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# TAXES ON NATIONAL BANKS

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HEARING  
BEFORE THE  
COMMITTEE ON BANKING AND CURRENCY  
UNITED STATES SENATE  
NINETY-FIRST CONGRESS  
FIRST SESSION  
ON  
**S. 2065, S. 2906, and H.R. 7491**  
TO CLARIFY THE LIABILITY OF NATIONAL BANKS FOR  
CERTAIN TAXES

SEPTEMBER 24, 1969

Printed for the use of the  
Committee on Banking and Currency

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TAXES ON NATIONAL BANKS

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## TAXES ON NATIONAL BANKS

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WEDNESDAY, SEPTEMBER 24, 1969

U.S. SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
Washington, D.C.

The committee convened, pursuant to notice, at 10:05 a.m., in room 5302, New Senate Office Building, Senator John Sparkman, chairman of the committee, presiding.

The CHAIRMAN. Let the committee come to order, please.

We hope some additional Senators will be coming in. Some of them have indicated that they will be here. Our Republican friends are in a caucus right now, and I expect some of them here after that caucus has been finished. But we have to begin now. The Senate meets at 11 o'clock.

Today we hold hearings on the legislative proposals which would allow State governments to treat national banks the same as State banks for State taxation purposes.

I am very glad to have with us this morning Senator Holland. We appreciate your coming by, Senator Holland, and will be glad to hear from you.

### STATEMENT OF SPESSARD L. HOLLAND, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HOLLAND. Thank you very much, Mr. Chairman.

I first express to you my appreciation for setting down this early hearing on the legislation before the committee this morning to clarify the liability of national banks for certain State and local taxes.

The enactment of such a measure will mean, insofar as my State of Florida is concerned, some \$25 to \$27 million in annual revenue that has been lost due to action of the Supreme Court early this year in affirming an order of the District Court for the Northern District of Florida in the case of *Dickinson, Comptroller v. First National Bank of Homestead, et al.*, No. 471.

The pertinent provision of the affirmed order reads as follows. This is from the order of the district court which was affirmed finally by the U.S. Supreme Court.

The CHAIRMAN. Wait a minute. Did you say it was later affirmed by the Supreme Court?

Senator HOLLAND. Yes. The appeal was dismissed.

The CHAIRMAN. Yes.

Senator HOLLAND. " \* \* \* the defendants jointly and severally are restrained and enjoined from levying, assessing or collection \* \* \* (b) intangible personal property taxes on mortgages owned and recorded by plaintiffs, (c) documentary stamp taxes on notes, mortgages

or other evidences of debt held by plaintiffs, and on shares of stock and capital debentures issued by plaintiffs.”

Those were the words, Mr. Chairman, of the decree which enjoined the collection by the State of certain of its taxes imposed by act of the Florida Legislature.

This order, in essence, set out that national banks, as Federal instrumentalities, are now immune from the above-listed taxes as they are not within the purview of 12 U.S.C., section 548 which I ask to be inserted in the record at this point.

That is a long section, Mr. Chairman, and I am sure you are familiar with it, but I think it should appear in the record.

The CHAIRMAN. That will be done.

(The document referred to follows:)

#### TITLE 12—UNITED STATES CODE, NATIONAL BANK SHARES

Sec. 548. State taxation: 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 association 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 and 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 be at a greater rate than is assessed upon other moneyed 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 employed or engaged in the banking or investment business and representing 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 financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations 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, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, 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 corporations.

(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 income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State shall be taxed by the taxing district or by the State where the association is located and not elsewhere: and such association shall make return of such shares and pay the tax thereon as agent of such nonresident 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 collecting thereof, to the extent that such tax would be valid under said section.

Senator HOLLAND. Section 192.54, Florida Statutes, reads as follows:

Banks and trust companies; exemption from taxation, etc.—All banks, trust companies and Morris plan banks, now or hereafter chartered under the laws of the State, shall have the same immunity from state and local taxation that national banking associations have from time to time under the statutes of the United States.

Mr. Chairman, as a result of the Supreme Court's affirmation of the order of the district court, the State will suffer a loss of some \$20 million annually in revenue from both national and State banks.

In other words, the State statute gives the same immunities to State banks that by Federal law are extended to the national banks so as to place them in an equal competitive position.

More recently, the legislature of the State of Florida in passing a new omnibus savings and loan act included a section that, under the Court's action, also exempts savings and loan associations from taxes with the resultant additional loss in State revenue of from \$5 to \$7 million annually.

The section of that act, which became effective June 2, 1969, reads as follows. And I ask that that section be inserted in the record which shows that the same quality in taxation was extended by Florida legislative act to the savings and loan associations as had been extended earlier to State-chartered banks when national banks were excluded by Federal law from certain forms of taxation. That now relates also to State banks and to savings and loan associations.

The CHAIRMAN. That will be inserted in the record.

(The section referred to follows:)

"Section 52. Taxes.—No tax may be imposed by the State or any of its political subdivisions on any savings and loan association or its franchise, surplus, deposits, assets, reserves, loans or income which is greater than the least onerous imposed by that State on any other financial institution."

Senator HOLLAND. Mr. Chairman, other decisions of the Supreme Court affect other States as well as the State of Florida with resultant loss of considerable revenue. For example, in the case of *First Agriculture National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339 (1968) the Court held that national banks in Massachusetts did not have to pay State sales and use taxes because these methods of taxation were not included in section 5219 of the Revised Statutes (12 U.S.C. 548)—which has already been included in this record—which enumerated the ways in which States can tax national banks.

It is my understanding that as a result of the decision of the Supreme Court, national banks in the State of California do not have to pay taxes on motor vehicles. I am sure that others testifying will bring out the fact that the decision affects various other States.

Mr. Chairman, the seriousness of the situation was brought to my attention by a resolution adopted by the Cabinet of the State of Florida on February 4, 1969, urging the Congress of the United States to amend title 12, United States Code, section 548.

I ask that copies of this resolution and of a subsequent Florida Senate Memorial No. 504, filed in the Office of the Secretary of State on May 27, 1969, urging the Congress of the United States to adopt legislation introduced by the Florida Delegation on this matter, be included in the record as a part of my remarks.

The CHAIRMAN. That will be done.

(The documents referred to follow:)

RESOLUTION

Whereas, a three-judge United States District Court for the Northern District of Florida, in the case of *The First National Bank of Homestead and Okaloosa National Bank at Niceville, v. Fred O. Dickinson, Jr., Comptroller of the State of Florida, and The Florida Revenue Commission and J. Ed Straughn, Director of Revenue, State of Florida*, enjoined the above-named Defendants from levying, assessing or collecting (a) sales and use taxes levied on goods, services and rentals purchased by Plaintiffs, (b) intangible personal property taxes on mortgages owned and recorded by Plaintiffs, and (c) documentary stamp taxes on notes, mortgages, or other evidences of debt held by Plaintiffs, and on shares of stock and capital debentures issued by Plaintiffs, and

Whereas, the Comptroller of the State of Florida requested Honorable Earl Faircloth, Attorney General of the State of Florida, to prosecute an appeal of the decision of the United States District Court, which appeal was filed in the United States Supreme Court, and

Whereas, the United States Supreme Court, in a memorandum decision on January 20, 1969, affirmed the judgment of the United States District for the Northern District of Florida, which decision is now subject to a Petition for Rehearing filed by the Attorney General of the State of Florida at the request of the Comptroller of the State of Florida, and

Whereas, the ultimate decision of the United States Supreme Court, should it affirm the United States District Court, will amount to a total revenue loss to the State of Florida of millions of dollars, and

Whereas, the National Association of Tax Administrators has prepared a proposed amendment to Title 12, U.S.C., Section 548, which would retain the nondiscrimination provisions in the present Act, thus assuring national banking associations equality on the state level with state chartered banks, but would make national banking associations subject to any other generally applicable state and local taxes.

Now, therefore, be it resolved by the Cabinet of the State of Florida, Tallahassee, Florida, that the Congress of the United States be urged to adopt the following amendment to Title 12, U.S.C., Section 548:

§548. State and local taxation.

1. (a) The shares of national banking associations shall not be taxed by any State or local subdivision thereof at a greater rate than is assessed upon other moneyed 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 employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(b) The shares of any national banking association owned by nonresidents of any State may be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

(c) If a State or political subdivision thereof imposes a tax on or according to or measured by the net income of an association. The taxing jurisdiction 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 financial corporations nor higher than the highest of the rates assessed by the taxing jurisdiction upon mercantile, manufacturing, and business corporations doing business within its limits: *Provided, however*, That a State or political subdivision thereof which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, 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 corporations nor higher than the rate assessed upon the net income from other moneyed capital.

2. Subject to the limitations imposed by this section, a state or local subdivision thereof may tax national banking associations, their property, franchises, capital, reserves, surplus, loans, income and receipts to the same extent as other corporations, engaged in business within the State or political subdivision thereof, and their property, franchises, capital, reserves, surplus, loans, income and receipts, are taxed.

Be it further resolved that a copy of this Resolution be caused to be transcribed in the Minutes of the Cabinet of the State of Florida to constitute a permanent record, and that the Cabinet hereby appoints Honorable Fred O. Dickinson, Jr., Comptroller of the State of Florida, to deliver a copy of said Resolution to the Congressional Delegation from the State of Florida and to the appropriate officers of the National Association of Tax Administrators, Chicago, Illinois.

Passed and adopted by the Cabinet of the State of Florida on this 4th day of February, 1969.

CLAUDE R. KIRK, JR.  
*Governor.*

TOM ADAMS,  
*Secretary of State.*

EARL FAIRCLOTH,  
*Attorney General.*

FRED O. DICKINSON, JR.,  
*Comptroller.*

BROWARD WILLIAMS,  
*Treasurer.*

FLOYD T. CHRISTIAN,  
*Commissioner of Education.*

DOYLE CONNER,  
*Commissioner of Agriculture.*

SENATE MEMORIAL No. 504

A memorial to the Congress of the United States to amend Title 12, U.S. Code, Section 548, to allow the State of Florida to collect sales and use taxes, documentary stamp taxes, and intangible taxes from national banks.

Whereas, a three-judge United States District Court for the Northern District of Florida, in the case of *The First National Bank of Homestead and Okaloosa National Bank at Niceville, v. Fred O. Dickinson, Jr., Comptroller of the State of Florida, and The Florida Revenue Commission and J. Ed Straughn, Director of Revenue, State of Florida*, enjoined the above-named Defendants from levying, assessing or collecting (a) sales and use taxes levied on goods, services and rentals purchased by Plaintiffs, (b) intangible personal property taxes on mortgages owned and recorded by Plaintiffs, and (c) documentary stamp taxes on notes, mortgages, or other evidence of debt held by Plaintiffs, and on shares of stock and capital debentures issued by Plaintiffs, and

Whereas, the Comptroller of the State of Florida requested Honorable Earl Faircloth, Attorney General of the State of Florida, to prosecute an appeal of the decision of the United States District Court, which appeal was filed in the United States Supreme Court, and

Whereas, the United States Supreme Court, in a memorandum decision on January 20, 1969, affirmed the judgment of the United States District Court for the Northern District of Florida, and

Whereas, a petition for rehearing was filed by the Attorney General of the State of Florida, at the request of the Comptroller of the State of Florida, which petition was denied by the United States Supreme Court on February 25, 1969, and

Whereas, the Comptroller of the State of Florida requested an opinion from the Attorney General of the State of Florida as to the applicability of the decision in the case of *Dickinson, Comptroller, v. First National Bank of Homestead* to state banks and received on March 14, 1969, the Attorney General's opinion to the effect that "by virtue of Section 192.54, Florida Statutes, State of Florida chartered 'banks, trust companies and Morris Plan banks' enjoy this same immunity," and

Whereas, the effect of the decision of the United States Supreme Court will cost the State of Florida millions of dollars annually in total revenue at a time when Florida is facing record-breaking requests for funds to support public services, and

Whereas, the Directors of the Florida Banker's Association have urged their congressional representatives to close up a loophole which exempts them from paying state sales taxes, documentary stamp taxes, and intangible property taxes, and

Whereas, the Cabinet of the State of Florida on February 4, 1969, unanimously adopted a resolution to be delivered by the Comptroller of Florida to the Congressional delegation of Florida, urging Congress to act to amend Title 12, U.S. Code, Section 548, and

Whereas, a bill entitled H.R. 9794 was offered in Congress on April 1, 1969, by the Florida delegation, to clarify the liability of national banks for certain taxes, as follows: "sales tax, use tax, personal property taxes, intangible personal property taxes, and documentary stamp taxes," and

Whereas, the Legislature of the State of Florida is acutely aware and concerned with the need for additional revenues necessary to finance the ever increasing responsibilities and needs of a fast growing state, and

Whereas, the loss of any tax revenue would seriously affect the ability of the state to meet its growing financial requirements and commitments, and

Whereas, immediate action is urgently needed so as to clearly allow the levy and collection of sales and use taxes, documentary stamp taxes, and intangible taxes from national banks, NOW, THEREFORE, Be It Resolved by the Legislature of the State of Florida :

That the Congress of the United States is hereby requested to adopt the bill introduced by the Florida delegation in the House of Representatives which provides as follows: "A national bank has no immunity from any sales tax, use tax, personal property taxes, intangible personal property taxes, and documentary stamp taxes which it would be required to pay if it were a bank chartered under the laws of the State or other jurisdiction within which its principal office is located."

Be it further resolved that copies of this memorial be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Filed in office Secretary of State May 27, 1969.

*I, Tom Adams, Secretary of State of the State of Florida, Do Hereby Certify That the above and foregoing is a true and correct copy of Senate Memorial No. 504, adopted by the Florida Legislature, Regular Session 1969, as shown by the records of this office.*

*Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the 29th day of May A.D. 1969.*

TOM ADAMS, *Secretary of State.*

Senator HOLLAND. Mr. Chairman, on May 5, 1969, I introduced S. 2065 as drafted by the Senate Legislative Counsel on information received from the comptroller of the State of Florida and also based on approval by the counsel for the State Bankers Association of Florida.

Subsequent discussions with the comptroller of the State of Florida and other banking authorities from my State resulted in my introducing S. 2906 on September 16, 1969, to more clearly define the problem as it relates to Florida's sales and use taxes, intangible personal property tax, and documentary stamp tax, and to more directly meet the problems of other States of which we have knowledge.

The intent of this later bill was to cover all taxes enjoined against in the *Homestead* case and, in addition, motor vehicle taxes.

Mr. Chairman, others that will testify will cover the technicalities of the pending legislation. I, therefore, will not attempt to cover the same ground. I would like to say to the committee, however, that I am not wedded to any specific approach to meeting the problem that confronts Florida and other States as a result of the Supreme Court's opinions so long as early action is taken to clearly give to the States the right to collect certain taxes from national banking institutions.

I might add, Mr. Chairman, the proposed legislation I introduced has the full support of the Florida Bankers Association and the Florida Savings and Loan League.

I have also received numerous letters from various individual banking and savings and loan institutions fully endorsing legislation to clarify the tax situation as they feel very strongly that they are a part of the communities they serve and, as a part of such communities, they desire to support the cost of governmental bodies by contributing their fair share of the expense through taxation.

I have not received any correspondence in opposition to the intent of the legislation, which I think is a highly significant fact and, I wish to say, is most complimentary to the many financial institutions in Florida.

Mr. Chairman, I strongly urge the committee to give early and favorable consideration to the pending legislation.

Mr. Chairman, before introducing the two gentlemen who will succeed me, I want to give to the committee this information. The reason for my introduction of the second act which I have mentioned was this:

I had a long conference in my office with Mr. Dickinson, the comptroller of the State of Florida, and he is the constitutional officer charged with the duty of collecting State taxes; with his counsel, Mr. Webb; with Mr. Senterfitt, the counsel of the Florida State Bankers Association; with Mr. McKethan, one of our most highly respected bankers in Florida and the chairman, as I understand it, of the committee of the State Bankers Association which is handling this matter; and with Mr. Matt Hale who is well known to you gentlemen as he served as solicitor for this committee for some years not long ago.

As a result of that conference and as a result of the points indicated there, I requested that group of lawyers to draft legislation which was the second act that I introduced and which I understood was the consensus among those lawyers as to a better method of meeting all points raised by the *Homestead Bank* decision in the State of Florida and also meeting two additional matters:

One, taxation of tangible personal property, which, of course, goes to make up some of the value of the banking institutions' property. They were already allowed to tax the real estate and the building under Federal legislation.

And also to meet the problem arising, as I understand, or as I understood from Mr. Hale, arising in the State of California, perhaps in other States, by which motor vehicle taxes were not permitted to be collected in the State of California by reason of the fact that there was no mention of the inclusion of that particular form of taxes within the Federal statute which we are seeking now to amend and enlarge.

Now, Mr. Chairman, I want to make it very clear that since I filed that second bill, some disagreement which I regard as minor has arisen among very able counsel in Florida on this point.

I believe they all agree that this second act covers everything that is embraced within the purview of the *Homestead Bank* decision and, in addition, the two matters which I mentioned awhile ago which were not covered by that decision—namely, the taxation of tangible personal property and of motor vehicle taxes.

But there is some opinion, able opinion, in Florida that the second act doesn't go as far as the first one did in covering the assessment and collection of all intangible taxes against banking institutions.

Apparently the question involved is not at this time an active question in Florida because I have been advised this morning that such property of banks as bonds and stocks acquired by the deposits in the banks, which, of course, are, the deposits as a whole, taxed as against the depositors under our State law—that those particular securities are not now administratively taxed under the Florida law.

I am not advised as to whether the Florida law is broad enough to cover such taxation, but I am advised by the administration such taxation is not involved.

There is an opinion in Florida to the effect that if desired by Florida or any other State such taxation might be also exempted by Federal statute from the protected fields which may not be taxed by States.

I mention this question solely because that question has arisen.

My sole effort is to solve this emergency problem in my State which as I have already said affects the collection this year of some \$25 to \$27 million of State revenue and therefore becomes a serious matter to my State's fiscal position.

I am very hopeful that whatever legislation may be reported out may be speedily passed so that the State may collect taxes for this year for the reasons just stated.

Mr. Chairman, while I am quite willing to respond to any questions, I would like first to introduce a letter addressed to me on September 19 by Mr. Dickinson, the State Comptroller of Florida, which I ask to have incorporated in the record.

And I want the record to show that he is the statewide-elected constitutional officer who as a member of the Cabinet helps handle State matters generally but who specifically has the duty of collection of State taxes.

I hope this letter may be introduced in the record.

The CHAIRMAN. That letter will be inserted in the record.

(The letter referred to and other material submitted by Senator Holland follow:)

OFFICE OF COMPTROLLER,  
STATE OF FLORIDA,  
Tallahassee, September 19, 1969.

HON. SPESSARD L. HOLLAND,  
U.S. Senate,  
Senate Office Building, Washington, D.C.

DEAR SENATOR HOLLAND: As Comptroller of Florida and by constitutional provision the chief fiscal officer of the State of Florida, I am pleased to present this information in support of the passage of S. 2906, or any legislation that is introduced for the purpose of remedying the effects of the Supreme Court decision in the case of *Fred O. Dickinson, Jr., Comptroller of Florida, v. First National Bank of Homestead, et al.* U.S. 21 L. Ed. 2d 134, 89 S. Ct. 685 (Jan. 20, 1969), petition for rehearing denied on March 3, 1969 22 L. Ed. 2d 133, 89 S. Ct. 988. In substance, the Supreme Court affirmed the decision of the three judge district court, which held that national banks are immune in the State of Florida from the payment of sales taxes, use taxes, intangible personal property taxes, and documentary stamp taxes.

As a direct result of the Supreme Court decision in the *Dickinson* case, the State of Florida will suffer a severe loss of revenue by virtue of both refunds of subject taxes collected in the past three years and loss of taxes for the present biennium. There is a projected loss for the next biennium in excess of \$20 million. As of this date, 260 of Florida's 464 banks have applied for and received a refund of sales tax in the amount of \$1,939,420.30. A projected loss for the sales

and use tax alone is in excess of \$4,800,000. The total collection of documentary stamp tax was \$25,000,000 for the fiscal period ending June 30, 1966.

The state documentary stamp tax collections for the month of August, 1968 was \$2,557,499.45 and for August 1969, \$2,349,668.65 which represents a loss of \$207,830.80. More severe losses are anticipated for the intangible personal property tax fund although data is not now available in dollar amounts. Revenue for the past fiscal year totaled \$30 million in that account.

The Florida Legislature has passed a memorial resolution to Congress wherein it has requested that the Congress of the United States take immediate action to remedy the effects of this decision. Further, the Governor and Cabinet of Florida has urged, through the passing of a resolution, that Congress similarly act. As the designated spokesman for the Governor and Cabinet of Florida, I have presented this resolution to the Florida congressional delegation.

In addition, the Florida Bankers Association has passed strong resolutions for this corrective legislation. Also, a number of individual banks under the supervision of the Comptroller have notified this office that by official action of their institutions, they will not ask for refunds of these tax payments and that they will continue to pay these taxes.

Due to the type of taxes involved in this matter, which are imposed and collected on a daily basis, as opposed to ad valorem taxes, which are collected on the basis of a determination of value as of a certain date, it becomes imperative that this legislation be passed at the earliest possible date. Of course, I speak only for the State of Florida, but, and as a member of the National Association of Tax Administrators, I am informed that all the States in the Union are experiencing the same difficulty in varying degrees as Florida at this time.

Accordingly, I respectfully urge the Senate Committee on Banking and Currency to take such steps as your deliberations reflect and send to the U.S. Senate remedial legislation at the earliest possible date.

Please be assured that my office and I extend to you our full cooperation and offer every assistance in any way possible. If any additional information is desired, please feel free to call upon us.

With personal regards, I am

Sincerely,

FRED O. DICKINSON, Jr.,  
*Comptroller of Florida.*

[From the St. Petersburg Times, Sept. 4, 1969]

#### FUROR ON SAVINGS AND LOAN EXEMPTION MAY SIGNIFY NOTHING

The furor over a tax exemption granted to savings and loan associations may signify nothing, Senate President John Mathews said yesterday.

Mathews, in Pinellas yesterday wooing support for his expected governor's campaign, said he's confident Congress will remove the state tax exemption granted national banks.

That would render moot the question of whether savings and loan associations should get a similar tax break.

He also said he believed a federal court test would render invalid any action the Legislature took on taxing savings and loans.

The U.S. Supreme Court last January ruled that national banks are exempt from state taxes. The ruling had the same effect on state banks.

Then during the past legislative session a bill passed stating that savings and loan associations should receive the same tax treatment as banks.

The bill had the effect of granting tax exemption to the savings and loans, something most legislators professed not to have known when that effect was disclosed last week.

Administration Secretary W. Samuel Tucker has predicted the exemption will mean a loss of \$5-million or \$15-million in revenue the state had counted on. That's brought calls for a special legislative session to eliminate the exemption.

But Mathews indicated yesterday he won't look favorably on a session. If the exemption were removed, Mathews said he believes the savings and loans could successfully sue for the same tax treatment as the banks.

Senator HOLLAND. There was a question about the nature of the Supreme Court action. And I ask leave to introduce the per curiam decision of the Supreme Court in the case which I have mentioned,

*Dickinson, Comptroller v. First National Bank of Homestead, et al.*, decided at the October term of the U.S. Supreme Court in 1968.

The CHAIRMAN. That, too, will be inserted in the record. (The decision referred to is reprinted as follows:)

SUPREME COURT OF THE UNITED STATES

October Term, 1968

DICKINSON, COMPTROLLER

v.

FIRST NATIONAL BANK OF HOMESTEAD, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF FLORIDA.

No. 741. Decided January 20, 1969.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.

MR. JUSTICE STEWART is of the opinion that probable jurisdiction should be noted.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

Senator HOLLAND. Mr. Chairman, with your permission, I would now like to introduce to the committee Mr. Alfred A. McKethan, president of the Hernando State Bank, Brooksville, Fla., my close personal friend of many years standing and a highly respected citizen of our State, who will testify on behalf of the Florida Bankers Association.

And to save the committee's time I would also like to introduce Hon. Ralph D. Turlington, former Speaker of the House of Representatives of the State legislature and presently Chairman of the House Appropriations Committee, an able legislator, my longtime friend, deeply interested in the legislation now before your committee, who will also make a brief statement.

I am glad to present first Mr. McKethan.

The CHAIRMAN. Come around, Mr. McKethan.

Senator HOLLAND. He has with him the counsel for the State Bankers Association, and I ask that he be allowed to sit with him.

The CHAIRMAN. Yes indeed.

Senator HOLLAND. Mr. Chairman, I am not trying to run away from questions of the committee if the committee has some. I am very glad to respond at this time before Mr. McKethan begins his brief statement. Or I can come back later if the committee wishes.

The CHAIRMAN. As you wish. But I wanted to ask Mr. Turlington—Is he at the table now?

Mr. TURLINGTON. Yes.

Senator HOLLAND. Mr. Turlington is here but they will testify separately and may have slightly different points of view. But we are all interested in one objection, and that is having this legislation as it comes from this committee be regarded as emergency legislation, because it does relate to the fiscal condition of my State and I am sure in some degree—and maybe in as great or greater degrees; I am not able to say—to the fiscal situation of others of the 50 sovereign States.

The CHAIRMAN. You introduced your bill on what date?

Senator HOLLAND. I introduced my first bill in May.

The CHAIRMAN. No, I'm talking about this last bill.

Senator HOLLAND. The last bill on September 16th. And I want it to be considered as simply in my opinion, based upon the advice of the attorneys whom I have mentioned who drafted that, a better method of dealing with the emergency situation now existing in Florida. And I hope the committee will not only so find but will also find that it better deals with the situation in other States. Because I am not at all unmindful of the fact that other States are interested and that the committee very properly is interested in more States than just the State of Florida.

We are very anxious for legislation to be passed this year without fail, Mr. Chairman, and I think that I have made that point completely clear.

The CHAIRMAN. If you have looked at our list of witnesses, I am sure you will see that we have them from several different parts of the country, to bear out what you have just said.

Senator HOLLAND. I tried to take that into consideration by having Mr. Matt Hale or asking Mr. Matt Hale to sit in with us at the conference which I have already mentioned and asking him to cooperate.

I believe he is here as a witness, and he can state his degree of cooperation—with which I am unfamiliar because I didn't sit in the conference of lawyers. I happened to be busy either in committee or on the Senate floor in such a way that while I once was regarded as a lawyer I wasn't able to participate in that particular conference at that particular time.

The CHAIRMAN. Well, thank you very much, Senator Holland.

Senator HOLLAND. Mr. McKethan.

The CHAIRMAN. Mr. McKethan, we will be very glad to hear from you.

I believe we have a copy of your statement. The statement of each witness will be printed in full in the record. You may treat it as you see fit, read it to us, summarize it, discuss it, however you want to present it.

At this point I will insert in the record copies of the bills we are considering.

(The bills are reprinted as follows:)

91ST CONGRESS  
1ST SESSION

## S. 2906

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### IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 1969

Mr. HOLLAND introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

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## A BILL

To clarify the liability of national banks for certain taxes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. In addition to any other tax which a na-  
4 tional bank is authorized to pay under any other law, a State  
5 or any political subdivision thereof is authorized to impose  
6 on a national bank any sales taxes or use taxes complemen-  
7 tary thereto, any taxes on tangible personal property (not  
8 including cash or currency), any taxes (including documen-  
9 tary stamp taxes) on the execution, delivery, or recordation  
10 of documents, or any license, registration, transfer, excise, or  
11 other fees or taxes imposed on the ownership, use or transfer

1 of motor vehicles, which such national bank would be re-  
 2 quired to pay if it were a bank chartered under the laws of  
 3 the State or other jurisdiction within which its principal  
 4 office is located.

# AN ACT

To clarify the liability of national banks for certain taxes.  
 1. Be it enacted by the Senate and House of Representatives  
 2 of the United States of America in Congress assembled,  
 3 § 1. Amendment of section 5219 of the Revised Statutes  
 4 (a) Section 5219 of the Revised Statutes (12 U.S.C.  
 5 5218) is amended to read:  
 6 "Sec. 5219. For the purpose of any tax law enacted  
 7 under authority of the United States or any State, a national  
 8 bank shall be deemed to be a bank organized and existing  
 9 under the laws of the State or other jurisdiction within which  
 10 its principal office is located."  
 11 (b) The amendment made by subsection (a) becomes

91ST CONGRESS  
1ST SESSION

# H. R. 7491

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IN THE SENATE OF THE UNITED STATES

JULY 18, 1969

Read twice and referred to the Committee on Banking and Currency

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## AN ACT

To clarify the liability of national banks for certain taxes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **§ 1. Amendment of section 5219 of the Revised Statutes**

4 (a) Section 5219 of the Revised Statutes (12 U.S.C.  
5 548) is amended to read:

6 "SEC. 5219. For the purposes of any tax law enacted  
7 under authority of the United States or any State, a national  
8 bank shall be deemed to be a bank organized and existing  
9 under the laws of the State or other jurisdiction within which  
10 its principal office is located."

11 (b) The amendment made by subsection (a) becomes



FEDERAL DEPOSIT INSURANCE CORPORATION,  
September 26, 1969.

HON. JOHN SPARKMAN,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Federal Deposit Insurance Corporation appreciates the opportunity to submit to the Senate Committee on Banking and Currency its views regarding S. 2065 and H.R. 7491, 91st Congress, bills "To clarify the liability of national banks for certain taxes."

As we understand it, both bills are designed to deal with a situation that has arisen in the taxation of national banks and state-chartered banks as a result of recent decisions of the United States Supreme Court. In *First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339 (1968) and *Dickinson v. First National Bank of Homestead*, 37 U.S.L.W. 3323 (U.S. Mar. 3, 1969), the decisions of the Court limited the authority of the states and their political subdivisions to impose certain taxes on national banks.

Under the provisions of S. 2065 as introduced by Senator Holland on May 5, 1969, a national bank would have no immunity from any sales tax, use tax, personal property taxes, intangible personal property taxes, or documentary stamp taxes that it would be required to pay if it were a bank chartered under the laws of the state or other jurisdiction within which its principal office is located. H.R. 7491 as passed by the House of Representatives on July 17, 1969, would, on the other hand, subject a national bank to taxation under any tax law enacted under authority of the United States or any state to the same extent that a bank organized and existing under the laws of the state or other jurisdiction within which the national bank's principal office is located is subject to taxes imposed by federal and state taxing authorities.

There seems to be fairly general agreement that an inequitable situation now exists with respect to taxation of state and national banks. The agreement, however, extends only to the ailment and not to the cure. Various proposals advanced have differed not only with respect to the types of taxes that could be imposed but also with respect to the extent of state and local taxation of national banks.

The Corporation has consistently supported the principle of parity between state and national banks with respect to state and local taxation. Consequently, we favor the enactment of legislation that would achieve a greater degree of parity than now exists with respect to taxation of state and national banks.

The Department of the Treasury is recommending substitute language to H.R. 7491 as passed by the House of Representatives which is designed to subject national banks to taxes imposed only by the states in which their principal offices are located. Since the Department of the Treasury proposals represent a step in the direction of greater parity than at present, we would have no objection to their enactment.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this letter for consideration by your Committee.

Sincerely,

K. A. RANDALL, *Chairman.*

The CHAIRMAN. Mr. McKethan, we are glad to have you, sir.

**STATEMENT OF ALFRED A. MCKETHAN, ON BEHALF OF THE  
FLORIDA BANKERS ASSOCIATION, ACCOMPANIED BY DONALD T.  
SENTERFITT, GENERAL COUNSEL**

Mr. MCKETHAN. Mr. Chairman, members of the committee, I am Alfred A. McKethan, president of the Hernando State Bank, Brooksville, Fla., a past president of the Florida Bankers Association, and currently the chairman of its legislative division.

Mr. Chairman, we of Florida are so appreciative of the efforts of our senior Senator, Senator Holland, a dear friend of long standing, being here today to present our situation from Florida, and particularly appreciate my dear friend presenting me to your committee, sir.

The Florida Bankers Association is pleased to be able to express its views on the proposals now before this committee to clarify the liability of national banks for certain taxes, and in particular, S. 2906, which was introduced by Florida's distinguished senior Senator, Spessard L. Holland.

Florida has a tax equality statute as between State and national banks, which provides that a State-chartered bank is not required to pay any tax that a national bank is not required to pay. By another section of the statutes, savings and loan associations in Florida are afforded similar equality vis-a-vis commercial banks.

It follows, therefore, that clarification of the liability of national banks for the payment of State and local taxes is a matter of interest to the entire banking and savings and loan industries of Florida.

The question of the reach of State and local taxing authorities in respect of national banks has been drawn to the forefront of public attention by recent court decisions holding that national banks are not liable for the payment of State and local sales taxes (*First Agricultural National Bank of Berkshire County v. State Tax Commission*, 322 U.S. 339 (1968)), documentary stamp taxes, and single-incident transactional type taxes involved in the execution and recording of mortgages on real estate. (*Dickinson v. First National Bank of Homestead*, 393 U.S. 405 (1969)) (memorandum decision affirming three-judge district court decision reported at 291 F. Supp. 855 (1968)).

Prior to the more recent of these cases, the national banks in Florida had been voluntarily paying the State sales and use taxes, documentary stamp taxes and the transactional type taxes involved in the execution and recording of mortgages on real estate, as well as motor vehicle license and registration fees and taxes, the same as State-chartered banks.

The Florida Bankers Association reacted promptly to the *Homestead* decision by memorializing the entire Florida congressional delegation to consider appropriate legislation which would restore to the States the very substantial amount of revenues from the taxes enumerated in the *Homestead* decision.

Senator Holland's bill (S. 2906) reflects the recognition of commercial banks in Florida of the propriety of their continued assumption of a fair proportion of the cost of State and local government by payment of these nondiscriminatory State and local taxes.

We have nothing but commendation for our entire delegation in Congress for their prompt responses to the revenue needs of Florida and the other States, as well as to what we feel is the rule of reason approach of the commercial banking industry in Florida.

We strongly feel that the approach of S. 2906 represents a splendid accommodation of the dual objectives of brief simplicity and adequacy of coverage. Its brevity and simplicity are obvious. Its adequacy of coverage is apparent when it is noted that it restores to the States revenues from all the taxes concerning which any question has been raised by the States in the recent court cases.

By its enumerative cast, Senator Holland's bill (S. 2906) avoids the complications and pitfalls of the perplexing problem of home State and multi-State taxation. The taxes covered by this bill are capable of being imposed by any State or political subdivision having jurisdiction, whether or not it is the State within which the principal office of the bank is located.

The nature of these taxes is such that when so applied, the possibility of discriminatory duplication is minimized.

Legislation which would generalize and broaden the authorization to the States would not only require certain essential exceptions to the blanket authorization, but must almost necessarily treat separately the home State and foreign State aspects.

There is nothing wrong with such an approach, and an excellent example of it is embodied in the proposal of the American Bankers Association which has been submitted to the chairman of this committee and which appears in the Congressional Record for September 17, 1969 (see p. 66).

Reference to the ABA proposal illustrates our point as to the relative length and complexity of the two methods for reaching a similar solution to the problem.

The ABA proposal does have the possible merit of broadening the base of permitted areas of taxation, and we believe that it does conform to appropriate standards of fairness and equality. We feel, however, that the competitive equity of the ABA proposal could be improved by the addition, in its proposed new subparagraph (6), dealing with foreign State taxation, the additional grant of authority to foreign States to impose sales and use taxes complementary thereto with respect to the sale of intangibles, and taxes on the execution, delivery or recordation of documents and other similar single-incident transactions.

Both the ABA proposal and S. 2906 have the additional virtue of consistency with the complex and involved constitutional and statutory bank tax structure which the States have developed over the past many years.

Through those existing structures, aided by the authorizations granted in either of these proposals, the States will have the means for adequately taxing national banks in relation to State-chartered banks, and adequately taxing all banks in relation to other business corporations, without necessity for extensive restructuring of their tax laws.

The Florida Bankers Association strongly opposes the treatment of this important subject by H.R. 7491. In our judgment, the simplicity of that bill is more apparent than real and that it would, in fact, provide a medium for widely varying results in different States. Its total lack of any restrictive safeguards creates the possibility for double taxation and other discriminatory tax treatment of commercial banks.

Basic to our opposition to the approach of H.R. 7491 is the contention that commercial banks are distinctly different from other business corporations. Commercial banks have a vital and unique position in the governmental and private monetary economy. Only they provide instantaneously transferable liabilities in the form of checking accounts which now provide the overwhelmingly largest part of the monetary stock of the country.

It is essential, therefore, that an appropriate degree of caution be exercised in subjecting banks to an unlimited multiplicity of local taxing authorizations and the possibility of discriminatory abuses.

It is submitted that either S. 2906 or the ABA proposal—with the small addition we have suggested—will effect results entirely adequate under present conditions in the States, and that if future develop-

ments indicate an impelling need for expansion or other revision, either of these proposals would provide an adequate basis therefor.

Mr. Chairman, with me today is Mr. Donald Senterfitt, the general counsel of the Florida Bankers Association. He is a director in the First National Bank of Orlando. He is a director in the First National Orlando group of banks, one of the large group of banks of Florida.

If there are any questions that you or any members of the committee might like to direct to me or to Mr. Senterfitt that would be helpful, we will be delighted to try to respond.

We do appreciate so much, Senator Sparkman, this opportunity to be with you.

The CHAIRMAN. Well, thank you very much.

I thought it might be well to hear Mr. Turlington make his presentation. Then if there are questions, we will go to any one of the three of you.

Mr. Turlington, we are glad to have you also.

**STATEMENT OF RALPH D. TURLINGTON, MEMBER OF THE HOUSE OF REPRESENTATIVES OF FLORIDA AND CHAIRMAN OF THE FLORIDA HOUSE COMMITTEE ON APPROPRIATIONS**

Mr. TURLINGTON. Thank you, Mr. Chairman.

I wish to thank you for the opportunity to appear before your committee with regard to State taxation of national banks which has become a matter of grave importance to Florida as well as other States.

The thrust of my statement is that there should be no immunity from State taxation for any business because it is chartered in Washington instead of Tallahassee or Montgomery or some other State capital.

Section 52.19 of the Revised Statutes of the United States Code provides such immunity from State taxation for national banks except by some elaborate specification of the ways in which States can tax national banks.

Now, the equal protection clause and other constitutional safeguards of the Constitution of the United States are adequate to protect national banks or other businesses who engage in business in Florida and other States.

House Resolution 7491, which is in the hands of your committee, or any bill that is substantially its equivalent, is really what is needed to remedy the present situation. It provides that State taxation of national banks and State banks be exactly the same with no discrimination against the national banks.

I have heard no valid argument why they should not be taxed exactly the same. Certainly there can be no justification for State banks and other financial institutions paying State taxes while by Federal law the same taxes cannot be applied equally and without discrimination to national banks.

If there is a State tax on State banks that should not be paid by national banks—and I know of none—then such State tax could be excluded by law from imposition on a national bank and specified.

However, should you in your wisdom decide to report a bill or an amendment to H.R. 7491 using an enumerative approach by specifically setting forth which State taxes may apply to national banks or from which State taxes national banks are not to be immune, then I

most strongly urge that you include sales taxes, use taxes, personal property taxes, intangible personal property taxes, and documentary stamp taxes which a bank should be required to pay if it were a bank chartered under the laws of the State or other jurisdiction within which its principal office is located.

All of the taxes enumerated above are specifically set forth in S. 2065 introduced by Senator Holland of Florida. If you choose to report a bill other than H.R. 7491, then I strongly urge that every consideration be given to Senator Holland's bill, S. 2065, which is in your committee.

(S. 2065 is reprinted as follows:)

91ST CONGRESS  
1ST SESSION

## S. 2065

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### IN THE SENATE OF THE UNITED STATES

MAY 5, 1969

Mr. HOLLAND introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

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## A BILL

To clarify the liability of national banks for certain taxes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        SECTION 1. A national bank has no immunity from any  
4        sales tax, use tax, personal property taxes, intangible per-  
5        sonal property taxes, and documentary stamp taxes which it  
6        would be required to pay if it were a bank chartered under  
7        the laws of the State or other jurisdiction within which its  
8        principal office is located.

Mr. TURLINGTON. To continue tax immunity for national banks in Florida grossly discriminates against the thousands of Florida citizens and other businesses which now pay the State taxes of which we are talking.

I would especially request that this committee specifically include personal property intangible taxes in your bill if it is to be enumerative.

The American Bankers Association amendments—and in my judgment Senate bill 2906—do not include all intangible legal authority for the levying of all types of intangible taxes of the variety that we levy in Florida. And since 55 percent of this money goes to our local governments, it is also most vitally important for those that are concerned not just for the taxes at the State level but for the taxes at the local level as well. Loss of any portion of these taxes is a direct loss to our counties whose revenue situation is already strained.

Florida's intangible taxes collected annually exceed \$30 million.

Lastly, State taxation should apply equally to banks doing business within the State regardless of where their principal office is located. In a speech delivered by Senator Bennett of Utah, which is reprinted in part in the September 23 edition of the Florida Times Union, he predicted—

... that lending institutions will have a greater overlapping of services and there will be a practical elimination of differences within these institutions with all enjoying the same privileges.

His point makes it even more important for the future that those enjoying equal privileges should also pay equal State taxes.

You have been furnished statistical information on the losses of income which Florida is now experiencing and will experience under the ruling of the court. Corrective action in this session of Congress to become effective at the earliest possible date is imperative. I hope that you will find a proper solution to the dilemma in which Florida and the other States find themselves.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Turlington.

Yes, Senator Holland?

Senator HOLLAND. Mr. Chairman, I note there is in my file another letter which I would like very much to have included in the record. It is a letter addressed to me on September 5 of this year from the executive vice president of the Florida Savings and Loan League, specifically approving and requesting the passage of S. 2065. At that time I had not filed the second bill.

I ask that that letter and the attachments be included in the record.

The CHAIRMAN. That will be done.

(The documents referred to follow :)

THE FLORIDA SAVINGS AND LOAN LEAGUE,  
Orlando, Fla., September 5, 1969.

HON. SPESSARD L. HOLLAND,  
Old Senate Office Building,  
Washington, D.C.

DEAR SENATOR HOLLAND: This date we have wired all members of the Senate Banking and Currency Committee the below message:

"In behalf of the savings and loan associations in Florida, we urge your support of Senator Holland's bill S. 2065. Passage of this legislation will allow savings and loan associations and the commercial banks in Florida to resume payment of State sales taxes, documentary stamp taxes, and intangible personal

property taxes which we are now exempt from paying. The savings and loan business in Florida wishes to pay its fair share of the cost of state government and passage of S. 2065 is essential for this to be accomplished."

We were prompted to send this wire after reading the enclosed news release which quotes State Senator Jerry Thomas that "Congress can't be depended to pass your bill S. 2065." Incidentally, we have also enclosed a copy of an editorial which appeared Tuesday, September 2, in the Ocala Star-Banner, and a news article quoting Senator Jack Mathews which puts this whole matter in its proper perspective.

Best personal regards,

WILLIAM D. HUSSEY,  
*Executive Vice President.*

[From the Orlando Sentinel, Sept. 4, 1969]

#### OCTOBER SESSION SOUGHT

TALLAHASSEE.—Warning that "Congress can't be depended on," senate president designate Jerry Thomas Wednesday called for a special legislative session possibly in early October to repeal the law exempting savings and loan associations from state taxes.

Senate president John E. Mathews Jr. said he'd cooperate in calling the session. It can be convened either on the call of Gov. Claude Kirk or the two majority legislative leaders, Mathews and house speaker Fred Schultz.

Thomas said he was aware that passage of a bill removing the state tax exemption of nationally-chartered banks, which would automatically end the exemption of state banks and loan associations, was pending in the U.S. Senate. The bill passed the House earlier this summer.

"Certainly, they've scheduled a banking committee hearing Sept. 24, and there have been assurances it will pass, but we all know how slow Congress has been lately and I don't think we should wait past Oct. 1 to take care of this," Thomas told a reporter.

He said the \$15,000 a one-day session would cost was "cheap money to recover \$1 million or so in lost taxes."

Department of administration statisticians have not made a final estimate yet of the loss for the current fiscal year from the sale and documentary taxes paid by savings and loan associations, but estimates have run as high as \$15 million. Even a tax loss of \$400,000 or so will throw the state operating budget into a deficit.

"As soon as we have a clear idea of what its effect will be, I think we should act," Thomas said.

A proposal for a special session to repeal the so-called "goof" law passed last May was first made by Rep. William Gillespie, D-New Smyrna Beach, last Friday.

Mathews said: "We've got to do whatever is necessary to get rid of the exemptions before they hurt the state."

The "goof" bill, signed into law by Gov. Claude Kirk June 2, was introduced by Sen. Fred Karl, D-Daytona Beach, in behalf of Bob Fokes, Tallahassee attorney and lobbyist for the Florida Savings and Loan League. The 105 page bill was explained by Fokes to Karl and legislative committees as a routine updating of savings and loan statutes but buried in it was a paragraph according the associations equal tax treatment with national and state banks.

This entitled them to the same state sales and documentary tax exemption that the U.S. Supreme Court ordered in January for national banks.

[From the Ocala Star-Banner, Sept. 2, 1969]

#### S&LS VICTIMS OF UNFAIR CRITICISM ON TAX ISSUE

Recent disclosure that the Florida Legislature during the closing hours of the regular 1969 session passed a law freeing savings and loan associations from paying state taxes has resulted in unfair criticism being heaped upon the various savings and loan associations around the state.

Apparently many Floridians are under the impression in aftermath of the publicity over the law that the savings and loans are attempting to avoid paying their fair share of the tax load.

This is not so.

It has been estimated up to \$12 million will be lost by the state as a result of the legislative action that stipulate S&Ls shall not pay any state taxes not imposed on other financial institutions.

In other words, the law extends the court-ordered tax exemption for banks to savings and loan associations.

What is being overlooked by so many persons taking issue with the law is the majority of money supposedly to be saved by the S&Ls actually will be saved by their customers instead.

It is the people who pay the documentary stamps fees that account for a big hunk of the tax revenue the state is losing. Granted, the banks and now the S&Ls are exempt from paying sales tax—and granted this is not right—but the sales tax is a minor factor compared to the documentary stamps.

S&L officials insist—and there is no basis to disagree with them—that they did not try to slip the tax exempt provision by the legislature, although many of the legislators who voted for it actually had no idea they were reducing the state's anticipated revenue.

It is the U.S. Supreme Court that is the culprit in this matter, not the legislature, not the banks, not the S&Ls.

When the court ruled earlier this year that national banks needn't pay state taxes, it once again was digging away at the rights of the individual states.

A Florida law gives state-chartered banks the same tax standing as national banks, so the high court's decision actually removed all banks in the state from paying state taxes in any form. Now the S&Ls are under the same umbrella.

S&Ls should not be taxed any more or any less than state and national banks. So despite all the disturbance created by discovery three months after it was passed that the law removes the S&Ls from paying state taxes, the law actually is a fair one.

Florida bankers have urged Congress to pass a law that will clear away the cloud created by the court's decision and permit states to tax banks. S&L leaders at their approaching state meeting are expected to endorse a resolution calling on the Senate to approve the bill that already has cleared the House counteracting the court ruling.

Banks and S&Ls should help pay the cost of state government like other businesses and individuals. And they want too.

The Senate should quickly finish action on the measure that will restore these institutions to the state tax rolls.

The CHAIRMAN. Senator Holland, why don't you just sit there to finish this panel? I shall only ask a very few questions. You have all given statements that are fully explanatory.

But, Mr. Turlington, I am a little puzzled by something you say in your statement. You say if we should choose to report a bill other than H.R. 7491—that, of course, is the bill that passed the House of Representatives and is before our committee—that if we choose to report a bill other than H.R. 7491, then you strongly urge that every consideration be given to Senator Holland's bill S. 2065 (see p. 20).

Mr. TURLINGTON. Yes, sir.

The CHAIRMAN. Well, what about his later bill, S. 2906?

Mr. TURLINGTON. Mr. Chairman, I believe the thrust of the difference here—and let me say that all of us from Florida are all in agreement we want speedy action. We are losing State revenue, of course, every day that action is not taken.

The biggest difference that we would have would be in the intangible tax section.

The CHAIRMAN. Well, I notice you say that, whatever we report out, you want us to specify that particular item.

Mr. TURLINGTON. Yes, sir.

Now, here is the distinction. The way that I understand S. 2906 is written, the State would not be able to collect intangible taxes on such things as bonds and stocks or other securities that are held by national banks.

Now, we collect these intangible taxes from all other businesses, and we collect them from our other citizens, such that if I owned a bond I would pay a 1-mill tax on that bond.

And I can see no reason why there should be any Federal restraint on a legislature to have the authority to determine whether a State should or shouldn't be able to levy such a tax on intangibles of banks.

Now, S. 2065 clearly would give the States authority to levy such a tax.

The CHAIRMAN. And you do collect those taxes on State banks? Is that right?

Mr. TURLINGTON. I had always thought that we did, but I am advised that we didn't. So my position would be—and I don't think that very many members of the legislature or many members of the public were aware that we were not collecting these taxes from either the State banks or the national banks.

I only say that there isn't any logical reason that I can think of why there should be a Federal statute prohibiting a State legislature from passing an intangible tax on assets held by a bank in the same way that they are taxing intangibles of every other business and every other citizen.

The CHAIRMAN. Does either one of these three bills that you refer to—or the ABA proposal, which is not in bill form—does either one of them forbid or do what you have just said?

Mr. TURLINGTON. Yes, sir. The ABA amendments would prohibit such taxation. S. 2906 appears to prohibit such taxation. But it was drawn with the specific instruction that it take care of everything that was in the *Homestead* case, and this was the way. Now, S. 2065 does not prohibit the type of taxation that I am talking about, and neither does H.R. 7491. In other words, S. 2906 and the ABA amendments do. H.R. 7491 and S. 2065 do not.

The CHAIRMAN. Well, as I understand the situation, even if we included specifically what you suggest, it would not have effect until and unless the Florida Legislature enacted legislation covering the same thing. Isn't that right?

Mr. TURLINGTON. This would mean that there would be no point in our ever covering the same thing. The answer to your question would be yes, but it would also mean that there would be no point in our ever taking a bill up until you passed a bill saying that we could pass a bill.

I would suggest that you be the horse and let us be the cart in the sense that I see no reason why that isn't the logical sequence.

The CHAIRMAN. All right.

Now, what is your position with reference to this, either one of you?

Mr. MCKETHAN. Well, Mr. Chairman, the proposal that we are supporting tries to recoup the taxes that have been lost to Florida by the *Homestead* decision. The deposits that our depositors hold in banks in Florida are subject to the Florida intangible tax which they pay themselves. We feel that the enactment of the proposal as suggested here by my good friend, Mr. Turlington, means that we would find a double taxation existing in Florida. And we don't think that would be proper.

The CHAIRMAN. Well, I suppose that is one point we will have to work out in the committee.

I certainly would not want to be a party to double taxation.

In fact, even authorizing States to tax national banks I think we have got to tread carefully to be certain that the two are tied together. And, as I understand, that would be true under your Florida situation. In other words, you could not tax the national banks unless you taxed the State banks in exactly the same way. Is that correct?

Mr. SENTERFITT. Vice versa, yes, Mr. Chairman, that is correct. State banks have the same standing in respect to taxation or non-taxation in Florida pursuant to a Florida statute that national banks have.

The CHAIRMAN. Yes; I understand that.

Well, I can just say that you gentlemen—and again I want to express my appreciation to Senator Holland. By the way, I noticed your comment about the wonderful service. Senator Holland and I came to the Senate about the same time. I believe he beat me by about 6 weeks.

Senator HOLLAND. I never have claimed that as setting up any seniority, as you well know.

The CHAIRMAN. I am sure you—

Senator HOLLAND. I have been glad to regard us as the Senators representing friendly and adjoining States and on exactly the same standing. And I shall always have that feeling.

The CHAIRMAN. With reference to seniority, I was about to say I'm sure you share with me the feeling that seniority is a good thing and gets better the longer we stay here.

Senator HOLLAND. Well, I have had no objection to asserting it under various situations, but not as against my colleagues here.

The CHAIRMAN. I just wanted to say to you it's characteristic of Senator Holland to render this type service, and I greatly appreciate, Senator Holland, your coming before us this morning.

Senator HOLLAND. Mr. Chairman, may I add one thing? When I asked for the hearing which you so graciously gave us at this early date, my feeling had been that it would make little difference as to whether my first act or the House act were passed. Later, in the conference that I have mentioned, Mr. Matt Hale persuaded me rather fully that the House act is overgeneral in its statement. In effect, it just simply says that with reference to State and local taxation that national banks should be regarded as if they had been chartered under the State law, which does bring some difficult situations into play and which I am sure will be discussed by later witnesses.

My own feeling in the filing of the second bill was that we were presenting a cleaner picture, and I thought that all of the various groups in Florida were together in that conclusion.

However, I want to accentuate in closing what I have said a time or two already. I think the real point is to get remedial legislation here passed as quickly as possible to do away with the very hurtful effect upon our fiscal affairs of Florida and those elsewhere resulting from the *Homestead Bank* decision.

That has been my effort, and I have hoped that we could go forward without any possible difference of opinion anywhere in Florida.

The difference now is mild as to whether or not it's enough to simply correct what was done by the *Homestead* decision or whether it's necessary to go a little farther either by enumeration or by generality.

That is a point that I am glad to leave in the lap of this able committee and subject to the testimony which I am sure you will hear in this hearing.

The CHAIRMAN. Well, thank you.

There is one other thing I want to say. I was pleased when you said that you had been working with Matt Hale in connection with this legislation. Matt Hale virtually ran this committee for many, many years as the staff director and general counsel, and we have come to feel that you can rely completely on his good counsel and advice.

Senator HOLLAND. Mr. Chairman, I have the same high regard for him. The American Bankers Association's suggestion in this field, however, I thought introduced complexities which might hold up speedy action of this committee, and I so told him. I don't know whether he agreed with that or not.

It not only introduced complexities not in either of my bills or in the bill that came over from the House, but it also introduced legislation relating to the FDIC which had little if any bearing upon these problems.

I think it's highly desirable to keep this legislation strict and narrow in its effort to correct a very hurtful situation that has been created by the *Homestead* decision, and that has been my effort, not only in support of what I thought was a completely unanimous position of my Florida people but also what I thought would necessarily be the unanimous position of other States who might be adversely affected by that decision, and I am sure there are many such.

That continues to be my primary objective.

I thank you.

The CHAIRMAN. Thank you very much, gentlemen. Before we continue I would like to insert in the record a letter and attachment sent to me from Senator Church.

(The information follows:)

FIRST SECURITY BANK OF IDAHO,  
Boise, Idaho, September 17, 1969.

HON. FRANK CHURCH,  
Senate Office Building,  
Washington, D.C.

DEAR FRANK: Included is a copy of the August 25th issue of Washington Financial Reports published by the Bureau of National Affairs, Inc., Washington, D.C., in which is a report on the status of House passed Bill H.R. 7491 which is the measure amending the National Bank Statute on taxation of National Banks. For your ready reference I enclose photographic copy of that portion of this report. From it you will note that someone (and I don't know just who) is concerned about the possibility of H.R. 7491 resulting in double taxation of National Banks. This same argument against enactment of H.R. 7491 was advanced in the House but was rejected. I personally fail to see merit in that objection. To me it seems more an attempt to delay and defeat the enactment of any measure to subject National Banks to the same taxation that State Banks are subject to but in that thinking I may be wrong. I do not consider myself an authority on all possible banking situations in every state in the Union but certainly as far as the State of Idaho is concerned, there is no ground for concern on this point.

Our concern, that is, the National Banks of Idaho's concern is:

(1) The act passed by the Idaho Legislature in its last session which in substance provides that if National Banks in Idaho do not pay sales and use and personal property taxes, the same as State Banks do, that the National Banks will be disqualified as depositories of all State and political subdivisions on and after January 1, 1970. Such a situation would be very detrimental, not only to the National Banks in Idaho but to borrowers throughout the State because it would deprive National Banks of the funds that otherwise would be available to them

to extend credit to their clients; and since at least two-thirds of all the commercial banking in Idaho is done thru National Banks, this is a matter of importance to the public as well as to the National Bankers.

(2) It is the firm belief of the writer, as well as every National Banker that I know in the State of Idaho, that National Banks, in all fairness, should pay State, county and municipal taxes on the same basis as State Banks do.

(3) The United States Supreme Court decision in June of 1968, held that National Banks, under the National Bank Act, are not subject to sales and use taxes levied by States. The attorneys all agree that in light of that ruling, the Supreme Court would hold that personal property of National Banks is not subject of taxation by the States. Therefore, as the statutes now stand, if National Banks voluntarily paid such taxes, the officers and directors of the National Banks would be subject to suit by their stockholders for having illegally paid out this money.

(4) I have heretofore furnished you a copy of Senate Joint Memorial #105 adopted by the last session of the Idaho Legislature, memorializing Congress to amend the National Bank Act to permit the States to tax National Banks on the same basis as State Banks are taxed.

It is therefore highly important from the standpoint of the National Banks of Idaho at least, that the National Bank Act be amended in the manner set forth by H.R. 7491.

Now if there is actually any real danger of double taxation of some National Banks across the United States if H.R. 7491 was enacted into law, the writer at least has no particular objection *in principle* to so amending that bill as to eliminate that possibility but a rewrite or amendment of H.R. 7491 will necessarily mean that the measure has to go back to the House and time is of the essence. Therefore, it would be highly preferable to have H.R. 7491 adopted by the Senate just as written by the House.

Sincerely yours,

J. L. DRISCOLL,  
*Chairman of the Executive Committee.*

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[From "Washington Financial Reports," published by the Bureau of National Affairs]  
ABA COMMITTEE TO CONSIDER ALTERNATIVES TO HOUSE-APPROVED NATIONAL BANK TAX MEASURE

The American Bankers Assn.'s Administrative Committee will meet Thursday to consider alternatives to the House-passed national bank tax bill designed to avoid the possibility of the double taxation of national banks.

*One alternative—and the preferable one—would make a national bank subject to any state and local tax paid by a state bank, but only in the state in which its principal office is located.*

A second alternative would specify all the taxes to which national banks would be liable if the taxes were paid by state banks. Again, the liability would be limited to the home state of the bank.

*The Senate Banking Committee has scheduled a one-day hearing on the national bank taxation question on September 24.* No hearings were held in the House.

Some banking observers in Washington would not be surprised if the Senate committee rewrote the House-passed bill (H.R. 7491) to make it clear that a state could only levy taxes on national banks whose principal office is located in that state.

#### CURRENT DEVELOPMENTS

A move to limit the scope of the measure to the taxation of a national bank only in the state in which its principal office is located was defeated on the House floor last month.

*Critics of the House-approved measure contend that it would expose national banks to double taxation—by states in which they "do business" as well as by their home state. They also contend that the bill is an invitation to state legislatures to rewrite sales tax laws to attract greater revenues from state banks as well as national banks.*

The legislation is designed to dilute the effect of a 1968 U.S. Supreme Court decision that found national banks to be immune from state and local sales and use taxes. A follow-up decision by the high court early this year held that

national banks were also immune from state and local intangible personal property taxes and documentary stamp taxes.

As passed by the House, the legislation would make national banks liable for these taxes and any other state or local tax levied against a state-chartered bank.

The CHAIRMAN. The next witness is Hon. Norbert T. Tiemann, the Governor of Nebraska.

Governor, come around. We are very glad to have you, sir.

**STATEMENT OF NORBERT T. TIEMANN, GOVERNOR OF THE STATE OF NEBRASKA**

Governor TIEMANN. Thank you very much.

The CHAIRMAN. We have a copy of your statement. You just proceed as you see fit.

Governor TIEMANN. My statement is very brief, and I shall merely read it and indicate to the committee the feeling of the Governors of this Nation as a result of the conference that we just concluded at Colorado Springs on the 3d of this month.

This conference adopted a statement of policy reiterating the National Governors' Conference's concern that action be taken to remove the preferential tax treatment which national banks now enjoy over State banks by virtue of the interpretation of the National Bank Act in recent decisions by the United States Supreme Court.

Such action should be taken because of the bearing such legislation has on the revenue system of each State and because of the need to preserve the State banking system.

Without question, each State has an increasing need for revenue to maintain State and local budgets. Taxation is the major source of State income. My State, Nebraska, alone is losing approximately \$375,000 annually by the tax immunity shared by the national banks. And I might indicate, Mr. Chairman, that that is strictly a ballpark figure. It could easily be double or triple that amount.

Many States are losing more.

Obviously, each State could better serve the public need with this additional source of revenue.

In the banking industry today, the present status of national banks as general commercial banks makes them no different than their State-chartered competitors. I'm sure the committee is aware of the services which banks perform. Such services have expanded greatly since the original passage of the National Bank Act.

The similarities of services and functions between the national banks and State-chartered banks is striking. Why should they not be taxed similarly? Other businesses conducting similar services and functions have to pay State taxes. National banks pay only as R.S. 5219 provides. Federal law should not prevent the State from taxing one business entity and thereby allow that entity to have a competitive advantage over another.

Each State should be allowed the decisionmaking capability of whether or not to impose a tax. Further, the State should be allowed the flexibility of imposing the kind of tax it feels would best serve the needs of the State so long as such tax does not discriminate between the two types of banks. As revenue needs increase, new sources are often sought. The law should allow the State to keep pace.

State government, obviously, is interested in the economic climate of its State. Equality between nationally-chartered banks and State-chartered banks is necessary in order to maintain a healthy economic climate. Equality is the heart of the dual banking system. The dual banking system has proven itself and has shown itself to be the hub in the wheel of progress. It touches all people and all industries. It is the core of decentralization of the financial industry. It is a flexible system offering an alternative to inequities from one side or the other; a bank can operate under State or Federal charter.

When State banks cannot compete with national banks because of taxation inequities, there could be a substantial number of conversions to nationally-chartered institutions resulting in economic nationalism.

States could grant similar tax exemptions to the State banks. However, such action again results in the loss of revenue.

The appropriate solution is the amending of the National Bank Act, thereby resolving the unfair tax advantage now shared by national banks.

The National Governors' Conference urges the adoption of Representative Patman's bill, as amended and reported out of committee (H.R. 7491, Rept. No. 91-290), which would allow States to treat national banks the same as State banks for State and local tax purposes.

Mr. Chairman, thank you very much for allowing me to present the statement.

The CHAIRMAN. Well, Governor, we appreciate your making this presentation.

Now, you explicitly, acting for the Governors' Conference, urge the adoption of H. R. 7491.

Governor TIEMANN. Yes.

The CHAIRMAN. Does that mean as opposed to S. 2906? Do you think it's a better bill than S. 2906—

Governor TIEMANN. No, sir—

The CHAIRMAN (continuing). Or was S. 2906 not before you at the time?

Governor TIEMANN. Both of these bills were not before us, nor were the ABA amendments at the time the position taken by the National Governors' Conference was adopted.

Therefore, all we are asking for is that the States be given flexibility to tax both banks, nationally-chartered and State-chartered banks, equally.

Now, if I may make one more comment, Mr. Chairman, the intangible tax question—and I don't pose as an expert in the matter of taxation in banks or any other area. But it seems to me that the problem posed by our friends from Florida is one that could be solved in the State.

Now, many States have no intangible taxes at all. Nebraska is one of them. We repealed our intangible tax law as being a worthless type tax. And we still maintain that position.

I don't know that you can solve the States' problems at this level.

The CHAIRMAN. Your statement represents the feelings of the National Governors' Conference at the recent session which adjourned September 3?

Governor TIEMANN. Our membership of the National Governors' Conference has time and time again gone on record in support of some type of legislation. Now we support specifically the Patman bill.

The CHAIRMAN. Thank you very much, Governor.

Governor TIEMANN. Thank you, Senator, very much.

The CHAIRMAN. The next witness is Hon. Robert Bloom, Chief Counsel of the Office of the Comptroller of the Currency.

Come around, Mr. Bloom. We are glad to have you sir. Glad to hear from you.

#### STATEMENT OF ROBERT BLOOM, CHIEF COUNSEL TO THE COMPTROLLER OF THE CURRENCY

Mr. BLOOM. Mr. Chairman, I first want to thank you for permitting me to present the views of the Comptroller of the Currency and the Treasury Department on this important legislation, which, of course, is of extreme importance to the national banking system and, because of the interaction which we have heard about with State banks, to the entire banking system.

The legislation under consideration deals with the extent to which States and local governments may levy taxes on national banks. This issue, smoldering for a number of years, was brought to flame by two recent Supreme Court decisions which we have heard about from the other witnesses.

The *First Agricultural National Bank of Berkshire County* case, which is a Massachusetts decision, holds that a national bank with a home office in Massachusetts is not required to pay a Massachusetts sales and use tax, since this method of taxation is not listed in R. S. 5219.

Similarly, in *Dickinson v. First National Bank of Homestead*, the Court affirmed the decision—or, rather, the Court held that the State of Florida could not collect its documentary stamp tax from a national bank.

The *First Agricultural* and *Dickinson* decisions merely reaffirmed a long line of earlier decisions which established the proposition that the States are without power, unless authorized by Congress, to tax national banks.

The leading early case is *Owensboro National Bank v. Owensboro* decided in 1889. Then there are other cases following that cited in my statement of which I will not read the names.

Prior to the two recent decisions, the Court has not squarely considered the question for a number of years although it continuously recognized during that time the general rule incidental to deciding other issues.

Perhaps because of the length of time between decisions such as *Owensboro* in 1899 and *First Agricultural* and *Dickinson* in 1968–69, the recent rulings resulted in a strong reaction by State banking and taxing authorities. These authorities also argue that the nature of national banks has changed materially since Congress last looked at the subject. At the urging of these groups, a number of bills were introduced in this and the last Congress to modify or eliminate the national banks' present immunity from certain types of State taxes.

It should be remembered that even under the present law, national banks are not immune from the more important types of State taxation. Under the provisions of section 548, national banks pay the same real estate taxes to the States, counties, and cities in which they are located as do other real estate owners.

In addition, a national bank now may be required to pay to its home State a tax measured by its net income or the work of its shares.

The taxes in dispute are mainly of the excise type, such as sales and use taxes, documentary stamp taxes, and motor vehicle taxes.

The various bills introduced in the House may be divided roughly into two groups. One group, including bills such as H.R. 2182, H.R. 9794, which is the same as S. 2065, and the original version of H.R. 7491 merely added various specific types of taxes to the list collectible from a national bank in its home State.

The other group of bills represented by H.R. 8642 and the present version of H.R. 7491 as passed by the House would completely repeal the present law and enact in its place a general statement to the effect that national banks should be deemed to be the same as State banks for the purpose of State taxation, wherever they are doing business, whether in their home State or in foreign States.

The Office of the Comptroller of the Currency favors the first approach of amendment rather than complete repeal. We do not agree with those bankers and State authorities who believe that some amendment to the present law is needed to equalize the State and local tax burden on State and national banks.

Our Office knows of no reason why national banks should not be required to pay the same taxes to their home States as State-chartered banks. We believe that the way to achieve such equalization is to do it in the same manner as changes have been made in the past, that is, by amendment to section 548.

In making the necessary changes, it is not necessary to use language which raises any doubt concerning, or changes the status of national banks as Federal instrumentalities.

As the Supreme Court indicated in *First Agricultural*, the issue is simply one of the extent to which Congress wishes to permit State taxation of national banks. Expressions such as "a national bank has no immunity," etc., serve to somewhat becloud this issue and should not be used.

*First Agricultural* dealt only with the question of taxation by the home State and did not involve the much broader questions of taxation and regulation by other States in which a national bank may do business. These so-called "doing business" taxes and statutes raise entirely different issues from that involved in the sales tax controversy and should not be confused with that issue.

The subject of interstate taxation of national corporations including banks has been studied for many years by bodies such as the Judiciary Committee of the House of Representatives and various legislative attempts have been made to deal with this complex question. As of this date, no comprehensive legislation has been enacted to remedy this problem, and we do not think it would be wise to attempt to dispose of it summarily as it relates to banks in a one-sentence bill such as H.R. 7491.

It is the view of our Office that this legislation should be confined to equalizing the tax burden of National and State banks in the home State only. Although it may be argued that there should be equalization in foreign States as well, it is not possible to do this without painstaking analysis of the types of taxes levied by the various States on foreign corporations doing business within their boundaries.

This family of taxes is inextricably interwoven with other State statutory provisions imposing restrictions on doing business within the host State; for example, requirements for the appointment of agents for the service of process, posting of bonds, establishment of statutory offices, etc.

We agree with the various courts which have held that such State restrictions on doing business are not applicable to national banks.

As these courts point out, because a national bank is a Federal instrumentality, it cannot for State law purposes be a foreign corporation and is, therefore, entitled to different treatment from a State-chartered bank when it does business outside of its home State.

At the least, this question of the effect of doing-business laws should not be injected into the comparatively simple problem highlighted by the *First Agricultural* decision.

Consistent with the foregoing position, our Office has suggested that the problem highlighted by *First Agricultural* be dealt with by the addition of a new paragraph 5 to section 548 which would make it clear that national banks must pay sales and use taxes in their home States.

Our suggested amendment in place of H.R. 7491 was contained in the letter of Treasury General Counsel Paul W. Eggers to the committee and reads as follows:

That section 5219 of the Revised Statutes, as amended (12 U.S.C. 548), is further amended by adding the following new paragraph at the end thereof:

5. In addition to the other methods of taxation permitted herein, a State or political subdivision thereof may impose sales and use taxes on a national bank having its principal office within such State in the same manner and to the same extent as such taxes are imposed upon a State chartered bank having its principal office within such State.

That language, of course, only covers the sales and use taxes which were involved in the *First Agricultural* case.

During debate on the floor of the House, Congressman Garry Brown of Michigan introduced an amendment which follows the approach we have suggested, but adds to the list of taxes collectable by the home State, the tangible personal property taxes, intangible personal property taxes, documentary stamp taxes, and all taxes imposed on the ownership, use, or transfer of motor vehicles.

This office perceives no objection to adding these taxes to the list, with the exception of an intangible personal property tax. Intangible assets, such as loans and investment securities, constitute the great bulk of any bank's assets and worth. Since the States are already permitted under the Federal law to levy a share tax, which is often measured by the net worth of the bank's assets, it would constitute a form of double taxation to permit a direct tax on its intangible assets.

Unlike the other type of taxes on the list, a tax on the intangible assets of financial institutions would be a major departure from present practices, and we think that more study is needed of the possible effects of such type of local taxation on the banking system.

I might insert there, Mr. Chairman, that I think there is a big difference between taxing the intangible assets of a manufacturing corporation and taxing the intangible assets of a financial institution. Naturally, the average corporation is not going to have the bulk of its entire worth in intangibles as will financial institutions.

I think when we are talking about intangible property taxation we are talking about a very broad type of taxation which we haven't seen very much of in the past.

We think there are important reasons for not scrapping the entire present law as does H.R. 7491. The very age of the section (it was first enacted in 1864 and last amended in 1926) means that a tremendous superstructure of existing State tax laws has been passed in reliance upon its provisions. Various methods have been used to equalize, in fact, the tax burden on State and national banks.

For example, most States have granted the same exemptions to State banks as national banks now enjoy. The burden on both classes of banks is then equalized with that of other corporations by levying a heavier income tax or franchise tax rate on banks (the so-called built-up rates).

H.R. 7491 would open the way in such States for the collection of the previously exempted taxes from both State and national banks. However, there is nothing in the bill which would require the States to repeal the compensatory forms of taxation originated prior to the proposed change in Federal law. Thus, the House bill will impose on both classes of banks the burden of obtaining by legislation or litigation in their home State equal treatment with other corporations.

We think the approach of the Treasury and Brown amendments will avoid the wholesale rewriting of State laws which would be necessitated by the House bill and would avoid much confusion. At the same time, substantial equity between State and national banks would be achieved by this approach.

For these reasons, the Comptroller of the Currency strongly urges the committee not to approve H.R. 7491 and instead to approve a bill in the language suggested by the Treasury Department.

Thank you.

The CHAIRMAN. Do you have the language suggested by the Treasury Department?

Mr. BLOOM. Yes. It is contained in a letter of General Counsel Eggers which was sent both to the House committee and to this committee. I also have the entire language of the bill incorporated in this statement at page 5, Mr. Chairman.

The CHAIRMAN. Was the letter sent to this committee?

Mr. BLOOM. Yes, sir. I understand so.

The CHAIRMAN. That you referred to?

Mr. BLOOM. Yes, sir.

The CHAIRMAN. We can incorporate the letter or incorporate what you have there, either one.

Mr. BLOOM. I would request, Mr. Chairman, that the letter of General Counsel Eggers be incorporated in the record. And since I departed slightly from my prepared statement, I would also request if you would that the prepared statement be included.

The CHAIRMAN. That is always done. The entire statement will be printed in the record, and the letter from the General Counsel will be printed in the record also.

Mr. BLOOM. Thank you.

(The documents referred to follow:)

STATEMENT OF ROBERT BLOOM, CHIEF COUNSEL TO THE COMPTROLLER  
OF THE CURRENCY

The legislation under consideration deals with the extent to which states and local governments may levy taxes on national banks. This issue, smoldering for a number of years, was brought to flame by two recent Supreme Court decisions. In *First Agricultural National Bank of Berkshire County v. State Tax Commis-*

sion 392 U.S. 399 (1968), the Supreme Court held that a national bank domiciled in Massachusetts is not required to pay a Massachusetts sales and use tax since this method of taxation is not listed in R.S. 5219, 12 U.S.C. 548. *Dickinson v. First National Bank of Homestead*, 393 U.S. 409 (1969) was a similar holding involving Florida documentary stamp taxes.

*First Agricultural* and *Dickinson* merely reaffirmed a long line of earlier decisions which established the proposition that the states are without power, unless authorized by Congress, to tax national banks. *Owensboro Nat. Bank v. Owensboro*, 173 U.S. 664, 668 (1889); *Des Moines Nat. Bank v. Fairweather*, 263 U.S. 103, 106 (1923); *First Nat. Bank v. Hartford*, 273 U.S. 548, 550 (1927); *Iowa-De Moines Nat. Bank v. Bennett*, 284 U.S. 239, 244 (1931).

Prior to the two recent decisions, the Court had not squarely considered the question for a number of years although it continuously recognized during that time the general rule incidental to deciding other issues. *Department of Employment v. U.S.* 385 U.S. 355, 360 (1966); *Michigan Nat. Bank v. Michigan* 365 U.S. 467, 472 (1961); *Mercantile Nat. Bank v. Longdeau*, 371 U.S. 555, 558-559 (1963). Perhaps because of the length of time between decisions such as *Owensboro* in 1899 and *First Agricultural* and *Dickinson* in 1968-69, the recent rulings resulted in a strong reaction by state banking and taxing authorities. These authorities also argue that the nature of national banks has changed materially since Congress last looked at the subject. At the urging of these groups, a number of bills were introduced in this and the last Congress to modify or eliminate the national banks' present immunity from certain types of state taxes.

It should be remembered that even under the present law, national banks are not immune from the more important types of state taxation. Under the provisions of section 548, national banks pay the same real estate taxes to the states, counties and cities in which they are located as do other real estate owners. In addition, a national bank now may be required to pay to its home state a tax measured by its net income or the worth of its shares. The taxes in dispute are mainly of the excise type, such as sales and use, documentary stamp, and motor vehicle taxes.

The various bills introduced in the House may be divided roughly into two groups. One group, including bills such as H.R. 2182 (Hosmer), H.R. 9794 (S. 2065 Sikes, Holland) and the original version of H.R. 7491 (Patman) merely added various specific types of taxes to the list collectible from a national bank in its home state. The other group represented by H.R. 8642 (Ashley) and the present version of H.R. 7491 (Patman), now before this Committee, would completely repeal the present law and enact in its place a general statement to the effect that national banks should be deemed to be the same as state banks for the purpose of state taxation, wherever they are doing business, whether in their home state or in foreign states.

The Office of the Comptroller of the Currency favors the first approach of amendment rather than complete repeal. We do not disagree with those bankers and state authorities who believe that some amendment to the present law is needed to equalize the state and local tax burden on state and national banks. This Office knows of no reason why national banks should not be required to pay the same taxes to their home states as state chartered banks. We believe that the way to achieve such equalization is to do it in the same manner as changes have been made in the past, that is, by amendment to section 548. In making the necessary changes, it is not necessary to use language which raises any doubt concerning, or changes the status of national banks as federal instrumentalities. As the Supreme Court indicated in *First Agricultural*, the issue is simply one of the extent to which Congress wishes to permit state taxation of national banks. Expressions such as "a national bank has no immunity etc." serve to becloud this issue and should not be used.

*First Agricultural* dealt only with the question of taxation by the home state and did not involve the much broader questions of taxation and regulation by other states in which a national bank may do business. These so-called "doing business" taxes and statutes raise entirely different issues from that involved in the sales-tax controversy and should not be confused with that issue. The subject of interstate taxation of national corporations including banks has been studied for many years by bodies such as the Judiciary Committee of the House of Representatives and various legislative attempts have been made to deal with this complex question. As of this date, no comprehensive legislation has been enacted to remedy this problem and we do not think it would be wise to attempt to dispose of it summarily as it relates to banks in a one-sentence bill such as H.R. 7491.

It is the view of our Office that this legislation should be confined to equalizing the tax burden of national and state banks in the home state only. Although it may be argued that there should be equalization in foreign states as well, it is impossible to do this without painstaking analysis of the types of taxes levied by the various states on foreign corporations doing business within their boundaries. This family of taxes is inextricably interwoven with other state statutory provisions imposing restrictions on doing business within the host state; for example, requirements for the appointment of agents for the service of process, posting of bonds, establishment of statutory offices, etc. We agree with the various courts which have held that such state restrictions on doing business are not applicable to national banks. *Steward v. Atlantic*, 27 F. 2d 224; *Bank of America v. Lima* 103 Supp. 916 (D. Mass. 1952). As these courts point out, because a national bank is a federal instrumentality, it cannot for state law purposes be a foreign corporation and is, therefore, entitled to different treatment from a state chartered bank when it does business outside of its home state.

At the least, this question of the effect of doing business laws should not be injected into the comparatively simple problem highlighted by the *First Agricultural* decision.

Consistent with the foregoing position, our Office has suggested that the problem highlighted by *First Agricultural* be dealt with by the addition of a new paragraph 5 to section 548 which would make it clear that national banks must pay sales and use taxes in their home states.

Our suggested amendment in place of H.R. 7491 was contained in the letter of Treasury General Counsel Paul W. Eggers to the Committee and reads as follows:

"That section 5219 of the Revised Statutes, as amended (12 U.S.C. 548), is further amended by adding the following new paragraph at the end thereof:

"5. In addition to the other methods of taxation permitted herein, a State or political subdivision thereof may impose sales and use taxes on a national bank having its principal office within such State in the same manner and to the same extent as such taxes are imposed upon a State chartered bank having its principal office within such State."

The foregoing language covers only sales and use taxes which were involved in the *First Agricultural* case. During debate on the floor of the House, Congressman Garry Brown of Michigan introduced an amendment which follows the approach we have suggested, but adds to the list of taxes collectible by the home state, tangible personal property taxes, intangible personal property taxes, documentary stamp taxes, and all taxes imposed on the ownership, use or transfer of motor vehicles. This office perceives no objection to adding these taxes to the list, with the exception of an intangible personal property tax. Intangible assets, such as loans and investment securities constitute the great bulk of any financial institutions' assets and worth. Since the states are already permitted to levy a share tax, measured by the net worth of the bank's assets, it would constitute a form of double taxation to permit a direct tax on its intangible assets. Unlike the other types of taxes on the list, a tax on the intangible assets of financial institutions would be a major departure from present practices and we think that more study is needed for the possible effects on the banking system.

There are important reasons for not scrapping the entire present law as does H.R. 7491. The very age of the section (it was first enacted in 1864 and last amended in 1926) means that a tremendous superstructure of existing state tax laws has been passed in reliance upon its provisions. Various methods have been used to equalize, in fact, the tax burden on state and national banks. For example, most states have granted the same exemptions to state banks as national banks enjoy. The burden on both classes of banks is then equalized with that of other corporations by levying a heavier income tax or franchise tax rate on banks (the so-called 'built-up' rates). H.R. 7491 would open the way in such states for the collection of the previously exempted taxes from both state and national banks. However, there is nothing in the bill which would require the states to repeal the compensatory forms of taxation originated prior to the proposed change in federal law. Thus the House bill will impose on both classes of banks the burden of obtaining by legislation or litigation equal treatment with other corporations.

The approach of the Treasury and Brown amendments will avoid the wholesale rewriting of state laws which would be necessitated by the House bill and avoid much confusion. At the same time, substantial equity between state and national banks would be achieved.

For these reasons, the Comptroller of the Currency strongly urges the Committee not to approve H.R. 7491 and instead to approve a bill in the language suggested by the Treasury Department.

TREASURY DEPARTMENT, June 6, 1969.

HON. JOHN SPARKMAN,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2065, "To clarify the liability of national banks for certain taxes."

The proposed legislation would provide that a national bank has no immunity from any sales tax, use tax, personal property taxes, intangible personal property taxes, and documentary stamp taxes which it would be required to pay if it were a bank chartered under the laws of the State or other jurisdiction within which its principal office is located.

The proposed legislation is apparently designed to overcome the effects of the decisions of the Supreme Court in the case of *First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339 (1968) and *Dickinson v. First National Bank of Homestead*, 37 Law Week 3262 (1969). The Supreme Court in the *First Agricultural* case held that national banks in Massachusetts did not have to pay the State sales and use taxes because these methods of taxation were not included in section 5219 of the Revised Statutes (12 U.S.C. 548) which enumerates the ways in which States can tax national banks. The *Dickinson* case made a similar ruling involving Florida documentary stamp taxes. The Supreme Court held that section 5219 of the Revised Statutes was the exclusive source of authority for the taxation of national banks by States.

The Department believes that a national bank should be subject to the same taxation in its home State as a State chartered bank in that State, and that the decision of the Supreme Court to the contrary in the *First Agricultural* case should be overcome by legislation. Consequently, the Department is in favor of the objective of the bill.

However, the *First Agricultural* case dealt only with the question of taxation by the home State. That case did not involve the broader question of taxation and regulation by other States in which a national bank may do business. This so-called "doing business" question raises different issues from that involved in the sales tax controversy.

The question of taxation of foreign corporations, including banks, is interwoven with other complex issues, such as venue for suit, and necessity for compliance with "doing business" statutes. We recommend, therefore, that the question of taxation of national banks by States other than the home State, be considered and treated separately. We perceive no reason, however, why the specific problem raised by the *First Agricultural* case may not be taken care of immediately. We recommend, therefore, that language along the lines of the following be adopted as a substitute for the language of S. 2065:

"That section 5219 of the Revised Statutes, as amended (12 U.S.C. 548), is further amended by adding the following new paragraph at the end thereof:

"5. In addition to the other methods of taxation permitted herein, a State or political subdivision thereof may impose sales and use taxes on a national bank having its principal offices within such State in the same manner and to the same extent as such taxes are imposed upon a State chartered bank having its principal offices within such State."

The foregoing language covers only sales and use taxes which were involved in the *First Agricultural* case. If the Congress believes that it is desirable to add other taxes listed in the bill, the language could be changed accordingly.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

PAUL W. EGGERS,  
General Counsel.

The CHAIRMAN. Thank you very much, Mr. Bloom.  
Senator HOLLAND. Mr. Chairman—  
The CHAIRMAN. Yes, Senator Holland?

Senator HOLLAND. On my way to my office after leaving this hearing a few minutes ago, I was met by a staff member with a wire from Comptroller Dickinson which I ask to have incorporated in the record at the end of my testimony.

The CHAIRMAN. Yes, that will be done.  
(The telegram follows:)

TALLAHASSEE, FLA., September 24, 1969.

HON. SPESSARD HOLLAND,  
U.S. Senate,  
Senate Office Building,  
Washington, D.C.

DEAR SENATOR HOLLAND; The sole purpose of S. 2906 as well as your previous S. 2065 was to remedy the effects of the Supreme Court decision in *Fred O. Dickinson, Jr., Comptroller of Florida v. First National Bank of Homestead, et al.* It is my opinion that the language now contained in S. 2906 which says "any taxes (including documentary stamp taxes) on the execution, delivery, or recordation of documents" would include intangible personal property taxes denoted "class CC" on recording mortgages which had been required and collected prior to the *Homestead* decision in Florida. As you know, national banks and State-chartered banks in Florida did not pay any other intangible personal property tax even prior to the *Homestead* decision. I agree with the contention that by not including the words "intangible personal property tax" in the subject bill that it would preclude the imposition and collection of intangible personal property taxes on the national banks and State-chartered banks in Florida other than on the executions, delivery or recordation of mortgages held by national banks and State-chartered banks.

Of equal importance in the subject bill, is the intent to allow the State of Florida to impose the same taxes on all banks in the State of Florida, whether national banks, State-chartered banks or a foreign bank with its principal office in another State. This would assure all competitive banks being taxed in Florida on an equal and non-discriminatory basis. There has been a question raised as to whether the language used in S. 2906 would accomplish this purpose.

A comparison shows that the language in S. 2906 and H.R. 7491 is extremely similar. If there is any question that the language now used could be interpreted in such a way as to force Florida to rely on the tax laws of the State in which the principal office is located in lieu of Florida tax laws, in the imposition of Florida tax laws on a foreign bank doing business in Florida but whose principal office is located in another State. Then we urge any amendment that would cure this defect on all bills.

I deeply appreciate your interest, concern and full cooperation in lending your effective leadership toward accomplishing this goal for Florida. It has truly been a joint effort of our offices and that of the Florida Bankers Association.  
Sincerely,

FRED O. DICKINSON JR.,  
Comptroller of Florida.

Senator HOLLAND. I just want to say that the wire makes it very clear that the *Homestead Bank* case and its decision did cover all of the intangible personal property tax now levied against both State and National banks.

The CHAIRMAN. Very well. Thank you, Senator Holland.

Senator HOLLAND. Which was my understanding when I testified and the understanding of other witnesses.

The CHAIRMAN. Yes. Thank you, sir. Thank you, Mr. Bloom.

Mr. BLOOM. Thank you, Mr. Chairman.

The CHAIRMAN. I appreciate the clarity of your statement.

Our next witness is Mr. Tom C. Frost, Jr., speaking for the American Bankers Association. Mr. Frost is a member of the ABA Federal Legislative Committee and president of the Frost National Bank of San Antonio, Tex.

Mr. Frost, we are glad to have you with us.

I may say that Senator Tower had wanted particularly to be here this morning and especially to be here when you testified. But, as I said in the beginning, the Republicans are tied up in a caucus trying to elect some officials in the Senate minority party, and he is not able to be here. So we will have to proceed without him.

He regrets not being able to be here.

**STATEMENT OF TOM FROST, JR., ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION, ACCOMPANIED BY MATTHEW HALE, GENERAL COUNSEL**

Mr. FROST. Thank you, Mr. Chairman.

I am very pleased to continue. And I think in view of the urgency of Senator Tower's concern with his party leadership it would be appropriate to do so.

In introducing myself, I might qualify myself as being a commercial banker—an officer and a stockholder in a national bank—one of the banks that will be affected directly by the bill.

As you said, Mr. Chairman, I am representing the American Bankers Association, but probably the best credential I think I can give, I have learned this morning, is that my counsel and adviser in the overall national implications is Matt Hale, so perhaps that helps me more than anything else.

The CHAIRMAN. We are glad to have him back again.

Mr. FROST. You suggested that the statements will be inserted in the record in their entirety, and while we worked long and hard on this statement and feel that by itself it is a clear presentation, I think it might be preferable, instead of reading the whole statement, to make some general remarks.

The first point I would like to emphasize to you is that the supporters of the House bill talk about parity or equality between State and National banks. When we start thinking of the Nation as a whole we are very mindful of one other aspect of equality that I hope the committee will consider, and that is the equality of all commercial banks compared with other taxpayers, business corporations particularly. This is a particularly significant point, I feel.

I would like to emphasize, too, that in the American Bankers Association we are trying to solve the whole problem of State taxation of national banks. When you get into this field, it gets very complicated.

I think the House bill, in its apparent simplicity, commits certain errors of omission, because it does not take into consideration all these complexities.

First, the House bill just talks about equality between two types of banks which the ABA embraces—State banks and National banks. It does not deal with the equality with which the ABA bill deals—equality of banks with other business corporations.

The other thing that H.R. 7491 does is that it sweeps aside—not in what it says but in what it replaces—all the statutory framework for State taxes on banks that has been built up around section 5219. It causes considerable problems and confusions by taking out the provisions that have been in existence for a hundred years since the time when the rest of the Nation—other than your State and my State and a few other States—passed the National Bank Act and for the 40 years since section 5219 has been amended.

The problem, I think, revolves around the fact that taxes in the several States have been falling on National banks and on State banks with a great complexity entwined around these four kinds of taxes which the States are permitted to impose by the law. And we would ask that you here in Congress give some consideration to these complexities that have been built around the Federal legislation for such a long, long time.

In some States they have passed special taxes on national banks, in lieu of the usual taxes that other people and other corporations pay. In my own State all banks pay a capital stock tax, which no other business corporation pays, in lieu of the franchise taxes that other business firms pay, but banks—State and National do not now pay.

In short, if we accept what H.R. 7491 does, we create tremendous problems.

The ABA is attempting to deal with this in two ways: One, we preserve these provisions of the Federal law as they have been in existence so long in section 5219, we preserve the ability of the States to impose any one of these four taxes.

The other thing that the ABA is attempting to do is to avoid the enumeration or the "laundry list," because that gets into the discussions we have heard this morning as to what taxes do you impose here and why should you include this tax or exclude that tax.

I think we have a very excellent proposal that will leave the four basic taxes under section 5219 and then go on to say to the States they can impose other taxes, as long as they do it on national banks and State banks together and as long as they are not discriminatory and do not involve double taxation.

That summarizes what the first part of the ABA bill provides. Then the bill goes on into the very complicated matter of foreign States taxing banks outside of the home States. And I recognize that the ABA bill in attempting to deal with that has come up with some minor differences from Senator Holland's new bill, S. 2906.

The last provision of the ABA bill is one that we think is very important in preserving the dual banking system, and that is to give insured State banks the same privileges as national banks in this out-of-State area.

If you will permit me to say so, I imagine one of the reasons I am here is that Texas is a dramatic example of what could happen if you pass the House version of H.R. 7491. In Texas the banks are not specifically exempt from taxes that other corporations pay. In Texas, banks—we have total parity and equality between State and national banks. Our exemptions for all banks rest you might say on the four provisions of the Federal act.

If you sweep those provisions aside, then what you have done to us—and to certain other States—is to eliminate all exemptions from State taxation. So we then are subject to a discriminatory tax that we have accepted on our capital stock, plus all of the other business taxes.

Now, the easiest way to put this before you may be the way I look at it. I have looked at what our bank's tax bill is now, what it would be if we were just another business corporation in Texas—and I might add that really looks good to me—what it would be under H.R. 7491, and what it would be under the ABA proposal.

These are not in my statement or in my figures.

Last year our institution paid \$523,000 to the State and its political subdivisions, and any change in the Federal law would change the taxation that we pay, the taxes we pay to all of the political subdivisions of the State of Texas. We pay taxes to 10 of these subdivisions. We paid \$523,000 in all to Texas and its subdivisions.

If we were not a bank and operated any other business—or if banks did not pay this special tax that no other business corporation pays and we just paid normal business taxes, from which we are exempt now because of the Federal law—we would have paid \$157,000. That's about one-third of what we pay now. That would be terrific if that would happen.

But I'd have to admit to you we couldn't do that because there would be some political subdivisions that just couldn't support themselves without the banks' taxes.

If H.R. 7491 went through, we would then pay the bank tax, the special discriminatory tax on State and National banks, plus the general business taxes, and we would pay \$579,000, or would have paid last year, an increase of some \$56,000.

Under the ABA proposal, my bank would have paid \$535,000 last year, an increase of \$12,000. So I am here really on behalf of many bankers across the State and in several States saying, "Please pass a bill to allow us to pay more taxes." I think that's a highly unusual position. You don't have too many people before you who do that.

Specifically, what the ABA proposal would have done in Texas is, it would have allowed us to pay the sales tax, which State banks don't pay either in Texas, but it would not subject us to a franchise tax basically on capital in addition to our present discriminatory share tax, because that would be double taxation. We already pay a tax on capital.

So that is a good example of what would happen under H.R. 7491. There are many other examples of what would happen in the way of confusion and litigation.

You could do what the House committee suggested. You could say, "Go back home and solve your problems." Well, we in Texas would say we didn't have a problem before you started on this. Everybody pays taxes equally. And all you do is create problems.

We say that just to say, "Go home and solve your problems," is not really recognizing what has happened over the last 40 years since the last change in the Federal law and would not recognize all of the accommodations that banks have made in attempting to meet their obligations to their States and the political subdivisions therein.

So we would ask that you do not pass H.R. 7491, which creates many problems by what it strikes out, not by what it does. Instead we urge that you consider a bill similar to the ABA, which would maintain these four taxes that we have built on throughout the country, and would add other taxes as long as they are not double or discriminatory. Actually I'd say to you that we could find no objection to Senator Holland's bill in principle. The new taxes in the Holland bill, or virtually all of them, would be permitted under the ABA bill, so Senator Holland provides just as much, or a bit more tax benefit for the States. Senator Holland's bill just does not cover as many future possibilities. ABA of course has not yet specifically considered his bill.

I would say to you personally I would prefer not to use the "laundry list" just because we approach it as Senator Holland does. This is waving the flag for the bull when you start talking about where a State legislature might tax.

I would also feel that we would have the same problem in a few more years when new taxes were invented, and I am afraid that technology will continue and there will be new taxes, and you would have to add those if you specify the particular new taxes that can be imposed.

If you pass the ABA bill, which does not specify the new taxes which the home States may impose, you are really saying everybody is equal as long as you are not having double or discriminatory taxation.

So in closing I would like to say we certainly can find no objection in principle to Senator Holland's bill. We would like one small addition there that would take care of some situations like California, where they have an increased tax rate for banks based on income in lieu of personal property and sales taxes, and the banks have accepted it because of the exemptions that the national banks have. In essence, these banks share with us our desire to pay some additional taxes, and to do it under a bill that will not permit double or discriminatory taxation in the several States, and that will recognize everything that has been build up over a hundred years and the last 40 years.

I would be pleased to answer any questions. I hope I have covered everything of real significance in my statement.

The CHAIRMAN. Thank you very much, Mr. Frost. I enjoyed that statement.

Mr. Hale, do you have anything to add?

Mr. HALE. Well, I do not have anything to add. Perhaps it might be worthwhile to emphasize a few points. There is a real problem here. Many States do need these sales taxes and Florida does need these documentary taxes. The banks in Florida and across the country are willing to pay them. They recognize that these taxes are different from the basic, fundamental income taxes and property taxes which all corporations are paying one way or another.

The banks—or most of them—do feel that these extra excise taxes, the sales and documentary stamp ones, are appropriate and proper to pay.

But the banks also feel terribly strongly that to sweep away a hundred years of constitutional and statutory State tax structures based on the provisions of the section 5219 would be very serious and could lead to endless litigation, endless legislative efforts, and would not in the immediate future take care of the problem that Florida and all the other States are so concerned with, the States that want desperately to get their hands on these sales taxes.

When you look State by State at the various tax arrangements that have been built up, you cannot help but recognize that the approach of the House bill may not speed up relief to the State tax authorities, but may delay it. I'm sure, for example, you will hear about New York which just this year has increased income taxes on banks by 1 percent and provided that sales taxes that have been paid may be deducted from this income tax. This seems to me to provide equality and in effect make sure that, in New York, State and national banks bear the burden of the sales taxes.

There are all kinds of special arrangements, like this, which would be swept away by a very simplistic approach.

The CHAIRMAN. Well, thank you very much, both of you gentlemen. (The full prepared statement of Mr. Frost follows:)

STATEMENT OF TOM C. FROST, JR., FOR THE AMERICAN BANKERS ASSOCIATION

Mr. Chairman and Members of the Committee, I am Tom Frost, Jr., President of the Frost National Bank of San Antonio, Texas, and a member of the Federal Legislative Committee of The American Bankers Association. I appear here to testify on behalf of the Association regarding H.R. 7491, a bill to clarify the liability of national banks for certain taxes. This bill's objective is to enable States to impose on national banks various taxes, such as sales and documentary taxes, which they are not now permitted to impose and to bring about equality of State taxation between State banks and national banks. The American Bankers Association fully supports the principle of equality, in taxation as in other fields, between State banks and national banks, and between commercial banks and other financial institutions, and financial institutions and other business corporations.

My remarks today are directed to pointing out that because of its oversimplification the enactment of H.R. 7491 will not accomplish this objective of equality, but in many States will place the commercial banks, both national and State, in an unequal and disadvantageous position relative to other financial institutions and general business corporations.

For over a hundred years since the enactment of the National Bank Act, and for more than 40 years since the last substantive amendment to R.S. Sec. 5219 (12 USC 548), the several States and the national banks have been evolving methods of taxation within limitations of the Federal law to finance State and local governmental operations with banks paying their proper portion of the cost. Sec. 5219 permits the States to choose one of four methods of taxation of a national bank (in addition to real estate taxes): share taxes, taxes on dividends received by the shareholder, taxes on the bank's net income, and taxes according to or measured by the bank's net income. These four taxes have been widely used by many States to effect proper and frequently heavy taxation of national and State banks by both State and local governments.

However, since the most recent amendment to Sec. 5219 in 1926, the States have devised, and rely heavily on, new forms of taxation not permitted under that section: sales and use taxes, documentary stamp and mortgage recording taxes, and motor vehicle taxes.

While bankers are no more anxious to pay taxes than anyone else, most bankers realize fully that these new taxes are not the same as the traditional annual real property taxes or share taxes or income taxes. Instead they are single-incident, transaction taxes, which are ordinarily imposed on all other business corporations in addition to basic real property, franchise, and income taxes. So bankers generally, and the A.B.A. as an association, support legislation which will authorize States to impose taxes of this sort.

The A.B.A. is, however, strongly opposed to the simplistic approach of H.R. 7491. Enactment of H.R. 7491 in the form it passed the House would be a sure guarantee of years of litigation and confusion, followed by years of legislative activity and further confusion. It would invite every State to rewrite its bank tax laws, whether or not the bank taxes are now fair and equitable compared with taxes on other business corporations. The results might be just as disastrous to State banks as to national banks. H.R. 7491 would also encourage States to impose restrictive taxes and requirements on out-of-State banks, as a condition to making loans or otherwise providing financing for the development of the State. For instance, Ohio, Minnesota, New Jersey and Pennsylvania have statutes imposing restrictions and taxes on foreign corporations doing business in those States, but they exempt all foreign banks, State and national. Enactment of H.R. 7491 would invite those States, and any other States with similar laws, to reconsider these exemptions and to impose substantial restrictions on the flow of funds from State to State.

Now, if I may, I will speak of my own State, Texas, as an example. One of the exceptions in Sec. 5219 permits a tax on the shares of stock of national banks. This tax on shares has been used to collect taxes from both national and State banks to provide substantial funds to the State of Texas, its several counties, school districts, hospital districts and other political subdivisions. It is signifi-

cant to note that in Texas taxes on State banks are levied under the same statute as taxes on national banks. This means that both types of banks enjoy the exemptions accorded national banks by Sec. 5219, the Federal law. Both State and national banks are subjected to the tax on shares or net worth, as permitted under the same Sec. 5219. No other business corporation or financial institution in Texas is subject to this same tax. Because of the exemptions accorded by Federal law, neither State nor national banks pay certain business taxes in Texas. The most significant of these is a franchise tax, fundamentally on the capital of a corporation.

State banks in Texas are exempt from these business taxes only as long as national banks are exempt under Sec. 5219. Consequently, if H.R. 7491 should be passed, this would eliminate the exemptions accorded both national banks and State banks. In Texas and many other States where equality and effective taxation has been accomplished, the banks, both State and national, might automatically find themselves subject to all other corporate taxes, plus the four specific taxes provided for by Sec. 5219.

In Texas this would mean a tax on the shares of State and national banks (capital or net worth) and a duplicate taxation through the franchise tax on capital (net worth).

So by H.R. 7491, equality might perhaps be accomplished but to the detriment of both State and national banks and their customers in many States. Certainly this would be true in Texas.

The suggestion can be advanced that such double or inequitable taxation could be clarified by legislation or litigation in each of the several States where it is found. There can, of course, be no doubt that Texas banks would vigorously contest this double taxation, in court and in the Texas legislature. I ask, is this the practical or just solution? The tax on bank stock in Texas is so heavily depended upon by all levels of government, particularly local government, that any legislation to alter or affect it would be most burdensome, and would probably be impossible anyway, in light of the opposition which would come from almost every political subdivision of the State. I can say that the passage of H.R. 7491 would effectively increase the tax burden on all banks in Texas, State and national. It would destroy what is now equality and balance between commercial banks and other financial institutions as well as between commercial banks and other business corporations.

The American Bankers Association has respectfully submitted to your Committee a substitute bill for H.R. 7491. It may be surprising to learn that by this legislation commercial bankers are asking that their local tax burden be increased to include sales taxes, documentary taxes, and certain other taxes now paid by State banks in the several States. At the same time, the A.B.A. bill would prohibit such double taxation situations as I have just given you. The A.B.A. bill would not bring about litigation, legislation, and other difficulties by sweeping aside an important provision of a Federal statute of many years standing, and would not overthrow the various taxation systems in the several States built around this Federal legislation.

While the A.B.A. could well support other bills which would give States authority to impose certain specific additional taxes, for example, Senator Holland's bill, S. 2906, we feel that our proposal is preferable because the three new provisions it would add to the present structure of State taxation are broader and would cover taxes not mentioned in S. 2906:

1. The home State of a national bank (the State where its head office is located) and the political subdivisions of that State would also be authorized to impose on the national banks taxes generally imposed on State banks and business firms, subject to three exceptions: sales taxes on purchases contracted for before September 1, 1969, taxes based on the same general factors as the four specified methods, and taxes in lieu of which other taxes, or increased rates, are already imposed. The provision does not set forth a "laundry list" of taxes which would be authorized—instead it uses general language, which would clearly cover, for example, State and local sales and use taxes, documentary stamp taxes, and motor vehicle taxes.

2. A State other than the home State of a national bank would be authorized to impose on tangible personal property of the national bank located in the State, ad valorem taxes, sales and use taxes, and motor vehicle taxes. (The tangible personal property of an insured State bank so located would be subject to the same taxes, and of course real property would be subject to tax by the locality in which it is situated.)

3. Insured State banks would be given the same privileges, protections, and immunities as national banks now have with respect to States other than the ones in which they are chartered. (This provision is based on S. 2364, 90th Congress, introduced by Senator Sparkman on August 30, 1967, at the request of the New York State Superintendent of Banks.)

While apologies might be offered for the length of the A.B.A. proposal, it appears that none should be made in light of the need *not* to destroy balanced tax structures built up over many years in the various States.

The A.B.A. is grateful for the opportunity to present these views which affect so many of its members in several States. The commercial bankers of this country ask for tax equality and national banks are requesting legislation to permit the payment of certain taxes now *not* permitted by Federal laws so that they will not have an advantage over State banks in certain States. The commercial bankers ask that you reject H.R. 7491, which would result in discriminatory double taxation of commercial banks in many States, and that you act favorably on the Association's proposals, which will meet the needs of the States and localities for added revenues and provide equality of taxation between State and national banks.

(Additional information submitted by American Bankers Association may be found at p. 59.)

Senator SPARKMAN. Hon. Cleo F. Jaillet. Mr. Jaillet is commissioner of the Department of Corporations and Taxation of the Commonwealth of Massachusetts.

Very glad to have you here.

**STATEMENT OF CLEO F. JAILLET, COMMISSIONER OF CORPORATIONS AND TAXATION, COMMONWEALTH OF MASSACHUSETTS, ACCOMPANIED BY OWEN CLARK, DEPUTY COMMISSIONER**

Mr. JAILLET. Thank you very much, Mr. Chairman.

As commissioner of Corporations and Taxation for the Commonwealth of Massachusetts, I want to thank you for the opportunity to appear before you to present the views of our State on this very important matter.

I know that this committee is aware of the fact that this bill is a logical result of the attempt by Massachusetts to assert its sales and use tax on a national bank doing business in our State.

The First Agricultural National Bank of Berkshire County, in a bill for declaratory relief, sought a binding declaration that it was exempt from the payment of sales or use taxes under the recently enacted sales tax law. The bank had sought a ruling from the State Tax Commission, of which I happen to be the chairman, that would exempt national banks from the sales and use tax law. The Commission did not issue the ruling sought.

It did subsequently issue a regulation which stipulated that "national banks and Federal savings and loan associations are subject to the sales and use tax."

It was this regulation which was attacked by the banks and which was subject of the declaratory bill entered in the Massachusetts Supreme Judicial Court. The basis used by the bank for its claim to exemption is found in the section of the Massachusetts law—and similar sections are found in all State sales and use tax laws—which exempts "sales to the United States—or any political subdivision thereof, or their respective agencies."

The national bank claimed it was an agency of the United States and was, therefore, exempt from our sales and use tax.

It was the considered opinion of all those charged with the administration of this tax law that the substantial changes which have

taken place in the evolution of the national banks, and their relationship to the Federal Government, had moved the banks away from their original role in managing and regulating the national currency to an essentially privately owned banking business privately managed in the interests of its stockholders.

In our defense of the regulation we pointed out that national banks no longer carry out the function originally assigned to them and that even though the Federal Government maintains some supervision and regulation over them, it was no greater than or more substantive than that maintained over railroads, airlines, radio and television and other forms of communications.

The primary purpose of the business of a national bank is to provide profits for its shareholders. The primary purpose of a State-chartered bank is to provide profits for its stockholders. Both State-chartered and national-chartered banks belong to the Federal Reserve System.

In our close analysis of the operations of the members of these two banking systems we could discern no appreciable difference. Most certainly we could not find any basis for determining that national banks were agencies or instrumentalities of the Federal Government.

The Massachusetts Supreme Judicial Court unanimously agreed with the position which we had taken and upheld the imposition of sales and use taxes on national banks. The case was then appealed to the U.S. Supreme Court which in a 5 to 3 decision reversed the Massachusetts court.

I believe it is generally agreed that the whole thrust of the U.S. Court decision was based upon the enumeration contained in 12 United States Code paragraph 548 which allows State taxation of national banks only in four areas:

1. Shares.
2. Dividends.
3. Net income.
4. Excise measured by net income.

Real estate has, of course, been taxable almost from the beginning of national bank history.

Congress has recognized the rights of the States to require national banks to carry their share of the cost of government, at least to the extent of intermittently increasing the kinds of tax methods which could be applied to national banks. The problem, however, is that as new forms of State taxation come into existence, Congress fails to add to the list at the appropriate time. The last additions passed by Congress were made in 1926.

The fact is that not one single State had a sales or use tax on the books in that year. And, in fact, the first States sales tax was not enacted until 1932, effective in 1933.

Now in 1969 there are only four States which do not have such taxes, with the tremendous pressures placed on the States to obtain sufficient revenues to pay for the increasing public services, it is obviously wrong to allow an important segment of the business community, operating for private profit to avoid paying its share of the tax burden because of a technicality.

I note, Mr. Chairman, with much interest this morning that most of those testifying are realizing the importance of this legislation

and are coming forth and stating that they are willing to have some form of taxation so long as it is equal between the State-chartered and the federally-chartered banks.

And I think that we in Massachusetts are only interested in that particular phase of it, that the taxation be equal for federally-chartered banks as well as State-chartered banks.

I think the rest of my presentation is well set out in the statement, and I shall not read any more.

(The complete prepared statement of Mr. Jaillet follows:)

STATEMENT OF CLEO F. JAILLET, COMMISSIONER OF CORPORATIONS AND TAXATION,  
COMMONWEALTH OF MASSACHUSETTS

Mr. Chairman and members of the committee, as commissioner of corporations and taxation for the Commonwealth of Massachusetts I want to thank you for the opportunity to appear before you to present the views of our State on this very important matter.

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The First Agricultural National Bank of Berkshire County, in a bill for declaratory relief, sought a binding declaration that it was exempt from the payment of sales or use taxes under the recently enacted tax law. The bank had sought a ruling from the State tax commission that would exempt national banks from the sales and use tax law. The commission did not issue the ruling sought.

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It was the considered opinion of all those charged with the administration of this tax law that the substantial changes which have taken place in the evolution of the national banks, and their relationship to the Federal Government had moved the banks away from their original role in managing and regulating the national currency to an essentially privately owned banking business privately managed in the interests of its stockholders.

In our defense of the regulation we pointed out that national banks no longer carry out the function originally assigned to them and that even though the Federal Government maintains some supervision and regulation over them it was no greater than or more substantive than that maintained over railroads, airlines, radio and television and other forms of communications.

The primary purpose of the business of a national bank is to provide profits for its shareholders. The primary purpose of a state chartered bank is to provide profits for its stockholders. Both state chartered and national chartered banks belong to the Federal Reserve System. In our close analysis of the operations of the members of these two banking systems we could discern no appreciable difference. Most certainly we could not find any basis for determining that national banks were agencies and instrumentalities of the Federal Government.

The Massachusetts Supreme Judicial Court unanimously agreed with the position which we had taken and upheld the imposition of sales and use taxes on national banks. The case was then appealed to the United States Supreme Court which in a 5 to 3 decision reversed the Massachusetts Court.

I believe it is generally agreed that the whole thrust of the U.S. Court decision was based upon the enumeration contained in 12 U.S.C. paragraph 548 which allows state taxation of national banks only in four areas: 1. shares, 2. dividends, 3. net income, 4. excise measured by net income. Real estate has of course, been taxable almost from the beginning of national bank history. Congress has recognized the rights of the states to require national banks to carry their share of the cost of government, at least to the extent of intermittently in-

creasing the kinds of tax methods which could be applied to national banks. The problem, however, is that as new forms of state taxation come into existence Congress fails to add to the list at the appropriate time. The last additions passed by Congress was made in 1926. The fact is that no one single state had a sales or use tax on the books in that year—and in fact the first state sales tax was not enacted until 1932.

Now in 1969 there are only four states which do not have such taxes, with the tremendous pressures placed on the states to obtain sufficient revenues to pay for the increasing public services it is obviously wrong to allow an important segment of the business community, operating for private profit, to avoid paying its share of the tax burden because of a technicality. The history of Congressional action in expanding the list of taxes has in this instance now been found to be defective.

The necessary enactment to keep pace with State tax laws has not taken place until long after a new state law has been passed. For example, taxes measured by income—the so-called excise on the doing of business—generally came into existence between 1915–1920. Congress did not however, add this type of tax to the national bank list until after 1926. Sales taxes were first enacted in 1932 and they expanded slowly since then—but while the bulk of states enacted sales taxes during the 1950–1960 Congress has not until this year seriously considered the problem of adding such taxes to the national bank list.

Since it is recognized, by almost all authorities, that national banks have no special immunity, by virtue of their operations, from taxes which are applicable to competitive state chartered banks, which at one time in history was sufficient reason for Congress to limit the scope of state taxation of national banks, the time has come for Congress to eliminate the piecemeal approach and to enact a statute which will not again have to be amended.

National banks should be subject to the same taxes applicable to state chartered banks. No state—certainly not Massachusetts—and I am certain no other state—seeks to discriminate against national banks in favor of state banks. The administrators of state tax departments seek only that each element of the economic community bear their fair and proper share now and in the future. That is all this bill does and that is all the state tax departments seek.

It is our firm opinion that the Congress should remove the artificial barrier which has insulated national banks from reasonable state taxation and should do it not by adding specific tax laws to the list now in effect but should do it by enacting the general provision which will place national banks on a par with state chartered banks as far as state taxes are concerned.

Mr. JAILLET. My associate and my deputy commissioner is here with me, Mr. Owen Clark. If the chair has any questions it should wish to direct to me or to my associate, we shall be glad to answer anything you have.

The CHAIRMAN. Well, thank you very much. It is a very clear and concise statement.

Do you have supervision over banks and banking in Massachusetts?

Mr. JAILLET. I as commissioner of corporations and taxation, am a member of the board of incorporations in Massachusetts as a result of my position. I am not the commissioner of banking in Massachusetts.

The CHAIRMAN. You do have a State commissioner of banking?

Mr. JAILLET. Yes. Mrs. Freyda Koplów. I believe she was here testifying before you very recently; within the past week.

As a member of the board of incorporations, however, we do sit on new charters of State banks and on changes in the operation of State banks. The State treasurer is a member. I am a member. And the commissioner of banking is the chairman of the committee.

The CHAIRMAN. Well, I will reserve my questions pertaining to that for the next witness, who is superintendent of banks in the State of New York and represents the National Association of Supervisors of State Banks.

Thank you very much, gentlemen.

Mr. Wille, will you come around, please?

Glad to have you, sir. We have your statement, and, as I have stated earlier, it will be printed in full in the record (see p. 52). Please proceed as you wish.

**STATEMENT OF FRANK WILLE, SUPERINTENDENT OF BANKS,  
STATE OF NEW YORK, ON BEHALF OF NATIONAL ASSOCIATION  
OF SUPERVISORS OF STATE BANKS**

Mr. WILLE. Mr. Chairman, with that understanding, I would like to proceed to read certain portions of this statement but not the entire statement.

The CHAIRMAN. You go right ahead.

Mr. WILLE. As you noted, sir, I am superintendent of banks of the State of New York, but I appear this morning on behalf of the National Association of Supervisors of State Banks in my capacity as chairman of its Federal legislation committee.

The NASSB wishes to reiterate its unequivocal support of H. Res. 7491, a bill which would permit States and localities to treat national and State banks alike for tax purposes.

I would point out this means what it says—that they will be treated alike, that States and localities cannot tax more heavily national banks than State banks, nor can they favor in any way State-chartered banks as distinct from national banks.

The taxes at issue before the Supreme Court included sales and use taxes, which were at stake in the *First Agricultural National Bank of Berkshire County* case, and intangible personal property taxes and documentary stamp taxes, which were at stake in the Florida supreme court decision. But the principle which the Supreme Court enunciated in these two cases would apply to all types of State and local taxes which are not specifically mentioned in section 5219.

Now, we are interested as State bank supervisors in removing the preferential tax treatment which national banks enjoy under these cases for two reasons:

First, as public officials concerned with the rising revenue needs of State and local governments throughout the country; and, second, as State supervisors concerned with competitive equality between national banks on the one hand and State-chartered commercial banks on the other.

In our view, States and localities should be free to choose whether or not to tax such banks just as they are now free under our Federal system to determine State and local tax policy with respect to other taxpayers, subject only to the limitations contained in the Federal Constitution.

If States and localities choose to tax national banks, they should be free to determine as well the method and rate of taxation. This choice should not be limited, as it is today, to the taxes specifically mentioned in section 5219. States and localities utilize many other forms of taxation, and new revenue sources will undoubtedly be sought in the future.

As supervisors of State-chartered commercial banks, we seek equality of treatment on this subject between two groups of banks offering essentially the same services to the public—one operating under State charter, the other under national charter.

Of the three proposals under consideration by your committee, we believe H. Res. 7491 is the most deserving of enactment. As the House committee report stated: “\* \* \* (H.R. 7491) would sweep away an outmoded, confusing and inequitable formula for State taxation of national banks and replace it with a simple, fair, and easily understood rule of law \* \* \* The bill says that national banks shall be subject to the same taxation as State banks, and it means exactly what it says.”

H. Res. 7491 has the following additional virtues, in our opinion:

1. H. Res. 7491 leaves to each State and its localities the choice of whether or not to tax banks operating within its borders, and if so, how. The bill does not require the imposition of any tax or the withdrawal of any exemption.

Conversely, it does not prevent the imposition of a tax nor the withdrawal of any exemption heretofore enacted because of the language of section 5219. What H. Res. 7491 does is give each State, for the first time since 1864, an unfettered choice as to its tax policy with respect to all banks operating within its borders, so long again, if I may emphasize, as they treat national and State banks alike.

2. The principle of equality established by H. Res. 7491 applies to all State and local taxes without limitation. In this way, it protects possible revenue sources for States and localities in the future and avoids the omission of some taxes now being collected by State and local governments.

3. H. Res. 7491 removes the tax immunity which national banks have, but State banks do not have, when they do business across State lines.

We believe that this advantage which the national banks have would be likely to increase substantially in the future as an increasing amount of bank business is done across State lines by out-of-State banks, regardless of charter.

We believe the arguments against the enactment of H.R. 7491 are not well founded. They are based, in the last analysis, upon a distrust of what States and localities might do with the freedom granted by H.R. 7491.

In a few States, State-chartered commercial banks are exempt from certain kinds of taxes because national banks cannot be taxed in the same way under section 5219. In other States—and I don't believe these constitute most other States, as stated in Mr. Bloom's statement, but in some other States—compensatory or in lieu taxes have been levied on both State and national banks at rates sufficiently high to equalize the overall tax burdens of banks and business corporations, the latter not being entitled to any exemptions under section 5219.

Precisely why the States should not be free in these situations to re-examine their State and local tax structures with respect to banks remains unanswered.

Is not the requirement under H.R. 7491 that national banks and State banks be treated alike for State and local tax purposes enough of a safeguard of evenhanded treatment at the State and local level in the event of the bill's enactment? Or must banks have some special protection not available to other business concerns or individuals?

It has also been said that the enactment of H.R. 7491 could lead to “double taxation” of the same income, property or transaction by

more than one State where a national bank does business across State lines.

One answer to this is that under Supreme Court decisions interstate commerce may not be subjected to the burdens of multiple taxation.

Furthermore, the due process clause of the 14th amendment provides additional protection in requiring sufficient local activity to establish a State's jurisdiction for a tax of this kind.

A final answer would be that whatever risks there are of "double taxation" in doing business across State lines, State-chartered banks are already subject to such risks, and no valid reason has been advanced why national banks should have a special immunity from the same tax burdens as State-chartered banks.

We find, accordingly, excellent reasons why H.R. 7491 should be enacted, and no valid reason why it should not be enacted.

Our views are shared by the Governors of the respective States in which we hold office. As Governor Tiemann mentioned to you this morning, the National Governors' Conference at Colorado Springs did adopt a resolution specifically in favor of Representative Patman's bill, H.R. 7491.

While we have reviewed S. 2906, introduced last week by Senator Holland, as well as the proposal circulated by the American Bankers Association dated September 16, 1969, we find each deficient in comparison with H.R. 7491.

S. 2906, while establishing the principle of tax equality between State and national banks for certain enumerated taxes presently levied by a number of States and localities, would continue the present national bank exemption as to taxes not so enumerated.

The listing omits some State and local taxes now levied on State banks and runs the risk that national banks will also be exempted from new forms of State and local taxation levied in the future.

It might be well to remember, as my colleague Commissioner Jaillet from Massachusetts just mentioned, that the present language of section 5219 was enacted at a time when sales and use taxes were an unknown form of taxation in the United States.

We may have the same situation in the future with forms of taxation that we do not now know about today.

We note with approval, however, that the language of S. 2906 draws no distinction between the imposition by the home State of the taxes which are enumerated and the imposition of the same taxes by a nondomiciliary State where a national bank is found to be doing sufficient business to sustain the imposition of a State or local tax. In this regard, we consider it preferable to the proposal advanced by the American Bankers Association.

The American Bankers Association proposal, while an improvement over existing law, is the least desirable of the three proposals now before the committee. It would enact one set of rules, with exceptions, for taxes imposed by the home State, and another set of rules for taxes in other States where banks choose to do business. The exceptions in the list of taxes authorized in the home State and the omissions from the list of taxes authorized in nondomiciliary States both mean that an unwarranted immunity for national banks from State and local taxation will continue, defeating to that extent the freedom of choice to tax or not to tax national banks granted to States and localities by H.R. 7491.

I might also point out under the ABA proposals one of the exceptions from the taxes which can be levied in the home State are in lieu taxes. The ABA proposal says that if there is an in lieu tax today in the home State, other kinds of taxes may not be levied on national and State banks even though they may be equally imposed.

I would point out from my experience in New York that compensatory or in lieu taxes involve only inexact equality between other types of business corporations and banks. When banks are exempted from one type of tax—for example, sales or use taxes—and a compensatory or in lieu tax is required to make up the difference, it is almost impossible arithmetically to achieve precisely the same result.

And I would say that it is much easier both in the administration of taxes and from the point of view of equity to require that banks pay the taxes that other taxpayers and business corporations are required to under State law so I think that that is one significant problem with the ABA proposal today.

As I read the ABA proposal, it seems to require States and localities to keep any in lieu taxes they now have.

The extension to State banks of the national bank immunity in doing business across State lines equalizes the tax treatment of the two types of banks, but in a manner contrary to the usual reliance on State law found in Federal banking statutes when matters of basic competitive importance to both national and State banks are involved.

I would point out further that the ABA proposal goes well beyond mere tax matters in this area, and includes, for example, granting to State banks the restriction on the venue of court cases which national banks now have. They are limited to litigation in the headquarters location of the bank. And also an exemption from the “doing business” requirements of the various States.

I think, unlike the ABA proposal, H.R. 7491 is a tax equality bill only. It does not deal with matters of venue or a State’s power to require the licensing of out-of-State national banks. It leaves these matters in status quo pending further clarification by the Supreme Court or the Congress as to the precise privileges and immunities which national banks may still be entitled to claim.

I have noted, of course, that section 2 of the ABA proposal is identical to a bill which you were kind enough, Mr. Chairman, to introduce on my behalf in 1967. My proposal was intended at that time as an emergency measure to provide competitive equality, as quickly as possible, to State banks doing business across State lines, pending a review by Congress of the precise exemptions, privileges, and immunities then enjoyed by national banks. It was recognized then as being only one means of insuring such competitive equality.

Your committee is now engaged in just such a review of national bank immunity in the limited area of State and local taxation, an area to which this committee’s attention has been directed as a result of Supreme Court cases in 1968 and 1969. In that limited area, H.R. 7491 is another means of insuring State banks of competitive equality with national banks in an important area of competitive importance.

For the reasons stated we urge this committee to report favorably H.R. 7491.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. A very good statement. Very helpful.

I think we have had very fine testimony this morning. I know it will be helpful to the committee as it considers the bills that are before us.

Mr. WILLE. Thank you, sir. We stand ready to answer any questions you might have in writing as well.

The CHAIRMAN. Thank you very much. Your statement is very clear, concise, and I have no questions.

I did have one query, and you answered that adequately when you read your statement.

Mr. WILLE. I tried to do that, sir.

The CHAIRMAN. In other words, you are speaking for the State Supervisors?

Mr. WILLE. Yes, sir. This position of the National Association has been approved by its legislative committee and by its board of directors, of whom the commissioner for Massachusetts is one member, on both committees.

The CHAIRMAN. Thank you very much.

(The prepared statement of Mr. Wille follows, in addition to prepared statements of Norman Gallman, acting commissioner, New York State department of taxation and finance, Hon. William McC. Martin, Jr., chairman, board of governors, Federal Reserve System, and Robert G. Wilmers, acting finance administrator of the city of New York submitted for the record:)

STATEMENT OF FRANK WILLE, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE BANKS

My name is Frank Wille. I am Superintendent of Banks of the State of New York but appear this morning on behalf of the National Association of Supervisors of State Banks in my capacity as Chairman of its Federal Legislation Committee.

The regular members of the National Association of Supervisors of State Banks (NASSB) are the 52 State Bank Supervisors throughout the country. These State officials have under their regulatory jurisdiction all State-chartered banks in the 50 States and Puerto Rico, including 8,975 commercial banks holding approximately 40% of the country's total commercial bank assets.

The NASSB wishes to reiterate its unequivocal support of H.R. 7491, a bill which would permit States and localities to treat national and State banks alike for tax purposes. This bill, reported favorably by the House Committee on Banking and Currency on June 9, was passed overwhelmingly by a roll call vote of 342-4 in the House of Representatives on July 17.

H.R. 7491 amends Sec. 5219 of the Revised Statutes (12 U.S.C. 548) to read as follows:

For the purposes of any tax law enacted under authority of the United States or any State, a national bank shall be deemed to be a bank organized and operating under the laws of the State or other jurisdiction within which its principal office is located.

This amendment becomes effective on the first day of the first calendar year which begins after the date of enactment, i.e. January 1, 1970 if the bill is enacted within the next three months.

Congressional action in this field has become necessary as a result of two recent decisions of the United States Supreme Court holding in effect that the States and their political subdivisions can tax national banks only to the extent specifically authorized by act of Congress. Since the only such taxes on national banks specifically authorized by Congress are those contained in Section 5219 of the Revised Statutes (12 U.S.C. 548), principally (I) taxes based on income, and (II) real estate taxes, States and localities have found themselves unable to levy other kinds of taxes on national banks. The taxes at issue before the Supreme Court included sales and use taxes, *First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339 (1968), and intangible personal property taxes and documentary stamp taxes, *Dickinson v. First*

*National Bank of Homestead*, — U.S. —, 89 S. Ct. 685 (1969), but the principle of nontaxation enunciated by the Court would apply to all types of State and local taxes not specifically mentioned in Section 5219.<sup>1</sup>

State bank supervisors are interested in removing the preferential tax treatment which national banks enjoy under these cases for two reasons: first, as public officials concerned with the rising revenue needs of State and local governments throughout the country, and second, as State supervisors concerned with competitive equality between national banks on the one hand and State-chartered commercial banks on the other.

Like their State-chartered counterparts, national banks are privately owned, privately managed institutions operated for profit. They perform no unique services for the Federal Government today which cannot be performed as well by State-chartered banks.

In our view, States and localities should be free to choose whether or not to tax such banks just as they are now free under our federal system to determine State and local tax policy with respect to other taxpayers, subject only to the limitations contained in the Federal Constitution.

If States and localities choose to tax national banks, they should be free to determine as well the method and rate of taxation. This choice should not be limited, as it is today, to the taxes specifically mentioned in Section 5219. States and localities utilize many other forms of taxation, and new revenue sources will undoubtedly be sought in the future.

As Supervisors of State-chartered commercial banks, we seek equality of treatment on this subject between two groups of banks offering essentially the same services to the public—one operating under State charter, the other under national charter. The nation's present system of dual banking regulation presupposes substantial equality in matters of basic competitive importance, and taxation is surely one of these. Failure to change existing law is likely to have one of three consequences: (I) it could encourage further conversions of commercial banks from State to national charter; (II) it could encourage the granting of similar exemptions to State-chartered banks by States and localities that do not offer such exemptions today; or (III) it could encourage compensatory tax action at the State and local level, provoking needless litigation and still not resolving the inequities of the present situation as easily as a change in the National Bank Act.

Of the three proposals under consideration by your Committee, H.R. 7491 is the most deserving of enactment. As the House Committee Report stated:

... (H.R. 7491) would sweep away an outmoded, confusing and inequitable formula for State taxation of national banks and replace it with a simple, fair, and easily understood rule of law. . . . The bill says that national banks shall be subject to the same taxation as State banks, and it means exactly what it says.

H.R. 7491 has the following additional virtues, in our opinion:

1. *H.R. 7491 leaves to each State and its localities the choice of whether or not to tax banks operating within its borders, and if so, how.* The bill does not require the imposition of any tax or the withdrawal of any exemption. Conversely, it does not prevent the imposition of a tax nor the withdrawal of any exemption heretofore enacted because of the language of Section 5219. What H.R. 7491 does is give each State, for the first time since 1864, an unfettered choice as to its tax policy with respect to all banks operating within its borders.

2. *The principle of equality established by H.R. 7491 applies to all State and local taxes without limitation.* In this way, it protects possible revenue sources for States and localities in the future and avoids the omission of some taxes now being collected by State and local governments.

3. *H.R. 7491 removes the tax immunity which national banks have, but State banks do not have, when they do business across State lines.* Whatever vitality may be left to the concept that national banks are "Federal instrumentalities"

<sup>1</sup>The thrust of the Supreme Court decision in the *Berkshire County* case was that the national bank exemption had been part of the statutory scheme for national bank operations since the original enactment of the National Bank Act in 1864 and should, therefore, be changed by Congress not the Court. There is no serious dispute that the wartime conditions that led to the creation of the national banking system have no relationship to the conditions that exist today. While national banks were necessary then for currency purposes and to establish a market for Federal Government bonds, most of these functions were assumed by the Federal Reserve System upon its creation in 1913. The national banks of today clearly do not warrant the status of "Federal instrumentalities" for purposes of constitutional immunity from State and local taxes, any more than State-chartered banks or other business corporations.

for tax purposes,<sup>2</sup> the fact remains that under Section 5219, as interpreted by the United States Supreme Court, national banks may not be taxed outside their home States even though another State may have sufficient jurisdiction to tax an out of State State-chartered bank which does similar business within its borders. H.R. 7491 removes any statutory basis in Federal law for the national bank exemption in these cases, thereby bringing to an end an unfair and unjustified tax advantage which national banks now have over State banks. Without such action, the importance of the national bank advantage would be likely to increase substantially in the future, as an increasing amount of bank business is done across State lines by out of State banks.

We believe the arguments against the enactment of H.R. 7491 are not well-founded. They are based, in the last analysis, upon a distrust of what States and localities might do with the freedom granted by H.R. 7491.

In a few States, State-chartered commercial banks are exempt from certain kinds of taxes because national banks cannot be taxed in the same way under Section 5219. In other States, compensatory or in lieu taxes have been levied on both State and national banks at rates sufficiently high to equalize the overall tax burdens of banks and business corporations, the latter not being entitled to any exemptions under Section 5219. Precisely why the States should not be free in these situations to re-examine their State and local tax structures with respect to banks remains unanswered.

In California, where it is my understanding that a higher franchise tax rate is in effect with respect to banks than other corporations, the higher rate was enacted "in lieu of" several taxes to which these other corporations were subject but which could not be levied on national banks because of Section 5219. The California Bankers Association took the following position in March 1968:

For many years the California Bankers Association has urged Congress to enact legislation which would permit the states to tax national banks in the same manner as other corporations, and it would welcome Federal and State legislation which would accomplish this (Statement by California Bankers Association, "How Banks are Taxed in California," March 1968). (Emphasis supplied).

H.R. 7491 would permit "national banks to be taxed in the same manner as other corporations" in California. While State legislation will also be required in California to reduce the franchise tax rate now imposed on banks, assuming H.R. 7491 is enacted, the necessity of legislation at both Federal and State levels was clearly anticipated by the California Bankers Association. A somewhat similar rate increase in New York's franchise tax on banks will revert automatically to a lower level if H.R. 7491 is enacted.

Is not the requirement under H.R. 7491 that national banks and State banks be treated alike for State and local tax purposes enough of a safeguard of evenhanded treatment at the State and local level in the event of the bill's enactment? Or must banks have some special protection not available to other business concerns or individuals?

It has also been said that the enactment of H.R. 7491 could lead to "double taxation" of the same income, property or transaction by more than one State where a national bank does business across State lines. One answer to this is that interstate commerce may not be subjected to the burdens of multiple taxation. *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954). Further, the due process clause of the Fourteenth Amendment provides additional protection in requiring sufficient local activity to establish a State's jurisdiction. See also *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 464-465 (1959); *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960). A final answer would be that whatever risks there are of "double taxation" in doing business across State lines, State-chartered banks are already subject to such risks, and no valid reason has been advanced why national banks should have a special immunity from the same tax burdens as State-chartered banks.

We find, accordingly, excellent reasons why H.R. 7491 should be enacted, and no valid reason why it should not be enacted.

Our views are shared by the Governors of the respective States in which we hold office. At the recently concluded 61st Annual Meeting of the National Governors' Conference, at Colorado Springs, the following resolution was adopted without dissent:

<sup>2</sup> Three of the present members of the United States Supreme Court flatly rejected the concept in *First Agricultural National Bank of Berkshire County v. State Tax Commission*, *supra*, while four of the present members found the question unnecessary to decide in that case.

The National Governors' Conference reiterates its concern, expressed in a policy statement adopted in February, 1969, that action be taken to counteract the effects of court decisions giving an unfair tax advantage to national banks. The Conference urges the adoption of Representative Patman's bill, as amended and reported out of committee (H.R. 7491, Report 91-290), which would allow States to treat national banks the same as State banks for State and local tax purposes.

While we have reviewed S. 2906, introduced last week by Senator Holland, as well as the proposal circulated by the American Bankers Association dated September 16, 1969, we find each deficient in comparison with H.R. 7491.

S. 2906, while establishing the principle of tax equality between State and national banks for certain enumerated taxes presently levied by a number of States and localities, would continue the present national bank exemption as taxes not so enumerated. The listing omits some State and local taxes now levied on State banks and runs the risk that national banks will also be exempted from new forms of State and local taxation levied in the future. It might be well to remember that the present language of Section 5219 was enacted at a time when sales and use taxes were an unknown form of taxation in the United States. We note with approval, however, that the language of S. 2906 draws no distinction between the imposition by the home State of the taxes enumerated and the imposition of the same taxes by a nondomiciliary State where a national bank is found to be doing sufficient business to sustain the imposition of a State or local tax. In this regard, we consider it preferable to the proposal advanced by the American Bankers Association.

The American Bankers Association proposal, while an improvement over existing law, is the least desirable of the three proposals now before the Committee. It would enact one set of rules, with exceptions, for taxes imposed by the home State, and another set of rules for taxes in other States where banks choose to do business. The exceptions in the list of taxes authorized in the home State and the omissions from the list of taxes authorized in non-domiciliary States both mean that an unwarranted immunity for national banks from State and local taxation will continue, defeating to that extent the freedom of choice to tax or not to tax national banks granted to States and localities by H.R. 7491.

The extension to State banks of the national bank immunity in doing business across State lines equalizes the tax treatment of the two types of banks, but in a manner contrary to the usual reliance on State law found in Federal banking statutes when matters of basic competitive importance to both national and State banks are involved. The privileges and immunities granted to State banks, moreover, go well beyond mere tax matters, and include, for example, a restriction on the venue of court cases to the headquarters location of the State bank, and an exemption from the "doing business" requirements of other States. Is the Congress really prepared to extend the "Federal instrumentality" doctrine, in all of its uncertain ramifications, to State banks when three members of the United States Supreme Court have flatly repudiated its validity to the national banks of today, at least in the tax area? Contrary to the American Bankers Association letter to you of September 16, 1969, Mr. Chairman, H.R. 7491 does not eliminate all the "Exemptions and privileges which national banks has as Federal instrumentalities." H.R. 7491 is a tax equality bill only. It does not deal with matters of venue or a State's power to require the licensing of out-of-State national banks. It leaves these matters in status quo pending further clarification by the Supreme Court or the Congress as to the precise privileges and immunities which national banks may still be entitled to claim.

I have noted, of course, that Section 2 of the bill proposed by the American Bankers Association is identical to a bill which you were kind enough, Mr. Chairman, to introduce at my request in 1967. My proposal was intended at that time as an emergency measure to grant competitive equality, as quickly as possible, to State banks doing business across State lines, pending a review by Congress of the precise exemptions, privileges and immunities then enjoyed by national banks. It was recognized then as being only *one* means of insuring such competitive equality. Your Committee is now engaged in just such a review of national bank immunity in the limited area of State and local taxation, an area to which this Committee's attention has been directed as a result of Supreme Court decisions in 1968 and 1969. In that limited area, H.R. 7491 also insures State banks of competitive equality with national banks.

For the reasons stated, we urge this Committee to report favorably H.R. 7491.

STATEMENT OF NORMAN GALLMAN, ACTING COMMISSIONER, NEW YORK STATE  
DEPARTMENT OF TAXATION AND FINANCE

H.R. 7491, a bill to clarify the liability of national banks for any tax law enacted under the authority of the United States or any State, has passed the House and is before the Senate Committee on Banking and Currency. This bill would end discriminatory immunity from state and local taxes granted to national banks. The bill provides that for tax purposes, a national bank shall be considered to be organized and existing in the state where its principal office is situated. Thus, national banks would be subject to state and local taxation to the same extent as their competitors, the state-chartered banks. The bill affects not only the important area of state and local sales and use taxation, but any other taxes implicitly prohibited under current Federal law.

As you know, in June of 1968 the United States Supreme Court held (*First Agricultural National Bank of Berkshire County v. State Tax Commission*<sup>1</sup>) that a state was prohibited from imposing its sales and use tax on a national bank. In a 5 to 3 decision, the Court concluded that this prohibition existed because, under Section 548 of Title 12 of the United States Code, Congress permits national banks to be taxed only in certain ways. One of the most important taxes prohibited was sales and use taxation.

In reaching its decision the Court found it unnecessary to reach the constitutional question of whether national banks should now be considered as Federal instrumentalities and thus immune even from *non-discriminatory* state taxation. The Court relied solely on its interpretation of Section 548.

In *Liberty National Bank v. Buscaglia*,<sup>2</sup> the New York Court of Appeals held that national banks are subject to New York's sales and use tax since national banks are no longer Federal instrumentalities and Section 548 does not restrict the state to specified types of taxes. After the decision in the *Agricultural National Bank* case, the Court of Appeals granted a rehearing in the *Liberty National Bank* case and subsequently reversed its decision.<sup>3</sup> New York State has filed a petition for a writ of certiorari in appeal to the United States Supreme Court in an attempt to have the Supreme Court decide the constitutional question left unanswered, namely, whether national banks should now be considered immune as Federal instrumentalities.

In the context of past court decisions, the extent to which national banks may be subject to state and local taxes has been left to the discretion of the Congress. Thus, it is Congress which must remedy the preferential tax treatment accorded national banks. Enactment of H.R. 7491, introduced by Congressman Patman, will end the exemption of national banks from sales and use taxes. For a number of reasons, I strongly urge the Committee to report this bill favorably.

National banks and state banks are in competition with each other. The ownership, control and source of capital of each is private and each exists for private profit. The relationship between these similar financial institutions must be one of competitive equality. However, there can be no equality where national banks are the beneficiaries of a preferential tax policy under which national banks are exempt from sales and use taxes while state chartered banks, like all other corporations and individuals, pay these taxes.

The need for equality between national and state banks has been recognized by Congress through other legislation. Under the provisions of Title 12 governing the Federal Reserve System, for example, those national and state banks that belong to the Federal Reserve System may accept deposits of public monies of the United States government and its agencies. Also, the Treasury Department and other Federal agencies are specifically prohibited from discriminating in favor of national banks over state chartered banks in their selection of depositories for public monies.

The Treasury Department customarily keeps its revenues from taxes and bond issues in both national and state banks. Presumably, Congress was also striving for equity when it authorized both national and state banks to underwrite obligations of Federal instrumentalities, such as the Federal home loan banks. In addition, both national and state banks actively compete for Federal Housing Administration and Veterans Administration loan business.

The Federal statute governing the right of states to tax national banks has not kept up with the times. When taxes on income and taxes based on income became important general revenue sources to the states, Section 548 was amended

<sup>1</sup> 392 U.S. 339, 20 L. Ed. 2d 1138.

<sup>2</sup> 21 NY 2d 357.

<sup>3</sup> 23 NY 2d 933.

to permit states to impose such taxes on national banks. These amendments were made in 1923 and 1926, before the first state had imposed a sales and use tax. In 1950, a bill to clarify state taxation of national banks was before a Subcommittee of the Senate Committee on Banking and Currency as Senate 2547. That bill, which I understand was not reported out of Committee, would have allowed states to impose sales and use taxes on purchases by national banks. At that time, about 28 states imposed sales and use taxes. Now, at a time when the Congress through your Committee is again considering a measure to permit states to subject national banks to sales and use taxation, some 45 states and the District of Columbia impose such taxes. Sales taxes are now a significant source of revenue for almost all states. In some states sales taxes are the main source of revenue, while in others like New York, such taxes are a very important source of both state and local revenue.

New York State has taken action, in addition to urging passage of this legislation, to protect its revenues. This year legislation was enacted to recoup losses incurred due to immunity of national banks from state and local sales and use taxes.<sup>4</sup> This law imposes an additional tax rate of 1% under the state franchise tax on state and national banks measured by net income. Under the law, state banks are allowed either a deduction or credit against their franchise tax for New York State and local sales and use taxes paid during the period that Federal law prohibits the states from imposing these taxes on national banks. National banks are also allowed a deduction or a credit, but to take it, sales and use taxes must be paid, or payments must be made in lieu of these taxes. Thus the new law will result in more equitable tax treatment of national and state banks. Both types of banks are subject to the 1% increase, which can be reduced to the extent that sales and use taxes are paid.

This interim New York tax increase, which will automatically be terminated upon enactment of Federal legislation subjecting national banks to state and local sales and use taxation, is expected to produce an amount of revenue equivalent to the sales and use tax loss expected from national bank immunity. The increase will not help finance the sales and use tax refunds which may be payable to national banks for the period August 1, 1965, when the state sales tax and use tax law took effect, through 1968.

The interim New York Law is not a satisfactory solution to this problem of tax immunity for national banks. It was designed as a stop gap measure to preserve State revenue, but it imposes additional undesirable administrative and taxpayer compliance burdens. As was earlier noted, it is the Congress which can remedy the unfair situation which now exists. New York urges the enactment of H.R. 7491.

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STATEMENT OF WILLIAM MCC. MARTIN, JR., CHAIRMAN OF THE BOARD OF  
GOVERNORS OF THE FEDERAL RESERVE SYSTEM

I appreciate your invitation to present the views of the Board of Governors with respect to H.R. 7491, S. 2906, and related proposals concerning State taxation of national banks. While this is a subject on which the Treasury Department can speak with more authority, we hope that some observations on our part will be helpful to your Committee in its deliberations on the important questions involved in these bills.

We understand that the immediate cause for the concern about changing the present law on this subject is that the Supreme Court has recently ruled in two cases that national banks are exempt from certain forms of taxes imposed by their home States. The second of these two rulings, according to the Comptroller of the State of Florida, involves a potential revenue loss of such serious proportions in that State that remedial legislation is needed as soon as possible.

The Treasury Department has submitted for your consideration a draft amendment to subject national banks to nondiscriminatory sales and use taxes in the home State, and has indicated in its letter accompanying the draft that the language could be broadened to cover other taxes, such as those specified in S. 2906. The Board agrees with the Treasury that "a national bank should be subject to the same taxation in its home State as a State chartered bank." We have no recommendation as to whether it is best to add to the statutory list of permissible taxes, as Senator Holland and the Treasury propose, or subject national banks to home-State taxation with listed exceptions, as others have

<sup>4</sup> Chapter 405, Laws of 1969.

proposed. Either approach runs the risk of requiring an amendment in case unforeseen problems arise. We believe that there is merit, however, in excluding two forms of tax: taxes on intangible personal property and taxes for which the State has substituted another tax (or imposed another tax at a higher rate) in the case of banks. A tax on intangible personal property hits hardest those financial institutions whose assets consist almost wholly of intangibles; so a tax that appeared to be nondiscriminatory could operate unfairly in practice if applied to banks. And we believe that recognition should be given to the fact that some States have exempted State banks from any tax that national banks need not pay, and have then taken this exemption into account in fixing other taxes that both State and national banks must pay; repeal of the exemption should not operate to subject banks to double taxation.

On the question of taxation outside the home State, we are inclined to agree with the Treasury, particularly in view of the urgency of the need for action, as expressed by the Comptroller on the State of Florida. The issue of multistate taxation of corporations is complex, and one on which we have limited knowledge. It is not involved in the two Supreme Court decisions that prompted introduction of the various bills before you. We believe equal treatment in the home State is clearly needed now; determination of whether changes should be made in other States can await further study.

In summary, the Board endorses the amendment submitted by the Treasury, with the qualifications mentioned above.

STATEMENT BY ROBERT G. WILMERS, ACTING FINANCE ADMINISTRATION OF THE CITY OF NEW YORK

My name is Robert G. Wilmers. I am Acting Finance Administrator of the City of New York. In that capacity I am charged by law with the responsibility of administering and collecting all taxes levied by the City.

I urgently request the Committee to give its approval to H.R. 7491 which would place national banks on a parity with state banks for purposes of state and local taxation.

This is a matter of great importance to the City of New York. I estimate that under existing law, which gives immunity to national banks from municipal taxes, the City of New York suffers the loss of \$8 million each year in revenues which would otherwise be realized were national banks held liable to taxation in the same manner as state banks. In light of the urban crisis, the City of New York—indeed, no City—can afford to forego revenues of such magnitude which can be devoted to such essential needs as police and fire protection, sanitary services, and health and hospital services.

In New York City the problem occasioned by the exemption of national banks from local taxes is emphasized by the fact that it is a highly concentrated site of the banking community. In this City, the foremost financial center of the nation and the world, national banks and state banks do business side by side throughout the City. All of those banks perform identical functions and render identical services to their customers. Nevertheless, national banks enjoy tax immunity which state banks do not. Whatever justification might have existed in an earlier society for affording national banks tax exemption because of special national functions performed by them, it is certainly an anachronism under modern conditions to continue to afford a discriminatory preference which has no justifiable factual basis today.

It would be unthinkable to suggest today that the states and localities of the nation will single out national banks for unfavorable and discriminatory treatment, as indeed was the situation in the landmark case of *McCulloch v. Maryland* decided in 1819 which first enunciated the principle of national bank immunity. Indeed, H.R. 7491 amply safeguards national banks by providing in effect that they are to be treated in the same way as banks organized and existing under state law. All that this bill would change is the discriminatory treatment which favors national banks; it would merely afford uniformity of treatment to all banks, national and state.

Economic circumstances may dictate that a bank shall operate under national law rather than state law, or vice-versa, and banks do indeed change their form of organization from one to the other, and even back to the original form. But such a mode of organization has nothing to do, and should by law be recognized as having nothing to do, with the tax liability of a bank to the state and the community in which it conducts its business operations.

Sales and other excise taxes are paid today by all businesses. Such taxes are non-discriminatory, and they are indeed indispensable to meet the burgeoning revenue needs of the states and localities. No valid reason can be suggested why banks, simply because they are chartered by the Federal Government, should be entitled to preferential treatment that no other bank or business in similar circumstances enjoys.

I urge that favorable action be taken promptly on H.R. 7491, because of the pressing and unabating needs of the states and localities today.

The CHAIRMAN. That concludes the hearings. The committee is adjourned.

(Whereupon, at 11:52 a.m., the committee was adjourned, subject to the call of the Chair.)

(The following was subsequently received for inclusion in the record:)

THE AMERICAN BANKERS ASSOCIATION,  
Washington, D.C., October 7, 1969.

HON. JOHN J. SPARKMAN,  
Chairman, Senate Banking and Currency Committee, New Senate Office Building,  
Washington, D.C.

DEAR MR. CHAIRMAN: In my letter of September 16, 1969, I urged the Committee to consider a draft of a bill suggested by The American Bankers Association as a substitute for H.R. 7491, which the A.B.A. strongly opposes.

The A.B.A. has now had an opportunity to consider Senator Holland's bill, S. 2906, introduced on September 16, 1969, and, subject to the addition of a short proviso based on a clause of the A.B.A. bill, we support S. 2906 as a satisfactory alternative to the A.B.A. proposal. S. 2906 adopts a simpler approach than the A.B.A. bill, but the results of the two are very similar. Virtually all of the taxes permitted under S. 2906 would be permitted under the A.B.A. proposal. (The only exceptions are that S. 2906 would permit the imposition of sales taxes on sales of intangibles by out-of-State banks and taxes on the execution, delivery or recordation of documents by out-of-State banks.) We know of no major taxes now being imposed which would be permitted under the A.B.A. proposal but not under S. 2906.

The principal difference between the two bills is the third provision in the A.B.A. proposal, giving to insured State banks the same privileges, protections, and immunities as national banks with respect to out-of-State transactions. This provision is not contained in S. 2906. However, by authorizing States to impose sales and use taxes, documentary stamp taxes and motor vehicle taxes on out-of-State national banks, S. 2906 eliminates the chief current basis for discrimination between State and national banks.

We recognize that this provision in the A.B.A. proposal is of major significance, and might be considered controversial. The A.B.A. would not wish to press this provision, desirable though we consider it, at the risk of jeopardizing or delaying favorable action on the rest of our proposal or on S. 2906.

S. 2906 would leave the present structure of R.S. 5219 (12 U.S.C. 548) unchanged. Each State would still select one of the four authorized methods of taxation of national banks, in addition to real property taxes. In effect, S. 2906 would constitute a new, fifth paragraph to Sec. 5219, authorizing additional compatible forms of tax. The A.B.A. proposal included a specific requirement that the additional taxes imposed under the new A.B.A. provision be generally applicable to State banks and business corporations on a non-discriminatory basis. While it might be desirable to add a specific provision to this effect to S. 2906, such a provision does not seem essential, since sales and use taxes, tangible personal property taxes, documentary stamp taxes and motor vehicle taxes are, as far as we know, always imposed on a general non-discriminatory basis on all businesses.

The A.B.A., however urges one amendment to S. 2906, the addition of a proviso based on our proposal reading as follows:

"Provided, That no tax may be imposed by a State or political subdivision thereof which imposes any tax, or imposes any increased rate of tax, in lieu of such tax."

In a number of States, California for example, an increased rate of tax over and above the tax rate applicable to corporations generally is imposed on banks in lieu of sales, personal property, and motor vehicle taxes. It would obviously

be unfair and improper to impose these special taxes under the new authority, and at the same time to continue the extra tax or the built-up rate of tax.

Accordingly, the A.B.A. recommends strongly that H.R. 7491 in its present form should be rejected, and that either the original A.B.A. proposal or S. 2906 (with the proviso suggested above) should be approved by your Committee and promptly enacted into law. Either of these means would accomplish the tax relief sought by the National Governors' Conference and the State taxing authorities, without creating the chaos that would result from the House version of H.R. 7491.

I enclose the A.B.A. responses to the questions handed to us at the close of the hearing.

Sincerely yours,

CHARLES R. MCNEILL,  
Director, Washington Office.

AMERICAN BANKERS ASSOCIATION RESPONSES TO QUESTIONS  
SUBMITTED BY THE COMMITTEE

*1. What factual basis has A.B.A. for assuming "probable double taxation" in some States if H.R. 7491 is enacted?*

Answer. The A.B.A. is concerned over the possibility of double taxation of both State and national banks which would be created by H.R. 7491. This possibility arises in two ways: (1) A State which imposes a share tax on the value of a bank's shares might also impose an intangible property tax on the intangible personal property owned by the bank. Since the value of a bank's shares (unlike the value of shares of most commercial and industrial firms) consists almost entirely of the value of its loans, investments, deposits in other banks, and cash (aside from the bank's premises, subject to real property taxes, and more recently its computers), taxation of these intangibles through an intangible property tax would be a duplication of the share tax. (2) A State where a loan is made by a bank chartered by another State might impose a tax on the loan, or the income from the loan, which would duplicate the tax imposed by the bank's home State on the value of or the income from the loan.

*1 (a). Is not the Federal Constitution a protection here?*

Answer. While the due process and equal protection clauses of the Constitution may give some protection to national and State banks against the imposition of double taxation of the same item, either by the home State or another State, such protection would be far from perfect, as well as expensive and slow. The courts are reluctant to upset a legislative determination with respect to taxes, and give States wide discretion in tax matters. This is the case under the precise statutory language of R.S. 5219 (*Security-First National Bank v. Franchise Tax Board*, Cal. 1961, 359 P.2d 625; *Tradesmen's National Bank of Oklahoma City v. Oklahoma Tax Commission*, 1940, 309 U.S. 560, 60 S. Ct. 688, 84 L. Ed. 947), and even greater freedom is permitted under the Fourteenth Amendment (*Union Bank and Trust Company v. Phelps*, 1933, 288 U.S. 181, 186).

*1 (b). Is there any evidence of a purpose or intent on the part of several States to tax the same income or property or transaction twice?*

Answer. Many States have now intangible personal property taxes. In the absence of an express statutory exemption for banks, these taxes would be immediately applicable to the loans and investments of national and State banks, without further State action, in the event of enactment of H.R. 7491. The testimony of Mr. Turlington makes it clear that he would support the imposition of such a tax in Florida, in addition to the Florida share tax on bank stock.

*2. "In lieu" taxes and increased franchise tax rates on banks seem to have been enacted as a tax equalization measure by States and localities precisely because national banks were exempt from certain taxes under Sec. 5219 and the Supreme Court decisions. Is there any factual basis for assuming that States and localities will change this policy of evenhandedness if H.R. 7491 is enacted?*

Answer. Some States, Florida for example, have achieved equality between State and national banks by exempting State banks from taxes that cannot be imposed on national banks. This provides equality between State and national banks, but not between banks and corporations which must pay sales taxes. Some States, Missouri and New York, for example, impose a "built-up" tax rate on banks and permit a deduction for sales taxes. This legally questionable practice provides equality between State and national banks, and between banks and

other corporations if the "built-up" rate accurately reflects the burden of the sales taxes on the other corporations. Other States, like Pennsylvania and Connecticut, have not achieved such satisfactory results, and State banks in those States must make substantial tax payments not made by national banks.

These widely divergent tax practices are the result of different constitutional and statutory tax structures in the several States. This wide divergence provides a clear factual basis for the conclusion that the "policy of evenhandedness" indicated by "in lieu" taxes and "built-up" rates is not the general rule today, and provides no basis whatever for the assumption that there will be a general adoption of such a policy in the future if H.R. 7491 is adopted.

*3. If H.R. 7491 is, as A.B.A. has said, an invitation to all States to review and rewrite all their tax laws on both in-state and out-of-state banks, why is this bad? Why should banks be granted special protection against possible forms of State and local taxes not available to individuals and other corporations?*

Answer. The process of rewriting basic tax laws and tax statutes is time-consuming, expensive, and uncertain as to results. Where a "policy of evenhandedness" has been put fully into effect, a new tax law might easily result in a change for the worse. And even where only a very rough measure of equality between State and national banks, or between banks and other corporations, has been achieved, a completely new tax structure may or may not result in a greater measure of equality, even after all the time and expense involved.

It would seem most inappropriate and undesirable for the Federal Government to impose on each State government, and on many local governments, the burdensome task of a complete revision of its bank tax structure, in order to take care of problems resulting from a few specialized taxes, such as sales and use taxes, documentary stamp and mortgage recording taxes, and tangible personal property and motor vehicle taxes. It seems a truism to say that unnecessary legislation is bad. Certainly it seems unnecessary and undesirable to invite, if not require, a general review of tax structures on the basis of a showing of need to cure a few special problems. And if attempting to accomplish too much will result in delay in accomplishing what is urgently needed, this too has real disadvantages.

It is appropriate for the Federal Government to enact special provisions for the protection of national banks from unfair or discriminatory State taxation for the same reasons that it was appropriate for the Federal Government to establish the national bank system in the first place, and then to establish the Federal Reserve system and Federal Deposit Insurance—namely, that the Federal Government has a vital interest in the banking system, as a means of providing a money supply, as a means of providing credit, and as a means of providing a payment mechanism, for the benefit of business, the government, and the public. Bank assets and bank responsibilities are sufficiently different from those of other corporations so that taxes may have an unusual effect on banks, and failure to take this into account might interfere with the strength and soundness of national banks, and thereby frustrate the objectives of the Federal Government.

*4(a). Is not the defect of both S. 2906 and the A.B.A. proposal the fact that national banks would remain exempt from certain State and local taxes when State banks and other businesses are not entitled to such exemptions as a matter of Federal law?*

Answer. It is correct that both S. 2906 and the A.B.A. proposal limit the authority of States to impose taxes on national banks, and to this extent would let national banks remain exempt from other State and local taxes. However, both S. 2906 and the A.B.A. proposal would permit States to impose on national banks the kinds of taxes which the State tax authorities refer to in their complaints to Congressman Podell (see letters printed in the Testimony Received in Consideration of H.R. 7491 and Related Bills, House Banking and Currency Committee, May 26, 1969), and involved in the Massachusetts and Florida tax cases.

As indicated above, the interest of the Federal Government in the banking system—whether the national bank system alone or the entire dual banking system—is sufficient to warrant the creation of national banks, the Federal Reserve System, and Federal Deposit Insurance.

*(b) In the interstate field, should Congress require, as the A.B.A. proposal recommends, that States and localities exempt State banks as well as national banks from the taxes which aren't specifically allowed? Why shouldn't States and localities have the same option to tax out-of-state national banks as they do today to tax out-of-state State banks and out-of-state business corporations? Do the day-to-day operations of national or State banks really require Congress to continue such special tax privileges?*

Answer. In the interstate field, the desirability of equalizing State and national banks as far as taxation of interstate loans and related matters such as doing business licensing requirements are concerned is clear. State banks should not be handicapped in this respect. The A.B.A. would favor equalization by improving the status of State banks, rather than by reducing the immunities of national banks. The arguments for this proposal were set forth in a letter from the New York Superintendent of Banks to the Committee Chairman, dated July 19, 1967, a copy of which is attached (see below).

5. *Isn't the A.B.A. proposal a fairly obvious attempt to preserve certain tax advantages for national banks and extend at least some of them to State banks as well?*

Answer. No. We believe that State action under R.S. 5219 has provided protection against discriminatory taxation for both State and national banks. The A.B.A. proposal is a completely open and above-board effort to preserve the present basic tax structure of section 5219, to which the States have adjusted their tax structures over the past 40 years, at the same time providing authority for additional taxes not inconsistent with the basic tax structure. The A.B.A. proposal would also extend to insured State banks the privileges, protections and immunities which national banks have in interstate transactions.

STATE OF NEW YORK,  
BANKING DEPARTMENT,  
New York, N.Y., July 19, 1967.

HON. JOHN SPARKMAN,  
U.S. Senate,  
Washington, D.C.

DEAR MR. SPARKMAN: In doing business across State lines, State-chartered banks and savings and loan associations operate at a serious competitive disadvantage as compared to National banks and Federal savings and loan associations. The extent of this disadvantage is outlined briefly in the two page summary which is enclosed. For the convenience of your staff, I have also enclosed two copies of this summary, two copies of a proposed bill and two copies of a more detailed memorandum which was sent to Senator Robertson last September on the same subject.

The New York State Banking Department has come to the conclusion that the only means by which these competitive disparities can be promptly eliminated is through Congressional action, and to this end, the Department has prepared the suggested bill which is enclosed. In essence, the bill would provide that a state bank or savings and loan association doing business across state lines shall enjoy the same privileges, protections and immunities as a national bank or federal savings and loan association doing such business.

The enactment of such a bill would reaffirm past expressions of Congressional intent that there be a basic equality of competitive opportunity within the dual banking system, irrespective of whether the institution concerned operates under Federal or State charter. Its enactment would also serve to strengthen state banking systems throughout the country.

If you see any merit in resolving this imbalance by an act of Congress, I would be most appreciative if you would sponsor such a bill and if you would urge your associates on the Senate Committee on Banking and Currency to give it their early consideration.

Sincerely yours,

FRANK WILLE,  
Superintendent of Banks.

#### INTERSTATE BUSINESS DISPARITIES BETWEEN STATE-CHARTERED AND FEDERALLY CHARTERED FINANCIAL INSTITUTIONS

State-chartered commercial banks, savings banks and savings and loan associations doing business across state lines are at a serious competitive disadvantage when compared with national banks and Federal savings and loan associations doing the same kinds of business.

The disadvantages for State-chartered institutions relate primarily to—

1. The necessity for compliance with "doing business" laws in other states.
2. The imposition of taxes by other states.

In addition, state-chartered banks encounter a third important disparity: they can be sued wherever they "do business," but Federal law (12 U.S.C. § 94) permits national banks to be sued only in their headquarters state.

## 1. COMPLIANCE WITH "DOING BUSINESS" LAWS

When a business corporation which is not a financial institution "does business" across state lines, it runs the risk that its contracts may be held void or unenforceable in the courts of other states. This disability can usually be overcome by meeting statutory qualification requirements, which generally include (i) initial license fees, (ii) a continuing liability for state and local taxes, and (iii) the designation of some public official for local service or process.

National banks and Federal savings and loan associations are generally treated as though they are exempt from such qualification requirements. The theory of these exemptions is that both types of institutions are, by virtue of their Federal charters, "federal instrumentalities" entitled to the same exemptions from state regulation as the Federal Government itself.

State-chartered banks and savings and loan associations enjoy no such exemptions when they do business across state lines. Unless they comply with local "doing business" laws—and some states do not permit compliance by banks or savings and loan associations—they may find themselves unable to collect on defaulted loans and unable to enforce their security interest in loan collateral.

## 2. TAXATION BY OTHER STATES

Federal and state courts, again treating Federally-chartered financial institutions as agencies of the Federal Government itself, have held that national banks and Federal savings and loan associations can be taxed by the states only as Congress has specifically permitted (e.g., in 12 U.S.C. §548 for national banks, and 12 U.S.C. §1464h for Federal savings and loan associations). Under this line of reasoning, they have held invalid license taxes, personal property taxes, and sales and use taxes levied on national banks. State-chartered banks and savings and loan associations have no such immunity from taxation in non-domiciliary states.

\* \* \* \* \*

The proposed bill requires equality of treatment for State-chartered financial institutions in these situations, without (i) limiting the power of Congress to change the exemptions now accorded to national banks and Federal associations, or (ii) conferring any powers on State-chartered banks or associations which have been denied them by their chartering State.

COMMONWEALTH OF PENNSYLVANIA,  
GOVERNOR'S OFFICE,

Harrisburg, September 23, 1969.

HON. JOHN J. SPARKMAN,  
*Chairman, Senate Banking and Currency Committee,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. SPARKMAN: Before your Committee is a bill designed to clarify the liability of national banks for certain taxes. I am referring to S. 2065, and on its behalf I would like to submit a statement for the record.

For years the States had levied taxes on both national and State banks on the same basis. Within the past two years, however, decisions by the U.S. Supreme Court have barred the imposition of State and local sales and use taxes on purchases by national banks. In one decision the Court stated, ". . . we are convinced that if a change is to be made in state taxation of national banks, it must come from the Congress, which has established the present limits."

When Congress first established the limits on taxation of national banks in 1926, sales and use taxes were not commonly in use. Had they been, I feel certain that Congress would have included them in the limits set. The Supreme Court has properly recognized the prerogatives of Congress to act in this area, and S. 2065 has been introduced to rectify and clarify the present narrow limits of the statutes.

The primary implications of differential, and in effect discriminatory, tax treatment of State banks vis-a-vis national banks are twofold.

There is first, and most obviously, a need for equality of treatment between the two. Within our banking system, both State and national banks perform a public service. We must, however, not lose sight of the fact that banks are also businesses. The success of a bank depends upon how well it competes in the

marketplace, as is true of all other competitive enterprises. Unless we provide equitable tax treatment for both, State banks will continue in their present, disadvantaged competitive position.

The second point is the impact on State revenues by the loss of our ability to tax national banks. Not only are we faced with a current loss of revenue, but the probability of future losses must also be considered. Several claims have already been made by national banks on the States to recover taxes paid in previous years. If the decisions of the Supreme Court are not clarified by Congress, their claims may be considered legitimate. It is also not unlikely to presume that some State banks, seeking to maintain a competitive position, will apply for national charters, thus causing a further reduction in revenues.

I am heartened by the action of the House of Representatives in passing the companion bill to S.2065, H.R.7491, by a vote of 342 to 4. I know that your Committee will give this measure full and careful consideration, and I am hopeful that you will reach the same conclusion as did the House.

I am sure that you share my conviction that equality of tax treatment should be sought at all levels of government and that discriminatory taxation must be eliminated whenever possible. S.2065 is a step in this direction and I thank you for the opportunity to state my views on it.

Sincerely,

RAYMOND P. SHAFER, *Governor.*

#### POSITION OF MISSOURI BANKERS ASSOCIATION ON H.R. 7491

Since 1926, Section 5219 of the Revised Statutes (12 U.S.C. 548) has provided the parameters within which the States and the political subdivisions thereof may tax national banks. The section provides four methods of taxation:

1. Tax the bank shares, or
2. Include dividends derived therefrom in the taxable income of an owner or holder thereof, or
3. Tax national banks on their net income, or
4. According to or measured by their net income.

In addition to one of the four forms of tax listed above, the section permits an ad valorem tax on the bank's real property.

In 1945, Missouri enacted section 148.030, Revised Statutes of Missouri, which provides: "Every national banking association shall be subject to an annual tax according to and measured by its net income in accordance with method numbered (4) as provided in 12 U.S.C.A. section 548. . ."

Missouri also imposed a tax upon state-chartered banks measured by their net income, the provisions of which insure that the total tax load for state and local government purposes will be precisely equal for any given bank, whether its charter is state or federal.

H.R. 7491, as passed by the House of Representatives, would repeal section 5219 and substitute a provision which states that:

"For the purposes of any tax law enacted under the authority of the United States or any State, a national bank shall be deemed to be a bank organized and existing under the laws of the State or other jurisdiction within which its principal office is located."

The announced purposes of the bill are to end the tax discrimination against state banks which is produced by sheltering national banks, and to permit the states to impose sales, use and some other taxes upon national banks. H.R. 7491 appears to accomplish these aims with obvious simplicity. When closely studied, however, several serious problems are revealed.

Supporters of the house-passed bill claim that it would not require, but merely permit, state legislatures to review their bank tax statutes. In fact, it would be necessary for Missouri to amend its laws. At the very least, the language in the Missouri statute which refers to a U.S.C.A. provision no longer in existence would need to be repealed. Once before the legislature, the section becomes an inviting target for substantive change and a convenient vehicle for providing additional state revenues.

We support equality in the taxation of banks, but no action is required in Missouri to end discriminatorily high taxes upon national banks as compared with state bank taxes. As noted earlier, our law produces an identical tax load upon state and national banks. While state banks do pay sales taxes, income taxes, and some other state and local taxes, the amounts so paid are direct credits against the amount of bank tax due, thus the total loads are equalized.

Nor is action required in Missouri to bring the level of taxation imposed upon banks up to that required of other financial institutions or general business corporation. Quite the opposite is true. The rate of bank tax levied upon banks and measured by their income is at the rate of 7%. The tax upon savings and loan associations and credit unions is at the rate of only 2%, as is the income tax upon business corporations. The 5% differential more than compensates for the additional sales and other taxes paid by other corporations.

It is possible to achieve the results desired by the proponents of H.R. 7491 without repealing the existing provisions of section 5219. The staff of the American Bankers Association, at the urging of Missouri bankers, has prepared a draft of a substitute which would permit states to impose sales and use and some other local or state taxes on national banks. The passage of this latter version would not, however, require a readjustment of statutes in states such as Missouri where equality between state and national banks has been achieved.

Adoption of the ABA proposal would also insure the continuation of an important safeguard now contained in section 5219. There is no justification for greater tax upon national banks than upon state banks. By the same token, it is difficult to justify higher taxes upon banks than upon other business corporations. Existing section 5219 and the ABA draft prohibit this form of tax discrimination by states.

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NATIONAL ASSOCIATION OF TAX ADMINISTRATORS,  
*Chicago, September 19, 1969.*

HON. JOHN SPARKMAN,  
*Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR SPARKMAN: For purposes of conserving the time of the Committee, the tax commissioners of the states of Alabama, Connecticut, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Rhode Island, South Carolina and Virginia, have asked me to express by this letter their strong support for H.R. 7491 or a substantially similar proposal to amend the National Banking Act so as to assure that national banks will be subject to generally applicable state and local taxes. In addition, the tax commissioners of the states of Maine, Michigan, Nebraska, New Jersey, Oregon, Pennsylvania, Utah and Wisconsin, have expressed their strong support for this legislation in communications sent directly to the Committee on Banking and Currency or to their own senators who are members of the Committee.

The revenue losses involved in the exemption of national banks from sales and use taxes and from other taxes imposed on business generally are not limited to transactions involving national banks. In many instances, as a matter of fairness, state legislatures have provided that banks organized under state law shall be exempt from any generally applicable tax that a national bank does not have to pay because of the restrictions of 12 U.S.C. 528.

State officials and students of public finance urge the amendment, some even the repeal, of R.S. 5219 because of two major changes that have taken place since the national bank tax clause was last amended. At that time, in 1926, the retail sales tax was practically unknown. Since then it has become a standard component of the tax structure of 44 states as of January 1, 1969. Individuals and businesses alike must pay this tax and presumably if the tax had been used by the states in 1926, Congress would have included it among those which national banks had to pay. In any event, there is no longer any reason, now that the legal question has been decided by the United States Supreme Court, to delay taking the action necessary to require national banks to pay the same taxes that other corporations and all individuals have to pay.

Moreover, the kinds of activities conducted by national banks have changed substantially during this same period. It was pointed out in the *Agricultural National Bank* case, decided by the United States Supreme Court on June 17, 1968, that the federal fiscal functions served by national banks were radically revised with the passage of the Federal Reserve Act of 1913 and that today national banks perform no significant fiscal service to the federal government that is not performed by their state competitors. At the same time, legislation was enacted to make them more competitive with state banks, for example, with respect to branch banking and fiduciary powers.

More recently, national banks have been accorded a greater scope of operations outside the domiciliary state by virtue of the loan production office rulings.

This extension of national bank operations geographically has been accompanied by an even greater expansion in the kinds of activities conducted by national banks. These include data processing services; leasing of personal property; ownership of subsidiary corporations performing mortgage servicing, factoring, warehousing and similar functions; credit cards; collective investment accounts; the sale of insurance and travel agency functions.

Other businesses conducting similar activities have to pay all generally applicable taxes including ad valorem taxes on tangible personal property, documentary taxes on deeds and similar levies; when national banks provide these services they need pay only the taxes authorized by R.S. 5219.

In short, consideration of the changes that have occurred in the composition of the tax systems of the states and the changes that have taken place in the functions and services performed by national banks in the years since the national bank tax clause was last amended, demonstrate most convincingly that the present restrictions are not only outmoded but also that they give national banks an unfair advantage over other businesses with which they are in competition.

Sincerely,

CHARLES F. CONLON,  
*Executive Secretary.*

[Reprinted from the Congressional Record, Sept. 17, 1969]

#### STATE TAXATION OF NATIONAL BANKS

Mr. SPARKMAN. Mr. President, the Committee on Banking and Currency has announced hearings to consider legislation in connection with the taxation of national banks by the various States. At present, two bills are pending before the committee dealing with this subject matter. These are H.R. 7491 and a bill introduced by the Senator from Florida (Mr. HOLLAND) S. 2906. Meanwhile, I have a letter, with enclosure, dated September 16, 1969, from the American Bankers Association which suggests another matter for consideration in reaching the aims now desired in connection with the taxation of national banks by States.

I ask unanimous consent that the letter with enclosure that I have received from the American Bankers Association be printed in full in the RECORD at this point, so that all who are interested in this matter will have the opportunity to study the proposals being made by that association, and indeed of all of these three different approaches to this matter.

I add, Mr. President that I do this so that all who may be interested may have this information. My doing so is not to be deemed as my support of any of them.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

#### THE AMERICAN BANKERS ASSOCIATION,

*Washington, D.C., September 16, 1969.*

Hon. JOHN J. SPARKMAN,  
*Chairman, Senate Banking and Currency Committee, New Senate Office Building,  
Washington, D.C.*

DEAR MR. CHAIRMAN: In its testimony before the Committee at the hearing on H.R. 7491, "an Act to clarify the liability of national banks for certain taxes", The American Bankers Association will support a substitute proposal. A copy of this is attached.

The A.B.A. bill would leave unchanged the basic structure of R.S. Sec. 5219 (12 USC 548), authorizing States to tax national banks by any one of four specified methods (in addition to real estate taxes). It would make three changes in the present situation:

1. The home State of a national bank (the State where its head office is located) and the political subdivisions of that State would also be authorized to impose on the national banks taxes generally imposed on State banks and business firms, subject to three exceptions: sales taxes on purchases contracted for before September 1, 1969, taxes based on the same general factors as the four specified methods, and taxes in lieu of which other taxes, or increased rates, are already imposed. The provision does not set forth a "laundry list" of taxes which would be authorized—instead it uses general language, which would clearly cover, for example, state and local sales and use taxes, documentary stamp taxes, and motor vehicle taxes.

2. A State other than the home State of a national bank would be authorized to impose on tangible personal property of the national bank located in the State, ad valorem taxes, sales and the use taxes, and motor vehicle taxes. (The tangible personal property of an insured State bank so located would be subject to the same taxes, and of course real property would be subject to tax by the locality in which it is situated.)

3. Insured State banks would be given the same privileges, protections, and immunities as national banks now have with respect to States other than the ones in which they are chartered. (This provision is based on S. 2364, 90th Congress, introduced by you on August 30, 1967, at the request of the New York State superintendent of Banking.)

The A.B.A. bill would give full and clear authority (with only the three exceptions specified above) for national banks to pay sales and use taxes—and other similar taxes—to the States and cities in which they are located.

In addition, where a national bank owns tangible personal property located in another State, the customary taxes on such property could be levied by that State.

These provisions would give to the States and municipalities the additional sources of revenue they need and seek. National banks which belong to the A.B.A., and State banks too, recognize that banks should contribute to the financing of their States and localities through the payment of sales and use taxes and similar special excise taxes, as well as through the four methods specified in R.S. Sec. 5219 and through real estate taxes. In fact, in many States national banks are now paying sales taxes directly or indirectly, and in such cases the bill would clarify and simplify the situation.

At the same time the A.B.A. proposal would fit in with the complex and involved constitutional and statutory bank tax structure which has been developed in the States over the 40 years since the last substantive amendment to R.S. Sec. 5219 and the 100 years since the first version of the provision was written into the National Bank Act.

In this respect, the A.B.A. considers that its proposal is far superior to the apparent simplicity of H.R. 7491, which would in fact have the most widely varying results in different States, ranging from probable double taxation in some States, to legislation and litigation in other States. The A.B.A. fully supports the principle of equality, as between State banks and national banks, as between commercial banks and other financial institutions and as between financial institutions and other business corporations. However, equality is not necessarily achieved by simplistic methods, and we feel strongly that in this case, brevity would not necessarily result in equality.

The A.B.A. also considers that its proposal is superior to that of H.R. 7491 with respect to taxation by States other than those in which the home office of the bank is located. The House bill would provide equality by eliminating exemptions and privileges which national banks have as Federal instrumentalities, exemptions such as relief from doing business taxes and licensing under such statutes. This provides equality but at a cost to national banks and to their customers by authorizing the imposition of restrictions on such transactions.

The A.B.A. proposal on the other hand would eliminate the inequality by giving to insured State banks—the State branch of the dual banking system—the privileges, protections and immunities which national banks now have. The A.B.A. in other words would provide equality by improving the situation of State banks and their customers rather than by impairing the situation of national banks and their customers. And since national banks, and by derivation State banks, would pay ad valorem, sales and use, and motor vehicle taxes on tangible personal property located in these other states, this equality would be achieved with little, if any, loss in revenue to these other states.

Since the A.B.A. proposal is a substantial departure from H.R. 7491, and since the subject matter is extremely complicated and involved, we would appreciate it if you would make the A.B.A. proposal available to the members of the Committee and to other interested parties and organizations so that careful consideration can be given to it at the Committee hearings of September 24.

Sincerely yours,

CHARLES R. McNEILL,  
*Director, Washington Office.*

A BILL TO CLARIFY THE LIABILITY OF NATIONAL BANKS FOR CERTAIN TAXES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5219 of the Revised Statutes (12 U.S.C. 548) is amended by adding at the end thereof new subparagraphs (5) and (6) reading as follows:

"(5) In addition to the method of taxation which a State may elect under the first four forms of taxation under this section, a State or political subdivision thereof may impose upon a national bank having its principal office in such State any tax other than one of such four forms of taxation to the same extent and in the same manner that such other tax is imposed generally upon State chartered banks and business corporations having their principal offices within such State, except that no sales or use tax complementary thereto shall be imposed upon purchases, sales and use within such State or political subdivision of tangible personal property which is the subject matter of a written contract of purchase entered into by a national bank prior to September 1, 1969, and except that no tax authorized hereunder shall be levied upon or measured by cash, intangibles (except taxes on sale, the execution or recordation of documents, and other similar single-incident transactions), capital, surplus, undivided profits, reserves, or bank indebtedness, and except that no such other tax may be imposed by a State which imposes any tax, or imposes an increased rate of tax, in lieu of such other tax.



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Charles M. ...  
Director, ...