

Inheritance Tax, Mortgages Not Real Estate.

Mortgages on real estate are not an interest in real estate but are personal property, within the meaning of the inheritance tax law, and subject to the same tax as other personal property.

Helena, Montana, May 13, 1909.

Hon. Sharpless Walker,
County Attorney,
Miles City, Montana.

Dear Sir:

I am in receipt of your letter of May 10, in which you request an opinion upon the following proposition:

The assets of the estate of A. B. Clark, deceased, were \$191,063.23, the bulk of which was personal property, and after paying the liabilities, expenses of administration, etc., a balance of \$50,000.00 remains to be distributed to the widow and children of deceased. You further state that the accounts and reports of the executrix have been so made as to make it appear that the estate ready to be distributed to the heirs consists of real estate, or an interest therein, or an income therefrom. You also state that "the property to be distributed consists of notes secured by mortgages on real estate which belonged to the estate and which has been sold."

Upon the above statement you submit the following question:

"Should an inheritance tax be collected, under Section 7724, Revised Codes, on the \$50,000.00 on the securities to be distributed?"

We understand the contention of the executrix to be that mortgages on real estate are interests in real estate, and therefore would not be subject to an inheritance tax where the property goes to the widow and children of decedent. The definition of real and personal property, for the purpose of taxation, as defined by Section 2501, Revised Codes, is that secured credits, such as mortgages, are personal property; also, under the definition of real and personal property, as given in Sections 4425 and 4430, Revised Codes, mortgages, would be personal property. It has also been repeatedly held by the supreme court of this state, and other courts, that mortgages on real estate are not an interest in real estate, and are taxable as personal property.

Gallatin Co. v. Beattie, 3 Mont. 173;
Holland v. Co. Commrs., 15 Mont., 460;
Swain v. McMillan, 30 Mont., 433;
Mueller v. Renks, 31 Mont., 100.

You are therefore advised that these securities are personal property within the meaning of the inheritance tax law, and are therefore subject to such tax; provided, the share received by each heir is sufficient to make them liable for the tax.

Your attention is called to the case of
Hinds v. Wilcox, 22 Mont. p. 4,

for a classification of the persons who are subject to such taxes. We also call your attention to an opinion given by this office to Honorable T. E. Collins—Opinions of the Attorney General; 1906-08, 151—in which it was held that the inheritance tax is based on the value of the property received by each heir and not upon the total value of the estate of the deceased.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

(Modified in Cascade Bank vs. Yoder, 103 Pac. 499).