

- INHERITANCE TAX: (1) Real property, and tangible personal property is subject to tax where located.
- (2) Intangible personal property is subject to tax by the State in which the owner maintained his legal domicile except where such personal property has acquired a "business situs" in the State July 12th, 1934 where located.

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Hon. Joseph L. Gutting,
Prosecuting Attorney,
Kahoka, Missouri.

July 12, 1934



Dear Mr. Gutting:

This Department is in receipt of your letter of June 21st, 1934 requesting an opinion on the following state of facts:

"A Mr. Willard died in the state of Iowa and he had property in both Iowa and Missouri with more in the latter state. Administration was taken out on his estate in Iowa and then administration was taken out in this county. He left a will which has been filed in both states leaving \$500.00 to each of three people, one being a daughter and the other two disinterested parties and the balance he leaves to his son. The bequests to the first three parties will be paid solely out of the Iowa property by the Iowa administrator and the son will get all the property in Missouri.

Question: In the inheritance tax report of this administrator in Missouri he must show the bequests to the first three above set forth beneficiaries, now will he have to pay inheritance tax on the five hundred dollars to each of said beneficiaries? If so this will make an inheritance tax on said bequests in both states, bearing in mind that the Iowa administrator will pay said bequests out of Iowa property to Iowa people. Also will the son have to pay a tax on what the Iowa administrator delivers to him which is in Iowa, both in Iowa and in Missouri? Or is it a fact that a Missouri inheritance tax should be paid only on what the Missouri Administrator pays out to these beneficiaries."

I.

The State of Missouri may assess an inheritance tax only on property within its jurisdiction.

From the facts as stated in your letter, it is impossible to say whether Mr. Willard was a resident of Iowa or Missouri at the time of his death. However, since his death occurred in Iowa, we shall assume, for the purpose of this opinion that he was a legal resident of Iowa. That being so, the question remaining is as to the power of Missouri to tax property of a non-resident decedent.

It is fundamental that a state has no power to tax the devolution of property of a non-resident unless it has jurisdiction of the property involved. This question of jurisdiction is dependent upon the kind of property upon which the State seeks to impose an inheritance tax.

As to real property located in jurisdictions other than that of the domicile of the owner, or an equitable estate in realty so situated, there can be no inheritance tax assessed in the State in which the owner was domiciled at the time of his death. 61 Corpus Juris, p.1633.

"Real property in another state descends by virtue of the laws of that state and is not subject to the Inheritance Tax Law, whether passing by descent or devise." Peo v. Kellogg, 109 N.E. 304; 268 Ill. 489.

The above statement of the law is also true with respect to tangible personal property. In the case of Frick v. Pennsylvania 45 S. Ct. 603; 268 U. S. 473, the Court said:

"Here the tax was imposed on the transfer of tangible personalty having an actual situs in other states, -- New York and Massachusetts. This property, by reason of its character and situs, was wholly under the jurisdiction of those states, and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that state nor subtracted anything from the jurisdiction of New York and Massachusetts.

In these respects the situation was the same as if the property had been immovable realty. The jurisdiction possessed by the states of the situs was not partial but plenary, and included power to regulate the transfer both inter vivos and on the death of the owner, and power to tax both the property and the transfer."

We turn now to a discussion of the taxation of intangible personal property. As a general rule, the principle "mobilia sequuntur personam" applies so as to authorize the levy of an inheritance tax at the domicile of the owner of intangible personal property which is, or the evidence of ownership of which is, actually situated elsewhere. 61 Corpus Juris, p.1632. In the recent case of Baldwin v. Missouri, 281 U. S. 586; 74 L. Ed. 1056, Mr. Justice McReynolds, in passing on this point, said:

"So far as disclosed by the record, the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not elsewhere."

There is one exception to the above statement of the law and that is in a case where intangible personal property has acquired a "business situs" in a state other than that of the domicile of the owner. By "business situs" we mean whenever a non-resident has a local agent in the State of Missouri, and permits that agent to control the investments of the said non-resident, including the buying and selling of stock, bonds, notes, mortgages, and other evidences of indebtedness, the property being present in the State of Missouri under the control and custody of the local agent, then that property has acquired a business situs in the State of Missouri for the purposes of the Transfer and Inheritance Tax Laws of the State of Missouri.

On this point, the Supreme Court of Missouri in the case of Baldwin v. Missouri, 323 Mo. 207 (Reversed on other grounds in Baldwin v. Missouri, 281 U.S. 586) said:

"It is a reasonable inference that the cash and notes in such large quantities in Missouri, when none of it was held in Illinois, was retained in this State for the purpose of investment. They may

have established a business situs in this state, in which case it would be subject to a general tax as well as the inheritance tax

'It (the personalty) possibly acquired a business situs in this state. Whether it did or not it was within the jurisdiction of the state and property subject to the transfer tax. It would have been a proper subject of inquiry by the trial court to determine how and why and under what conditions these evidences of debt were in this state, but whatever the determination of that question the property was legally within the jurisdiction of the probate court of Lewis county in this state and subject to the tax.' (323 Mo. 207, 19 S.W. (2d) 734)."

While this question was left open by the Supreme Court of the United States, we respectfully submit that where intangible personal property belonging to a non-resident has acquired a "business situs" in Missouri, it is subject to inheritance tax in the State of Missouri.

CONCLUSION

In view of the foregoing, we submit the following conclusions:

- (1) Real property and tangible personal property is subject to tax where located.
- (2) Intangible personal property is subject to tax by the State in which the owner maintained his legal domicile except where such personal property has acquired a "business situs" in the State where located.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General