

No. 162

**PERSONAL PROPERTY—SITUS OF PROPERTY—
TAXATION—ASSESSMENT**

Held: Personal property held by trustee is assessable and taxable in the county where the personal property is located. The situs of the personal property controls.

July 7, 1941.

Mr. James H. Higgins
County Attorney
Meagher County
White Sulphur Springs, Montana

Dear Mr. Higgins:

You have submitted the following question:

“The testator in question left both real and personal property and established a trust. Upon testator’s death, the estate was distributed to the trustee, who lives in and conducts his business in a different county. Which County may assess and collect the taxes on the assets of the trust?”

There is no question the real estate is assessed and taxed in the county where it is situated.

The question arises in regard to the personal property which was decreed to the trustee and is now located in the county where the trustee has its principal place of business.

Our Supreme Court, in *Flowerree Cattle Co. v. Lewis and Clark County*, 33 Mont. 32, 8 Am. Cas. 674, 81 Pac. 395, affirmed the annulment of an assessment upon cattle only temporarily within Lewis and Clark County, which was the residence of their owner—the situs of the cattle being not in the residence of their owner but in the county of their accustomed and permanent range. Actual situs was held controlling in that instance.

The general principle is set forth in 61 C. J. 520, as follows:

“It is essential either that the owner of the personal property involved shall be a resident of, or that the personal property shall be located within the taxing district or unit which attempts to impose the tax.”

Again our Supreme Court in the case of *State ex rel. Rankin v. Harrington*, 68 Mont. 1, 17, 217 Pac. 681, reviewed the statutes applicable as follows:

“By the provisions of section 2002, Revised Codes of 1921, the assessor is required to 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 to

assess such property to the persons by whom it was owned or claimed or in whose possession or control it was at 12 o'clock noon of the first Monday of March next preceding.

"Section 2003 directs the assessor to require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession or under his control at 12 o'clock noon on the first Monday of March. Then follow sections relating to the property of absent or unknown owners (2008, 2009), to property situate in another county (2010), and section 2012 provides: 'When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.' By section 2013 it is provided that '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.' Section 2015 provides that 'The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.' By the provisions of section 2016, 'the personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on,' and by section 2017 the personal property of express, transportation and stage companies, steamboats, vessels and other water craft must be listed and assessed in the county, town or district where such property is usually kept. And after providing for the assessment of railroads, telegraphs, telephone and electric light lines (2021, 2022), the first sentence of section 2023 declares: '**All other taxable property must be assessed in the county, city, or district in which it is situated.**' (Emphasis mine.)

"The foregoing statutes demonstrate the emphasis laid upon the actual situs of property for purposes of taxation by the law-making power, and also indicate a clear intention to include the property of nonresidents which has a situs here." (Emphasis mine.)

It will be seen the county in which the personal property is located (the situs of the personal property) is the county in which such property should be assessed and the tax paid. In the instant case, the owner or trustee and the personal property are both located in the same county. Then there can be no question the county in which both are located is the county to assess and tax such property.

Sincerely yours,

JOHN W. BONNER
Attorney General