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STATE TAXATION OF NATIONAL BANKS

JUNE 1, 1934.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. STEAGALL, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany H.R. 9045]

The Committee on Banking and Currency, to whom was referred the bill (H.R. 9045) to amend section 5219 of the Revised Statutes, as amended, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass as amended.

The amendment is as follows:

Commencing with line 6, page 1, strike out all down to and including line 12 and insert in lieu thereof the following:

SEC. 5219. The legislature of each State may determine and direct the manner and place of taxing national banking associations located within its limits upon their real and personal property and also upon their shares: *Provided*, That in lieu of such tax upon the shares, the legislature may impose either a tax upon the net income of such associations or an excise tax measured by net income received by them from all sources: *Provided further*, That such taxation shall not be at greater rates than are imposed, respectively, upon the real and personal property or shares or income of, or by way of excise (or franchise) tax upon, State banks: *And provided further*, That a State which imposes a tax on the net income of individuals or corporations, or an excise or a franchise tax on corporations measured by their net income, may also include in such income of individuals or corporations the dividends from national banking associations located in the State, but only if dividends from the State banks of such State are similarly included; and may also tax dividends from such associations located without the State, but in such case at no higher rate than is imposed on the dividends from foreign corporations. As herein used the words "State banks" shall mean and include all persons and corporations engaged primarily in the business of commercial banking; and the word "shares" in its application to individuals engaged primarily in the business of commercial banking shall mean the capital and surplus of such business, and the word "dividends" shall in such case mean the distributed profits therefrom.

SCOPE AND PURPOSE OF THE BILL

The purpose of this bill is to end the intolerable conditions created in many of the States by the decision in 1921 in the so-called "Richmond bank tax case" (Merchants National Bank of Richmond,

256 U.S. 635) relating to the taxation of national bank shares by the States; and at the same time to simplify and bring into harmony with the principle of the bill the alternative methods of bank taxation which were introduced by amendments to section 5219 of the Revised Statutes passed in 1923 and 1926. Under this bill national banks and their shareholders are protected against any greater taxation than that imposed in the case of State banks or individuals or corporations engaged in the business of commercial banking. In the form in which it is drawn, the bill is an adequate substitute for the present unsatisfactory law and sets up the only standard which experience has shown to be at once fair, feasible, and practicable.

CONDITIONS WHEN SECTION 5219 WAS ENACTED

Section 5219, as it stood at the time of the Richmond bank decision, had remained unchanged since 1868. In addition to a tax on the real estate of the banks, it 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 before the adoption of the fourteenth amendment, with its "equal protection" clause, and during the period immediately following the Civil War. At that time virtually all the States employed the general property tax system under which all property was taxed at rates which were uniform throughout the respective taxing districts. Personal property, tangible and intangible, was subjected to the same tax rate which was 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.

SUCCESSIVE INTERPRETATIONS OF SECTION 5219

By successive decisions of the courts the meaning of the words "other moneyed capital" was narrowed by the exclusion of various forms of property, savings banks, building and loan associations, insurance companies, shares of foreign corporations, etc. It was further limited by other decisions holding that the capital must be that of individuals and not of corporations; that it must be used in the business of employing money; that it must be capital competing with the business of national banks; that it must be in substantial amount; and that the discrimination must be intentional and unfriendly. The net result of all this litigation was a general understanding on the part of the banks as well as on the part of the States that a tax on the shares of national banks could not be defeated if their substantial competitors, the State banking institutions, were not given more favorable treatment. This may not have been the strict legal purport of all these decisions, but it was certainly the practical effect, because of the exclusion of so many classes as comparatives and because of the difficulty of gratifying the various conditions imposed by the court rulings. That the national banks were not alarmed by this situation may reasonably be inferred from the fact that no effort was made by them to have it changed by Federal legislation. It is therefore evident that they could have suffered no real harm under the long-continued practice which classified them with State banking institutions.

SUCCESS UNDER CLASSIFIED TAX SYSTEMS

Because it was so generally accepted that investments in private securities could thus safely be put in a different class for taxation purposes, encouragement was given to the movement for the separate classification of such intangibles. This took the form in State after State of a low fixed millage rate which was fully justified by sound fiscal policy. It need but be pointed out that in the city of Baltimore the reduction of the tax rate on bonds and foreign stocks, from the general property rate of about 2 percent to a special rate of about one-half percent, increased the taxable basis of such property in the first year (1897) from $6,000,000 to $60,000,000. In Minnesota the application of a 3-mill rate to moneys and credits increased the basis of such property for the first year from 13 millions to 115 millions; and, as illustrating the wholesome effects of the law, the number of persons returning such property rose at the same time from 6,200 to 41,000. The effect of a reduced rate in Kentucky was to increase the assessment on bank deposits from 11 millions to 179 millions in 1 year, to which 30 millions were added in the following year, with progressive increases from year to year.

The crowning instance of enlightened self-interest was in Virginia, where the very banks in whose favor the Supreme Court had been persuaded, in the Richmond case, to hold that they were harmed and discriminated against by a 95-cent rate on the alleged competitive "other moneyed capital" represented by a $6,250,000 assessment on mortgages, bonds, and notes, shortly thereafter openly and actively favored and promoted the passage of the act which reduced the rate on such property to 55 cents. If anything could more conclusively confirm the unsubstantial nature of the complaint upon which the Richmond decision was founded, it is the fact that in spite of the further material differential thus created as between the rate on bank shares and the rate on this "other moneyed capital", these very banks continued to submit to a rate twice as high ($1.10) and were even willing to enter into binding written agreements to foreclose all right to claim discrimination.

Wherever this improved system was installed, the results were gratifying and wholesome. Invariably the taxes paid by the owners of intangible investments were materially greater than had been collected when the rate on such intangibles was higher. It is obvious that the great increase in revenue receipts from this source was of no less advantage to the banks than to other taxpayers. The new system, in improving the cause of tax honesty, also had the beneficial tendency of inducing a fairer valuation of other property, because, by minimizing tax evasion in the matter of intangible property, it weakened the familiar excuse for underassessment (which always produces unequal assessment) of all other property, including real estate.

BASIS OF RICHMOND BANK DECISION

As the Supreme Court had held (*Aberdeen Bank* v. *Chehalis County*, 166 U.S. 440) that since failure to reach intangible personal property for taxation because of the inherent difficulties of enforcing the law, did not constitute an intentional discrimination against national banks, within the meaning of section 5219, the banks had everything

to gain by the low-rate classified system of taxing such intangibles. It seems therefore the irony of fate that the trouble and confusion caused by the Richmond bank decision should have been due to the lower rate applied to mortgages and other private investments, which the court treated as competitive moneyed capital on the mere opinion of an officer of the bank that loans and investments by individuals and corporations tend to lower the rate of return "that a bank can get on a similar investment." There was no evidence in the case to show the particulars of these investments nor whether any of them were employed in financial business. This sums up the "testimony" which the Supreme Court accepted, without more, as proving unlawful discrimination in that case. Apparently it did not occur to the Court that, on the theory advanced by the bank officer, all money in the State, available for loans or for such investment as banks are permitted to make, is in competition with the business of the banks.

REASON FOR LIGHTER TAX ON INTANGIBLES

One reason why intangibles like bonds and mortgages are entitled to light taxation, or even to total exemption, is because the property upon which they are secured is already taxed. It was recognized by the court in *Mercantile Bank* v. *New York* (121 U.S. 138, 150) that a tax on the intangible in such case imposes a double burden. The exemption, or taxation at nominal rates, of the shares of foreign corporations is justifiable on similar grounds. It follows, therefore, that though such intangibles were properly to be regarded as competitive to bank shares or to banking capital, there would still be no reason for requiring that they must be taxed at the rates fairly applicable to bank shares, in order to sustain such tax on the bank shares.

ECONOMIC DIFFERENCES BETWEEN STOCKS AND BONDS

It needs to be emphasized that, from the standpoint of taxation, there is no similarity between a share of bank stock and a bank deposit or a credit represented by a note or a bond. The share of stock represents the ownership of an aliquot part of a going business, operated under a valuable franchise. It participates in the profit from the use of all the moneyed capital of the bank. It carries the right to share in the profit derived not only from the investment of the so-called "capital assets of the corporation" (the equivalent of the share investment) but also the profit derived from the use and investment of funds contributed by others, mostly in the form of deposits. The shareholder also participates in profits derived from other lucrative bank activities, involving the use of relatively little capital, such as rental of safe-deposit boxes and acting as trustee or in other fiduciary capacities. The additional contributed capital (deposits) amounts normally to four or five times the amount of the bank's own "capital and surplus", and in many instances is maintained at a ratio as high as 15 or 20 to 1. It is because the shareholder thus participates in the profits derived from the use of other people's money besides his own that the dividends often rise to high figures—and this after payment of all expenses, including taxes. Proper consideration of the characteristics of the bank share, as compared with the mortgage or bond or note or other credit, clearly justifies a difference in their treatment by the tax laws.

The failure of section 5219, as interpreted in the Richmond case and subsequent decisions, to recognize this economic difference is responsible for the chaotic condition respecting bank taxation throughout the country. A statement in one of the reports of the committee on taxation of the American Bankers Association illustrates the extremes to which fallacious comparison may lead. In discussing the tax status of national banks in Kansas, the report says:

> Indeed it is doubtful if they (the banks) could be required to pay more than the equivalent of the 2½ mill nonrecurrent recording tax that is applicable to domestic real-estate mortgages, if the matter were pressed in the courts.

In Delaware there is an even more astounding situation. Bank shares there are taxed at the low rate of 2 mills per $100 of book value; and as bonds, notes, mortgages, and other credits are not taxed at all, the banks would go scotfree if they were not ashamed or afraid to take advantage of the remarkable position created for them by the court decisions.

NONCOMPETING MONEYED CAPITAL

It is impossible to reconcile the theory of harmful competition from ordinary investments with the opinions expressed in some of the decided cases. Thus, in the leading case of *Mercantile Bank* v. *New York* (121 U.S. 138), the Court rejected the idea that even the huge amount of a half-billion dollars invested by the savings banks of New York could be regarded as moneyed capital competing with the business of national banks; and yet the investments of savings banks differ in no essential respect from those of commercial banks except perhaps in the matter of unsecured loans. Said the Court:

> No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States * * *. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the community.

And in the recent case of *First National Bank* v. *Louisiana Tax Commission* (289 U.S. 60) the Court said:

> There is a fundamental difference between banks which make loans mainly from the money of depositors and the other financial institutions which make loans mainly from the money supplied otherwise than by deposits.

The bank had complained that it was more heavily taxed than "loan companies; finance and securities companies; pawnbrokers; homestead and building associations; Federal joint-stock land banks; life-insurance companies; real-estate mortgage and investment, or bond and investment brokers."

Furthermore, the Court refused to infer that the national bank was discriminated against, under section 5219, merely because the following classes of property were exempted by statute from taxation: Cash on hand and on deposit; mortgages and mortgage notes on Louisiana property; loans by building and loan associations secured by the stock of such associations; debts due for merchandise or services. Nor would the Court infer hurtful discrimination from the fact that corporate bonds are assessable at only 10 percent of market value, while the regular property rate is laid on the full book value of bank shares, less credit for real estate.

To the suggestion that there was hurtful competition with capital employed by loan companies, so-called "Morris Plan" companies,

and automobile finance companies, the Court replied that loans by such corporations differ from bank loans and that such companies are not competitors of the banks, quoting the language of the lower court as follows:

> The national banks would never handle such business. They prefer to—and do in fact—lend to such companies.

The opinion of the Supreme Court in the Louisiana case is significant not only because it was rendered after the disturbing rulings in the Richmond bank case (256 U.S.) and the latter ones in the Wisconsin and Minnesota cases (both in 273 U.S.) but because it refuses to deal with theoretical grievances and shows a keen comprehension of the actualities of the situation. It certainly lends support to the principle of the bill (H.R. 9045) which recognizes that national banks are protected from genuine, hurtful, and substantial discrimination, when they are put on an equality with others engaged in the business of commercial banking.

UNSOUND STANDARD OF COMPARISON IN SECTION 5219

The underlying fallacy, therefore, of the moneyed capital standard fixed in section 5219 is that it includes a comparison of two things which are not properly comparable. So far as there is a comparison of the tax burden on the shares of the bank with the tax burden on the shares of substantially competitive moneyed corporations incorporated by the State where the bank is situated, it compares similar things and lays down a rational and easily enforceable rule. And if it compared the share tax burden, measured by its incidence [1] on the total intangible resources of the bank, with the tax burden on the intangible resources of competing corporations, or with the intangible resources of individuals or unincorporated concerns engaged in similar business, the comparison would also be of like with like. But the defect in section 5219, and the reason why so much difficulty has been encountered in attempting to apply it, is in the requirement that the tax burden on the shares of the bank must also be compared with the tax burden on the gross intangible resources of individuals. In other words, the tax rate applied to the net worth of the bank is not permitted to be greater than the tax rate when applied against the gross worth of the individual, even in States which permit the individual to deduct the debts growing out of the business.

As has already been shown, banks operate not merely with their surplus and share capital, but with their entire resources. It is therefore palpably unfair to limit the rate applicable to their shares (which are the practical equivalent of capital and surplus) to the rate applicable to the gross intangible resources, or "other moneyed capital", in the hands of individuals. Unfortunately, this glaring defect is now apparently beyond cure by the device of judicial construction, because as recently as the decision in the Minnesota case (*Minnesota* v. *First National Bank*, 273 U.S. 561), decided in 1927, the Court ruled that under the present section 5219 the tax burden is to be measured by the value of the bank's shares and not by the value of its assets; and that, in a comparison of relative tax burdens,

[1] It has been held that sec. 5219 has to do with the "actual incidence and practical burden of the tax upon the taxpayer, "*Amoskeag Savings Bank* v. *Purdy* (231 U.S. 373, 386). And while this sound principle was applied in that case to sustain the share tax, it seems to have escaped attention since then.

it is not permissible similarly to reflect debts and liabilities against the gross assets of individuals.

AS TO CERTAINTY OF SHARE TAX

It has also been put forward by the banks, as a reason for preferential treatment, that the assessment of bank shares is certain and the tax thereon collectible, while a considerable amount in bonds and other taxable credits belonging to private investors eludes the assessor. This argument is without force. By the same token it would entitle the owners of many other classes of property, especially of real estate, to a similar concession. Public revenue must, however, come from somewhere, and it is inevitable that it comes in major part from sources that are certain. Moreover, it is the certain taxes which are more readily and more commonly shifted upon others. Bank taxes are loaded into the expenses which, in normal operations, form part of the charges collected by the bank for the use of money or for other services. It is because the taxes paid by the banks of New York and Massachusetts and other States on ad valorem share assessments which none of them at the time believed to be violative of section 5219 that the refund of millions of dollars of taxes, in consequence of the unlooked-for decision in the Richmond bank case, were without real equitable basis, since the banks had already been reimbursed.

EFFECTS OF SHARE TAX CHAOS

As a result of these later decisions which have put private investments in bonds and mortgages into a class with bank shares, the classified tax systems prevailing in nearly one-half the States were put in peril of disruption. The ensuing dilemma gave the banks an advantage which they are loth to surrender without a struggle—and the struggle has now been going on for over a dozen years. The hopeless plight of income-tax States caused them to submit early to one or the other of the alternative tax methods offered by the 1923 and 1926 amendments to section 5219, namely, income or excise taxation. Data presented before the committee show that in Alabama and California the tax revenue from banks in the first year under the new system amounted to only one-eighth of the money collected in the previous year under the share tax; and in New York, Massachusetts, and Wisconsin, to one-fourth.

Other States have been compelled to reduce the rate of tax by amending the law—in some cases to the nominal millage rate which is applied to bonds and other credits; while a number of others have been forced to the humiliating expedient of a "gentlemen's agreement", whereby the tax rate is set at a figure which the banks deem to be "fair." In the meantime, the States and local communities are marking time awaiting remedial action by the Congress. There are a few States which have escaped embarrassment thus far, some of them because their law applies the full property rate to moneys and credits as well as to bank shares, thus bringing the law within the letter of section 5219. Oddly enough, if banks ever suffer by reason of low-taxed or untaxed investments, privately held, they must suffer most in States which undertake the impossible task of collecting on moneys and credits a tax equal to that on bank shares.

Reference has already been made to the large sums which some of the States were obliged to refund after the Richmond bank decision. The numerous suits and controversies which arose and the heavy drafts on their treasuries have not served to allay the feeling that something must be done, as speedily as possible, to bring order out of chaos.

During the long period of litigation, agitation, fiscal embarrassment, uncertainty, and general confusion, progress in the improvement of tax conditions generally, has been halted. States that have the classified tax are on the anxious bench, while States that have obsolete systems fear to make a change. There is agreement in the States that no one of the alternatives offered by section 5219 insures a proper return except in the few States where the banks continue to pay as before.

INCOME AND EXCISE TAX ALTERNATIVES

While the right to tax income or to impose an excise tax, given by the amendments to section 5219 of 1923 and 1926, have only been availed of by States which were rendered powerless by the Richmond decision to continue the share tax, it has been thought proper to retain this alternative privilege for the benefit of States which may desire to, or may not be in a position to change the systems now installed. The weakness of the income-tax plan is that when there is no income there is no tax; and in any event, it may vary materially from year to year, making it difficult to frame the budgets. Under the share tax the situation is better. All banks had over many years accepted it as a fixture and had adapted themselves to it. They paid the tax on an ad valorem basis, just as they paid the tax on real estate, and allowed for it in fixing their charges.

The excise tax has this advantage over the income tax, that it permits the inclusion of income which would be exempt if directly taxed, such as interest on Government securities; also on State and municipal bonds, in the issuing States. It is not perceived that any State would, in view of this, choose the income tax in preference to the excise tax, unless there existed some constitutional reason for the choice.

The bill as drawn preserves equality as between National and State banking institutions. It also retains the existing right in income-tax States, to include the dividends with the taxable income of the shareholders, whether they reside in or without the State of the bank's location.

A JUST, SIMPLE AND WORKABLE PLAN

The numerous hearings conducted before the committees of Congress since the crisis created by the Richmond bank decision of 1921 have but confirmed the conviction that no fairer or sounder or more practicable rule for the protection of national banks can be devised than to guarantee to them equal treatment with comparable State banking institutions. Among the many curative plans proposed in the various bills introduced since 1921, there is none which is freer from valid objections than the one now reported. The plan is just. It is simple. It is workable. It embodies all the protection that is necessary or can reasonably be asked for.

Experience has shown that commercial banks and bankers are the only true, substantial competitors of national banks. Private in-

vestors certainly are not. Neither are many of the great banking houses like those in New York who underwrite and buy and sell securities—unless they do a commercial banking business. This may be tested by inquiring whether the banks would put them out of business if they could. They are actually great feeders and business-getters for the banks and as such are welcomed by them. So, far from being undesired, the banks have protected and nourished them and have refrained from using their great power to have restrictions imposed on them in the conduct of their business—restrictions to which the banks willingly submit for themselves.

SPECIAL PROTECTION NOT ESSENTIAL

Banks, National as well as State, are owned by human beings—hundreds of thousands of them—who are citizens of the States. They are recognized as essential to the well-being of the body politic. They cater in some manner to the needs of all the people. Numberless persons have a very direct interest in the thousands of banking institutions—as stockholders or officers or employees or borrowers or depositors or as relatives or friends of these. The events of the last year have proved this, if proof were needed. Communities point with pride to their banks and the imposing structures many of them have erected.

If, in view of all this, it could still be conceived that hostile and injurious action would be taken against banking institutions if again treated as a class, then it need only be pointed out that there are other important forms of invested wealth which have had no such special favor from the Federal Government and have not been impelled to demand it. The railroads, the telegraph, and the telephone companies are in times of war even more essential Federal instrumentalities than the banks—so essential that they deserve all possible encouragement in times of peace as well. They are content with the equal protection assured them by the fourteenth amendment. In most of the States, though they have been put into individual classes for the purposes of taxation, they have felt themselves able to look after their own interests in that regard without appealing for the special interposition of Congress. Their property may be classified by the States for taxation; their receipts may be made to pay tribute; their stockholders may be taxed on their shares—all free of conditions laid down by Congress.

The 13,645 National and State corporations engaged in the business of commercial banking have aggregate resources of 40 billions, an amount of wealth equaled by few other classes. That they have the power and influence to prevent hostile or unjust State legislation, if it were attempted, will be readily believed by all those who have observed the power and influence they have been able to exert in other directions. The general trend of bank-tax legislation over many years has been to reduce, and not to increase, their burden. Where taxes have risen, their increased wealth or profits may have justified it, or else the taxes of other property owners have likewise been increased in order to meet the growing expenses of government.

Finally, it ought not to be necessary to remind those, if any there be, who harbor a sincere fear of the consequences if section 5219 should be restored to its long-accepted meaning, that the act of Congress will

remain under the control of the Federal law-making body and that the two Houses of Congress will continue to be open for business.

In conformity with 2a of rule XIII of the House rules, there is herewith printed in full section 5219 of the Revised Statutes, as amended, printed in brackets, and the proposed new matter printed in italics, 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, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(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 or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but 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 mercantile, manufacturing, and business corporations doing business within its limits: *Provided, however*, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

"(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 of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

"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 United States 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."]

The legislature of each State may determine and direct the manner and place of taxing national banking associations located within its limits upon their real and personal property and also upon their shares, provided that in lieu of such tax upon the shares, the legislature may impose either a tax upon the net income of such association or an excise tax measured by net income received by them from all sources: Provided further, That such taxation shall not be at greater rates than are imposed, respectively, upon the real and personal property or shares or income of, or by way of excise (or franchise) tax upon, State banks: And provided further, That a State which imposes a tax on the net income of individuals or corporations, or an excise or franchise tax on corporations measured by their net income, may also include in such income of individuals or corporations the dividends from national banking associations located in the State, but only if dividends from the State banks of such State are similarly

included; and may also tax dividends from such associations located without the State, but in such case at no higher rate than is imposed on the dividends from foreign corporations. As herein used, the words "State banks" shall mean and include all persons and corporations engaged primarily in the business of commercial banking; and the word "shares" in its application to individuals engaged primarily in the business of commercial banking shall mean the capital and surplus of such business, and the word "dividends" shall in such case mean the distributed profits therefrom.

In case of a tax on shares, the shares of any national banking association owned by nonresidents of any State shall be taxed by the district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.