

**Inheritance and Succession Tax—Construction of “Loans or Obligations” Under Inheritance Tax Law.**

The term “loans or obligations,” as used in Subdivision 1 of Section 1, Chapter 6, 16th Extraordinary Session Laws, means “money loaned by decedent to be repaid or debts due decedent,” and such loans or obligations are subject to the transfer tax provided for in said Chapter 6.

J. W. Walker, Esq.,  
State Treasurer,  
Helena, Montana,

My dear Mr. Walker:

You have requested an opinion from this Department as to whether the term "loans or obligations" used in Subdivision 1 of Section 7737, Revised Codes of 1907, as amended by Chapter 6, Extraordinary Session Laws of the 16th Legislative Assembly, includes a note secured by mortgage on land in this State, so as to subject said note and mortgage to the payment of inheritance and succession tax.

Section 5206, Revised Codes of 1907, reads as follows:

"A *loan* of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed."

In the case of *Savings & Loan Soc. v. City and County of San Francisco*, 63 Pac. 665, the court held that the term "loan" ordinarily means money loaned, and in *Hertily v. Coney*, 59 Atl. 952, 99 Me. 446, the court said: "From the use of the word 'loan' in its ordinary signification, the law implies a promise to repay."

The court, in *Teed v. Parsons*, 66 N. E. 1044, 202 Ill. 455, in discussing the subject of a loan, made use of the following language: "Though payment of money is called a 'loan' it is not a loan where the money is not to be paid back at all events."

Section 5188, Revised Codes of 1907, says:

"A loan for use is a contract by which one gives to another the temporary use and possession of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use."

Certainly the Legislature, in framing Chapter 6, *supra*, did not intend to use the word "loans" as defined in Section 5188, but must have had in mind a loan of money as defined in Section 5206, *supra*.

In the case of *Trask v. Livingston County*, 109 S. W. 656, 210 Mo. 582, the court held that "a debt in its general sense is a specific sum of money, which is due or owing from one person to another, and denotes not only an obligation of the debtor to pay, but the right of the creditor to receive and enforce payment."

I think this is the sense in which the Legislature used the word "obligations" in Chapter 6, *supra*, viz., that it means *debts due to the decedent*.

Section 4926, Revised Codes of 1907, reads:

"Performance of an *obligation* for the delivery of money only is called payment."

We find the word "obligation" used in section after section of the Revised Codes in connection with the payment of money, and I think there is no doubt of the meaning of the word as used in Chapter 6, *supra*.

It is, therefore, my opinion that the term "loans or obligations" as used in said Chapter 6, supra, means "money lent by decedent and to be repaid or debts due decedent," and when such are assigned or transferred by the executor, administrator or trustee, they are subject to the tax prescribed by Chapter 6, supra.

Inheritance taxes are not imposed upon the property itself, but upon the transfer of, or succession to, the property.

Plummer v. Cooler, 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829.

A note secured by mortgage is subject to the transfer tax law of the State where the land is located and the mortgage recorded, although the note and mortgage are, at the death of the owner, in his possession in another state.

In re Merriam, 147 Mich. 630, 111 N. W. 196, 9 L. R. A. (N. S.) 1104.

You are therefore advised that the note for \$1,600, given by Milton Pratt and wife to Count Pulaski Johnson, secured by mortgage on land in Hill County, Montana, comes within the provisions of Subdivision 1, Section 7737, of Chapter 6, Session Laws of 16th Extraordinary Legislative Assembly, and the tax therein provided for should be collected from the estate of said Count Pulaski Johnson, deceased.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.