

SEPTEMBER 29, 1955.

WARREN COUNTY BOARD OF TAXATION,
Court House Annex,
Belvidere, New Jersey.

FORMAL OPINION—1955. No. 35.

Re: Bank Stock Tax.

GENTLEMEN :

You have requested our opinion as to the method of computing the value of bank stock under the provisions of R. S. 54:9-1 et seq.

Your request states:

"Some banks, or possibly all banks, set up in their records a 'reserve for contingencies' which amount is deducted from the undivided profits. Would you kindly give me your interpretation as to whether under the Statute the banks are permitted to deduct this reserve out of undivided profits in rendering their statement to the County Tax Board for figuring the tax, or must the banks report full undivided profits even if in their own bookkeeping procedures they do set aside this reserve."

R. S. 54:9-5, as amended, provides that:

"For the purposes of assessment, the chief fiscal officer of every such bank, shall annually, on or before January tenth, file with the secretary of the board of taxation of the county within which its principal place of business is located, a true statement under the oath of its president, cashier, or treasurer, setting forth:

- a. Its name and principal place of business;
- b. The amount of capital surplus and undivided profits, *as indicated by the books of the company*, as of the close of business December thirty-first previous for which the statement is filed;" (emphasis supplied "through-out)

The wording of the statute indicates that the statement must reflect the figures as to capital, surplus and undivided profits as they appear on the books of the bank. It would seem, therefore, that, if in computing undivided profits an allowance of a reserve for contingencies was set up on the books, a statement showing the figure so computed would be in compliance with the statute.

This does not mean, however, that the board must necessarily restrict itself to figures so reported in ascertaining the value of the common stock. R. S. 54:9-9, as amended, sets forth a list of facts which must be found by the board independently in ascertaining the value of the shares of stock. The statute provides:

"Each county board shall annually, on or before March first, ascertain from an inspection of the statements filed, *and from any other sources of information which may be open to it*:

- a. The names and places of business of all banks in the county;
- b. The number of shares of common and preferred capital stock of each issued and outstanding;
- c. The aggregate amount of the capital, surplus and undivided profits of each."

Chapter 90, P. L. 1914, a predecessor statute containing substantially similar language was construed by the former Supreme Court to mean that the county tax board was not limited to the figures as reported to it, but it could resort to other sources of information. The Court said, *Com. Trust Co. v. Hudson Bd. of Taxation*, 86 N. J. L. 424, 432 (Sup. Ct. 1914), *aff'd*. 87 N. J. L. 179 (E. & A. 1914):

"The legislature could not have thought that the books of the corporation would be an infallible test of the amount of capital, surplus and undivided profits; they would be no more infallible than the method of section 2; the statement was no doubt required because it would furnish information that would assist in determining the true value. So, the value of each share ascertained under section 2 would give valuable information; but the county board is not limited by section 6 to the facts ascertained from the books (book value), and from adding together the amount of capital, surplus and undivided profits (liquidation value). It is authorized to resort to other sources of information which may be open, and required to ascertain the true value of all the capital stock issued and outstanding."

See also *Second Nat. Bank & Trust Co. of Red Bank v. State Board of Tax Appeals*, 114 N. J. L. 573 (Sup. Ct. 1935).

We now turn to the question of whether reserves for contingencies should be taken into account in determining the amount of undivided profits and ultimately the value of the stock.

Contingency reserves are a recognized means of providing for an adjustment to surplus or earned profits to reflect anticipated losses. See Paton, *Advanced Accounting* (1939) p. 595; Kester, *Principles of Accounting* (1939) p. 465. Paton states, however, at page 596 that,

"The practice of appropriating surplus in the form of one or more loss reserves should not be carried to extremes. Reservations which are nothing more than gestures in the direction of conservatism are more likely to obscure than to illuminate and are to be avoided. The foregoing of dividends and the accumulation of a general surplus buffer, without the use of fancy labels, give sufficient indication of conservative policy except in situations where a definite basis for anxiety exists."

In view of the statutory requirement stated above that the board ascertain the value of the bank stock from any sources of information which may be open to it, the duty devolves upon the board to examine the books of the bank and form an independent judgment as to the reasonableness of the amount of the reserve entered upon its books. In so doing, the board should take into consideration the past experience of the bank, general and local economic conditions and reasonable expectations for the immediate future. If it is satisfied, after having considered these and any other related factors of which it may have knowledge, that the reserve is proper, it may use the figures as reported by the bank. If on the other hand, it believes that the amount of the surplus entered upon the books is not justified by the circumstances, it may make such adjustments as it deems necessary to arrive at the true value of the stock.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.