

U.Colo.L.Rev. 849 (1986).

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ANNOTATIONS

NOTES OF DECISIONS

- I. GENERALLY 1 to 40
- II. OBLIGATIONS OR PROPERTY EXEMPT FROM TAXATION 41 to 59

I. GENERALLY

< Subdivision Index >

Generally 6

Computation of tax

 Computation of tax - Generally 13

 Computation of tax - Deductions 14

Constitutionality 2

Construction with other laws 6a

Deductions, computation of tax 14

Estoppel 16

Franchise taxes from which obligations exempt 9

Gift taxes from which obligations exempt 10

Historical 1

Income taxes from which obligations exempt 11

Jurisdiction 15

Nonproperty taxes from which obligations exempt 12

Nonresident aliens 7

Particular taxes from which obligations exempt

 Particular taxes from which obligations exempt - Generally 8

 Particular taxes from which obligations exempt - Franchise taxes 9

 Particular taxes from which obligations exempt - Gift taxes 10

 Particular taxes from which obligations exempt - Income taxes 11

 Particular taxes from which obligations exempt - Nonproperty taxes 12

Power of Congress 5

Purpose 3

Retroactive effect 4

1. Historical

Revenue statute providing for exemption from state or local taxation of obligations of United

States, as amended in 1959, provided exemption no broader in scope than that which Constitution requires for tax exemption for government obligations. First Nat. Bank of Atlanta v. Bartow County Bd. of Tax Assessors, U.S.Ga.1985, 105 S.Ct. 1516, 470 U.S. 583, 84 L.Ed.2d 535.

From the time when McCulloch v. Maryland, 1819, 4 Wheat. 316, 4 L.Ed. 579, was decided, an unbroken line of cases adopting the principles of that decision, has established the inherent nontaxability by the states of property held by the United States, and of bonds and obligations issued by the United States and held by individuals or corporations, except by permission of the United States. State v. Mayor of City of Newark, N.J.Err. & App.1899, 44 A. 654, 63 N.J.L. 547.

NOTE: SEE TITLE 12 SECTION 411 IN PART:.....

UNITED STATES CODE ANNOTATED

TITLE 12. BANKS AND BANKING

CHAPTER 3--FEDERAL RESERVE SYSTEM

SUBCHAPTER XII--FEDERAL RESERVE NOTES

Current through P.L. 104-98, approved 1-16-96

Sec. 411. Issuance to reserve banks; nature of obligation; redemption

*****NOTE***NOTE*****

OBLIGATIONS ARE NON-TAXABLE

BY THE STATES OR POLITICAL

SUB-DIVISIONS OF THE STATES

SEE TITLE 31, Section # 742

Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. [[[A DARN LIE IN FACT!!!]]]

2. Constitutionality

Where economic but not legal incidence of tax falls on federal government, such tax generally does not violate constitutional immunity if it does not discriminate against holders of federal property or those with whom federal government deals. Memphis Bank & Trust Co. v. Garner, U.S.Tenn.1983, 103 S.Ct. 692, 459 U.S. 392, 74 L.Ed.2d 562.

Determination that state was not prohibited by federal statutory exemption from taxing dividend income derived from repurchase agreements involving federal securities did not resolve challenge to tax on separate ground that tax violated intergovernmental tax immunity doctrine of the supremacy clause of the United States Constitution, as scope of statutory exemption was not necessarily the same as scope of intergovernmental tax immunity doctrine. Bewley v. Franchise Tax Bd., Cal.1995, 886 P.2d 1292, 37 Cal.Rptr.2d 298, 9 Cal.4th 526.

Congress cannot withdraw from state taxation securities issued by the United States already subject to such taxation, and Act Feb. 25, 1862, c. 33, 12 Stat. 346, incorporated in former Sec. 742 of this title, so far as it exempted from state taxation United States securities previously issued, was extra constitutionally void. People v. City and County of New York Com'rs of Taxes and Assessments,

3. Purpose

When Congress amended former Rev.Stat. Sec. 3701 [now this section] providing that all stocks, bonds, treasury notes and other obligations of the United States shall be exempt from taxation by or under state or municipal or local authority to add sentence stating that exemption extends to every form of taxation that would require that either obligations or interest thereon, or both, be considered, directly or indirectly in computation of tax, Congress intended to sweep away formal distinctions and to invalidate all taxes measured directly or indirectly by the value of federal obligations, except those taxes specified in amendment. *American Bank and Trust Co. v. Dallas County*, U.S.Tex.1983, 103 S.Ct. 3369, 463 U.S. 855, 77 L.Ed.2d 1072, rehearing denied 104 S.Ct. 39, 463 U.S. 1250, 77 L.Ed.2d 1457, on remand 679 S.W.2d 566.

Former Sec. 742 of this title which generally exempted interest bearing obligations of the United States from state and local taxation was enacted to prevent taxes which diminished in the slightest degree the market value or investment attractiveness of obligations issued by the United States in an effort to secure necessary credit. *New Jersey Realty. Title Ins. Co. v. Division of Tax Appeals* in Dept. of Taxation and Finance of N.J., U.S.N.J.1950, 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

Former Sec. 742 of this title and former Sec. 425 [now Sec. 5154] of this title were clarifications of congressional intent to immunize from state taxation only the interest bearing obligations of the United States which were needed to secure credit to carry on the necessary functions of government, which intent should not have been expanded or modified in any degree by the judiciary. *Smith v. Davis*, U.S.Ga.1944, 65 S.Ct. 157, 323 U.S. 111, 89 L.Ed. 107.

Congressional intent of statute exempting stocks and obligations of federal government from taxation by state or political subdivision was to prevent state taxes which diminish in even slightest degree market value or investment attractiveness of obligations issued by United States in effort to secure necessary credit. *Loewenstein v. State, Neb.*1993, 504 N.W.2d 800, 244 Neb. 82, certiorari granted 114 S.Ct. 1215, 127 L.Ed.2d 562, reversed on other grounds 115 S.Ct. 557, 130 L.Ed.2d 470.

Congressional purpose of enacting this section exempting interest from federal obligations from most forms of state or local taxation, except, inter alia, nondiscriminatory franchise taxes imposed on corporations, was to protect federal obligations against discriminatory state taxation when federal obligations were offered for sale in competition with state securities; in an effort to secure and protect credit, Congress sought to prevent the slightest diminution of market value or investment attractiveness of federal obligations. *State ex rel. Douglas v. Karnes*, Neb.1984, 346 N.W.2d 231, 216 Neb. 750.

Federal public debt statute is intended to invalidate all state and local taxes measured directly or indirectly by value of federal obligations or any interest thereon, except those exceptions specified in Statute. *Pacific First Federal Sav. Bank v. Department of Revenue, State of Or.*, Or.1989, 779 P.2d 1033, 308 Or. 332.

4. Retroactive effect

Former 31 U.S.CODE, Sec. #742 of this title which exempted from state taxation United States securities did not apply to such securities held before the passage of such former section. Bank of Commerce v. City and County of New York, N.Y.1863, 67 U.S. 620, 2 Black 620, 17 L.Ed. 451. See, also, People v. Commissioners of Taxes and Assessments, N.Y.1862, 37 Barb. 635.
{ MORE LIES }

United States Supreme Court decision declaring state taxation of interest income earned by banks on federal obligations to be illegal and unconstitutional should be applied prospectively only from January 24, 1983, the date of such decision, and not retroactively, in light of lack of foreseeability of such decision, disruptive impact on state of retroactive application due to tax refund liability, and fact that retroactive application was not necessary to accomplish the purpose of the decision, that is, to encourage bank investment in federal obligations. First of McAlester Corp. v. Oklahoma Tax Com'n, Okla.1985, 709 P.2d 1026. BUT SEE MEMPHIS BANK AND TRUST vs. STATE OF TENNESSEE et al GARNER, which totally upheld 31 U.S. CODE Section # 742 by U.S. SUPREME COURT at; 103 S.Ct. 692, 459 U.S. 392, 74 L.Ed.2d 562 {1983 case}.

Permitting banks to recover 1982 corporate excise taxes due and paid to state did not involve retroactive application of decision of United States Supreme Court, in that taxes were not due when decision of United States Supreme Court was rendered, and action by banks to contest constitutionality of discriminatory assessment of the taxes did not accrue until they paid the taxes under protest, which banks did subsequent to ruling of United States Supreme Court. Midland Bank & Trust Co. v. Olsen, Tenn.1986, 717 S.W.2d 580, certiorari denied 107 S.Ct. 1336, 479 U.S. 1103, 94 L.Ed.2d 186.

5. Power of Congress

Congress has power to declare that bonds issued by the United States shall not be taxable by a state. Newark City Bank v. Assessor of Fourth Ward of City of Newark, N.J.Sup.1862, 30 N.J.L. 13.

6. Generally

Tax exemption for government obligations that is required by Constitution is not a total exclusion, but, instead, may be limited by charging obligations and their interest fair share of related expenses or burdens. First Nat. Bank of Atlanta v. Bartow County Bd. of Tax Assessors, U.S.Ga.1985, 105 S.Ct. 1516, 470 U.S. 583, 84 L.Ed.2d 535.

The principle of exemption is that the states cannot control the national government within the sphere of its constitutional powers--for there it is supreme--and cannot tax its obligations for payment of money issued for purposes within that range of powers, because such taxation necessarily implies the assertion of the right to exercise such control. Banks v. Mayor and Controller of City of New York, U.S.N.Y.1868, 74 U.S. 16, 19 L.Ed. 57, 7 Wall. 16.

States may not encroach upon the borrowing power of the United States government by taxing federal obligations. Montana Bankers Ass'n v. Montana Dept. of Revenue, Mont.1978, 580 P.2d 909, 177 Mont. 112.

6A. Construction with other laws

Definition of Federal Reserve notes as "obligations of the United States" within context of 12 U.S.C.A. Sec. 411, which governs issuance of such notes, is distinguishable for tax purposes from meaning of 31 U.S.C.A. Sec. 3124, which provides that stocks and obligations of the United States government are exempt from taxation by state or political subdivision of state, and Code 1957, Art. 81, Sec. 280(c)(1), which provides that interest or dividends on obligations of the United States shall be subtracted from federal adjusted gross income, as Sec. 411 is contained within title which created the Federal Reserve System and Sec. 3124 and Art. 81 refer to interest bearing instruments such as United States bonds. *Provenza v. Comptroller of Treasury*, Md.App.1985, 497 A.2d 831, 64 Md.App. 563.

7. Nonresident aliens

United States bonds issued after as well as before Mar. 1, 1941, and physically located within United States, should have been excluded from taxable gross estate of nonresident alien not doing business in United States, under former Sec. 750 of this title which exempted United States securities beneficially owned by such aliens from "taxation"; the term was not restricted to property taxes. *Jandorf's Estate v. Commissioner of Internal Revenue*, C.A.2 (N.Y.) 1948, 171 F.2d 464.

United States bonds issued after Mar. 1, 1941, which were owned by nonresident alien individual who did no business in United States, and which were physically located in United States, should have been excluded from taxable gross estate of nonresident alien, for federal estate tax purposes, under former Sec. 750 of this title which exempted United States securities beneficially owned by such aliens from taxation. *Pennsylvania Co for Banking & Trusts v. U S*, D.C.Pa.1950, 91 F.Supp. 237, affirmed 185 F.2d 125.

Where taxpayer, a nonresident alien, owned certain domestic stocks and bonds which she had converted into United States Treasury notes under a prearranged program or understanding and solely for the purpose of making a gift of such notes in trust, within the gift tax exemption provisions of former Sec. 750 of this title, such conversion was ineffectual to avoid gift tax under former Sec. 1000 et seq. of Title 26 [now Sec. 2501 et seq. of Title 26]. *De Goldschmidt-Rothschild v. C. I. R.*, Tax Ct.1947, 9 T.C. 325, affirmed 168 F.2d 975.

Liberty Bonds were taxable by the Commonwealth of Virginia while held by the executor of a nonresident alien testator. *Jeffress v. Commonwealth*, Va.1929, 146 S.E. 296, 152 Va. 100.

8. Particular taxes from which obligations exempt--Generally

Principle that obligations of federal government are immune from state taxation embraces indirect taxation of such obligations through their inclusion in tax imposed on all property of a taxpayer, and it is quite immaterial that state tax does not discriminate against the federal obligations. *Society for Savings in City of Cleveland, Ohio v. Bowers*, U.S. Ohio 1955, 75 S.Ct. 607, 349 U.S. 143, 99 L.Ed. 950, 71 Ohio Law Abs. 280, 56 O.O. 365.

Obligations of federal government cannot be taxed, either directly or indirectly, by state, municipal or local authorities. *Peter Kiewit Sons' Co. v. Douglas County, Neb.* 1955, 72 N.W.2d 415, 161 Neb. 93.

Use of the indefinite articles "a" and "an" in federal statute providing that exemption from local taxation of the United States obligations does not preclude the obligations from being considered in computing a nondiscriminatory franchise tax or an estate or inheritance tax means "any," and a number of acceptable forms of taxation can be imposed within that exception; statute does not limit the state to the imposition of one such tax. *First American Nat. Bank of Knoxville v. Olsen, Tenn.* 1987, 751 S.W.2d 417, appeal dismissed 108 S.Ct. 1460, 485 U.S. 1001, 99 L.Ed.2d 691.

The exemption provided by former Sec. 742 of this title could not have been evaded by any mere change of form or name in the law by which the tax was imposed. *Monroe County Sav. Bank v. Rochester*, 1867, 37 N.Y. 365.

9. ---- Franchise taxes

N.J.S.A. 54:10A-1 et seq., 4(d), 5, which imposed on each domestic corporation an annual franchise tax measured by corporation's net worth, which is defined as sum of corporation's issued and outstanding capital stock, paid-in or capital surplus, earned surplus and undivided profits, other surplus accounts, which will accrue to shareholders, not including depreciation reserves, and debts owed to shareholders owning 10 percent or more of corporation's stock, is valid despite the inclusion of tax exempt federal bonds in the determination of net worth. *Werner Mach. Co. v. Director of Division of Taxation, Dept. of Treasury, State of N. J.*, U.S.N.J.1956, 76 S.Ct. 534, 350 U.S. 492, 100 L.Ed. 634.

A state statute imposed a franchise tax on corporations lawful so far as it affected securities of the United States. *Hamilton Co. v. State of Massachusetts*, U.S.Mass.1867, 73 U.S. 632, 18 L.Ed. 904, 6 Wall. 632.

Former Sec. 742 of this title did not exempt savings societies from a franchise tax on account of deposits, part of which were invested in securities of the United States. *Society for Savings v. Coite*, Conn.1868, 6 Wall. 594, 18 L.Ed. 897. See, also, *Provident Institution for Savings v. Massachusetts*, Mass.1868, 6 Wall. 611, 18 L.Ed. 907.

Where former Sec. 742a of this title made liable to federal income tax interest and gains on obligations of United States issued after Mar. 1, 1941, as result of which the state franchise tax on corporations by reason of the adoption of the federal income tax returns as basis of such state franchise tax included federal securities and excluded state securities in determining amount of such franchise tax, 72 P.S. Sec. 3420a et seq. became discriminatory against securities of the United States and to that extent was unconstitutional. *Com. v. Curtis Pub. Co.*, Pa.1949, 69 A.2d 410, 363 Pa. 299, certiorari denied 70 S.Ct. 627, 339 U.S. 928, 94 L.Ed. 1349.

That discrimination against federal securities by 72 P.S. Sec. 3420a et seq. was not intended by the state but resulted from the passage of former Sec. 742a of this title did not render the discrimination any the less unconstitutional, since the constitutionality of a statute could not have been determined by a consideration of the motives behind its enactment. *Com. v. Curtis Pub. Co.*, Pa.1949, 69 A.2d 410,

363 Pa. 299, certiorari denied 70 S.Ct. 627, 339 U.S. 928, 94 L.Ed. 1349.

The New York City financial corporation tax, which is imposed on financial corporations for privilege of doing business in the city in a corporate or organized capacity, is a "franchise tax" within meaning of the federal public debt statute which exempts United States Government obligations and interest thereon from state or municipal taxation "except nondiscriminatory franchise or other nonproperty tax in lieu thereof imposed on corporations." Bankers Trust New York Corp. v. Department of Finance of City of New York, N.Y.1992, 593 N.E.2d 275, 583 N.Y.S.2d 821, 79 N.Y.2d 457, certiorari denied 113 S.Ct. 202, 506 U.S. 870, 121 L.Ed.2d 144.

Ohio corporate franchise tax is a true franchise tax for purposes of federal law barring taxation of obligations of United States government except in a nondiscriminatory franchise tax. Bank One Dayton, N.A. v. Limbach, Ohio 1990, 553 N.E.2d 624, 50 Ohio St.3d 163, rehearing denied 555 N.E.2d 647, 51 Ohio St.3d 710.

Excise tax imposed on gross investment income of domestic insurance companies is "nondiscriminatory franchise tax or another nonproperty tax" and, thus, imposition of tax on income from federal bonds and other federal obligations does not conflict with federal statute or violate supremacy clause; statute does not impose limited income tax, but rather sets out workable measure of value of privilege of doing business in State, and tax is imposed on interest paid on state obligations as well as on federal obligations. Liberty Mut. Ins. Co. v. Commissioner of Revenue, Mass.1989, 541 N.E.2d 566, 405 Mass. 352, certiorari denied 110 S.Ct. 1523, 494 U.S. 1055, 108 L.Ed.2d 763.

By rendering investments in obligations of federal government less attractive than other investments, in calculation of taxes due under New York City's general corporation tax [Administrative Code Sec. R46-3.0 et seq.], city tax discriminated against federal obligations within meaning of federal statute [31 U.S.C.A. Sec. 3124] permitting only nondiscriminatory franchise taxes to be levied on United States obligations, and therefore violated supremacy clause [U.S.C.A. Const. Art. 6, cl. 2]. Forbes, Inc. v. Department of Finance of City of New York, N.Y.1985, 487 N.E.2d 251, 496 N.Y.S.2d 394, 66 N.Y.2d 243, certiorari denied 106 S.Ct. 1517, 475 U.S. 1109, 89 L.Ed.2d 915.

Federal securities owned by corporation for profit were properly included in franchise tax base in determining franchise taxes notwithstanding former Sec. 742 of this title which exempted federal securities from taxation. Raymond Bag Co. v. Bowers, Ohio 1955, 126 N.E.2d 321, 163 Ohio St. 275, 56 O.O. 247, appeal dismissed 76 S.Ct. 648, 350 U.S. 1003, 100 L.Ed. 866, rehearing denied 76 S.Ct. 777, 351 U.S. 928, 100 L.Ed. 1457.

R.S.Supp.1982, Sec. 77-2734(2) in state corporate franchise tax which in light of sections 61, 63, and 103 of Title 26 resulted in a franchise tax with a base that excluded interest from state and local obligations but included interest on federal obligations resulted in an invalid, discriminatory franchise tax proscribed by subsec. (a) of this section. State ex rel. Douglas v. Karnes, Neb.1984, 346 N.W.2d 231, 216 Neb. 750.

Corporate franchise tax, imposed under M.S.A. Secs. 290.02, and 290.08, subd. 08, which utilized net income as a measuring stick for determining the value of exercising the corporate franchise and which permitted the inclusion of interest income on United States government obligations in

computation of that net income did not violate former Sec. 742 of this title which forbade the states to consider interest on such obligations in the computation of any tax other than a nondiscriminatory corporate franchise tax or other nonproperty tax imposed in lieu thereof. *Reuben L. Anderson-Cherne, Inc. v. Commissioner of Taxation*, Minn.1975, 226 N.W.2d 611, 303 Minn. 124, appeal dismissed 96 S.Ct. 181, 423 U.S. 886, 46 L.Ed.2d 118.

Even though M.S.A. Sec. 290.02 uses net income as measuring stick for determining value of exercising the corporate franchise and permits the inclusion of interest income on United States government obligations in computation of that income, the tax is not an income or property tax but is, in fact, a "franchise tax" imposed upon the privilege of operating a corporation. *Reuben L. Anderson-Cherne, Inc. v. Commissioner of Taxation*, Minn.1975, 226 N.W.2d 611, 303 Minn. 124, appeal dismissed 96 S.Ct. 181, 423 U.S. 886, 46 L.Ed.2d 118.

State excise tax assessed annually on corporations for privilege of carrying on or doing business in state is "franchise tax," and thus within exception to federal statute invalidating state and local taxes on federal obligations, even though tax is largely measured by corporation's net income. *Pacific First Federal Sav. Bank v. Department of Revenue, State of Or.*, Or.1989, 779 P.2d 1033, 308 Or. 332.

MCA 15-31-101 is a nondiscriminatory franchise tax, and thus does not violate this section notwithstanding that, in computing tax, interest income from federal obligations is included, as it does not discriminate against holders of federal obligations but, rather, taxes interest earned by corporate holders of state obligations. *Schwinden v. Burlington Northern, Inc.*, Mont.1984, 691 P.2d 1351, 213 Mont. 382, opinion clarified 730 P.2d 422, 224 Mont. 500.

Bank tax imposed "for privilege of exercising its corporate franchise within the state according to and measured by its net income for the preceding year" was nondiscriminatory franchise tax which fell outside prohibition against taxing federal obligations or interests thereon. *Centerre Bank of Crane v. Director of Revenue*, Mo.1988, 744 S.W.2d 754.

The taxes upon corporations, imposed under Laws N.Y.1880, c. 542, as amended by Laws 1881, c. 361, are taxes upon franchises, not upon property, and the fact that dividends, a portion of which are derived from United States securities, exempt from taxation, furnish the basis for computing the amounts of the taxes, does not invalidate the law and such taxation is within the authority of the legislature. *People v. Home Ins. Co.*, N.Y.1883, 92 N.Y. 328, affirmed 8 S.Ct. 1385, 119 U.S. 129, 30 L.Ed. 350.

Where a tax is declared in terms to be imposed on the franchises and privileges granted a corporation, it is not void because the corporation may have seen fit to invest its moneys in bonds or securities of the United States which are exempt from taxation. *Monroe County Sav. Bank v. City of Rochester*, 1867, 37 N.Y. 365.

10. ---- Gift taxes

Tax Court's finding that conversion of domestic stocks and bonds into United States Treasury notes was solely for the purpose of making tax exempt gifts in trust was sustained by the evidence and holding that the gifts were not tax exempt was proper. *De Goldschmidt-Rothschild v. Commissioner of*

Int. Rev., C.C.A. 2 1948, 168 F.2d 975.

11. ---- Income taxes

Maryland tax scheme that taxes only gains on federal obligations, but not on state obligations, was impermissibly discriminatory because it made federal obligations less attractive than similar state obligations thus violating purpose of statute to prohibit state from imposing any burden on any part of national public debt. *Doneski v. Comptroller of Treasury*, Md.App.1992, 605 A.2d 649, 91 Md.App. 614, certiorari denied 610 A.2d 796, 327 Md. 523, certiorari denied 113 S.Ct. 981, 122 L.Ed.2d 134.

Federal prohibition against state taxation of obligations of United States government was applicable to state's "piggybacking" taxation scheme which computed state tax as fixed percentage of federal tax. *In re Thomas C. Sawyer Estate*, Vt.1987, 546 A.2d 784, 149 Vt. 541.

Federal statutory exemption from state taxation of stocks and obligations of the United States Government did not prohibit state from taxing dividend income derived from repurchase agreements involving federal securities. *Bewley v. Franchise Tax Bd.*, Cal.1995, 886 P.2d 1292, 37 Cal.Rptr.2d 298, 9 Cal.4th 526.

MCA 15-31-116 which provides that when corporate taxpayer computes allowable deductions from gross income, those deductions are decreased by a ratio of federal interest income to all interest income earned by the corporation, the effect of which is to add back to taxable income interest income from federal obligations for purpose of determining state corporation license tax, is unconstitutional as in direct contravention to subsec. (a) of this section under which both federal obligations and interest therefrom are exempt from taxation by states directly or indirectly in the computation of tax. *Schwinden v. Burlington Northern, Inc.*, Mont.1984, 691 P.2d 1351, 213 Mont. 382, opinion clarified 730 P.2d 422, 224 Mont. 500.

Corporate excise tax is not an income tax for purposes of federal statute precluding imposition of income tax on obligations of the United States. *First American Nat. Bank of Knoxville v. Olsen*, Tenn.1987, 751 S.W.2d 417, appeal dismissed 108 S.Ct. 1460, 485 U.S. 1001, 99 L.Ed.2d 691.

Corporate excise taxes imposed on banks and attributable to inclusion in banks' net earnings of interest earned on obligations of the United States unconstitutionally discriminated against Federal obligations where the "net earnings" did not include interest on Tennessee state and local obligations.. *Midland Bank & Trust Co. v. Olsen*, Tenn.1986, 717 S.W.2d 580, certiorari denied 107 S.Ct. 1336, 479 U.S. 1103, 94 L.Ed.2d 186.

Act 1867, allowing a tax of 5 percent on the gross annual income from interest paid on bonds issued by the federal government, was repugnant to the Constitution of the United States, since such tax is a tax upon the means used by the government in the execution of its expressly delegated power "to borrow money on the credit of the United States". *Bank of Kentucky v. Commonwealth*, 1872, 72 Ky. 46, 9 Bush. 46.

Act N.H. July 1, 1865, entitled "An act for the taxation of incomes," is unconstitutional, in so

far as it provides for the taxation of incomes derived from notes, bonds, and other securities of the United States given for loans of money to the United States. Opinion of Justices, 1873, 53 N.H. 634.

12. ---- Nonproperty taxes

Corporate excise tax is a nonproperty tax for purposes of federal statute permitting obligations of the United States to be included in the base for certain state taxes. *First American Nat. Bank of Knoxville v. Olsen*, Tenn.1987, 751 S.W.2d 417, appeal dismissed 108 S.Ct. 1460, 485 U.S. 1001, 99 L.Ed.2d 691.

13. Computation of tax--Generally

Vernon's Ann.Civ.St. art. 7166 violated former section 742 of this title [now this section] providing that tax is barred regardless of its form if federal obligations must be considered, either directly or indirectly, in computing tax where equity capital formula was usual and customary method employed in Texas to calculate tax. *American Bank and Trust Co. v. Dallas County*, U.S.Tex.1983, 103 S.Ct. 3369, 463 U.S. 855, 77 L.Ed.2d 1072, rehearing denied 104 S.Ct. 39, 463 U.S. 1250, 77 L.Ed.2d 1457, on remand 679 S.W.2d 566.

As exception to general rule of immunity of federal government obligations from property taxation by states, tax may be levied upon shareholders of state or national banks though tax is measured by corporate assets which include federal obligations and though payment of tax by corporation as collecting agent is required. *Society for Savings in City of Cleveland, Ohio v. Bowers*, U.S.Ohio 1955, 75 S.Ct. 607, 349 U.S. 143, 99 L.Ed. 950, 71 Ohio Law Abs. 280, 56 O.O. 365.

A tax imposed on a domestic stock insurance corporation and levied in the amount of 15 percent against capital and surplus less liabilities or against entire net worth computed without deduction of principal amount of tax exempt United States bonds and accrued interest thereon, under N.J.S.A. 54:4-22 imposing a tax on value of property exclusive of tax exempt property, but requiring assessment against intangible personalty of not less than 15 percent of capital stock and surplus in excess of liabilities, was invalid as in conflict with former Sec. 742 of this title which generally exempted interest bearing obligations of the United States from state and local taxation, and could not have been sustained as a tax levied on the corporate franchise. *New Jersey Realty. Title Ins. Co. v. Division of Tax Appeals in Dept. of Taxation and Finance of N.J.*, U.S.N.J.1950, 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

Rev.St.Mo.1919, Sec. 6386, which required insurance companies to pay tax on value of assets in excess of required reserve and unpaid claims as construed to require reserve and unpaid claims to be reduced by proportion that value of government bonds bears to total assets was invalid. *State of Missouri ex rel. Missouri Ins. Co. v. Gehner*, U.S.Mo.1930, 50 S.Ct. 326, 281 U.S. 313, 74 L.Ed. 870.

Rev.St.Ohio, Sec. 2737, which required the taxpayer to return to the assessor a statement of the monthly average, amount, or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits or other effects within that time invested in government securities, but not deducting any indebtedness created in the purchase of such securities, did not tax the citizen for greenbacks or other United States securities he might have held during the year, and was not in conflict

with former Sec. 742 of this title. *Shotwell v. Moore*, U.S.Ohio 1889, 9 S.Ct. 362, 129 U.S. 590, 32 L.Ed. 827.

Single Excise Tax enacted as legislative response to Pennsylvania Supreme Court decision striking down as violative of federal law method of computing bank shares tax that required taxpayer to include obligations of United States in total assets for purpose of calculating net worth, that imposed tax only upon taxpayers which had claimed or intended to claim refunds or refused to pay taxes assessed as result of Supreme Court decision, contradicted federal statutes prohibiting imposition of state taxes on federal obligations and violated supremacy clause. *First Nat. Bank of Fredericksburg v. Com.*, Pa.1989, 553 A.2d 937, 520 Pa. 244.

Federal statutory exemption from state taxation of stocks and obligations of the United States Government extended to state taxes that either directly or indirectly considered federal obligation in computing tax. *Bewley v. Franchise Tax Bd.*, Cal.1995, 886 P.2d 1292, 37 Cal.Rptr.2d 298, 9 Cal.4th 526.

As applied to federal securities, A.R.S. Sec. 43-123.21(E)(2) (Repealed), adding tax-exempt income to gross income when computing net operating loss, which had effect of reducing or extinguishing net operating loss which was carried forward and used as deduction in computing future net income, violated former Sec. 742 of this title which prohibited taxation of obligations of United States. *Continental Bank v. Arizona Dept. of Revenue*, Ariz.App.1981, 638 P.2d 228, 131 Ariz. 6.

The portion of Gen.St.1915, Sec. 11163, which provided that where United States bonds had been purchased during the year preceding March 1, a sum should have been listed for taxation as money on hand March 1, computed by dividing the value of the bonds by twelve, and multiplying the quotient by the number of months of the year remaining after deducting the time the bonds were owned, violated former Sec. 742 of this title. *Lantz v. Hanna*, Kan.1922, 207 P. 767, 111 Kan. 461.

Bank share tax, insofar as it allowed shares of stockholders of banks or banking associations to be taxed at their fair market value on basis of net worth of bank, without subtracting value of federal securities owned by bank, violated this section exempting all federal obligations from state taxation. *Bartow County Bank v. Bartow County Bd. of Tax Assessors*, Ga.1984, 312 S.E.2d 102, 251 Ga. 831, probable jurisdiction noted 104 S.Ct. 2654, 467 U.S. 1214, 81 L.Ed.2d 361, affirmed 105 S.Ct. 1516, 470 U.S. 583, 84 L.Ed.2d 535.

14. ---- Deductions

The immunity of national securities from state taxation is violated by a tax imposed under authority of Code Iowa Sec. 1322, directing that the shares of stock of state bank shall be assessed to such banks, and not to individual stockholders, the effect of which is to require taxation upon property, not including the franchise of such banks and to adopt the value of the shares as the measure of the taxable valuation of such property without permitting any deductions from such valuation on account of bonds of the United States owned by its bank. *Home Sav. Bank v. City of Des Moines*, U.S.Iowa 1907, 27 S.Ct. 571, 205 U.S. 503, 51 L.Ed. 901.

A tax on the shares of stock in a trust company under Rev.St.Ohio, Sec. 2762, was not

equivalent to a tax on the property of the corporation, and therefore the shareholders were not entitled under former Sec. 742 of this title to have a deduction from the value of the shares of the amount of the capital stock of the company which was invested in United States bonds. *Cleveland Trust Co. v. Lander*, U.S. Ohio 1902, 22 S.Ct. 394, 184 U.S. 111, 46 L.Ed. 456.

A savings bank which owns United States bonds, not subject to taxation, is entitled, in the estimate of its property subject to taxation, to have such bonds deducted from its apparent surplus over and above the amount of its deposits. *People ex rel. Bridgeport Sav. Bank v. Barker*, N.Y. 1897, 47 N.E. 973, 154 N.Y. 128.

The amount paid for United States bonds purchased out of the general assets of a savings bank should be deducted from its taxable assets. *Ottumwa Sav. Bank v. City of Ottumwa*, Iowa 1895, 63 N.W. 672, 95 Iowa 176.

State court not impose tax upon stockholders' interests in a national bank, measured by corporate asset values, without making a deduction for federal obligations owned by the bank. *First Sec. Bank of Bozeman v. Montana Dept. of Revenue*, Mont. 1978, 580 P.2d 913, 177 Mont. 119.

Bank share tax had to be calculated by proportionate method of deduction, that is, determining extent to which federal obligations were represented in bank's assets, and then deducting exempt federal obligations to extent that they were represented in net worth, by which share tax is measured, since allowing deduction from bank's net worth of percentage of assets attributable to federal obligations fully insulates federal obligations from tax without insulating bank's taxable assets at the same time. *Bartow County Bank v. Bartow County Bd. of Tax Assessors*, Ga. 1984, 312 S.E.2d 102, 251 Ga. 831, probable jurisdiction noted 104 S.Ct. 2654, 467 U.S. 1214, 81 L.Ed.2d 361, affirmed 105 S.Ct. 1516, 470 U.S. 583, 84 L.Ed.2d 535.

This section providing that federal government obligations are exempt from taxation under state or local authority does not require a specific deduction for the proportionate value of the federal obligations held by bank in valuing the shares of bank stock for taxation so long as the method of assessment does not directly or indirectly involve any computation which takes federal obligations into account mathematically as a factor in determining the value. *American Bank and Trust Co. v. Dallas County*, Tex.App.-Dallas 1984, 679 S.W.2d 566.

R.S. Tex. art. 4764, providing for deduction from an insurance company's assets of the value of its real estate, the remainder to be the assessed taxable value of its personal property, if so construed as to make it possible to have United States bonds exempt from taxation under former Sec. 742 of this title, in the remainder which was declared to be the assessed taxable value of the company's personal property, would have been invalid to that extent; therefore, if it was possible to give it such construction as to avoid a conflict with the federal statutes, it was the court's duty to do so. *City of Waco v. Texas Life Ins. Co.*, Tex.Com.App. 1923, 248 S.W. 315.

The effect of former Sec. 742 of this title was that in any scheme of state or municipal taxation government bonds should have been eliminated from consideration in any equation to reach the taxable property, or at least when they were included, it compelled a deduction as such for the amount of the bonds. *City of Waco v. Amicable Life Ins Co*, Tex.Civ.App. 1921, 230 S.W. 698, affirmed 248 S.W.

Corporations were entitled, when assessed under the New Jersey Tax Act of Mar. 28, 1862, to have deducted from the amount of their capital stock paid in, and accumulated surplus, the amount of the stock and public securities issued by the United States owned by them at the time of assessment. *Newark City Bank v. Assessor of Fourth Ward of City of Newark*, 1862, 30 N.J.Law 13, 1 Vroom 13. See, also, *Mechanics' & Traders' Bank v. Bridges*, 1862, 30 N.J.L. 112, 1 Vroom 112.

In the exemption, under Acts Feb. 25, 1862, c. 33, 12 Stat. 345, Mar. 3, 1863, c. 73, 12 Stat. 709, incorporated in part in former Sec. 742 of this title, of United States bonds from state taxes, their par value, instead of their market value, should have been deducted from the personal estate. *People v. Commissioners of Taxes and Assessments*, 1879, 76 N.Y. 64.

15. Jurisdiction

Where banks, in their complaints, alleged that Department of Revenue had illegally taxed their shares of stock in violation of federal law, complaint raised question as to legality of tax imposed and did not put into issue any question of valuation; therefore, courts, not tax appeal boards, had original subject matter jurisdiction to hear cases. *U. S. Nat. Bank of Red Lodge v. Montana Dept. of Revenue*, Mont.1977, 573 P.2d 188, 175 Mont. 205.

16. Estoppel

Life insurance company is not estopped to question validity of tax imposed by state upon its property, under Rev.St. 79-324, without deduction of amount of United States bonds included in valuation, on ground that officer of company, in listing property, under Rev.St. 79-310, had set forth all of the capital stock and other property of the company at its true value in money, where statement showed that United States bonds of certain amount were included in the valuation of the property listed. *Farmers' & Bankers' Life Ins. Co. v. Anderson*, Kan.1925, 232 P. 592, 117 Kan. 451.

II. OBLIGATIONS OR PROPERTY EXEMPT FROM TAXATION

< Subdivision Index >

Generally 41

Annuities 42

Bank earnings 60

Bonds 43

Certificates of indebtedness 44

Corporate capital 45

Debts owing by United States 46

Determining ownership 49a

Federal reserve notes 53a

Gold and silver certificates 47

Income tax refund claims 48

Interest 49

Miscellaneous obligations or property 59
Money borrowed on obligations 50
Mortgages
 Mortgages - Generally 51
 Mortgages - Association certificates 52
Mutual fund income 52a
National bank notes 53
Open account claims 54
Property obtained by pledge or obligations 55
Silver certificates 47
Social security benefits 61
Stock 56
Treasury
 Treasury - Checks and orders 57
 Treasury - Notes 58

41. Generally

Under rule of ejusdem generis, the words "other obligations" in former Sec. 742 of this title, referred only to obligations or securities of the same type as those specifically enumerated. *Smith v. Davis*, U.S.Ga.1944, 65 S.Ct. 157, 323 U.S. 111, 89 L.Ed. 107.

Under rule of ejusdem generis, words "other obligations" within former Sec. 742 of this title which provided that, except as otherwise provided by law, all stock, bonds, treasury notes and other obligations of United States should have been exempt from taxation by state, municipal or local authority, referred only to obligations of the same type as specifically enumerated. *Montgomery Ward Life Ins. Co. v. State, Dept. of Local Government Affairs*, Ill.App. 1 Dist.1980, 411 N.E.2d 973, 44 Ill.Dec. 607, 89 Ill.App.3d 292.

42. Annuities

Annuity payments paid to retired federal employees from civil service pension plan, a qualified pension plan trust, were subject to state income tax, although taxpayers claimed that portion of pension annuity payments were derived from "U.S. Government interest" and thus exempt from state taxation; neither amount of civil service pension benefits nor amount of state income tax payable thereon was measured by or computed on or dependent in any way on amount of interest received by pension fund by reason of its ownership of United States securities, and state was not required to characterize annuity payments as pass-through distributions of tax exempt interest. *Meunier v. Minnesota Dept. of Revenue*, Minn.1993, 503 N.W.2d 125, certiorari denied 114 S.Ct. 635, 126 L.Ed.2d 594.

Where a widow surrenders her dower interest and distributive share in her husband's estate in consideration of an annuity, taxation of such annuity does not involve the question of taxation of the property invested to produce such annuity, so as to render it a tax on government bonds invested for that purpose. *Chisholm v. Shields*, Ohio Cir.1900, 11 Ohio C.D. 361.

43. Bonds

Imposition of bank shares tax on national bank did not violate 72 P.S. Sec. 4752-2 exempting all state and municipal obligations from taxation where bank shares tax was imposed on capital owned and employed by bank in its banking operations, which capital was property interest separate from state and municipal obligations themselves. Dale Nat. Bank v. Com., Pa.1983, 465 A.2d 965, 502 Pa. 170.

Statute purporting to exempt county expressway bonds from state taxation, under which no bonds had ever been issued, did not have to be considered in determining whether repealer provision contained in law which created franchise tax was sufficient to negate exemption later provided in expressway bond exemption provision. Department of Revenue v. First Union Nat. Bank of Florida, Fla.1987, 513 So.2d 114, appeal dismissed 108 S.Ct. 1253, 485 U.S. 949, 99 L.Ed.2d 408.

Under Act July 14, 1870, c. 256, 16 Stat. 272, incorporated in part in former Sec. 742 of this title, which provided for the issue of United States bonds, "all of which several classes of bonds and the interest thereon shall be exempt from the payment of all taxes and dues of the United States, as well as from taxation in any form by or under state, municipal or local authority," and Gen.Laws R.I. c. 44, Sec. 2, which exempted from taxation "the bonds and other securities issued and exempted from taxation by the government of the United States," the exemption covered "bonds" and every incident thereto, including premiums above par which such bonds commanded in the market. People v. Commissioners of Taxes and Assessments in City of New York, 1882, 90 N.Y. 63. See, also, Rhode Island Hospital Trust Co. v. Armington, 1898, 41 A. 570, 21 R.I. 33.

The principle of former Sec. 742 of this title was, that whenever, by state law, a tax was laid upon property which consisted of United States bonds, exempt from taxation, then, in whatever form, or in whatever terms, the law was expressed, it was void, and could not have been enforced. Monroe County Sav. Bank v. Rochester, 1867, 37 N.Y. 365.

44. Certificates of indebtedness

Certificates of indebtedness issued by the United States to creditors of the government for supplies furnished to it in carrying on the war for integrity of the Union, and by which the government promised to pay the sums of money specified in them with interest at a time named, were beyond the taxing power of the states. Banks v. Mayor and Controller of City of New York, U.S.N.Y.1868, 74 U.S. 16, 19 L.Ed. 57, 7 Wall. 16.

Certificates given by the Treasurer of the United States, to secure a loan of money, were United States securities, and, as such, exempt from state taxation. Mutual Life & Casualty Ins. Co. v. Haight, 1870, 34 N.J.Law 128, 5 Vroom 128.

Certificates of indebtedness of the United States issued pursuant to Act Mar. 1, 1862, c. 35, 12 Stat. 352, given in "satisfaction of audited and settled demands, and in discharge of checks drawn by disbursing officers," were not exempt from taxation by virtue of former Sec. 742 of this title. People v. Gardiner, N.Y.1867, 48 Barb. 608.

45. Corporate capital

A state tax on corporate capital measured by federal securities may be invalid even though imposed without discrimination against the federal obligations. *New Jersey Realty. Title Ins. Co. v. Division of Tax Appeals in Dept. of Taxation and Finance of N.J.*, U.S.N.J.1950, 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

An assessment of the capital of a bank which refused to pay on the ground that its capital not invested in real estate consisted of United States legal tender notes was sustained as not invading any right secured to it by the federal Constitution or laws. *New Orleans Canal & Banking Co v. City of New Orleans*, U.S.La.1878, 99 U.S. 97, 9 Otto 97, 25 L.Ed. 409.

A tax laid by a state "on banks, on a valuation equal to the amount of their capital stock paid in, or secured to be paid in," is a tax on the property of the institution and, when that property consists of stocks of the federal government, the law laying the tax is void. *New York v. Tax Com'rs*, N.Y.1865, 69 U.S. 200, 2 Wall. 200, 17 L.Ed. 793. See, also, *Whitney v. City of Madison*, 1864, 23 Ind. 331.

Bonds of the United States held by a national bank as part of its capital cannot be taxed by the state or under its authority. *Beard v. People's Savings Bank*, 1913, 101 N.E. 325, 53 Ind.App. 185. See, also, *Old Nat. Bank v. Berkeley County Court*, 1905, 52 S.E. 494, 58 W.Va. 559.

United States bonds owned by a bank are property which tends to enhance the value of its capital stock, and are properly considered in determining the assessable value of its shares. *National State Bank v. City of Burlington*, 1903, 94 N.W. 234, 119 Iowa 696. See, also, *Security Sav. Bank v. Carroll*, 1905, 103 N.W. 379, 128 Iowa 230; *First Nat. Bank v. City of Independence*, 1904, 99 N.W. 142, 123 Iowa 482.

Capital stock of a bank organized under Acts 15th Gen.Assem. Iowa, c. 60, invested in United States bonds or securities, was not liable to state taxation. *German-American Sav. Bank v. City of Burlington*, Iowa 1880, 7 N.W. 105, 54 Iowa 609.

Laws 1929, c. 64, taxing moneys and credits and moneyed capital was not invalid as taxing shares of state banking corporations solely because of their ownership of United States securities. *Bank of Miles City v. Custer County*, Mont.1933, 19 P.2d 885, 93 Mont. 291.

As former Sec. 742 of this title, which exempted public securities of general government from taxation was supreme law of land, under U.S.C.A.Const. Art. 6, cl. 2, states were without authority to tax property of state banks or moneyed capital consisting of bonds of the United States, though such bonds were not expressly exempted by Mont. Const. art. 12, Sec. 2, Rev.Codes 1921, Sec. 1998. *East Helena State Bank v. Rogers*, Mont.1925, 236 P. 1090, 73 Mont. 210.

Where state, under Const. Art. 12, Sec. 17, could not tax both shares of stock on state banks to individual shareholders, and to bank itself, by choosing to tax property of bank itself, it cannot tax its property which is invested in bonds of United States. *East Helena State Bank v. Rogers*, Mont.1925, 236 P. 1090, 73 Mont. 210.

Tax assessor's formula for determining property taxes to be assessed on banks violated federal law in that it took into account, at least indirectly, federal obligations that constituted part of banks'

assets, where assessor computed tax by determining total amount of capital assets of each bank and subtracting from that figure only bank's liabilities and assessed value of real estate owned by bank. *Charles Schreiner Bank, of Kerrville v. Kerrville Independent School Dist.*, Tex.App.-San Antonio 1984, 683 S.W.2d 466.

The Alabama revenue law of 1868, exempting "all shares of the capital stock of corporations which are required to list their property for taxation," did not apply to shares of the stock of a national bank whose capital consisted mainly, if not entirely, of United States bonds, which the corporation was not required to list for taxation. *McIver v. Robinson*, Ala.1875, 53 Ala. 456.

Capital of a private banking firm, constantly absorbed in some form of government securities by resale and repurchase, was exempt from state and municipal taxation. *City of Chicago v. Lunt*, 1869, 52 Ill. 414.

A bank, which claims that a portion of its capital is invested in United States bonds, stocks, or currency, must show affirmatively the exact amount of its capital so invested; otherwise, such capital will not be exempt from taxation. *City of New Orleans v. New Orleans Canal & Banking Co.*, 1877, 29 La. Ann. 851, affirmed 99 U.S. 97, 25 L.Ed. 409.

The capital of a private bank invested in United States bonds is not taxable by the state. *State ex rel. Davis v. Rogers*, 1883, 79 Mo. 283.

While it is true that United States bonds, as such, cannot be taxed by a state, it is also true that the shares of the capital stock of a corporation can be taxed at their true value, although part or the whole of such capital may be invested in such bonds. *St. Louis Building & Sav. Ass'n v. Lightner*, 1871, 47 Mo. 393.

Where the officers of a bank furnish the assessor with the names of the shareholders, together with the amount of stock held by each, their shares should be so assessed as to cover the value of their bonds, and it will be the duty of their officers to pay the tax on behalf of the shareholders. *St. Louis Building & Sav. Ass'n v. Lightner*, 1871, 47 Mo. 393.

Where a part of the capital stock of a corporation was invested in the bonds of the United States, and a tax was levied upon this part of the capital stock separately under the name of "shares of stock in incorporated companies," the assessment was against the corporation in respect of its capital stock, and was illegal. *St. Louis Bldg. & Sav. Ass'n v. Lightner*, 1868, 42 Mo. 421.

The principle that the capital of an incorporated company is, when invested in bonds or other securities of the United States, exempt from state taxation, unless there is an express congressional permission to tax the same, is clearly established. *Mutual Life & Casualty Ins. Co. v. Haight*, 1870, 34 N.J.Law 128, 5 Vroom 128.

A shareholder in a bank whose capital is invested in government securities is not a holder of such securities, and an assessment upon his shares is not an assessment of the securities held by the bank. *People v. Assessors of Town of Barton*, N.Y.1861, 44 Barb. 148, 29 How.Prac. 371.

A foreign corporation is not liable to be taxed for any portion of its capital invested in the stock of the United States. *International Life Assur. Soc. v. Commissioners of Taxes*, N.Y.1858, 28 Barb. 318, 17 How.Prac. 206.

46. Debts owing by United States

GNMA mortgage-backed securities were not "obligations of the United States" exempt from ad valorem tax. *Rockford Life Ins. Co. v. Department of Revenue*, Ill.1986, 492 N.E.2d 1278, 97 Ill.Dec. 405, 112 Ill.2d 174, probable jurisdiction noted 107 S.Ct. 430, 479 U.S. 947, 93 L.Ed.2d 380, affirmed 107 S.Ct. 2312, 482 U.S. 182, 96 L.Ed.2d 152.

An unpaid balance of a debt owed on account from the United States on a fully performed war contract was not taxable under Greater New York Charter and McKinney's N.Y. Tax Law Sec. 12, as taxation by the state would have hindered the exercise of the federal government's constitutional powers to borrow money on the credit of the United States, to declare war, and to raise and support armies; that was true, notwithstanding former Sec. 742 of this title was of doubtful application. *People ex rel. Astoria Light, Heat & Power Co. v. Cantor*, N.Y.1923, 141 N.E. 901, 236 N.Y. 417.

47. Gold and silver certificates

Notes and gold and silver certificates of the United States are not taxable by or under the authority of any state, without the permission of the United States. *State v. Mayor of City of Newark*, N.J.Err. & App.1899, 44 A. 654, 63 N.J.L. 547.

48. Income tax refund claims

Under former Sec. 742 of this title "other obligations" did not include claim of corporation listed as asset on its books against United States for refund of federal income taxes on account of accelerated depreciation of war facility whether amount was agreed upon or not so as to exempt claim from inter county personal property tax. *Glidden Co. v. Glander*, Ohio 1949, 86 N.E.2d 1, 151 Ohio St. 344, 39 O.O. 184.

49. Interest

Interest on federal obligation is "considered" in state taxation, for purposes of federal statutory exemption from state taxation, when that interest is included in computing taxpayer's net income or earnings for purpose of income tax or the like. *Nebraska Dept. of Revenue v. Loewenstein*, U.S.Neb.1994, 115 S.Ct. 557, 130 L.Ed.2d 470.

Former section 742 of this title providing that, except as otherwise provided by law, all stocks, bonds, Treasury notes and other obligations of the United States shall be exempt from taxation by or under state or municipal or local authority applied to income in form of interest earned by bank on various federal obligations, primarily notes and bills of the United States Treasury and obligations of federal credit banks. *Memphis Bank & Trust Co. v. Garner*, U.S.Tenn.1983, 103 S.Ct. 692, 459 U.S. 392, 74 L.Ed.2d 562.

Former Sec. 742 of this title which generally exempted interest bearing obligations of the United States from state and local taxation also exempted accrued but unpaid interest on federal securities. *New Jersey Realty. Title Ins. Co. v. Division of Tax Appeals in Dept. of Taxation and Finance of N.J.*, U.S.N.J.1950, 70 S.Ct. 413, 338 U.S. 665, 94 L.Ed. 439.

Taxpayer was not required to pay state income tax with respect to proceeds received from investment trust for short-term United States government securities, representing pass through of interest income received by trust directly from United States government. *Comptroller of the Treasury, Income Tax Div. v. First United Bank & Trust*, Md.1990, 578 A.2d 192, 320 Md. 352.

Interest earned by taxpayer on investment in retirement fund which invested solely in federal obligations was income derived from federal obligations and as such, was exempt from state taxation. *Keys v. Vermont Dept. of Taxes*, Vt.1987, 552 A.2d 418, 149 Vt. 658, certiorari denied 108 S.Ct. 1596, 485 U.S. 1035, 99 L.Ed.2d 911.

Payments by borrower pursuant to repurchase agreement involving borrower's conveyance of federal obligation to trust and trust's reconveyance of obligation in future were not interest derived from federal obligation and were subject to state taxation. *In re Thomas C. Sawyer Estate*, Vt.1987, 546 A.2d 784, 149 Vt. 541.

State was not prohibited, by doctrine of intergovernmental immunity, from including interest received on Federal Home Loan Banks consolidated bonds in calculating bank's net income for purpose of nondiscriminatory franchise tax on financial institutions; state was not taxing bonds or interest on them, but rather privilege of doing business as financial institution in corporate form in state, with tax measured by net income which included interest on federal obligations. *State Dept. of Assessments and Taxation v. Maryland Nat. Bank*, Md.1987, 531 A.2d 294, 310 Md. 664, appeal dismissed 108 S.Ct. 2812, 486 U.S. 1048, 100 L.Ed.2d 913.

State's corporation business tax was nondiscriminatory within intent of federal public debt statute so as to permit tax to include interest income of federal obligations in the net income base and face value of the obligations in the net worth base. *Garfield Trust Co. v. Director, Div. of Taxation*, N.J.1986, 508 A.2d 1104, 102 N.J. 420, appeal dismissed 107 S.Ct. 390, 479 U.S. 925, 93 L.Ed.2d 345.

Inclusion of interest derived from, and proceeds from corporation's sale of, tax exempt United States government obligations in the allocation formula used to measure corporation's net income subject to tax by state was impermissible, in light of fact that it involved an indirect levy of tax on tax-exempt federal securities. *Federal Products Corp. v. Norberg*, R.I.1981, 429 A.2d 447.

Corporation which had entered into agreement with bank by which bank sold United States Treasury Bills and Notes to corporation from its portfolio and corporation simultaneously agreed to resell them to bank at agreed-upon price and on certain date with bank paying corporation interest was not "owner" of the securities, so was not entitled to exemption from state income tax for interest income earned pursuant to repurchase agreement. *Hammond Lead Products, Inc. v. State of Ind. Tax Com'rs*, Ind.1991, 575 N.E.2d 998.

Where corporation entered into agreement with bank whereby bank sold United States Treasury bills and notes to corporation from its portfolio and corporation simultaneously agreed to resell them to bank at agreed-upon price and on certain date with bank paying corporation interest at fixed rate for period between original sale and repurchase, corporation was not entitled to exemption from state income taxes for interest income earned pursuant to repurchase agreement; repurchase agreement was, in effect, a collateralized loan because corporation did not bear any risk of market fluctuations and could not sell the securities to third parties, interest rate on United States obligations was not material to computation of tax on corporation's interest income, and corporation failed to prove that any burden on United States Treasury existed if exemption was denied. *Hammond Lead Products, Inc. v. State of Ind. Tax Com'rs*, Ind.Tax 1990, 549 N.E.2d 424, affirmed 575 N.E.2d 998.

Tax-exempt interest income on obligations of the United States could not be taken into consideration in apportioning taxpayer bank's taxable income under formula utilized to determine portion of financial institution's multistate business income which could be taxed by Illinois. *Continental Illinois Nat. Bank and Trust Co. of Chicago v. Lenckos*, Ill.1984, 464 N.E.2d 1064, 80 Ill.Dec. 81, 102 Ill.2d 210, certiorari denied 105 S.Ct. 296, 469 U.S. 918, 83 L.Ed.2d 231.

Interest earned on government national mortgage association certificates was neither constitutionally immune from state taxation nor did it constitute other obligations of United States so that it was not exempt from state taxation under this section. *Farmers & Traders State Bank v. Johnson*, Ill.App. 4 Dist.1984, 458 N.E.2d 1365, 76 Ill.Dec. 565, 121 Ill.App.3d 43.

Section 745 of Title 48 exempting Puerto Rican bonds from federal or state taxation included by implication the same exception contained in former Sec. 742 of this title which exempted obligations of the United States from taxation, that such obligations were exempt "except as otherwise provided by law;" therefore, interest received by bank on Puerto Rican bonds held by the bank was includable in its taxable net income for purposes of the computation of the bank excise tax, under M.S.A. Sec. 290.08, subd. 1, providing that the state statutory exemption from taxation for obligations of the United States and its possessions was not applicable to corporations taxable under M.S.A. Sec. 290.361. *Rochester Bank & Trust Co. v. Commissioner of Revenue*, Minn.1981, 305 N.W.2d 776.

Even if federal public debt statute excepts only one state franchise tax from its prohibition on state or local taxation of federal obligations, state corporation excise tax could be applied to interest earned on federal obligations, where second state franchise tax was based on amount of capital stock authorized in corporation's articles of incorporation, rather than on interest earned on federal obligations. *Pacific First Federal Sav. Bank v. Department of Revenue, State of Or.*, Or.1989, 779 P.2d 1033, 308 Or. 332.

Interest income from mutual fund derived from interest paid by federal government to fund on securities of the United States was not subject to state income taxation when passed on to holders to fund. *Borg v. Department of Revenue, State of Or.*, Or.1989, 774 P.2d 1099, 308 Or. 34.

Provisions for in lieu bank taxes under 68 O.S.1981 Secs. 2370 and 2371, which specifically excluded interest income earned on state and local obligations from taxable income, did not likewise exclude interest income from federal obligations, and thus violated 31 U.S.C. (1976 Ed.) Sec. 742, which bars a tax regardless of its form if federal obligations are considered in computing the tax, and

also violated U.S.C.A. Const. Art. 1, Sec. 8, cl. 2 (the "Borrowing Clause") and Art. 6, cl. 2 (the "Supremacy Clause"). *First of McAlester Corp. v. Oklahoma Tax Com'n*, Okla.1985, 709 P.2d 1026.

Interest income received by taxpayers on exempt federal obligations was not includable in net income for purposes of calculating Montana corporation license tax, MCA 15-31-101. *First Federal Sav. and Loan Ass'n v. Department of Revenue*, Mont.1982, 654 P.2d 496, 200 Mont. 358, certiorari denied 103 S.Ct. 3128, 462 U.S. 1144, 77 L.Ed.2d 1378.

Interest income from obligations issued by Federal National Mortgage Association and Government National Mortgage Association was subject to state excise taxation. *First Tennessee Bank, N.A. Chattanooga v. Olsen*, Tenn.1987, 736 S.W.2d 601.

The interest on United States bonds was not taxable by the state, and could not have been made taxable by Acts Tenn.1903, p. 635, c. 258, Sec. 8, which provided for the assessment of the income derived from United States bonds; nor did such interest become taxable immediately upon having been paid into the hands of the bondholder. Mosely v. State, Tenn.1905, 86 S.W. 714, 115 Tenn. 52.

49A. Determining ownership

In determining ownership of federal obligations on which owner would be entitled to exemption from state income tax for interest received, court may consider whether party claiming ownership bears risk of market fluctuations, whether that party has ability to sell securities to third party, whether seller or United States Government pays interest income, and whether obligations must be considered in computing tax. *Hammond Lead Products, Inc. v. State of Ind. Tax Com'rs*, Ind.1991, 575 N.E.2d 998.

50. Money borrowed on obligations

Money borrowed on government bonds is liable to taxation. *People v. Assessors of Town of Flushing*, 1886, 3 N.Y.St.Rep. 148.

51. Mortgages--Generally

Arrangement, whereby successful bidder on military housing project became sole stockholder of corporations which obtained leases of federal land and gave mortgages under Sec. 1748 et seq. of Title 12 in order to procure necessary private financing for construction of project with payment of mortgages guaranteed by United States, was designed to relieve government of obligation to provide housing for its military personnel and at same time avoid increasing the national debt, government did not pledge its credit in the usual sense and mortgages were not exempt from mortgage recording tax under former Sec. 742 of this title. *S.S. Silberblatt, Inc. v. Tax Commission of State of N.Y.*, N.Y.1959, 159 N.E.2d 195, 186 N.Y.S.2d 646, 5 N.Y.2d 635, certiorari denied 80 S.Ct. 253, 361 U.S. 912, 4 L.Ed.2d 183.

Where contractor, who was successful bidder on military housing project, was sole stockholder of corporations which obtained leases of federal land and gave mortgages under Sec. 1748 et seq. of

Title 12 in order to procure necessary private financing for construction of project with mortgage payments guaranteed by United States, it would not be assumed, in absence of statute, that the government function was involved, so as to exempt mortgages from New York mortgage recording tax. *S.S. Silberblatt, Inc. v. Tax Commission of State of N.Y.*, N.Y.1959, 159 N.E.2d 195, 186 N.Y.S.2d 646, 5 N.Y.2d 635, certiorari denied 80 S.Ct. 253, 361 U.S. 912, 4 L.Ed.2d 183.

Where contractor, who was successful bidder on military housing project, was sole stockholder of corporations which obtained leases of federal land and gave mortgages under Sec. 1748 et seq. of Title 12 in order to procure necessary private financing for construction of project with mortgage payments guaranteed by United States, contractor and corporate mortgagors were not exempt from state and local taxation or state mortgage recording tax as instrumentalities of federal government or its agencies, notwithstanding fact that all of capital stock of each corporation would ultimately be owned by federal government. *S.S. Silberblatt, Inc. v. Tax Commission of State of N.Y.*, N.Y.1959, 159 N.E.2d 195, 186 N.Y.S.2d 646, 5 N.Y.2d 635, certiorari denied 80 S.Ct. 253, 361 U.S. 912, 4 L.Ed.2d 183.

52. ---- Mortgage association certificates

Instruments commonly known as "Ginnie Maes," issued by private financial institutions and guaranteed by Government National Mortgage Association were fundamentally different from securities specified in tax immunity statute, and thus were not exempt from state taxation as "other obligations of the United States"; it was issuer of certificate that bore primary obligation to make timely payments, United States was guarantor only, not obligor. *Rockford Life Ins. Co. v. Illinois Dept. of Revenue*, U.S.Ill.1987, 107 S.Ct. 2312, 482 U.S. 182, 96 L.Ed.2d 152.

Interest earned on federal national mortgage association certificates was not constitutionally exempt from state taxation nor did it constitute other obligations of the United States so that it was not statutorily exempt from state taxation, in that certificates did not carry a binding promise by the United States to pay specified sums at specified times, they did not have congressional authorization pledging full faith and credit of the United States in support of promise to pay, and certificates were not used to secure credit for government, but to attract private capital so that government credit would not be necessary. *Farmers & Traders State Bank v. Johnson*, Ill.App. 4 Dist.1984, 458 N.E.2d 1365, 76 Ill.Dec. 565, 121 Ill.App.3d 43.

Government national mortgage association certificates were not constitutionally immune from state's capital stock tax and were not "other obligations of the United States" within meaning of former Sec. 742 of this title which provided that, except as otherwise provided by law, all stocks, bonds, treasury notes and other obligations of United States were exempt from taxation by state, municipal or local authority, in light of fact that guaranty of the United States to pay the certificates on default by issuer was not a binding promise and that certificates were not issued by government agency to borrow money on credit of United States to finance an essential governmental function. *Montgomery Ward Life Ins. Co. v. State, Dept. of Local Government Affairs*, Ill.App. 1 Dist.1980, 411 N.E.2d 973, 44 Ill.Dec. 607, 89 Ill.App.3d 292.

Fact that Department of Local Government Affairs published assessment standards in effect erroneously indicating that government national mortgage association certificates were exempt from

state's capital stock tax would not preclude a subsequent correction of the error and taxation of the property, though it was asserted that investment community had relied on such exemption. *Montgomery Ward Life Ins. Co. v. State, Dept. of Local Government Affairs*, Ill.App. 1 Dist.1980, 411 N.E.2d 973, 44 Ill.Dec. 607, 89 Ill.App.3d 292.

52A. Mutual fund income

Interest income earned by mutual funds from repurchase agreements involving federal securities was not interest on "obligations of the United States Government," for purposes of federal statutory exemption from taxation by states, but instead was interest on loans from mutual funds to seller-borrower. *Nebraska Dept. of Revenue v. Loewenstein*, U.S.Neb.1994, 115 S.Ct. 557, 130 L.Ed.2d 470.

Trust which invested in short term federal securities and repurchase agreements involving federal securities did not actually own the securities, and, thus, neither supremacy clause nor constitutional prohibition against state taxation requiring obligation of government or interest on obligation of government to be considered in computing tax applied to prevent State from taxing the income derived from repurchase agreements. *Everett v. State, Dept. of Revenue and Finance*, Iowa 1991, 470 N.W.2d 13.

Mutual fund dividends which were directly attributable to income from the United States treasury notes and bonds were exempt from state income taxation. *Yurista v. Commissioner of Revenue*, Minn.1990, 460 N.W.2d 24.

Mutual fund income derived from repurchase agreements, under which sellers other than the United States sold United States obligations to mutual fund and simultaneously agreed to repurchase same or similar securities at a price that included interest during period of sale, was taxable to holders of fund even though securities would be tax exempt if income were paid directly by federal government. *Borg v. Department of Revenue, State of Or.*, Or.1989, 774 P.2d 1099, 308 Or. 34.

53. National bank notes

Act June 30, 1864, c. 172, 13 Stat. 218, incorporated in part in former Sec. 742 of this title, which declared that all bonds, treasury notes, and other obligations of the United States should have been exempt from state taxation, and that the words "obligation or other security of the United States" meant all bonds, national currency, United States notes, and other representations of value which may have been or may be issued under any Act of Congress, did not exempt the notes of national banks from state taxation. *Board of Com'rs of Montgomery County v. Elston*, Ind.1869, 32 Ind. 27, 2 Am.Rep. 327.

53A. Federal reserve notes

Federal reserve notes are not federal obligations within meaning of exemption from state taxation for federal obligations; like other types of United States currency, federal reserve notes are legal tender for all debts, public charges, taxes, and dues. *Richey v. Indiana Dept. of State Revenue*, Ind.Tax 1994, 634 N.E.2d 1375.

54. Open account claims

An open account claim against the United States does not represent a "credit instrumentality of the United States" within constitutional immunity from state and local taxation of all properties, functions, and instrumentalities of the federal government. *Smith v. Davis*, U.S.Ga.1944, 65 S.Ct. 157, 323 U.S. 111, 89 L.Ed. 107.

Former Sec. 742 of this title did not apply to an open account claim of a creditor of United States. *Smith v. Davis*, U.S.Ga.1944, 65 S.Ct. 157, 323 U.S. 111, 89 L.Ed. 107.

55. Property obtained by pledge or obligations

Though government bonds are not subject to taxation, the money or property obtained by a pledge of such bonds is subject to taxation. *Hooper v. State*, Ala.1904, 37 So. 662, 141 Ala. 111.

56. Stock

Georgia statute imposing property tax on fair market value of shares of bank stockholders, as construed by Georgia Supreme Court, to allow bank to deduct from net worth not full value of United States obligations it held but, rather, only percentage of fair obligations attributable to assets, did not violate revenue statute providing for exemption from state or local taxation of obligations of United States. *First Nat. Bank of Atlanta v. Bartow County Bd. of Tax Assessors*, U.S.Ga.1985, 105 S.Ct. 1516, 470 U.S. 583, 84 L.Ed.2d 535.

Exemption of all stocks, bonds, treasury notes and other obligations of United States from every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in computation of tax, bars all such taxes, regardless of their form. *American Bank and Trust Co. v. Dallas County*, U.S.Tex.1983, 103 S.Ct. 3369, 463 U.S. 855, 77 L.Ed.2d 1072, rehearing denied 104 S.Ct. 39, 463 U.S. 1250, 77 L.Ed.2d 1457, on remand 679 S.W.2d 566.

Stock and securities issued by the United States under the power to borrow money are exempt from taxation. *Weston v. City of Charleston*, S.C.1829, 27 U.S. 449, 2 Pet. 449, 7 L.Ed. 481. See, also, *New York ex rel. N.Y. Nat. Bkg. Ass'n v. Connelly*, N.Y.1869, 7 Wall. 16, 19 L.Ed. 57; *Hamilton Mfg. Co. v. Massachusetts*, Mass.1868, 6 Wall. 632, 18 L.Ed. 904; *Bank of Commonwealth v. Commissioner of Taxes*, 1863, 2 Black 635, 67 U.S. 635 (note), 17 L.Ed. 456; *Bank of Commerce v. City and County of New York*, N.Y.1863, 67 U.S. 620, 2 Black 620, 17 L.Ed. 451; *Carroll v. Perry*, C.C.Mich.1845, Fed.Cas. No. 2,456; *First Nat. Bank v. Board of Equalization of Independence County*, 1909, 122 S.W. 988, 91 Ark. 335; *City of Madison v. Whitney*, 1863, 21 Ind. 261; *Commonwealth v. Morrison*, 1819, 9 Ky. 75, 2 A.K.Marsh. 75; *City of Pittsburgh v. First Nat. Bank*, 1867, 55 Pa. 45, 5 P. F. Smith 45; *Newark City Bank v. Assessor of Fourth Ward of City of Newark*, 1862, 30 N.J.Law 13, 1 Vroom 13; *People v. Board of Com'rs of Taxes and Assessments for City and County of New York*, N.Y.1870, 41 How.Prac. 459; *Monroe County Sav. Bank v. City of Rochester*, 1867, 37 N.Y. 365; *People v. Commissioners of Taxes and Assessments for City and County of New York*, N.Y.1863, 25 How.Prac. 9.

A tax imposed by a law of any state, or under the authority of such a law, on stock issued for loans made to the United States, is repugnant to the Constitution. *Weston v. Charleston*, S.C.1829, 27 U.S. 449, 2 Pet. 449, 7 L.Ed. 481. See, also, *People v. Tax Com'rs*, N.Y.1863, 2 Black 620, 17 L.Ed. 451.

When a tax is assessed on the market value of shares in a state banking corporation, a specific deduction for federal securities held by the bank is not necessarily required as the value of the shares of stock have no fixed or necessary relation to the company's assets; market value may be determined by such factors as the experience and ability of the management, general economic prospects in the community, and selling prices of alternative investments yielding comparable returns with comparable safety. *American Bank and Trust Co. v. Dallas County*, Tex.App.-Dallas 1984, 679 S.W.2d 566.

57. Treasury checks and orders

United States Treasury checks or orders issued for interest accrued upon registered bonds of the United States were intended for immediate payments and could have been taxed by a state in the hands of the owner without having violated former Sec. 742 of this title. *Hibernia Sav. Bank & Loan Soc. v. City and County of San Francisco*, U.S.Cal.1906, 26 S.Ct. 265, 200 U.S. 310, 50 L.Ed. 495, 4 Am. Ann. Cas. 934.

Checks or orders of the Treasurer of the United States payable on demand are not within the reason and scope of the rule forbidding such taxation by the states as may tend to destroy the powers of the national government or impair their efficiency. *Hibernia Sav. & Loan Soc. v. City and County of San Francisco*, Cal.1903, 72 P. 920, 139 Cal. 205, affirmed 26 S.Ct. 265, 200 U.S. 310, 50 L.Ed. 495, 4 Am. Ann. Cas. 934.

The words "and other obligations" read in connection with the context "stocks, bonds, treasury notes" include only obligations of the government similar in character to those specifically named and given under the general power to borrow money on the credit of the United States, and to issue and return therefor obligations in any appropriate form, and they do not include checks given in payment of such obligations. *Hibernia Sav. & Loan Soc. v. City and County of San Francisco*, Cal.1903, 72 P. 920, 139 Cal. 205, affirmed 26 S.Ct. 265, 200 U.S. 310, 50 L.Ed. 495, 4 Am. Ann. Cas. 934.

58. Treasury notes

United States notes issued under Acts Feb. 25, 1862, c. 33, 12 Stat. 345, and Mar. 3, 1863, c. 73, 12 Stat. 709, intended to circulate as money, and actually having constituted, with the national bank notes, the ordinary circulating medium of the country, were moreover, obligations of the national government, and exempt from state taxation. *People of State of New York ex rel Bank of New York v. Board of Sup'rs of New York County*, U.S.N.Y.1868, 74 U.S. 26, 19 L.Ed. 60, 7 Wall. 26.

Money in the hands of others subject to draft is a credit due a bank, and is not exempt though the money originally deposited may have been Treasury notes. *Griffin v. Heard*, Tex.1890, 14 S.W. 892, 78 Tex. 607.

Gold coin and United States Treasury notes on deposit in New York City were not subject to

taxation under the Alabama revenue law of 1868. *Varner v. Calhoun*, Ala.1872, 48 Ala. 178.

United States Treasury notes, popularly known as "greenbacks," were not liable to state taxation. *Board of Com'rs of Montgomery County v. Elston*, Ind.1869, 32 Ind. 27, 2 Am.Rep. 327.

59. Miscellaneous obligations or property

Bank shares tax imposed on national bank violated this section exempting obligations of United States from taxation by or under state authority where tax was computed on basis of equity capital and where equity capital was determined in part by bank's ownership of United States obligations. *Dale Nat. Bank v. Com.*, Pa.1983, 465 A.2d 965, 502 Pa. 170.

Federal statutory exemption from state taxation of stocks and obligations of the United States Government did not prohibit state from taxing dividend income derived from repurchase agreements involving federal securities. *Bewley v. Franchise Tax Bd.*, Cal.1995, 886 P.2d 1292, 37 Cal.Rptr.2d 298, 9 Cal.4th 526.

Congress did not intend for former Sec. 742 of this title, as amended, to withdraw in any respect its consent to state taxation of national or state bank shares. *Bank of Texas v. Childs*, Tex.Civ.App.-Dallas 1981, 615 S.W.2d 810, ref. n.r.e., injunction granted 634 S.W.2d 2, certiorari granted in part 103 S.Ct. 291, 459 U.S. 966, 74 L.Ed.2d 276, reversed 103 S.Ct. 3369, 463 U.S. 855, 77 L.Ed.2d 1072, rehearing denied 104 S.Ct. 39, 463 U.S. 1250, 77 L.Ed.2d 1457, on remand 679 S.W.2d 566.

Nonproperty excise tax on privilege of operating bank or savings association within the state was a franchise tax contemplated by exception to statute prohibiting taxation of United States obligations by the states. *Department of Revenue v. First Union Nat. Bank of Florida*, Fla.1987, 513 So.2d 114, appeal dismissed 108 S.Ct. 1253, 485 U.S. 949, 99 L.Ed.2d 408.

60. Bank earnings

T.C.A. Sec. 67-751 imposing tax on net earnings of banks doing business in state which defines net earnings as including interest received on obligations of the United States and its instrumentalities and obligations of other states, but not interest earned on obligations of Tennessee and its political subdivision, **discriminates in favor of securities issued by Tennessee and its political subdivision and against federal obligations and, therefore, Tennessee bank tax impermissibly discriminates against federal government and those with whom it deals.** *Memphis Bank & Trust Co. v. Garner*, U.S.Tenn.1983, 103 S.Ct. 692, 459 U.S. 392, 74 L.Ed.2d 562.

61. Social security benefits

"Obligations," for purposes of federal statute stating that stocks and obligations of United States Government are exempt from taxation by state or political subdivision of state were investment securities, rather than government's duty to pay social security benefits and thus, such statute did not preclude state from imposing income tax on social security benefits reported as federal taxable income. Boersma v. Karnes, Neb.1988, 417 N.W.2d 341, 227 Neb. 329, appeal dismissed 109 S.Ct. 29, 488 U.S. 801, 102 L.Ed.2d 9.