

71
FEDERAL RESERVE BOARD

WASHINGTON

X-7205

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

July 18, 1932.

SUBJECT: Taxability of Checks and Drafts Used
in Remitting for Items Payable to
Officials of the Government.

Dear Sir:

Under date of July 2, 1932, the Federal Reserve Board addressed a letter to the Secretary of the Treasury requesting a ruling of the Treasury Department on certain questions with regard to the application of the tax imposed by Section 751 of the Revenue Act of 1932 to checks and drafts drawn by banks on their correspondent banks in remitting to the Federal reserve banks for checks and drafts drawn on themselves payable to Collectors of Internal Revenue, Collectors of Customs, and other officials of the Government in their official capacities and sent to the drawee banks by the Federal reserve banks for collection. The Board has now received a letter from the Acting Secretary of the Treasury answering the question submitted; and I inclose herewith for your information a copy of the Board's letter and of the reply thereto.

Very truly yours,

Chester Morrill,
Secretary.

Inclosures.

TO GOVERNORS OF ALL F. R. BANKS.

C O P Y

X-7205-a

Jul 2 - 1932

Honorable Ogden L. Mills,
Secretary of the Treasury,
Washington, D. C.

Dear Mr. Secretary:

Under the provisions of Section 22 of Treasury Department Circular No. 176, the Federal Reserve Banks, as you know, receive checks and drafts from Collectors of Internal Revenue, Collectors of Customs, and other depositors of public money for collection and credit to the Treasurer of the United States. Many of these checks and drafts are drawn on banks which are not members of the Federal Reserve System; and the Federal Reserve Bank of Atlanta advises that, while certain of the nonmember banks in its district are willing to remit at par for such checks and drafts, they are unwilling to pay the Federal tax on their own checks and drafts sent to the Federal Reserve Bank in payment for such items and are deducting two cents for each remittance to reimburse them for the tax. In these circumstances, rulings from your Department will be appreciated on the following questions:

1. Whether the tax imposed by Section 751 of the Revenue Act of 1932 applies to checks and drafts drawn by banks on their correspondent banks in remitting to the Federal Reserve Banks for checks and drafts drawn on themselves payable to Collectors of Internal Revenue, Collectors of Customs, and other officials of the Government in their official capacities and sent to the drawee banks by the

Honorable Ogden L. Mills

-2-

Federal Reserve Banks for collection;

2. If so, whether the issuing banks may deduct two cents from each remittance to reimburse themselves for the tax; and

3. If so, whether the Treasurer of the United States will accept credit on the books of the Federal Reserve Bank for the amount of the checks and drafts covered by each remittance minus the two cent tax on the remittance check or draft.

For your further information in this connection, there is quoted below an extract from an opinion addressed to the Cashier of the Federal Reserve Bank of Atlanta by the General Counsel of that bank under date of June 23, 1932.

"You state that you receive a very large number of checks from the United States government disbursing officers or departments, drawn on non-par (and, of course, non-member) banks located in this and other districts. You send these items for payment to the banks on which they are drawn, if located in this district. Your cash letters enclosing such items contain instructions to the drawee to remit to you at par or to return the items if they are unwilling to remit at par. These non-member banks are now deducting two cents from the remittances, representing the tax they have to pay on their own remittance checks. You state that, in your opinion, such remittance checks should not be subject to the tax because they are issued in payment of checks representing monies paid to the Government.

"I am inclined to believe that the checks are subject to the tax. It was not the purpose of the Act to tax checks, drafts or orders drawn by the officers of the United States in their official capacities against public funds standing to their official credit. I do not think, however, that the Act intended to provide any immunity from taxation in favor of a private citizen merely because he might happen to utilize a personal check as a medium for the satisfaction of an obligation to the United States. Upon similar principles, the drawee bank, in remitting for the items by its own check, would not be exempt from taxation thereon. I do not think that the non-member bank would have any right to "pass on" its tax liability to the Federal Reserve Bank by the

Honorable Ogden L. Mills

-3-

simple expedient of reducing the remittance draft by two cents. The non-member bank would doubtless argue, however, that its obligation is to pay checks at its own counter and that if, for the convenience of the holder, whether the United States Treasury or its fiscal agent, the Federal Reserve Bank, it sees fit to send a check drawn on its correspondent, it should be accorded the right to reimburse itself for the tax liability occasioned by such remittance."

The Federal Reserve Board has received numerous other requests for rulings on questions arising under Section 751 of the Revenue Act of 1932 and is assembling them for presentation to your Department in due course; but the questions raised in this letter are being submitted separately, because it is believed that a prompt decision is desirable in the interest of both the Government and the Federal Reserve Banks.

Very truly yours,

Eugene Meyer,
Governor.

Copy

X-7205-b

The Secretary of The Treasury
Washington

July 18, 1932.

Honorable Eugene Meyer,
Governor, Federal Reserve Board,
Washington, D. C.

My dear Governor:

In your letter to me of July 2, 1932, you refer to the practice under which the Federal Reserve Banks receive checks and drafts from collectors of internal revenue, collectors of customs, and other depositors of public money for collection and credit to the Treasurer of the United States, and state that certain non-member banks of the Federal Reserve System, upon which these checks and drafts are drawn, have indicated an unwillingness to pay the Federal tax on their own checks and drafts used in making remittances to the Federal Reserve Banks in payment for such items, and are deducting two cents for each remittance to reimburse them for the tax. Under these circumstances you request a ruling of the Treasury Department on the following questions:

1. Whether the tax imposed by section 751 of the Revenue Act of 1932 applies to checks and drafts drawn by banks on their correspondent banks in remitting to the Federal Reserve Banks for checks and drafts drawn on themselves payable to Collectors of Internal Revenue, Collectors of Customs, and other officials of the Government in their official capacities and sent to the drawee banks by the Federal Reserve Banks for collection;

2. If so, whether the issuing banks may deduct two cents from each remittance to reimburse themselves for the tax; and

3. If so, whether the Treasurer of the United States will accept credit on the books of the Federal Reserve Bank for the amount of the checks and drafts covered by each remittance minus the two cent tax on the remittance check or draft.

- 2 -

X-7205-b

In the opinion of this Department the remittance checks and drafts given under the circumstances referred to are taxable under section 751 of the Revenue Act of 1932. Such checks and drafts are clearly included among the instruments described in that section upon which the Federal check tax is imposed. While checks and drafts drawn by officers of the United States or of a State, county, or municipality, or of a foreign Government, in their official capacities, against public funds standing to their official credit and in furtherance of duties imposed upon them by law, are not subject to the tax, that exemption can have no application to a person who in a private capacity draws a check or draft as a medium for the satisfaction of an obligation to the United States. In principle, a drawee bank in remitting by its own check or draft to the Federal Reserve Bank in payment of checks and drafts drawn on itself stands in the same position as such a person and must pay the Federal tax imposed upon checks and drafts drawn by it to make such payment. The bank's decision to remit by check or draft is within its discretion and is not due to any requirement of the United States. The Treasury Department has always taken the position that a check or draft is not paid by the bank on which it is drawn until the proceeds thereof have been received in actually and finally collected funds. Checks or drafts in payment of obligations to the United States Government would not be acceptable unless the amount of the instruments was to be paid to the United States or to the Federal Reserve Bank as its fiscal agent without any deduction therefrom and without expense to the Government. There is no warrant in law for any taxes or expenses incurred by a bank in making payment of checks or drafts drawn on itself being passed on to the fiscal agent of the United States or by it to the United States.

For the reasons stated, the first question propounded by you is answered in the affirmative and the second and third questions in the negative.

Very truly yours,

(Signed) A. A. Ballantine,

Acting Secretary of the Treasury.