and trust companies organized under the laws of this state or by authority of the United States at their cash value, after deducting the assessed value of all real property owned or leased by any such banks and trust companies, including the assessed value of any buildings erected upon leased lands upon which leased property any such banks and trust companies have obligated themselves to pay any and all taxes also including the capital stock owned by any such bank or trust company of any corporation organized solely for the purpose of building or owning the business premises occupied by any such bank or trust company, also deducting that proportion of the par value of all securities issued by the United States government or by any federal land bank or joint stock land bank, or by any state, or any county, township, city, village, school district, or any political subdivision thereof owned by any such banks and trust companies that the capital, surplus and undivided profits bear to the capital, surplus, undivided profits and deposits. The cash value of each share shall be determined by adding together the capital stock, surplus and undivided profits, deducting therefrom the items aforesaid, and dividing the result by the number of shares into which the capital stock is divided. The value of all securities deductible hereunder shall be determined by taking the daily average of said securities at their par value, owned by said bank or trust company, during the preceding year."

[illegible]

(3) "All shares in banks [illegible] trust companies [illegible] shall be [illegible] in the [illegible], village or city [illegible] the [illegible] trust, [illegible]: Provided, [illegible] in the [illegible] trust, deposit [illegible] shall be [illegible] in the township [illegible] city [illegible]: Provided further, That in [illegible] bank, trust, deposit [illegible] security [illegible] its stock, for its [illegible] (2) [illegible] district, then the [illegible] value of such stock [illegible] property in such district, may be assessed in the (1) [illegible] bank, trust, deposit or security [illegible] personal property, [illegible] each stockholder, if [illegible] bank, trust or security [illegible] such [illegible] to be [illegible]."

Mich. C.L. 1929, General Property Tax Act, ch. 52, Sec. 14, Pr. 3 (Sec. 7103, [illegible] 3)

1931

Act 9[illegible], Public Acts of 1931

(Amending Chap. 2, Act No. 2[illegible] Sec. 7[illegible], Pub. Acts of [illegible],

"3. - All shares in bank and trust companies which shall be doing business in this state [illegible] shall be [illegible] with. The said [illegible] shall be [illegible] the [illegible] value [illegible] (a) [illegible] shall [illegible] shall have [illegible] all [illegible] Capital Stock [illegible] (b) [illegible] by vi[illegible] a [illegible]

[illegible]

"Subdivision Fifth" (1)

FIFTH, So much of the credits, [illegible] of the United States [illegible] credits, both [illegible] additional debts [illegible] If the [illegible] by virtue of [illegible] laws of United States or of this State [illegible] to the extent that the [illegible] of the [illegible] invested in such exempt credits the amount of said debts so invested shall not be deducted. The [illegible] shall be [illegible] to allow [illegible] the consideration [illegible] of all debts so invested [illegible] to the extent the assessing officer shall be unable otherwise to determine with reasonable certainty the debts shall be deemed to be invested in such exempt credits in the proportion which such exempt credits bear to the total of the credits, both taxable and exempt, [illegible] equivalent to such exempt credits of which the [illegible] the funds invested therein shall have been [illegible].

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(1) (Mich. C.L. [illegible] 1971, chap. 53, sec. [illegible], subd. Fifth.)

APPENDIX C

MICHIGAN CONSTITUTION OF 1908, ARTICLE X, [illegible]

"*Uniform rule of taxation.* Sec. 3. The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes."

"*Specific taxes.* Sec. 4. The legislature may by law impose specific taxes, which shall be uniform upon the classes upon which they operate."

APPENDIX D

EX[illegible]

[illegible] of [illegible] at the taxable value per share under Act [illegible], Public Acts, Michigan, 1[illegible].

Capital Stock..........................	$ 9,500,000	$ 9,500,000	Relative [illegible]
Surplus............................	7,500,000	7,500,000	[illegible]
Undivided Profits..............	2,217,005	2,217,005	[illegible]
Deposits......................	140,357,815		[illegible]
	$159,547,333	$19,217,005	12%

Total of daily [illegible] of
securities carried during
preceding year............... 25,000,000
Proportion deducted...... .12

$ 3,000,000

Other deductions

Assessed value
of R.E. owned
or leased.......$3,263,024
Stock in bank
building cor-
poration........ 150,000 3,413,024

Total deductions............ $12,472,024 Taxable
Per
Share
$76.[illegible]

Taxable capital divided by
number of shares........... --$5,000--$6,752,800

APPENDIX F

SELECTED BIBLIOGRAPHY

Bank Tax Commission of Minnesota. Importance of Bank Tax Reform. Saint Paul, Minn., 1934. 8pp.

Bank Tax Commission of Minnesota. Taxation of National and State Banks. Saint Paul, Minn. 1934, 7pp.

Steagall, Congressional Representative. State Taxation of National Banks, Report No. 1957, House of Representatives, 73d. Congress, 2d. Session. (Report to accompany H.R. 9645) Washington, D.C. June 1, 1934, 11pp.

Steagall, Representative. A Bill, to amend section 5219 of the Revised Statutes, as amended. (In the House of Representatives) 74th Congress, First Session, H.R. 8210, June 21, 1935. 7pp.

Burns, J.A. The Assessment of Bank and Trust Shares, Ann Arbor, Michigan: The Michigan Municipal Review for April, 1935. p. 55.

By Authority. Annual Report of Banking Department of the State of Michigan. (For the years 1929-1936 Inclusive) Lansing, Michigan. 1929 - 1936.

National Tax Association, The Bulletin of, Volume XXI, No. 8. Columbia, So. Carolina. May 1936. pp. 247 - 248.

New York State Tax Commission: Income Tax Bureau. Personal Income Tax Regulations, Manual 75. 1935.

National Industrial Conference Board, Inc. State and Local Taxation of Business Corporations. New York. 1931.

Traynor, R.J. National Bank Taxation in California, Berkeley, California. California Law Review. (a series.)
Volume XVII, Number 2, January, 1929, pp. 83 - 110.
Ibid. 3, March, 1929, pp.232 - 257.
Ibid. 5, July, 1929, pp.456 - 521.

Plehn, C.C. The Taxation of National Banks, Berkeley, California. California Law Review, Volume XVII, Number 4, May 1929, pp. 357 -371.

Selected Bibliography (cont.)

Traynor, R.J. and Keesling, F.M., Recent Changes in the Bank and Corporate Franchise Act (of California) Berkeley, California. California Law Review:
Volume XXI, Number 6, Sept. 1933, pp. 543-560.
Volume XXII, number 5, July 1934, pp. [illegible]-5[illegible]5.
Volume XXIII, number 1, Nov. 1935, pp. 51 - 77.

Beckett, R. C. Illinois Income Tax Law of 1932. Chicago, Illinois. Illinois Law Review. December 1932, Volume XXVII, Number [illegible], pp. [illegible].

Barnett, W.V., An Income Tax Law for Illinois. Chicago, Illinois. Illinois Law Review, June 1932. Volume XXVII, Number 2, pp. [illegible].

Annotation: Discrimination in state taxation of national banks or national bank shares. 59 A.L.R. pp. [illegible].

[illegible], L.H., The Taxation of Banks. New York: National Industrial Conference Board, Inc., [illegible]. [illegible] pp.

[illegible], C.R., State Income Taxes, Historical Development, vol. I, New York: National Industrial Conference Board, Inc., [illegible]. [illegible] pp.

[illegible], C.R., State Income Taxes, Analysis of Income Taxation in State Fiscal Systems, Vol II. New York: National Industrial Conference Board, Inc., [illegible]. 214 pp.

[illegible], Taxation of Trust Companies, Madison, Wis: Wisconsin Free Library Commission, Legislative Reference Department. [illegible] pp.

[illegible], R.E., The Tax Racket, Philadelphia, J.B. Lippincott Co., [illegible]. [illegible] pp.

Tax Systems of the World ([illegible] Edition) Chicago, Illinois. The Tax Research Foundation, Commerce Clearing House, [illegible].

Commerce Clearing House, Inc. State Tax Guide Service, Chicago, Illinois. (Loose leaf legal service, [illegible].)

[illegible], J.B., State Taxation of Banks, Chapel Hill, North Carolina, The University of North Carolina Press, [illegible].

The Commission For the Recodification of Laws Relating to Michigan Financial Institutions, Report of, Lansing, Michigan, 1936. 76 pp.