

Opinion No. 97**State Board of Equalization—Inheritance Tax—Bank Deposits**

Held: 1. The State Board of Equalization has the power to summon witnesses to appear and give evidence and to produce records, books, papers, and documents relating to matters which the Board has authority to investigate and determine. By virtue of these powers and in connection with the enforcement of the inheritance tax law, banks in the State of Montana are required to furnish information upon the request of the Board as to the amount of any bank balance a deceased person may have in a bank on the date of death. It is not necessary that the Board have the consent of the administrator or executor of the estate before requesting the aforementioned information.

March 7th, 1950.

State Board of Equalization
Capitol Building
Helena, Montana

Gentlemen:

I have your letter and request for opinion, as follows:

“The State Board of Equalization, in its administration of the inheritance tax laws, finds it necessary to investigate and determine the amount of any bank balance decedent may have in a bank on date of death. A certain bank in this State has refused to furnish such information upon request of the Board unless the Board first procures the consent of the administrator or executor of such estate.

"Will you kindly give us your opinion as to whether or not this Board is entitled under the law to obtain such information without first procuring the consent of such administrator or executor"

By reason of Section 15, Article XII of the Montana Constitution, the State Board of Equalization is a constitutionally created administrative agency of the State of Montana. Said Board is expressly charged with the very important duty of administering property taxes and equalizing values of taxable property and performing other duties. Said Section expressly provides for such other duties in the following words:

"Said State Board of Equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law."

With respect to the administrative powers and duties of the Board by reason of said constitutional provision, the Supreme Court of Montana in *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 262, 229 Pac. 730 said:

"The intention of the people to confer amplified power upon the State Board of Equalization by the amendment of 1922 is noteworthy. A mere casual inspection of the Section as it appeared originally, as amended in 1916, and as amended in 1922, confirms the statement. The concluding sentence of the 1922 amendment; 'Said State Board of Equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law,' certainly indicates the intention of the electorate to permit the legislature to entrust the Board with comprehensive powers respecting taxation."

Upon reading said Section 15 it is at once apparent that the facts pertaining to the question submitted are not among those that pertain to ad valorem taxation, but fall within those other powers and duties to be prescribed by law. With reference to the State's Inheritance Tax Act, Sections 91-4401 through 91-4459, Revised Codes of Montana, 1947, the administration thereof has been placed in the hands of the Board, as one of those "other duties," together with express power of administration. Section 91-4444, Revised Codes of Montana, provides as follows:

"State Board of Equalization to supervise inheritance tax. It shall be the duty of the State Board of Equalization to supervise the administration of, and to investigate and cause to be investigated the administration of the inheritance tax laws applied throughout the various counties of the state, and to cause to be made and filed in its office reports of such investigation together with specific information and facts as to particular estates that may seem to require special consideration and attention by the legal department of the state; but no information so acquired shall, in ad-

vance of legal action, be disclosed to any person except proper officials and persons interested in such estate."

The next Section, to-wit, 91-4445, provides for the powers and authority of the Board for gathering information and making investigations. The applicable part thereof reads as follows:

"Powers and duties of the Board. The State Board of Equalization in the conduct of inheritance tax affairs, shall have the same and similar powers and authority for gathering information and making investigations as is conferred by law on said Board in the performance of its other duties."

The immediate question thereunder is: What are those "same and similar powers and authority for gathering information and making investigations as is conferred by law on said Board?" Since they are not enumerated or specified under the Inheritance Tax Act, other statutes must be consulted.

Section 84-708, Revised Codes of Montana, 1947, contains numerous general powers of the Board. Subsections (6) and (13) thereof are applicable. Said subsection (6) contains the following provision:

"to supervise the administration of all revenue laws of the state and assist in their enforcement."

And subsection (13) reads as follows:

"To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the board shall have authority to investigate and determine."

The language thereof is clear and broad in its scope. It does not authorize a witness to impose any condition precedent for such information. It is clearly apparent that a sovereign state may not be hampered in the administration of its own revenue measures by any condition whatever demanded by a person in possession of information pertaining to such taxes, in the absence of authority in law.

Insofar as the Montana State Board of Equalization is concerned bank deposits or other obligations owing from a bank to any person are not privileged communications under Section 93-701-4, Revised Codes of Montana, 1947, or at all. This is particularly true upon the death of such creditor. The State of Montana becomes a party interested in his entire estate, including bank deposits and other credits includable in decedent's estate for inheritance tax purposes. The state has a statutory lien thereon for its inheritance tax, which lien extends to and includes inter vivos in contemplation of death. See Sections 91-4401 and 91-4405, Revised Codes of Montana, 1947; *In re Perier's Estate*, 195 Pac. (2d) (Montana) 989; and *In re Brown's Estate*, 206 Pac. (2d) (Montana) 816.

It appears to me that the law is clear and exacting in the premises.

It is my opinion, therefore, that the State of Montana, acting by and through its State Board of Equalization, is entitled under the law to obtain all such information without first procuring the consent of such administrator or executor, or of anyone else, and without yielding to any condition precedent whatever.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.