

Opinion No. 62.**Taxation—Intangible Personal
Property—Credits**

Held: County where securities, representing solvent credits, are kept, proper county for assessment and taxation.

June 7, 1943.

Mr. J. Miller Smith
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Smith:

You have requested my opinion regarding the proper county for taxation purposes of solvent credits belonging to a Montana corporation, your statement indicating the following facts:

“The articles of incorporation provide that the principal place of business shall be at Deer Lodge, in Powell County, at which place the annual meeting of the corporation is held; it further appearing the actual business of the corporation is transacted at Helena, in Lewis and Clark County, where its officers reside and the securities in question kept in a safety deposit box in a local bank.”

Section 2015, Revised Codes of Montana, 1935, provides:

“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 is no principal place of business or office in the state, then at the place in the state where any such corporation or person transacts business."

If consideration of the matter was confined to this section alone, it could be argued that Powell County is the proper situs for taxation, in view of authorities that the capital stock of a corporation includes all its property, there also being respectable authority to the contrary (definitions of capital stock in Words and Phrases); but it is to be noted the section in question includes the phrase "except as otherwise provided," and it, therefore, becomes necessary to examine other sections of the codes relating to taxation.

Section 2013, Revised Codes of Montana, 1935, provides:

"The property of every firm and corporation must be assessed in the county where the property is situated, and must be assessed in the name of the firm or corporation."

This section in, stating all property of a corporation is to be assessed in the county where situated provides the exception noted in Section 2015, Revised Codes of Montana, 1935, above referred to, and indicates the legislative intent that property of a corporation is to be assessed in like manner with the property of individuals, this intent also appearing in Section 2015 by its reference to both corporations and persons.

An examination of other sections of the codes, relating to taxation, indicates a definite legislative theory or intention that the actual situs of the property is controlling. Thus Section 2002, Revised Codes of Montana, 1935, requires the assessor to assess all property in his county, subject to taxation; Section 2010, Revised Codes of Montana, 1935, requires the assessor, as soon as he receives a statement of taxable property situated in another county, to make a copy of the statement and to transmit to the assessor of the proper county, who must assess it the same as other taxable property therein; Section 2017, Revised Codes of Montana, 1935, requires the personal property of express companies, etc., to be assessed in the county where the property is usually kept; and after providing for the assessment of railroads, etc., in Sections 2021

and 2022, Revised Codes of Montana, 1935, 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."

It is true there has been considerable confusion as to the proper situs of credits and other intangible property for purposes of taxation, and the authorities are divided, many courts holding that under the doctrine of "mobilia sequuntur personam," the domicile of the owner is the proper situs of such property for taxation purposes. It would seem though that this doctrine may not apply in Montana in the light of the decision of our Supreme Court in *State ex rel. Rankin v. Harrington*, 68 Mont. 1, 217 Pac. 681, wherein the Court points out the rule expressed in the maxim above quoted and by which personal property was regarded as subject to the law of the owner's domicile, grew up in the middle ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself, whereas in modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, the rule has yielded more and more to the *lex situs* (see page 24 state report); and at page 25 of the state report, the "fiction of law" that "all intangible property is presumed to have its situs at the domicile of the owner" must give way in the face of contrary facts; and further, page 27 of the state report, the state constitution and statutes, insofar as the principles of taxation are concerned, do not make any distinction between tangible and intangible property whatever.

Based upon the specific wording of our taxation statutes and the ruling of our Supreme Court in the case cited above, it is my opinion, under the facts stated, Lewis and Clark County is the proper county for assessment and taxation of the credits in question.

Sincerely yours,
R. V. BOTTOMLY
Attorney General