

Insurance Companies, Assessment of. Corporations, Assessment of. Assessment, of Insurance Companies.

The proper manner of assessing domestic insurance companies is to assess the mortgage loans, deposits in banks, county warrants, loans to policy holders on policies, and on furniture, fixtures, etc.

June 3rd, 1913.

Hon. G. M. Houtz,
State Tax Commissioner,
Helena, Montana.

Dear Sir:

Recently you wrote to this office as follows

"I have been asked by one of the assessors of the state to request the opinion of your department as to the proper legal assessment of insurance companies organized under the laws of Montana and doing business in the state. I believe there are but two counties in the state that this question affects.

"In one, last year, assessment was made on the capital stock and surplus of the company; in the other upon the mortgage loans, deposits in banks, county warrants, loans to policy holders on policies, and on furniture, fixtures, etc.

"Which method is correct, if either?"

I have carefully considered the question propounded in your letter as to the correct method of assessing domestic insurance companies in this state, and now beg to advise that with reference to the capital stock of such companies, the general doctrine, which I believe is applicable to this case, was announced by our supreme court³ in *Daly Bank & Trust Company v. Board of County Commissioners*, 33 Mont. 101, as follows:

"Stocks * * * fall within the definition of the term 'property' as given in Sec. 17 of Art. XII of the Constitution, and in Sec. 3680, Subdivs. 1 and 4 of the Political Code (2501, Revised Codes of 1907), and are to be assessed to the owners at their full cash value except to the extent that that value is represented in property which is assessed to the company."

Corporations are to be assessed the same as individuals and the property subject to taxation is defined in Sec. 17 of Art. XII of the Constitution. See also Sec. 7 of the same article.

In *Butte Land & Investment Company v. Sheehan*, 44 Mont. 371, our supreme court, in passing upon the power to tax the capital stock of a corporation, which did not own any of its capital stock, said:

"The only question involved is whether the authorized capital stock of any corporation is taxable as such against the corporation. It must be answered in the negative. Sec. 7 or Art. XII of the Constitution, declares that all corporations in this state shall be subject to taxation on real and personal property, owned by them not exempted from taxation. Sec. 2510 provides that the assessors must, between the first Monday of March and the second Monday of July of each year, ascertain the names of all taxable inhabitants and all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or

claimed or in whose possession or control it was at 12 noon on the first Monday of March next preceding. Indeed, the manifest intent of our revenue laws generally is that property shall be assessed to the owner."

In construing Sec. 2521, *supra*, our supreme court has said in *Monidah Trust Company v. Sheehan et al.*, 45 Mont. 424:

"The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation." In *Gallatin County v. Beattie*, 3 Montana, 173, this court had under consideration the same questions now before us, in a somewhat different aspect. In that case the tax payer was a resident of Lewis and Clark County and held mortgages upon real property situate in Gallatin County. The taxing authorities of Gallatin County sought to subject the credits to tax in that county, and to this end made the assessment of the records in Gallatin County, just as the assessor of Silver Bow County undertook to do it in this instance, but in that case this court held that the mortgages were mere chattels subject to taxation in the county where actually found,—that the records of mortgages were not the mortgages, but only copies, and since the mortgages themselves were not in Gallatin County, assessment of them there was void."

It would appear from the doctrine announced in this case that mortgage loans made by the insurance company in question are to be assessed not where the mortgaged property may be located, but where the mortgages themselves are actually found, since the property subject to taxation is the mortgage itself, and not the property held by way of pledge to secure the loan. The mortgage is personal property of a tangible character, and has its situs for the purpose of taxation only at the domicile of the owner.

Monidah Trust Company v. Sheehan et al., *supra*.

The assessor who made the assessment last year in the manner indicated in the first proposition of your letter evidently was misled into doing so through the general language of Sec. 2523 of the Revised Codes, which provides in a general way that the capital stock and franchises of corporations, etc., must be listed and taxed in the county, town or district where the principal office or place of business of such corporation is located. By reference to the cases above referred to, the language of this section becomes sufficiently plain and relieved of ambiguity.

It therefore follows that the proper manner of assessing domestic insurance companies is as contained in the second or latter method outlined in your letter, and the property which must bear the burden of taxation is that owned or possessed by such corporation on the first Monday of March at 12 o'clock noon of each year, and which falls within the constitutional definition of property as follows:

"The word 'property' as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises

and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed."

Sec. 17, Art. XII, of the Constitution of Montana.

And it becomes the duty of the assessor to assess any and all property of the corporation pursuant to the provisions of this section and not otherwise.

Yours very truly,

D. M. KELLY,

Attorney General.