

**Inheritance Tax, Estates Subject to. Mortgages, Situs of
for Taxation.**

The inheritance tax law imposes a condition upon the right or privilege of taking property by will or by the intestate laws; until the tax is paid, the rights of the heir, devise or legatee are inchoate. Non-residents are subject to the tax. Mortgages have situs at domicile of decedent.

April 15, 1914.

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

Dear Sir:

Recently you handed me a communication from Hon. Thomas F. Conley, Clerk of the Fourth Judicial District Court of Missoula

County. From the tenor of this letter, I gather that you have been in correspondence with Mr. Conley, relative to the collection of an inheritance tax from the estate of Sarah A. Baker, deceased, and that there is some question as to whether a tax can be collected from this estate because the property to be distributed consists entirely of mortgages on real property in the state of Nebraska, and that one of the heirs is a resident of this state, and the other is a resident of New York.

This office heretofore has held that mortgages on real property are not an interest in real estate, but are personal property within the meaning of the inheritance tax law (Opinions Attorney General, 1908-10, Vol. 3, p. 117). In the opinion referred to the following cases are cited: Galatin Co. vs. Beattie, 3 Mont., 173; Holland vs. Co. Commissioners, 15 Mont. 460; Swain vs. MacMullen, 30 Mont. 433; Mueller vs. Renks, 31 Mont. 100, an examination of which will disclose that it is now the settled law of this state that mortgages are nothing more than collateral securities, depending upon outside obligations to secure which they are given. Hence, they have no situs independent of the domicile of the owner.

In the instant case, Sarah A. Baker in her lifetime was a resident of Missoula county, and upon her decease her estate was there probated. Under such circumstances it can make no difference that the real estate pledged to secure the payment of the mortgage debts, is located in a foreign state, for, under the decisions, the real estate is only collateral while the mortgages are personal property with their situs fixed at Missoula county, the domicile of the owner at the time of her death.

It is set forth that one of the heirs is a resident of this state, and the other heir is a resident of New York, and the inquiry is propounded as to whether this fact has bearing upon the collection of the tax. In my opinion, it has not, for the inheritance tax law imposes a condition upon the right or privilege of taking property by will or by the intestate laws of this state. A certain amount of percentage of the property of the decedent's estate in the hands of the executor or administrator must be deducted and paid into the county treasury as a condition precedent to the right of the heir, devisee or legatee to participate in the distribution of the estate; until the required tax or penalty is paid, the rights of the heir or devisee or legatee are inchoate. Hence, it can make no difference that a part or all of the estate will be finally distributed to non-residents. You are, therefore, advised that the estate of decedent, Sarah A. Baker, is subject to the payment of the inheritance tax, provided for by Section 7724, Revised Codes of 1907.

Yours very truly,

D. M. KELLY,
Attorney General.