

Taxation—Solvent Credits—Counties.

Solvent credits consisting of conditional bills of sale should be assessed in the county in which the owner resides and not in the county where the bills of sale are filed.

R. D. Miller, Esq.,
Secretary State Board of Equalization,
Helena, Montana.

My dear Mr. Miller:

You have submitted to this office the question whether solvent credits are assessable in the county where physically located or in the county in which the principal place of business of the owner is located.

In the case of Flowerree etc. Co. v. Lewis and Clark County, 33 Mont. 32, the question presented to the court was whether livestock that was being wintered and cared for in one county was assessable in that county, where the domicile of the owner and his principal place of business, as well as the range of the cattle, were in another. Mr. Justice Holloway, delivering the opinion of the court, discussed the situs of tangible personal property, as follows:

“That all property shall be assessed in the county which is its home. If the property be real estate, its actual situs determines the question of its home. If personal property belonging to a merchant, the county where the merchant's business is conducted determines the home of such property; and likewise, if the property be range stock, its home is its accustomed range—in this case, Teton county. Any other con-

struction would lead to the greatest possible confusion and open the door to tax dodging; for it was never intended that the county within which the particular personal property may chance to be casually or in a transitory sense on the first Monday of March shall be the county entitled to assess and collect the taxes upon it. If so, a resident of Jefferson county who happened to drive into Helena on the first Monday of March would be subject to have his team assessed in Lewis and Clark county, even though he returned to his home the same day, and was not within Lewis and Clark county again during the entire year. Likewise, if that theory should be adopted, unscrupulous taxpayers of a county heavily in debt and having a high tax levy might simply transfer their movable property across the county line into a county having a lower levy, and have it assessed there, effecting a saving for themselves, but at the same time depriving their home county of needed revenue; and it is no stretch of imagination to see that the county having the lowest levy would possibly soon become the county having the largest assessment, while other localities, because of large debts and necessarily large levies, would soon become bankrupt. * * *

"We are firmly of the opinion that the idea running through our assessment laws is that property shall be assessed in its home county, for to that county it owes the duty of helping to bear the burden of county government. And this was evidently contemplated by the Legislature, for it made provision in the sections above referred to, as in others, for determining the actual home of the particular species of property."

It will be observed in this case that the question under consideration was the domicile of the tangible personal property.

The rule is stated in 37 Cyc. 953 in regard to personal property of this character, as follows:

"Personal property constituting the stock in trade of a merchant or the raw or finished product of a manufacturer is not ordinarily taxable at the place of the owner's domicile, but, according to varying statutes in the different states, at the place where it is actually located or stored, or where the property is kept for sale," * * *

The rule with reference to credits and securities, however, is given as follows:

"The rule of law that *mobilia sequuntur personam* is applied to all species of personal property which has no tangible existence of its own, and which is not intrinsically valuable, but has worth only as the evidence or representative of value, such as accounts and bills receivable, deposits in

bank, money loaned on mortgage or other security, shares of corporate stock, and bonds; and all such property ordinarily has its situs for purposes of taxation only at the domicile of its owner."

37 Cyc. 806.

The rule is further stated in 37 Cyc. 955 as follows:

"Property of an intangible nature, such as credits, bills receivable, bank deposits, bonds, promissory notes, mortgage loans, judgments, and corporate stock, has no situs of its own for the purpose of taxation, and is therefore assessable only at the place of its owner's domicile. This rule is not affected by the fact that the note or other evidence of the debt may be deposited elsewhere, or that the debt is secured by a mortgage on property situated in another county or taxing district, or that the debt has been reduced to judgment at the domicile of the debtor."

It is, therefore, my opinion that the intangible property created by the conditional bills of sale is, under the statement of facts contained in your letter, to be assessed in Silver Bow county where the owner resides, and not in Deer Lodge county where the conditional bills of sale are filed.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.