

Mortgages, Taxation of Unrecorded. Taxation, of Unrecorded Mortgages.

A Mortgage is a collateral security depending on outside obligations to secure which it is given. It has situs at the domicile of the owner, and is taxable as solvent credits.

August 18th, 1914.

Hon. W. M. Black,
County Attorney,
Shelby, Montana.

Dear Sir:

I have your letter of the 10th inst., wherein you set forth the following:

"Under Sec. 2509, Rev. Codes of 1907 of Montana, I cannot find whether or not a mortgage on realty can be assessed to the mortgagee before it has been recorded. The same question applies to chattel mortgages.

"In this county we have several mortgages, both real and chattel, which have not been recorded, but have been given in some instances over a year ago. I can find no law applying in which we can assess these. And if so assessed, to whom?

"In other instances we find mortgages given and let run for several months before recorded. Our point is to determine just who to assess these mortgages to."

In reply will say that in the early case of Gallatin County v Beatty, 3 Mont. 173, the doctrine is laid down that a mortgage is a mere chattel like any other personal property, and is subject to taxation in the county where it is found. The record of a mortgage is not the mortgage itself or any more than any other copy would be. The doctrine here announced has been amplified and followed in the later cases of Holland v. County Commissioners, 15 Mont. 460, Swayne v. McMullen, 30 Mont. 433, and Mueller v. Renks, 31 Mont. 100. Thus a mortgage is nothing more than a collateral security depending upon outside obligations to secure which it is given and has domicile at the situs of the owner thereof. It becomes immaterial whether or not a record of the mortgage has been made. It represents a species of property which is made the subject of taxation and should be taxed as solvent credits, as outlined in the sixth subdivision of Sec. 2501 of the Revised Codes of 1907, pursuant to the mandate contained in Sec. 2501, Idem.

Yours very truly,

D. M. KELLY,
Attorney General.