

CL. 2—Supremacy of the Constitution, Laws, and Treaties

statute books today.²¹⁵ The right of Congress to exempt legal tender notes to the same extent as bonds was sustained in *Bank v. Supervisors*,²¹⁶ over the objection that such notes circulate as money and should be taxable in the same way as coin. But a state tax on checks issued by the Treasurer of the United States for interest accrued upon government bonds was sustained since it did not in any way affect the credit of the National Government.²¹⁷ Similarly, the assessment for an *ad valorem* property tax of an open account for money due under a federal contract,²¹⁸ and the inclusion of the value of United States bonds owed by a decedent, in measuring an inheritance tax,²¹⁹ were held valid, since neither tax would substantially embarrass the power of the United States to secure credit.²²⁰ A state property tax levied on mutual savings banks and federal savings and loan associations and measured by the amount of their capital, surplus, or reserve and undivided profits, but without deduction of the value of their United States securities, was voided as a tax on obligations of the Federal Government. Apart from the fact that the ownership interest of depositors in such institutions was different from that of corporate stockholders, the tax was imposed on the banks which were solely liable for payment thereof.²²¹

Income from federal securities is also beyond the reach of the state taxing power as the cases now stand.²²² Nor can such a tax be imposed indirectly upon the stockholders on such part of the corporate dividends as corresponds to the part of the corporation's income which is not assessed, *i.e.*, income from tax exempt bonds.²²³ A state may constitutionally levy an excise tax on corporations for the privilege of doing business, and measure the tax by the property of net income of the corporation, including tax exempt United

²¹⁵ 31 U.S.C. § 3124. The exemption under the statute is no broader than that which the Constitution requires. *First Nat'l Bank v. Bartow County Bd. of Tax Assessors*, 470 U.S. 583 (1985). The relationship of this statute to another, 12 U.S.C. § 548, governing taxation of shares of national banking associations, has occasioned no little difficulty. *American Bank & Trust Co. v. Dallas County*, 463 U.S. 855 (1983); *Memphis Bank & Trust Co. v. Garner*, 459 U.S. 392 (1983).

²¹⁶ 74 U.S. (7 Wall.) 26 (1868).

²¹⁷ *Hibernia Savings Society v. San Francisco*, 200 U.S. 310, 315 (1906).

²¹⁸ *Smith v. Davis*, 323 U.S. 111 (1944).

²¹⁹ *Plummer v. Coler*, 178 U.S. 115 (1900); *Blodgett v. Silberman*, 277 U.S. 1, 12 (1928).

²²⁰ *Accord*, *Rockford Life Ins. Co. v. Illinois Dep't of Revenue*, 482 U.S. 182 (1987) (tax including in an investor's net assets the value of federally-backed securities ("Ginnie Maes") upheld, as it would have no adverse effect on Federal Government's borrowing ability).

²²¹ *Society for Savings v. Bowers*, 349 U.S. 143 (1955).

²²² *Northwestern Mut. Life Ins. Co. v. Wisconsin*, 275 U.S. 136, 140 (1927).

²²³ *Miller v. Milwaukee*, 272 U.S. 713 (1927).