



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 13, 1936

X-9649

SUBJECT: Effect of Social Security
Act upon National Banks.

Dear Sir:

There are inclosed herewith for your information
and that of your counsel two copies of a letter addressed
by the Commissioner of Internal Revenue to the Comptroller
of the Currency under date of July 8, 1936, expressing the
opinion of the Bureau of Internal Revenue that national
banks are instrumentalities of the United States within the
meaning of the provisions of the Social Security Act and
that neither the banks nor their employees are subject to
the taxes imposed by the Act.

Very truly yours,

Chester Morrill

Chester Morrill,
Secretary.

Inclosures

TO PRESIDENTS OF ALL FEDERAL RESERVE BANKS

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TREASURY DEPARTMENT
WASHINGTON

X-9649-a

July 8, 1936

Office of
Commissioner of Internal Revenue

Honorable J. F. T. O'Connor,
Comptroller of the Currency,
Treasury Department,
Washington, D. C.

Sir:

Further reference is made to your letter of March 17, 1936, requesting an expression of the views of this Bureau as to whether a national bank will be considered an instrumentality of the United States within the meaning of sections 210(b) (5), 811(b) (6) and 907(c) (5) of the Social Security Act. The sections read as follows:

"The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except -

* * * * *

"Service performed in the employ of the United States Government, or of an instrumentality of the United States;".

The language of the statute applies in its terms to all employees of the United States Government and of all instrumentalities thereof, and there is nothing in the act to indicate an intention to limit its application to employees engaged in activities of an essentially governmental nature. A contrary intention is indicated by the fact that sections 811(b) (7) and 907(c) (6) as they appeared in the bill for the Act as submitted to the House Ways and Means Committee contained the additional clause "in the course of the exercise of an essential governmental function", and that such clause was deleted before the bill was enacted. Moreover, since the same exemption is given with respect to employees of the United States Government and its instrumentalities as is given with respect to employees of a State or its instrumentalities, it is indicated that there was no intention to grant the exemption to merely such employments as were protected by the constitutional limitation against taxation.

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Honorable J. F. T. O'Connor,
Comptroller of the Currency.

X-9649-a

In Davis v. Elmira Savings Bank (161 U. S. 285), it is stated, following McCulloch v. Maryland (4 Wheat. 316), that:

"National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States."

The conclusion is based on the fact that such banks are required "for the fiscal operations of the Government." As stated by Chief Justice Marshall in McCulloch v. Maryland, *supra*, the bank is "employed with other means to carry into execution the powers of the government."

There is no indication that Congress intended, in the Social Security Act, to use the term "instrumentality" of government in any different sense than it has been used by the Supreme Court. On the contrary, in the Congressional Record for June 18, 1935, page 9920, appears a statement of Senator Harrison that employees of national banks and of banks which are a part of the Federal Reserve System are exempt.

It is, therefore, the opinion of this Bureau that national banks are instrumentalities of the United States within the meaning of the above-quoted provisions of the Social Security Act, and that neither the banks nor their employees are subject to the taxes imposed by the Act.

Respectfully,

(Signed) Guy T. Helvering.

Commissioner.