Opinion No. 68.

Taxation—Inheritance Tax—Intangibles.

HELD: "Intangibles" consisting of an interest in a partnership in Montana, belonging to deceased who was domiciled in another state, is subject to but one inheritance tax and that is in California.

March 24, 1937.

State Board of Equalization
The Capitol

Gentlemen:

You have submitted the following:

"Elizabeth B. Long died a resident of the state of California and her sole property in Montana consisted of interests in two partnerships whose principal place of business is Great Falls, Montana. The assets of the partnership consist solely of shares of stock in two Montana corporations which are engaged in the livestock business in Montana.

"The primary estate is being probated in California and the proceedings here are ancillary to that estate. We are advised by the Inheritance Tax Department of the State of California that it contemplates assessing and will assess, inheritance tax upon the transfer of this partnership property due to the fact that she was a resident of that state at the time of her death."

and request my opinion as to whether the State of Montana has the right to levy an inheritance tax upon this estate.

An almost identical question was presented to the Supreme Court of the United States in First National

Bank v. Maine, 284 U. S. 312, 76 L. Ed. 313. Edward H. Haskell died testate a resident of Massachusetts. The greater part of his property consisted of shares of stock in a Maine corporation, which had most of its property in that state. His will was probated in Massachusetts, where his stock was made liable to an inheritance tax of a like character to the inheritance tax in force in Maine. The Massachusetts tax amounted to over $32,000. Ancillary administration was taken out in Maine, and an inheritance tax amounting to over $62,000.00 was assessed under the Maine statutes. A credit was allowed for the Massachusetts tax and an action was brought to recover the balance. The Maine court upheld the tax in that state but the decision was reversed by the United States Supreme Court in the case above cited.

In an opinion written by Mr. Justice Sutherland, previous contrary decisions of that court were reviewed and rejected. The court held that the stock of the corporation owned by the deceased was of the character of property known as "intangibles" and applied the legal fiction expressed in the maxim **mobilia sequuntur personam,** meaning movable things follow the person, or, as the court said, "this interest is an incorporeal property right which attaches to the person of the owner in the state of his domicile." The court said further:

> "A transfer from the dead to the living of any specific property is an event single in character and is effected under the laws, and occurs within the limits, of a particular state; and it is unreasonable, and incompatible with a sound construction of the due process of law clause of the Fourteenth Amendment, to hold that jurisdiction to tax that event may be distributed among a number of states. (p. 327) * * *
>
> "We conclude that shares of stock, like the other intangibles, constitutionally can be subjected to a death transfer tax by one state only." (p. 328.)

After pointing out the different rule applying to tangible property which has an actual situs in the state where it is, and that applying to intangibles, the court said:

> "And since death duties rest upon the power of the state imposing them to control the privilege of succession, the reasons which sanction the selection of the domiciliary state in the various cases first named, sanction the same selection in the case last named. In each case, there is wanting on the part of a state other than that of the domicile, any real taxable relationship to the event which is the subject of the tax. (p. 329) * * *
>
> "Practical consideration of wisdom, convenience and justice alike dictate the desirability of a uniform general rule confining the jurisdiction to impose death transfer taxes as to intangibles to the state of the domicile; and these considerations are greatly fortified by the fact that a large majority of the states have adopted that rule by their reciprocal inheritance tax statutes. In some states, indeed, the rule has been declared independently of such reciprocal statutes. The requirements of due process of law accord with this view." (pp. 330-331.)

This case was decided in January, 1932, and although three justices dissented, the decision has not been reversed. In a late Federal case, City Bank Farmers Trust Company v. Schnader, 8 Fed. Supp. 815, the court said:

> "In the case of intangibles, the law is now well settled that the state in which the owner is domiciled and no other may impose an inheritance tax. Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98, 100, 74 L. Ed. 371, 65 A. L. R. 100; First National Bank v. Maine, 284 U. S. 312, 52 S. Ct. 174, 175, 76 L. Ed. 313, 77 A. L. R. 1401."

For a further discussion of the subject, we call attention to the A. L. R. Notes found in 60 A. L. R. 565, 65 A. L. R. 1008, 72 A. L. R. 1310 and 77 A. L. R. 1411.

That an interest in a partnership is of the character of property known as intangibles, can hardly be questioned. See Blodgett v. Silberman, 277 U. S. 1, 72 L. Ed. 741; In Re Bijur's Estate, 216 N. Y. S. 523; In Re Dumarest's Estate, 262 N. Y. S. 450;

Apple v. Smith, (Kans.) 190 Pac. 8; Meyers v. Garland, (Okla.) 251 Pac. 34.

We are therefore compelled to advise, that, as construed by the Supreme Court of the United States, an attempt on the part of the State of Montana to levy an inheritance tax upon the property of Elizabeth B. Long, deceased, consisting of an interest in a partnership in Montana, she being domiciled in California, where she died, would be in violation of the Fourteenth Amendment to the Constitution.