

Assessment. Taxation. Foreign Corporations.

Credits based upon contracts of sale of sewing machines in Montana, made payable to a foreign corporation and not held or kept within the state, are not subject to assessment within this state.

The sewing machines, however, should be assessed to the party in whose possession they are found.

Helena, Montana, July 17th, 1906.

Board of County Commissioners, Missoula, Montana:

Gentlemen:—On or about April 10th, 1906, I received an inquiry from you relative to assessment of credits belonging to the Singer Sewing Machine Company.

The statement of facts contained in your letter, however, was too meagre to permit full investigation, and on May 3rd I addressed a letter to you requesting further information. I have heard nothing from you since that date, but on or about June 20th, 1906, I received a letter addressed to the "Singer Sewing Machine Company, Missoula, Montana," signed "Singer Sewing Machine Company, J. F. Kelly, Agent," forwarded to me. No letter of transmission was inclosed with this letter from the company, and I can only presume that it was intended as an answer to my inquiry of May 3rd from the fact that the questions asked by me were quoted and answered.

It appears from this letter that this is a New Jersey Company; that it sells its machines in Montana on contract, part payments being made down, and that the contracts as soon as executed, are sent to the home office of the company in New Jersey; that none of the contracts are kept within the county of Missoula. Although there is no provision in the written contract with reference to the payment of taxes, yet it is understood that the party in whose possession the machine is left is to pay the taxes, and these contracts are not filed with the county clerk and recorder under the laws of 1899, page 124.

I have never seen a copy of these contracts and can only deal with the proposition on the statement of facts made by the company.

Sec. 3670 of the Pol. Code provides that "all property in this state is subject to taxation". It is also well established that "the general rule is that debts attend the person of the creditor and are taxable at his domicile."

In *Hollond v. Commissioners*, 15 Mont. 460, the supreme court in considering the question of assessment said:

"The debt, therefore, if owned and controlled by one not a resident of the state, is not 'property in this state subject to taxation' as provided by the revenue act of 1891, and can be assessed only at the domicile or place of residence of the creditor, without regard to the domicile of the debtor."

This Revenue Act of 1891 is the same as Sec. 3670 above.

Laws 1891, page 73.

If this contract of purchase is regarded as a mortgage, or if it is regarded as an evidence of debt due from a resident to a non-resident, then it cannot be assessed, for the domicile of the creditor is out of the state, and if it is regarded merely as evidence that the company is still the owner of the machine, then it is only a muniment of title and is not a proper subject of assessment any place, but the sewing machine itself should be assessed, and the question is now, to whom should this assessment be made.

Sec. 3701, Pol. Code, requires each person to make a statement under oath, which shall show among other things, "all property belonging to, claimed by, or in the possession or under the control or management of such person". These machines, when delivered, are in the possession and under the control and management of the purchaser, and they should be included in the statement he makes to the assessor and should be assessed to him unless he shows to the satisfaction of the board of equalization or the assessor that the property is the property of such company that he only holds it as agent, trustee or bailee, and in that event, it should then be assessed to him in accordance with the provisions of Sec. 3710 of the Pol Code, and if the company, or the party who is the actual owner of the machine has no real estate in the county on which the tax levied is a lien, summary collection of the tax should be made by seizure of the property by the county treasurer, as required by the laws of 1903, page 225.

Very truly yours,

ALBERT J. GALEN,

Attorney General.