

March 16, 1927.

OPINION No. 1419.

TAXATION; NATIONAL BANKS;
EFFECT OF ACT OF CONGRESS
OF MARCH 25, 1926:

The provisions of the Act of Congress of March 25, 1926,—amending Section 5219; U. S. R. S.—relating to the taxation of National Banks, applies to Territories as well as to States.

SAME:

The general provisions of the tax laws of the Territory of Hawaii became operative, as against National Banking institutions, upon the enactment by Congress of the Act of March 25, 1926, and no new local legislation is required to subject the property of such banks to taxation.

Harold C. Hill, Esq.,
Income Tax Assessor,
First Taxation Division,
Honolulu, T. H.

Dear Sir:

After a careful study of the recent Federal Act which in effect removes the prior exemption of national banks, with respect to taxation, I beg to advise you that the effect of the passage of this law is to permit the general taxation statutes of this Territory to apply to national banking institutions and their property without the need of any further local legislation. This will be the ruling of this department in view of a recent Federal court decision on the precise point presented. Personally, I would have some measure of doubt whether additional legislation might not be called for; but in view of the fact that a Federal court has ex-

pressly decided the matter, it is incumbent upon me to invoke that decision as controlling.

The holding in the case cited is that it is immaterial whether the income tax on dividends of national bank shares are valid at the time of the enactment of such tax as they are validated by the amendment. In other words, the old legislation becomes operative and no new legislation is needed. *First National Bank v. Buder*, 8 Fed. 2nd, 883, 885.

See also:

Motion for leave to file petition for mandamus denied in *Re Buder*, 271 U. S. 461, 70 L. Ed. 1036.

The same principle is announced relating to a different subject in *Wilkerson v. Rahrer*, 140 U. S. 545, 35 L. Ed. 572-578. In that case the following language was used:

“This is not a case of a law enacted in the unauthorized exercise of power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the Act of Congress. That Act in terms removed the obstacle, and we perceive no adequate grounds for adjudging that a re-enactment of the State law was required before it could have the effect upon imported which it had always had upon domestic property.”

The preliminary question which required determination was whether or not the word “State” in said Act (i. e., Act of March 25, 1926) relating to the taxation of national banks, should be construed to mean “Territories” as well. This question has been answered in the affirmative by the case of *Talbott v. Silver Bow County*, 139 U. S. 438, 35 L. Ed. 210.

I herewith return your copy of the Congressional Act submitted with your request for my opinion.

Very truly yours,

WILLIAM B. LYMER,
Attorney General.