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TAXATION PROBLEMS IN BRANCH BANKING†

By ROGER J. TRAYNOR*

The recent rapid development of branch banking in this country, the desire on the part of many for nation-wide branch banking, and the desire of many others for branch banking at least within trade areas without regard to state boundaries, suggests the desirability of a consideration of some of the problems and difficulties of bank taxation that must be met if branch banking across state lines should become general. Before much can be said of these problems and difficulties, however, an appreciation of some of the complexities of the present situation should be had. These complexities have their immediate origin in section 5219 of the Revised Statutes of the United States which lays down the methods and conditions on which the states may tax national banks. Because of the conditions set forth in that statute

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†This article is an elaboration of a paper read before the Commercial Law Round Table at the session of the Association of American Law Schools in Chicago, December 30, 1930.
1See Hearings before the Committee on Banking and Currency, House of Representatives. 71st Congress. 2nd Session, 1930, H. R. 141; Willitt, Chain, Group and Branch Banking.
3"National banks . . . their property, and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent." First National Bank v. Anderson, (1926) 269 U. S. 341, 46 Sup. Ct. 135, 70 L. Ed. 295. For a discussion of the constitutional basis of section 5219 see, Schwepppe, State Taxation of National Bank Stocks: Uncertainty of its Constitutional Basis, (1922) 6 MINNESOTA LAW REVIEW 219; Rottschaefer, State Taxation of National Bank Shares, (1923) 7 MINNESOTA LAW REVIEW 357; (1929) 17 Cal. L. Rev. 83, 84-94.

Section 5219 as amended in 1926, and as it now appears reads as follows: "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
the taxation of national banks is inseparably connected with
the taxation of state banks and with the taxation of bonds,
notes, mortgages and other intangibles, and in some states it
is tied up with the taxation of almost everything else in the
state. An understanding of the rules of law thus far de-
veloped in the application of section 5219 will go far in acquain-
ting one with the problems that must be met if either state
banks or national banks have branches in different states.
However, it would take far more than the space allotted for
this paper to give even a cursory summary of the rules of
law applying to bank taxation in general. These rules can
be at a greater rate than is assessed upon other money 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 em-
ployed or engaged in the banking or investment business and repre-
senting 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 finan-
cial corporations nor higher than the highest of the rates assessed by
the taxing state upon mercantile, manufacturing, and business corpo-
rations 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, manu-
facturing, and business corporations organized under its own laws or
laws of other states and also imposes a tax upon the income of indi-
viduals, 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 cor-
porations.

"(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 in-
come from other moneyed capital.

"2. The shares of any national banking association owned by non-
residents of any state, shall be taxed by the taxing district or by the
state where the association is located and not elsewhere; and such asso-
ciation shall make return of such shares and pay the tax thereon as
agent of such non-resident 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 in force prior to March 25, 1926, 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 col-
lecting thereof, to the extent that such tax would be valid under said
Sec. 5219.
be discussed here only in their relation to the branch bank problem.

Under section 5219, as it now reads, the states are authorized to tax the real property of national banks, and in addition may, subject to the general condition that the use of any one of the following forms of taxation must be in lieu of the others, (1) tax the shares of national banks to their owners provided that the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens; (2) include dividends derived from the shares in the taxable income of the owners or holders thereof provided the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital; (3) tax the banks on their net income or (4) according to or measured by their net income in which latter case income from all sources may be included in the measure. If the net income methods are used, 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 or business corporations doing business within its limits. If the state employs the net income or measured by net income method, it may at the same time tax dividends from national bank shares in the taxable income of the owners or holders thereof on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banks 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.

The validity of the share method as applied at present, and necessarily therefore as concerns interstate branches, may perhaps be thrown in doubt by *Farmers' Loan and Trust Company v. Minnesota*. That case held that Minnesota had no power because of the fourteenth amendment to levy an inheritance tax on the transfer of registered bonds of the cities of Minneapolis and St. Paul, owned by a non-resident decedent, and kept in New York. The grounds of the decision were, generally, that intangibles may be taxed in the

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state of their owner's domicile and that as multiple state taxation of intangibles is an evil which the court will not tolerate they are entitled, like tangibles, to immunity from taxation by more than one state. If this principle is extended to corporate shares and it is held that they are taxable only at the domicile of their owner, it is probable, but by no means certain, that a state tax cannot validly be levied on national bank shares held by non-residents. The uncertainty arises from the circumstance that since by the terms of section 5219 the shares of national banks can only be taxed in the state where the bank is located there is no double taxation of such shares, and also from the circumstance that although section 5219 is fundamentally no doubt merely federal consent to the imposition by the states of a burden on a federal instrumentality it is possible to argue that in upholding state taxes on non-resident shareholders in national banks the courts have permitted Congress in effect to give the states jurisdiction to tax property otherwise beyond its power to tax, not merely because the subject was a federal instrumentality, but because the property was beyond the jurisdiction of the state. But even if the rule of Farmers' Loan and Trust Company v. Minnesota is not extended to shares of national banks, the present share method is practically useless in most states because of the condition resulting from

5In Tappan v. Merchants' National Bank, (1873) 19 Wall. (U. S.) 490, 22 L. Ed. 189 it was contended that owners of national bank shares could not be taxed without regard to their places of residence. In dismissing this contention the court declared: "Shares of stock in National banks are personal property. They are made so in express terms by the acts of Congress under which such banks are organized. They are a species of personal property which is, in one sense, intangible and incorporeal, but the law which creates them may separate them from the person of their owner for the purposes of taxation, and give them a situs of their own. This has been done. By section forty-one of the National Banking Act, it is in effect provided that all shares in such banks, held by any person or body corporate, may be included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed under state authority, at the place where the bank is located, and not elsewhere. This is a law of the property. Every owner takes the property subject to this power of taxation under state authority, and every non-resident, by becoming an owner, voluntarily submits himself to the jurisdiction of the state in which the bank is situated for all the purposes of taxation on account of his ownership. His money invested in the shares is withdrawn from taxation under the authority of the state in which he resides and submitted to the taxing power of the state where, in contemplation of the law, his investment is located. The state, therefore within which a National bank is situated has jurisdiction, for the purposes of taxation of all the shareholders of the bank, both resident and non-resident, and of all its shares, and may legislate accordingly."
the Supreme Court's interpretation of "other moneyed capital," that if national bank shares are taxed, bonds, notes, mortgages or other securities of a character in which national banks may invest must be taxed at least as high as bank shares are taxed. Under the present chaotic condition the states find themselves in the following dilemma. Full taxation of intangibles is impossible and unjust. But if intangibles are not fully taxed, national bank shares cannot be so taxed, and a fair and feasible intangible tax rate applied to bank shares would not produce from banks to any appreciable extent the fair and adequate revenue that should be obtained from them. It is obvious that this dilemma will be present in the interstate branch bank situation.

Moreover, the according to or measured by net income method of bank taxation applied to interstate branches and as applied at present is not very attractive to the states in view of the unsettled state of the law of this aspect of the subject as shown by the cases of *Macallen Company v. Massachusetts* and *Educational Films Company v. Ward.*

The *Macallen Case* held invalid a state excise tax on domestic corporations measured by total net income purposely levied to reach tax-exempt income from federal, state, county and municipal bonds. The purpose to reach income from tax exempt bonds was found in the fact that such income was included in general terms by an amendment to the statute in question which before the amendment was specifically excluded, and from the fact that such purpose was plainly disclosed by a report of a special commission to the Massachusetts legislature. The court distinguished *Flint v. Stone Tracy Company,* *Home Insurance Company v. New York,* and other cases in which similar taxes were upheld, on the ground that in those cases the tax was not specifically intended to reach nor aimed at exempt income. The opinion

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6*(1929) 279 U. S. 620, 50 Sup. Ct. 14, 73 L. Ed. 874. This case has been extensively discussed in the reviews. See an article by Powell on the Educational Films Case—"An Imaginary Judicial Opinion," (1931) 44 Harv. L. Rev. 889 and list of articles there cited; see also (1931) 15 Minnesota Law Review 591.


10In the Macallen Case, "the court held the tax void even assuming that had that motive been lacking the tax would have been valid, for the
of the court, in so far as distinguishing the instant case from the *Flint Case* and the *Home Insurance Company Case* is concerned, apparently makes the measure including income from statutory tax exempt local bonds invalid under the impairment of the obligation of contracts clause on the same grounds that the inclusion of income from federal bonds is invalid as an interference with the federal borrowing power, namely, because of the manifest intent and purpose in both cases to reach such income.

The court refused to pass upon the question whether such a tax on national banks measured by total net income would be valid. The question with respect to national banks is not identical with that presented in the *Macallen Case* for the reason that Congress has consented to the imposition by the states of this kind of tax on national banks. However, since it was expressly held in the *Macallen Case* that

reason that it was enacted with the purpose of reaching non-taxable property. It is rather important to observe that the proposition just stated was the ground not only for distinguishing Flint v. Stone Tracy Co., but was the sole ground of the decision itself, for if legislative motive had been invoked only to distinguish the Flint case and the decision itself had been put upon some other ground it would have been impossible to suspect that the court had repented its decision in the Flint case and that its ground for distinguishing the case was not to be taken very seriously. It cannot be thought, however, that the court has based the decision itself on a proposition of law in which it does not believe simply because the only alternative was the outright repudiation of its earlier decision. . . . It seems rather unfortunate that the court should have chosen as a test of the validity of these statutes the motive impelling the legislature in each particular case. Admittedly the only justification for condemning any of these statutes is the duty of the Supreme Court to protect the federal government and its agencies from burdensome interference by the states. The application given to the court's test in the instant case, in the light of the Flint Case, which the court here recognizes as good law, compels the conclusion that the statute here involved would have been valid if the state of Massachusetts could have convinced the court that its motives were unimpeachable. But the statute would have been no less a burden upon the borrowing power of the federal government. In other words there is no reasonable relation between the test adopted by the court and the only justification for its application. The court has in effect adopted a rule of retributive justice. It seems obvious that a rule adopted in aid of the court's duty to prevent undue burdens on the activities of the federal government should turn upon the seriousness of the burdens rather than upon some factor varying independently of those burdens. The argument immediately suggests itself that such statutes may be void independently of the extent of the burden because of the motive of their enactment. It seems fairly safe to say, however, that there is nothing in the Constitution or elsewhere which compelled the court to hold that the motive of the legislature has any bearing whatever upon the validity of these taxes. If a statute does not impose an undue burden it seems rather difficult to say that it must nevertheless be held void if the legislature which enacted it consciously desired to go as far as it could." (1929) 17 Cal. L. Rev. 456, 459-460.
the inclusion of income from Massachusetts county and municipal bonds in the measure of a tax on domestic corporations was void as impairing the obligation of the statutory contract of the state by which such bonds were made exempt from state taxation, it would seem that under similar circumstances taxation of income of national banks from such sources would be void for the same reasons regardless of Congressional consent for Congress has no power to permit states to impair the obligation of contracts. As to the inclusion of income from federal securities in the measure of tax on national banks, Congressional consent raises a different question. Many bonds of the federal government are issued under statutes exempting them from state taxation. Although the United States is not expressly forbidden to impair the obligation of contracts, it was held in the case of Choate v. Trapp\(^{12}\) that the repeal by Congress of a contractual tax exemption attached to Indian lands by act of Congress, thus subjecting the land to state taxation, was a violation of the due process clause of the Fifth Amendment and void. For the same reasons the Congressional consent given in section 5219 to the states to tax income of national banks from statutory tax exempt federal bonds might be held void. This conclusion would seem to follow if the court applies to federal legislation the test of intent adopted in the Macallen Case. That Congress intended by the fourth

\(^{12}\)The precise terms of the exemption are not the same in all issues of United States bonds: In 12 Stat. at L. 346, ch. 33, sec. 2 it is provided:

"and all stocks, bonds and other securities of the United States held by individuals, corporations or associations, within the United States shall be exempt from taxation by or under state authority." The statute relating to the Panama Canal Bonds, 32 Stat. at L. 494, 31 U. S. C. A. sec. 744 declares:

"and such bonds shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under state, municipal or local authority." The statute relating to the First Liberty Loan bonds, 40 Stat. at L. 35, 31 U. S. C. A. sec. 746 declared the bonds to be:

"exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any state or local taxing authority; ..." For the provisions of the statute relating to the Second and subsequent Liberty loans see 40 Stat. at L. 291, 31 U. S. C. A. sec. 747. See also 31 U. S. C. A. sec. 748, 749, 750, 751, 753 for other statutory tax exemptions of federal securities. See also the opinion of Mr. Justice Brandeis dissenting in National Life Insurance Co. v. United States, (1929) 277 U. S. 508, 522, 48 Sup. Ct. 591, 72 L. Ed. 908, in which the differences in the statutes are pointed out.

alternative in section 5219 to sanction the reaching by the states of income from exempt securities (as a matter of fact that is the sole reason for having this method and is the principal distinction between it and the third alternative which authorizes a direct net income tax on national banks) is demonstrated by the report of the Committee on Banking and Currency submitted to the House of Representatives March 11, 1926. It will be recalled that a similar report before the Massachusetts legislature was part of the evidence from which an improper intent was attributed to that legislature. Evidence parallel to the history of the Massachusetts legislation, i.e., an amendment removing a prior specific exclusion of exempt income, however, is not present. The federal statute permits for the first time the taxation of any income of national banks. It might conceivably be held, however, that although the intent of Congress was improper, and whether or not the state legislature knows of this improper intent, if the statute which the state enacts in pursuance of the permission given with an improper intent is itself passed with a proper intent (that is if it is passed without the presence of evidence of the kind found in the Macallen Case from which improper intent is attributed—the question is simply one of evidence for surely the legislature must intend to include income actually included), the tax would nevertheless be valid.

It was contended in the Educational Films Case that Long v. Rockwood held income from patents immune from direct state taxation; that there was no legal difference so far as state taxation was concerned between royalties from copyrights and royalties from patents; that to tax either was to tax a federal instrumentality; that since the Macallen Case held invalid an excise tax which included in its measure income from a federal instrumentality, i.e., liberty bonds and federal farm loan bonds, the instant tax which included in its measure royalties from copyrights was likewise void. The court refused to pass upon the question whether the rule of the patents case was applicable to royalties from copyrights, applied the rule of Flint v. Stone Tracy Company and Home Insurance Company v. New York, and distinguished the Macallen Case on the ground that the instant tax, unlike that involved

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in the *Macallen Case*, was not aimed at the income alleged to be exempt, since the New York statute never excluded income from copyrights and since neither before nor after any amendments thereto was any mention made of copyrights or income therefrom nor was there anything to suggest that the legislature adopted the statute "for the very purpose of subjecting it 'pro tanto to the burden of the tax'."15

It becomes unavoidably necessary to speculate upon the destiny of "measured by" taxes generally. The *Macallen Case* and the *Educational Films Case* taken together leave the question in grave doubt both because of the intricacy of the reasoning therein and because of the opinion entertained by three members of the court dissenting in the *Films Case* that the decisions are inconsistent. If we take a sort of algebraic sum of the conflicting opinions expressed in the *Educational Films Case* and consider the case as a step in the development of a rule in the traditional common law fashion, it seems not improper to say that the case contains at least some evidence of intent to abandon legislative intent as a test of the validity of these taxes. The majority opinion by Mr. Justice Stone, who dissented in the *Macallen Case*, in distinguishing the *Macallen Case* seems to show a lack of enthusiasm for the rule there laid down, and the minority opinion given by Mr. Justice Sutherland, who wrote the opinion of the court in the *Macallen Case*, expresses a hostility to all measured by taxes which if adopted by the court would render the intention test superfluous since the laws would be void because of their effect regardless of legislative intent. If the court adheres to the intention test, the problem in each case will be to determine the nature and degree of evidence necessary to prove improper intent. Whether it will be the *Macallen Case* or the *Educational Films Case* that will determine the validity or invalidity of a state tax on national banks measured by their total net income from all sources cannot be predicted with any degree of assurance.16 If Congressional consent to the measured

16 In Pacific Co. Ltd. v. Johnson, (March 31, 1931) 81 Cal. Dec. 519, the California supreme court, relying upon the Educational Films Case, (1931) 282 U. S. 379, 51 Sup. Ct. 170, upheld the constitutionality of the California Bank and Corporation Franchise Act (Cal. Stats. 1929, ch. 13) which imposes a franchise tax on banking, manufacturing, mercantile and business corporations doing business in the state measured by total net income including income from tax exempt bonds. In Aber-
by net income method is deemed properly given and if the significant distinction between the Macallen Case and the Educational Films Case turns upon the nature and degree of evidence of intent to reach particular exempt income and the rule of the Macallen Case is confined to its peculiar facts, it would seem that a tax on national banks measured by total net income would be valid unless (1) the act in question is an amendment removing the specific exclusion of exempt income provided by a prior statute and/or (2) reports of commissions or legislative committees demonstrate that the statute in question was aimed at particular exempt income. On the other hand, if the supposedly significant distinction between the two cases is not the nature of the evidence of intent present, the following arguments may suggest possible grounds for distinguishing the Educational Films Case:

(1) "A tax measured by income derived from copyrights does not impose a burden upon the exercise of a vital power
deeen Savings and Loan Assn. v. Chase, (1930) 157 Wash. 351, 289 Pac. 536, rehearing denied 290 Pac. 697, decided before the decision in the Educational Films Case, the Washington supreme court, relying upon the Macallen Case, held invalid the Washington franchise tax on banks and financial corporations measured by net incomes including income from tax exempt securities.

17 It may be observed in passing that although the court in Flint v. Stone Tracy Company, (1911) 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, the Educational Films Case, (1931) 282 U. S. 379, 51 Sup. Ct. 170, and the earlier cases, has adopted the principle that a state can tax the fruits of a privilege granted by it and can tax all those fruits even though part of them are income from tax exempt securities, it has never examined into a question which might be raised on the basis of differences in the degree in which different kinds of income are attributable to the exercise of a state granted privilege. An earlier article, (1929) 17 Cal. L. Rev. 232, 249-255) has discussed the proposition that a problem presented in these cases should be treated as a problem of weighing in each case the interference with federal power which follows from upholding such taxes against the interference with the state's power to tax its creatures in condemning them. If this approach be a proper one, questions of degree are relevant; for example the court might well uphold a tax measured by total net income of a domestic corporation incorporated for the purpose of and engaged primarily in holding tax exempt securities for investment and on the other hand condemn a tax including income from tax exempt securities in favor of a taxpayer which was a manufacturing corporation and which made a practice of keeping part of its surplus invested in tax exempt securities pending payment of dividends or extension of capital investments. In the latter case, although the entity holding title to the securities is a creature of the state, it might well be argued that although its activity in buying and holding tax exempt securities as a corporation is in some sense the exercise of a privilege granted by the state it can also be described as the exercise of a purely collateral power naturally and quite incidentally an attribute of an entity created to engage in a quite different activity as its raison d'être.
of the federal government, as it would in the case of federal bonds.\textsuperscript{218}

(2) Copyrights are not expressly made tax exempt by Congressional statute as are many issues of federal bonds. Mr. Justice Sutherland, delivering the opinion of the court in the Macallen Case, stated that in respect of United States securities the statutory exemption is superfluous.\textsuperscript{19} He did not say, however, that such statutory exemption is ineffective. He held the tax void independently of the statutory exemption because it was per se a forbidden interference with the federal borrowing power. The opinion has nothing to say on the question whether or not the statutory exemption itself would have been sufficient. For all that appears in the case, therefore, such a statutory exemption may be an important factor or indeed may be without more a sufficient ground for holding invalid a state tax of the kind here discussed. The question here involved, therefore, was not presented. That question would be presented if a Congressional statute expressly declared that income from federal bonds should not be included in the measure of any state tax. Suppose that it were definitely settled that in the absence of such a statute a measure including income from federal bonds was not invalid. The statute might then be considered from two points of view. (1) As an additional factor to be weighed by the court in determining whether such a tax is a burden upon the federal borrowing power in the light of the congressional declaration that it is such a burden. Some support for an argument that such a declaration was decisive might perhaps be found in the cases under the commerce clause\textsuperscript{20} and in the cases holding that section 5219 determines the extent of state taxation of national banks\textsuperscript{21}—cases in which Congressional determination whether state laws constitute a burden upon the exercise of a federal power

\textsuperscript{18}Mr. Justice Sutherland, dissenting in Education Films Corp. v. Ward. Mr. Justice Sutherland was of the opinion, however, that a tax measured by income derived from copyrights was nevertheless invalid. The entire quotation from his opinion on this point follows: "And, although it may be conceded that a tax measured by income derived from copyrights does not impose a burden upon the exercise of a vital power of the federal government, as it would in the case of federal bonds, it is, nevertheless, a tax falling upon income which is exempt in virtue of an implied prohibition of the federal Constitution. Long v. Rockwood, (1927) 277 U. S. 142, 48 Sup. Ct. 463, 72 L. Ed. 824."

\textsuperscript{19}279 U. S. 620, 624, 49 Sup. Ct. 432, 73 L. Ed. 874.

\textsuperscript{20}Burdick, Law of the American Constitution 206-254.

\textsuperscript{21}(1929) 17 Cal. L. Rev. 83-94.
is held controlling. (2) Even though the inclusion of such income in such measure is not per se a burden, the exemption which Congress desires in order to confer a bounty upon federal bonds with its attendant limitation of the taxing powers of the states, might conceivably be deemed necessary and proper in order to facilitate loans the federal government might otherwise have difficulty in obtaining. If such a statute would be valid, it would then be necessary to determine whether the existing exemption statutes can be deemed to go so far before the distinction here discussed would be of any significance.

If the direct net income method is used, of course income from exempt securities cannot be taxed. In addition to that fact the case of Missouri v. Gehner\textsuperscript{22} adds another factor that would make this method unattractive to the states. It was held in that case that in a tax on net assets the states could not provide for the apportionment of the liabilities of the taxpayer between taxable and non-taxable assets but had to allow for the full deduction of the liabilities against the taxable assets for the purpose of taxing their net worth. It would seem likewise that a state could not apportion expenses between non-taxable and taxable income. As a result of this decision and in view of the fact that banks have extensive holdings in tax exempt securities it is not likely that the net income method of bank taxation would be productive of much revenue.

Interstate banking by means of holding companies has presented no peculiar taxation difficulties. Corporations, including national banking associations, owning shares in national banks, are taxed as other shareholders are taxed.\textsuperscript{23} As the various banks are ostensibly operated as distinct units, the income tax methods operate upon them as they do in the case of completely independent banks.

In several states at the present time national as well as state banks have branches not only in the city in which their

\textsuperscript{22}(1930) 281 U. S. 313, 50 Sup. Ct. 326, 74 L. Ed. 870.
\textsuperscript{23}Bank of Redemption v. Boston, (1888) 125 U. S. 60, 80 Sup. Ct. 772, 31 L. Ed. 689. It should be pointed out, however, that if a national bank pays a tax on shares it owns in another national bank, its shareholders are entitled to have deducted from the value of their shares for assessment purposes, the value of the shares held by the bank on which it has already paid a tax. Bank of California v. Richardson, (1919) 248 U. S. 476, 39 Sup. Ct. 165, 63 L. Ed. 673. For a discussion of this case see (1929) 17 Cal. L. Rev. 83, 118.
principal place of business is located but throughout the state.\textsuperscript{24} This situation raises several problems under the provisions of section 5219 which it will be necessary to consider preliminarily to a discussion of the broader problem of bank taxation in the interstate branch bank situation.

Section 5219 provides in part as follows:

"The legislature of each State may determine and direct . . . 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

\textsuperscript{25}The nine states listed in Federal Reserve Bulletin, April 1930, p. 258, quoted by Willit, Chain, Group and Branch Banking, 157, as permitting state wide branch banking, tax branch banks as summarized below. The following taxes are in addition to the real property taxes paid by the banks. The real property of banks and their branches is taxed to the same extent according to its value as other real property in the state is taxed.

(1) \textbf{Arizona.} Bank shares are taxable in each county, city or town on such portion of their value as the assets of the bank in such county, city or town bears to the value of the bank's entire assets. Arizona, Rev. Code, Stuckmeyer, 1928, sec. 3071, p. 714.

(2) \textbf{California.} Banks are taxed by the state exclusively according to or measured by their net income. Cal. Stats. 1929, ch. 13, p. 19.

(3) \textbf{Delaware.} Bank shares are taxable solely by the state. Delaware, Laws 1921, p. 301, 306.

(4) \textbf{Maryland.} Shares of banks located within the state are taxable in the county and/or city in which the holders reside and if share owner a non-resident, his shares are taxable in the county and/or city in which the principal office of such bank is situated. Maryland, Code Annotated, 1929 Supp. 477-478, 491.

(5) \textbf{North Carolina.} Value of bank shares is allocated as between parent and branch bank by state board of assessment to the counties in proportion to the deposits of the parent and branch bank. 1929 Supplement to the North Carolina Code Annotated, 1929 Supplement sec. 7971 (151), p. 217.

(6) \textbf{Rhode Island.} Bank shares of banks located within the state are taxable in the town in which the owner shall have had his actual abode for the larger portion of the twelve months next preceding the first day of April in each year. Rhode Island, Gen. Laws, 1923, title VIII, ch. 59, p. 307. Shares of non-residents are taxable in the town where the bank "is located." Rhode Island, Gen. Laws 1923, title VIII, ch. 60, pp. 310, 313.

(7) \textbf{South Carolina.} State tax commission prorates assessable property of any bank having branches among the school districts in which such bank has branches on basis of deposits as shown in last bank statement of the year. South Carolina Acts 1924, p. 116.

(8) \textbf{Vermont.} Bank shares are taxable in town where owner resides and if owner a non-resident in the town where the bank has its principal place of business. Vermont, Public Acts 1925, No. 21, sec. 4, p. 34.

(9) \textbf{Virginia.} Bank shares are taxable in the county, city or town in which banking houses or offices are situated and each such county, city or town "is entitled to tax such a proportion of the total shares of stock of said bank as the deposits in such county, city or town bear to the total deposits of said bank." Virginia, Code Annotated 1924, sec. 4102, p. 932.
holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income. 25

"2. The shares of any national banking association owned by non-residents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere. 26"

What taxes may the political subdivisions of the state in which branches are located impose on such branches? It seems clear that as regards shares of national banks located within the state owned by residents the words, "The legislature...may determine and direct the manner and place of taxing all the shares," permit the state to determine for itself what taxing authorities in the state may tax national bank shares. The state is thus apparently free to provide that the shares shall be taxed by itself and/or by any political subdivision of the state where the principal place of business or any branch is located, and/or where the owners of such shares are domiciled, and/or where any assets of the bank are located, but the taxes imposed by such political subdivision or the aggregate taxes imposed on such shares must not be at a greater rate than the taxes imposed upon "other moneyed capital" employed in competition with national banks. If subdivision (2) 27 above quoted is strictly construed, it would appear that as regards shares of national banks held by non-residents the disjunctive "or" would limit the taxation of such shares to either the state, or to the taxing district in which the bank is located. That is if a state tax on the shares is levied, the taxing district where the bank is located cannot tax them, and if the shares are taxed by such taxing district, a state tax cannot be imposed upon them. It would also seem to follow from the wording of subdivision (2) that no taxing district in which the national bank is not located may tax such shares. The question immediately arises whether a national bank is located in each city or county in which it has a branch, or whether it is

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25 Italics the author's. [Ed.]
26 Italics the author's. [Ed.]
27 This subdivision was probably designed to prevent the taxation of national bank shares by any state other than that in which the bank was located. Such a construction of the subdivision, however, renders it superfluous for state authority to tax national bank shares. It depends solely upon section 5219 and that section, in the first paragraph quoted above in the text, sanctions the taxation of the shares only of national banking associations located within the limits of a state.
located only in the city or county in which it has its principal place of business or whether it is only partially located in the various places concerned. The vagueness and uncertainty of the statute in this particular indicates that the problem here discussed was probably not contemplated by Congress in its enactment of section 5219. It is difficult to see what purpose would be served by permitting localities in which branches were located to tax resident shareholders and by excluding such localities from taxing the shares of non-residents. A holding that a national bank is located only in the city or county of its principal place of business would not only serve no apparently useful purpose but would unnecessarily interfere with the taxing power of the states and needlessly complicate local taxation in the states. If such a holding were made, it would then be necessary for the state itself to levy the tax on the shares of non-residents and provide a scheme for allocating the proceeds back to the cities and counties in which the branches were located.

May the political subdivisions in which branches of national banks are located include dividends from national bank shares in the taxable income of an owner or holder thereof, tax the net income of such branches, or tax such branches according to or measured by their net income? Express authority to determine the "manner and place" of taxing the taxable values of national banks is only given the state in regard to shares. On the other hand, there is no express provision with regard to dividends or net income comparable to subdivision (2) expressly limiting the taxation of such values to the locality in which the branch is located. It would seem reasonable to hold that the authority given the states by section 5219 to tax dividends, net income, or to use the according to or measured by net income method was not intended by Congress to be confined to the state itself, excluding the subdivisions thereof, but that the general authority given the states is broad enough to permit delegation thereof by the states to their political subdivisions.

It would seem reasonable to contend, although the matter is by no means free from doubt, that the legislature is free to determine how the taxable values of national banks or the proceeds from the taxation of such values shall be distributed or allocated among the cities and counties in which the banks have branches. The problem of finding a
suitable allocation formula for city and county taxation of branches within a state is somewhat similar, aside from constitutional questions, to the problem of allocation of the taxable values of banks among the various states in the case of interstate branches. This problem is discussed in some detail toward the close of this paper and will not be considered further at this point.

It is almost unthinkable that Congress would authorize national banks to have branches across state lines and leave

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28 The present statute regarding branches of national banks reads as follows: "Sec. 36. Branch Banks. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have in lawful operation on February 25, 1927, and any national banking association which has continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) If a state bank is hereafter converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated association may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank on February 25, 1927.

(c) A national banking association may, after February 25, 1927, establish and operate new branches within the limits of the city, town, or village in which said association is situated if such establishment and operation are at the time permitted to state banks by the law of the state in question.

(d) No branch shall be established after February 25, 1927, within the limits of any city, town, or village of which the population by the last decennial census was less than twenty-five thousand. No more than one such branch may be thus established where the population, determined, of such municipal unit does not exceed fifty thousand; and not more than one such branch where the population does not exceed one hundred thousand. In any such municipal unit where the population exceeds one hundred thousand the determination of the number of branches shall be within the discretion of the comptroller of the currency.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the comptroller of the currency.

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any state or territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

(g) This section shall not be construed to amend or repeal sections 601 to 605 of this title, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

(h) The words "state bank," state banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of state laws. (As amended Feb. 25, 1927, ch. 191, sec. 7, 44 Stat. at L. 1928) U. S. C. A. 1930 Cumulative Annual Pocket Part, p. 12.
TAXATION PROBLEMS IN BRANCH BANKING

section 5219 in its present form. A consideration of some of the difficulties and confusion that would arise if the section were left unamended is not, however, of mere academic importance particularly if Congress desires to apply to the branch bank situation any or all of the present methods of taxing national banks. Such consideration will perhaps demonstrate the necessity of amending section 5219 and will indicate in some degree the problems that must be faced by Congress in providing for the branch bank situation in its rewriting of that section.

Section 5219, as stated before, provides that each state may tax the shares, dividends or income of national banks "located within its limits." What would be the location of a national bank with a home office in one state and branches in half a dozen others. The possibilities are that it is located in (1) the state of its home office only; (2) in that and also in each state in which it has a branch, or (3) that it is located partially in all the states concerned. If it were held that it is located only in the state of its home office, the permission to tax given by the statute would obviously be inadequate and unfair if interstate branches were permitted since the state in which branches were located could not tax them. If it were held that it was located in each state within the meaning of the statute in which it had a branch, the bank would be subject to a tax burden approximately seven times, in the case supposed, that imposed on state banks, and the authorization of interstate branches of national banks would be illusory. Such a construction, moreover, would contradict the unquestioned purpose of the statute to prevent discrimination against national banks. The principal difficulty with the third possibility is that of statutory construction. Congress in fact consented to taxation of all the shares, dividends, or income of national banks located wholly within the taxing state. It would be a very liberal construction, to say the least, to hold that this included by fair implication authority to tax some part of the shares, dividends, or income of banks located partially within the taxing state. Further difficulties presented by this construction will be considered later. It will be enough at this point to suggest that even assuming that this last construction is possible it would be inadvisable and unnecessary for Congress to leave the tax problems presented by interstate branches to be worked out under the
present statute. The vagueness and uncertainty of the statute applied to interstate branches would be an invitation to endless and expensive litigation.

Thus far we have discussed the effectiveness of the present statute applied to interstate branches of national banks. It remains to discuss its effectiveness (1) if state banks established interstate branches to any substantial extent; (2) if both national and state banks have interstate branches. This last possibility is largely covered by what has already been said. Of course, difficulties of adequate supervision may prevent any extensive development of interstate branches of state banks, but a discussion of the possibilities seems nevertheless appropriate. Under the rule of Rhode Island Hospital Trust Company v. Daughton, a state has no jurisdiction to tax the shares of stock in a foreign corporation owned by non-residents, and if only the shares in foreign state banks owned by residents were taxed there would be an obvious factual discrimination against local national banks all of whose shares are taxable regardless of ownership by residents or non-residents. The same discrimination would result under the dividend method since for the same reason the state cannot tax dividends paid to non-resident shareholders of foreign state banks. Even though a share or dividend tax were imposed on national banks, the state could avoid the discrimination to a considerable extent by taxing the foreign state banks on the capital employed and income earned by them within the state. But this method of taxing foreign state banks would not remove all discrimination if the capital employed by the foreign state banks in the state consisted in part of tax exempt securities and national bank shares were taxed at full value including the value contributed thereto by tax exempt securities. In the tax on the foreign state banks deductions would have to be made for the tax exempt securities held by them in the state and the income received therefrom, whereas under the authority of Des Moines National Bank v. Fairweather national bank shares could nevertheless be taxed at full value. In that case the United States Supreme Court upheld an Iowa tax upon national bank shares although no deduction was made of the value of federal securities from the value of the shares. Shares of stock in national and state

29(1926) 270 U. S. 69, 46 Sup. Ct. 256, 70 L. Ed. 475.
30(1923) 263 U. S. 103, 44 Sup. Ct. 103, 68 L. Ed. 191.
banks were taxed in the same manner, but a deduction of the value of federal securities was made from the value of the assets of private bankers who were taxed upon their banking capital. The plaintiff bank contended that the tax was void because the failure to make provision for deduction of exempt securities from the value of the shares discriminated against national banks. The court answered the plaintiff's contention by stating that the exemption allowed private bankers was merely in recognition of, and obedience to, another law of the federal government that federal securities in the hands of individuals cannot be taxed by the states and that the discrimination was really imposed by federal law. It is thus by no means certain that the factual discrimination which would result from the application of the share or dividend method in the foreign state branch bank situation would be legally discriminatory.\textsuperscript{31} It seems clear,

\textsuperscript{31}See also Bank of California National Association v. Richardson, (1919) 248 U. S. 476, 39 Sup. Ct. 165, 63 L. Ed. 673, and Montana National Bank of Billings v. Yellowstone County, (1928) 276 U. S. 499, 38 Sup. Ct. 165, 72 L. Ed. 673. The Richardson Case involved, among other things, the validity of a tax on the plaintiff national bank as a shareholder in a state bank. It was contended that section 5219 requires that if all national bank shares are taxed, all state bank shares must also be taxed. If shares in a state bank held by a national bank are not taxed, although all shares in national banks are taxed, there is a discrimination against national bank shares. The court held, however, that the statute and ruling of the court in Bank of Redemption v. Boston, (1888) 125 U. S. 60, 31 L. Ed. 689 (holding that a national bank may be taxed on shares it owns in another national bank because the permission of section 5219 to tax national bank shares is unqualified) both in letter and spirit apply only to stock ownership by a national bank in another national bank and therefore taxation of the bank as a shareholder in a state bank was without the scope of the statute and therefore beyond the power which it conferred. In the words of Mr. Justice Pitney, (who dissented in the Richardson Case from the holding that individual shareholders of a national bank which was taxed on its shares in another national bank were entitled to deduct from the assessed value of their shares that part thereof contributed by the national bank shares on which the bank of which they were members had already paid a tax), "The non-taxability of state bank shares in the hands of a national bank is attributable to the character of the bank as a taxpayer, not to the quality of the state bank shares as an object of taxation." In the Billings Case national bank shares were taxed to their full value, including the value contributed by tax exempt securities. State bank shares were not taxed. State banks, however, were directly taxed upon the value of their assets, necessarily excluding therefrom the value of tax exempt securities held by such banks. It was contended on the authority of the Fairweather Case that since the exemption from taxation of the United States bonds in the hands of the state banks was created by federal statute, the discrimination was one which the state could not avoid. The court held, however, that the tax imposed an invalid discrimination against national bank shares and declared that "in respect of the taxation of state corporate banks the shares must
however, that the factual discrimination will be a serious burden on national banks, and if state bank branches become common it is submitted that neither the present share method nor the dividend method should be allowed to stand.

With regard to a tax on a national bank according to or measured by net income the statute provides that the taxing state may include the entire net income received by the bank from "all sources." Although permission to include net income from all sources in this type of tax was designed to allow the states to reach the income of banks received from tax exempt securities, the words "all sources" are broad enough not only to cover income from tax exempt securities but income from other sources including that from business done outside the state. However, even if this language is broad enough to give the states authority to include net income earned by extra-state branches in the measure of a tax on national banks, the conditions imposed by section 5219 apparently nullify that authority. The statute provides that if the states adopt either of the income tax methods, the rate shall not be higher than the rate on financial corporations nor higher than the highest of the rates upon mercantile, manufacturing and business corporations doing business within the limits of the state. It is doubtful whether a state can include in the measure of a tax on a foreign corporation extra-territorially earned income. If there are any financial corporations other than national banks doing business in the state which cannot be taxed on income earned outside the state, and if the measure of the tax on such corporations includes only income earned within the state, whereas the measure of the tax on national banks includes all

be taxed as they are in the case of national banks, so far as necessary to prevent discrimination." In the Fairweather Case the statute exempting federal bonds, plus the court's adherence to the entity theory compelled the discrimination there involved. In the Billings Case, however, the virtual unavoidableness of the discrimination involved in the Fairweather Case was not present for the state had at its command an alternative method of taxation, i. e. the state could tax both national and state bank shares, and thus avoid the discrimination completely. It is conceivable that the holding of the Billings Case could be extended into a premise that if the state can avoid the discrimination the court will require it to do so if national bank shares are to be taxed. If that premise were reached, however, the rule of the Fairweather Case would have to be modified for it is apparent that the discrimination there involved was avoidable by deducting from the value of national bank shares the value of tax exempt securities held by the bank.

32See (1929) 17 Cal. L. Rev. 456, 512-516.
their income, there would be an obvious discrimination against national banks. It might be argued, however, on the theory of the Fairweather Case, that the discrimination did not render the tax invalid. If, however, national banks and the other corporations mentioned are taxed only on net income earned within the state, national banks would have no just cause for complaint. It would be perfectly possible, subject to the difficulties to be discussed presently, for the state to tax foreign state bank branches and foreign financial corporations on a fair share of their net income making their tax burden substantially equal to that of local, state and national banks.

Returning to the problem raised by interstate branches of national banks, the question arises whether each of the present methods could be altered in such manner as to be made applicable to branch banks if Congress should be unwilling to make any drastic changes in section 5219. The fundamental problem in such case would be, what proportion of the value of the subject taxed, i.e., shares, net income, or dividends, should be taxable in each state and how should that proportion be determined. If bank branches were substantially distinct entities, the tax base would of course be no more difficult of ascertainment than in the case of individual banks. It is submitted, however, that in the absence of limitations and requirements imposed by law regulating the amount of capital to be employed by each branch or of rules requiring the branches to be operated as distinct entities it would be virtually impossible to determine how much capital a branch had in any particular state or what specific net income was earned by any particular branch. The costs and benefits of centralized management by the officers, attorneys and technical experts at the head office obviously could not be distributed among the branches with mathematical accuracy. Some bank branches require an abundance of capital, others require little capital. The fact that the branch is part of a large banking system makes it possible to do business with less capital than if it were an independent bank. Seasonal fluctuations in the capital needs of the branches is undoubtedly an important factor. Likewise the capital needs of the different branches vary according to the financial needs of the various industries located in the different places where the branches do business. The larger part
of the entire capital of the bank is available to any branch if the exigencies of the business require it. Some branches may be located in rich residential districts where deposits are large and loans and discounts small, while other branches may be located in industrial and agricultural districts where loans and discounts are large and deposits small. The "unit of use and management" throughout the whole system, the shifting of capital and deposits as the home office sees fit from one branch to the other would seem to establish the unitary character of the business of a bank with branches in different states. If this be true, it would be necessary and proper to invoke the unit rule to determine the tax base to be applied by each state. The courts are, of course, aware of the inherent difficulties in segregating values for purposes of taxation in this kind of situation, and the general rule seems to be that, unless the state's method of apportionment can be shown by the taxpayer clearly and substantially to reach non-taxable values, the tax will be upheld.\(^8\)

Could the unit rule be applied to the existing methods of taxing national banks? Assuming that a suitable formula could be devised and that in pursuance of Congressional consent each state in which a national bank had branches could tax the shares on that portion of their value fairly attributable to each state, there would be no particular objection to applying the unit rule to the share method if only national banks were allowed to have branches across state lines. But if state banks also have extra-territorial branches, the share method as well as the dividend method would not be satisfactory for the reasons already given. There are, however, apparently no peculiar legal difficulties in the way of applying the net income methods of national bank taxation to the branch bank situation if either state or national banks have branches if a suitable formula under the unit rule is applied.

It seems reasonable to suggest that the enormous difficulties the states have encountered in taxing national banks without interstate branches under the existing methods renders it appropriate in considering the possible adjustments to take care of interstate branches to attempt to find some

means of remedying the existing difficulties also. The present confusion arises out of the requirement that "other moneyed capital" must be taxed at least as high as national bank shares are taxed. The corresponding restriction under the income method requiring comparison of the tax with the taxes levied on other financial, mercantile, manufacturing and business corporations in the state, although so far not discussed by the courts, seems obviously as vague and difficult of operation as the "other moneyed capital" provision. Aside from the vagueness of the present limitations, no doubt the principal difficulty has arisen from the fact that the Supreme Court has found other moneyed capital to include bonds, notes and mortgages in the hands of individual citizens, and the states simply cannot tax these intangibles at a rate as high as what is a reasonable tax upon national bank shares.

The two principal problems in devising a tax for national banks in general are: (1) the scheme must be sufficiently elastic or simple to be adaptable to the very various systems of the several states, and (2) undue discrimination against national banks must be prevented. The specific problems presented by interstate branches are first to find a suitable tax base or general taxable subject, and second, a scheme for allocation among the several states.

Several means of preventing discrimination have been suggested, the merits of which it is not proposed here to discuss. One is a fixed maximum set by Congress without any comparisons, as suggested by Professor Plehn, another the fourteenth amendment as suggested by the Minnesota Tax Commission, and another, a method suggested in the hearings before the Committee on Banking and Currency of the House of Representatives in May, 1930, on a proposed amendment to section 5219, that a federal commission be appointed with power to approve or disapprove state taxes on national banks on the basis of a comparison by the commission of the tax proposed with the other taxes imposed by

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Hearings, Before The Committee on Banking and Currency House of Representatives. Seventy-first Congress. 2d Session on H.R. 7752 (H.R. 12490) p. 85.
the state in question to determine whether or not the bank tax was unreasonably discriminatory.

A general tax base to be suitable must avoid discrimination against national banks without compelling an equal tax on intangibles, must be easy to ascertain and should no doubt include all the taxable values of the bank. So far as concerns legal difficulties there seems to be no particular choice as a general tax base between capital, surplus and undivided profits; net income; gross income; total value of real and personal property, tangible and intangible. It would seem that Congress should permit as many alternative taxable subjects as is reasonably possible for the purpose of enabling the states to adopt alternatives adaptable to their general tax systems and for the purpose of facilitating comparison of national bank taxes with other taxes in the state. If a fair method of allocation is provided in each instance, it would seem that the banks would not be prejudiced by the fact that the states selected different taxable subjects, except, perhaps, with respect to possibly greater accounting burdens and vexation in the preparation of tax returns. Whatever subject a particular state selects, the amount of the tax, we may assume, will be as large as is lawful and if so, it makes no difference on which of several taxable subjects it is levied.

One of the most serious questions in the problem of allocation is whether the federal statute should prescribe the particular ratio by which the taxable values of a bank or branch thereof located within a state are to be determined. Whether or not a particular ratio can be devised which will work with fairness to the banks and to the several states is a question of fact which cannot be answered without a detailed knowledge of the banking business and without knowing also what the nature and extent of branch banking activities will be. If a specific ratio were not prescribed, different ratios would probably be adopted by the different states, and a bank doing business in several states which used different ratios would almost certainly be subjected to discrimination because each state would tend to adopt ratios emphasizing factors favorable to itself, and in passing upon the validity of any particular ratio the courts would, it seems, be almost compelled to consider it independently of those adopted in other states; this certainly has been true in the past and it is difficult to see how it could be otherwise. On
the other hand, it may be that a rigid rule could not be adjusted to meet particular situations and new and changing conditions. If so it would be undesirable specifically to provide in detail the precise ratio that would be permitted. It is not likely that a perfect ratio will ever be devised. A fairly satisfactory compound ratio based on deposits, loans and discounts, value and situs of tangible property and perhaps other factors might be worked out. The fact that national banks now do a trust business may complicate the problem. In a state where the branch does little or no trust business it is doubtful if the taxable values attributable to the trust business done outside the state should be included in the tax base. A similar situation may prevail in other departments of the banking business. It may be that a fair statute would permit the bank to present segregated accounts of business within the state dissociated from business outside the state so far as possible and segregated accounts of the several departments of its business generally. It seems probable that the intricacies and peculiarities of the situation cannot be specifically provided for in so many words in a statute but can only adequately be taken care of by administrative machinery. Because of the dangers of double and excessive taxation the matter cannot safely be left to administrative machinery in each particular state. It is therefore submitted that whether the ratio is prescribed by Congress or left to each state to select, a federal commission, as suggested above, should be created vested with power and discretion to make or approve variations in the ratio to fit particular situations and with power to approve or disapprove of state taxes on national banks on the basis of a comparison by the commission of the tax proposed by any particular state with other taxes imposed by such state and with taxes imposed by other states on such banks. This scheme would at least have the merit of elasticity and quite possibly might be made to work without unreasonable delay or expense.