

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

S-555

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 22, 1942.

Dear Sir:

There is attached hereto a copy of a letter from the Commissioner of Internal Revenue dated September 9, 1942, which sets forth the requirements necessary in order to avoid the application of the first-in, first-out rule with regard to the taxation of dividends on Federal Reserve Bank stock.

You will note that the letter suggests that the member bank in making application for cancellation of Federal Reserve Bank stock specify the shares which it desires to have cancelled. Accordingly, forms F. R. 56 and 56a (applications for adjustments in holdings of Federal Reserve Bank stock) have been amended so that the member bank may signify the shares desired to be cancelled. A copy of the draft of revised form 56 is attached, and a supply of both forms will be sent to you under separate cover.

In order to make it clear that the intention of the member bank was carried out in the matter of surrendering Federal Reserve Bank stock, you will note that the Commissioner of Internal Revenue has suggested that the Federal Reserve Bank show on the stock certificate the number of shares issued and paid for prior to March 28, 1942, and the number of shares issued and paid for on or after that date. To meet this suggestion, Federal Reserve Bank stock certificates issued by your Bank on or after March 28, 1942, may be endorsed on the reverse side in the following manner, the endorsement to be signed preferably by one of the officers whose signature appears on the face of the certificate:

"This certificate represents _____ shares of Federal Reserve Bank stock which were purchased and paid for prior to March 28, 1942, and _____ shares of Federal Reserve Bank stock purchased and paid for on or after March 28, 1942.

Signature

Title of Officer



If desired, arrangements will be made with the Bureau of Engraving and Printing in Washington to have this endorsement printed on the reverse side of all future issues of the Federal Reserve Bank stock certificates. Meantime, the endorsement may be applied by rubber stamp or in some other manner.

In the next to the last paragraph of the letter from the Commissioner of Internal Revenue, he indicates that if it is feasible to have two certificates of Federal Reserve Bank stock outstanding, one representing stock purchased and paid for prior to March 28, 1942, and the other stock purchased and paid for on or after that date, it would facilitate identification for the purpose of determining taxability on shares of Federal Reserve Bank stock. In the circumstances, any Federal Reserve Bank that so desires is authorized to have not more than two certificates of stock outstanding in the case of each member bank, one to represent stock purchased and paid for prior to March 28, 1942, and the other to represent stock purchased and paid for on or after that date. This may be done without regard to the provision of Regulation I that no more than one certificate shall be outstanding in the case of any one member bank, and an appropriate revision of Regulation I will be made when that regulation is reprinted. If this procedure is adopted it will be necessary, of course, for the Federal Reserve Bank to make an appropriate endorsement on any certificate issued on or after March 28, 1942, but representing stock purchased and paid for prior to that date. This will come about, for example, if a member bank reduces its capital and surplus and, as a consequence, is required to surrender some of its Federal Reserve Bank stock. The endorsement in such cases should read "This certificate represents shares of Federal Reserve Bank stock which were purchased and paid for prior to March 28, 1942." No endorsement would be required, of course, on certificates representing stock purchased and paid for on or after March 28, 1942.

The alternative procedure outlined in the preceding paragraph may be preferred by some of the Reserve Banks, if they anticipate that relatively few member banks will have occasion to surrender Federal Reserve Bank stock purchased before March 28, 1942. Particular care, however, would have to be taken that the occasional endorsements on stock certificates which would be required under such a procedure are not overlooked.

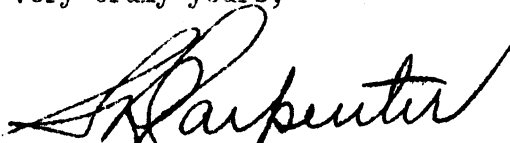
The Board will appreciate it if you will advise it, in response to this letter, whether your Bank decides (1) to have only one Federal Reserve Bank stock certificate outstanding in the case of

-3-

each member bank, as outlined in the third paragraph of this letter, or (2) to have two certificates outstanding in accordance with the alternative plan outlined in the fourth paragraph.

It is suggested that, if any circular letter is sent to the member banks on this subject, their attention be called to the subject matter of the last paragraph of the letter of the Commissioner of Internal Revenue.

Very truly yours,

A handwritten signature in dark ink, appearing to read "S. R. Carpenter", with a large, sweeping flourish extending from the end of the name.

S. R. Carpenter,
Assistant Secretary.

Enclosures

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

TREASURY DEPARTMENT

Washington

Office of
Commissioner of Internal Revenue

September 9, 1942

Board of Governors,
Federal Reserve System,
Washington, D. C.

Attention Mr. L. P. Bethea, Assistant Secretary.

Sirs:

Reference is made to your letter of August 4, 1942, regarding the application of section 6 of the Public Debt Act of 1942, approved March 28, 1942 (Internal Revenue Bulletin 1942-16, p. 32), and Treasury Decision 5160 (I.R.B. 1942-28, 2), as relating to the taxability of dividends on shares of Federal Reserve Bank stock.

Your inquiry concerns the ascertainment of whether the dividends are on shares purchased and paid for prior to, or on or after, March 28, 1942 (the effective date of section 6, supra).

In connection with such ascertainment, you refer to the "first-in, first-out" rule, which is applicable, inter alia, in ascertaining what particular shares of stock in a corporation are disposed of, in the absence of positive identification thereof, where the seller has several lots of such stock purchased at different dates. Section 19.22(a)-8 of Regulations 103; Helvering v. Jas. L. Rankin (1935, 295, U.S. 123, Ct. D. 966, C.B. XIV-1, 160); John A. Snyder v. Commissioner (1935, 295 U.S. 134, Ct. D. 967, C.B. XIV-1, 164).

You state that, by virtue of your Board's Regulation I, a member bank may not have more than one stock certificate evidencing its holdings of Federal Reserve Bank stock, and that it is possible for a certificate (issued on or after March 28, 1942) to represent shares purchased and paid for prior to as well as on or after March 28, 1942.

You request advice, (1) whether the "first-in, first-out" rule will be inapplicable, in ascertaining the particular shares of Federal Reserve Bank stock on which dividends have been received, if, when a member bank surrenders some of its shares of Federal Reserve Bank stock in reduction of its aggregate holdings, it identifies, by reference to the date they were purchased and paid for, the shares surrendered. You are advised that the "first-in, first-out" rule is inapplicable in such ascertainment where the particular shares on which dividends are received are positively identified as having been purchased and paid for either prior to or on or after March 28, 1942. See G.C.M. 11743 (1933, C.B. XII-2, 31); Louis C. Neville (1933, 29 B.T.A. 450); H. H. Franklin (1938, 37 B.T.A. 471, acq. C.B. 1938-2, 12). It is, of course, impracticable to outline comprehensively

Board of Governors

-2-

the proof or evidence which will be required or accepted as satisfactorily showing or constituting such identification in every case. Cf. Henry C. Heinz v. Commissioner (1934, CCA-5, 70 F. (2d) 461); Geo. Vawter v. Commissioner (1936, CCA-10, 83 F. (2d) 11, Ct. D. 1193, C.B. 1937-1, 184, certiorari denied 299 U.S. 578); S.B. Kraus v. Commissioner (1937, CCA-2, 88 F. (2d) 616, Ct. D. 1273, C.B. 1937-2, 249).

In the event the answer to question (1) is in the affirmative, you request further advice, (2) whether there is sufficient identification for the purposes of the ascertainment here concerned, if, when a member bank so surrenders shares of Federal Reserve Bank stock, it identifies the shares surrendered by reference, on APPLICATION FOR ADJUSTMENT IN HOLDINGS OF FEDERAL RESERVE BANK STOCK (Federal Reserve System Form 56, Revised 1936), to the date they were purchased and paid for. You are advised that such identification will be accepted as satisfactory, for the purposes of the ascertainment here concerned, provided that, also, the (single) stock certificate representing the shares on which the dividends are received shows the number of shares purchased and paid for prior to March 28, 1942, and the number of shares, if any, purchased and paid for on or after that date. After all, the certificate is the best evidence of the shares a member bank holds, in the absence of clear and convincing evidence of error therein. See J. E. Davidson v. Commissioner (1938, 305 U.S. 44, Ct. D. 1366, C.B. 1938-2, 227); I. T. 3426 (C.B. 1940-2, 41); A. F. Mack (1935, 31 B.T.A. 1149).

It was contemplated in section 19.22(b)(4)-2 of Regulations 103, as amended by T. D. 5160 (supra), that it was feasible to arrange for issuance by the Federal Reserve Banks of two certificates outstanding at one time to a particular member bank where it is the holder of some Federal Reserve Bank stock purchased and paid for prior to March 28, 1942, and of some such stock purchased and paid for on or after that date. It is believed that if this be done, with each certificate showing the respective holdings accordingly, it would greatly facilitate identification for the purposes here concerned.

It may be added that before a member bank surrenders a certificate or certificates which shows such respective holdings, it should make, and retain in its files for convenient reference and as permanent evidence in this connection, a photostatic or certified copy of the certificate or certificates.

Respectfully,

(Signed) Guy T. Helvering

Commissioner.