

**Taxation, of Mortgages, Situs of. Mortgages, Situs for Taxation.**

A mortgage upon real estate is assessed as personal property, and the domicile of the owner of the mortgage is the situs for the taxation thereof.

Helena, Montana, November 22, 1909.

Hon. W. H. Trippet,  
County Attorney,  
Anaconda, Montana.

Dear Sir:

I am in receipt of your letter of November 15, wherein you submit for my official opinion the question as to where a mortgage on real estate should be assessed.

In answer to your query it is necessary, in the first place, to determine the character of the estate assessed.

In an opinion addressed to Honorable Sharpless Walker, county attorney, Miles City, Montana, under date of May 13, 1909, the following language is used:

"The definition of real and personal property, for the purpose of taxation, as defined by section 2501, revised codes, is that secure 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, \* \* \*."

Under the existing law, the situs of taxation of personal property, except special kinds of personal property, such as range stock that are driven from county to county, is the domicile of the owner.

You present a suppositious case in your request for this opinion, wherein you say:

"Suppose a man living in Miles City should loan money upon lands in this county; it seems to me the mortgage would be assessed in this county."

I cannot agree with your interpretation of the law in this regard. The mortgage represents cash in hand of the mortgagee and this cash in hand must be assessed in the jurisdiction wherein he resides. You say that you find no provisions for the assessor or county clerk to certify a mortgage to the assessor of another county. This objection is overcome by section 2518, which provides, briefly, that as soon as the assessor receives a statement of any property situate in another county, he must make a copy of such statement for each county in which the same is submitted and transmit the same by mail to the assessor of the proper county, so that when he receives notice that a mortgage on real estate is held by a resident of some other county, as the record would show, it is his duty, under this section, to transmit a statement to that effect to the county where the mortgagee resides. While there is no express provision in the statutes relating to taxation that identifies the residence of a taxpayer more particularly than the county, still I think that reasoning by analogy it is proper to hold that the school district in which a mortgagee resides is the proper situs for the taxation of that mortgage, irrespective of the location of the real estate mortgaged.

You are therefore advised, that, in my opinion, a resident of Anaconda, holding a mortgage on real estate situate in some other school district in Deer Lodge county, should be taxed upon the value of the mortgage in the city of Anaconda.

Yours very truly,

ALBERT J. GALEN,

Attorney General.