

Taxes—Inheritance Tax—Decedents—Non-Residents—Notes—Mortgages.

Notes held by non-resident decedents secured by mortgages upon Montana land are not subject to inheritance tax in Montana.

State Board of Equalization.

April 29, 1925.

Helena, Montana.

Gentlemen :

You have requested my opinion whether a note held by a non-resident decedent and secured by a mortgage upon real estate in this state is subject to inheritance tax when the note and mortgage were held at the residence of the decedent at the time of his death.

The authorities are not in accord on this question. In some states the situs of such property for inheritance tax purposes is at the domicile of the owner. Among such cases may be cited the following :

In re Fearing, 200 N. Y. 340, 93 N. E. 956 ;

In re Meyer, 192 N. Y. S. 717 ;

Walker vs. People, (Colo.), 171 Pac. 747 ;

Gilbertson vs. Oliver, (Iowa), 105 N. W. 1002.

Other courts have held that such notes are taxable where they are actually located at the time of death, and still others at the place where the real estate given as security is situated. Of those taking the latter view the following may be cited :

Kinney vs. Stevens, 207 Mass. 368, 93 N. E. 586 ;

Hawkridge vs. Burrill (Mass.), 111 N. E. 707 ;

Auditor General vs. Merriam's Estate (Mich.), 111 N. W. 196 ;

In re Roger's Estate (Mich.), 112 N. W. 931 ;

Helser vs. State (Md.), 97 Atl. 539.

The Massachusetts cases cited above may be distinguishable for the reason that under the laws of Massachusetts, unlike those of this state, the mortgagee of real estate holds the legal title to the mortgaged land.

The supreme court of this state has not passed on the precise question submitted. It has, however, recognized the rule that if the courts of this state must be resorted to for ancillary administration the property involved in the ancillary proceedings is subject to the tax. This was so held in the case of *State ex rel. Floyd vs. District Court*, 41 Mont. 357.

However, since this decision the court has held that shares of stock of a foreign corporation (with all of its physical property in the state) held by a non-resident decedent, is not subject to an inheritance tax. (*State vs. Walker*, 226 Pac. 894.)

Our statute (subd. 2 of sec. 1, chapter 65, laws of 1925), providing for the tax upon property of a non-resident, imposes the tax upon "property within the state or within its jurisdiction."

In *Holland vs. Com'rs*, 15 Mont. 460, the court, in speaking of a debt secured by a mortgage on real estate in Montana, said :

"The debt, therefore, if owned and controlled by one not a resident of the state, is not 'property in the state subject to

taxation,' as provided by the revenue act of 1891, but can be assessed only at the domicile or place of residence of the creditor, without regard to the domicile of the debtor."

In that case the court was speaking of a property tax and not an inheritance tax, but, nevertheless, insofar as it holds that the debt is not property in the state, the decision is equally applicable to an inheritance tax. Other cases applying the same principle are collected in, and followed by, the case of *State ex rel. Rankin vs. Harrington*, 68 Mont. 1.

It is my opinion, therefore, that in view of the foregoing decisions of the supreme court, it is extremely unlikely that it would hold that the property in question is subject to an inheritance tax.

Very truly yours,

L. A. FOOT,
Attorney General.