

No. 392

INHERITANCE TAX, compromise of—STATE BOARD OF
EQUALIZATION—OFFICERS, powers of

Held: Neither the State Board of Equalization nor any other executive officer or department of the state may enter into a valid compromised agreement with another state as to division of inheritance tax where domicile of decedent is claimed by both states.

April 7, 1942.

State Board of Equalization
State Capitol
Helena, Montana

Gentlemen:

You have presented the question as to the power of the State Board of Equalization or any other executive officer or department of the State of Montana to compromise, by agreement with another state, on a division of inheritance tax due from an estate where there is a genuine and serious question as to the domicile of the decedent at the time of her death. Both states claim domicile.

If the statutory, or inherent, authority to compromise is non-existent, it is unnecessary to consider the effect of Article V, Section 39 of the Montana Constitution providing, inter alia, that "no obligation or liability . . . owned by the state, . . . shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished. . . ."

I have carefully searched through the statutes of this state and there is no express statutory authority which would authorize the compromise. Sections 10400.37 and 10400.41, Revised Codes of Montana, 1935, most nearly applicable, do not cover the situation presented.

As to inherent power or power by implication, it is true power by implication exists for the due and efficient exercise of that power expressly granted. (*Guillot v. State Highway Commission*, 102 Mont. 149, 56 Pac. (2nd) 1072.) But conversely, no power will be implied other than that necessary for effective exercise of powers and duties expressly conferred. (*State ex rel. Dragstedt v. State Board of Education*, 103 Mont. 336, 62 Pac. (2nd) 330.) Authority to make such compromise is not a necessary adjunct to any of the powers granted the State Board of Equalization under Article XII, Section 15, Montana Constitution, or Chapter 193, Volume I, Revised Codes of Montana, 1935, nor may it arise by implication from powers granted other state executive branches of government.

Any contract embodying such compromise would be invalid under existing state law. (*Dade Park Jockey Club v. Commonwealth*, 253 Ky. 314, 69 S. W. (2nd) 363.) Decisions such as *State v. Young*, 44 Wyo. 6, 7 Pac. (2nd) 216, have not been overlooked.

Consequently, it is my opinion such compromise cannot be validly effected in the absence of appropriate legislation.

Sincerely yours,

JOHN W. BONNER
Attorney General