

INHERITANCE TAX: Intangible property, including stocks, bonds, notes etc., physically located in the State of Missouri and owned by a foreign subject or by a non-resident domiciled in a foreign country, is subject to the inheritance tax laws of the State of Mo.

3-2
February 27, 1936.



Neuhoff & Millar,
Attorneys at Law,
414 Rialto Building,
220 N. Fourth Street,
St. Louis, Missouri.

Attention: Mr. David L. Millar

Dear Mr. Millar:

This department is in receipt of your letter of February 4, 1936 requesting an opinion as to the following state of facts:

"A client of our office has sought our advice on the following situation:

"A German citizen, who had come to this country and was employed here, became a naturalized citizen of the United States, and then subsequently returned some years ago to Germany and thereafter resumed her German citizenship, left with this St. Louis resident approximately \$10,000 worth of intangible securities for safe-keeping, fearing the inflationary period in Germany. These securities have had their situs during this period in St. Louis, the local resident having simply held them for safe keeping and turned over, when requested, once a year, the proceeds of the coupons. The non-resident German citizen, owner of these securities, has died. The local resident having them in charge, desires to forward them to the decedent's estate in Germany. The local resident, being a client of our office, has asked us whether there is any Missouri inheritance tax due, before forwarding the securities.

"In view of the decision of the Supreme Court of the United States in the case of

Baldwin vs. Missouri, 281 U.S. 586, and the subsequent decision by the same Court of the First National Bank of Boston vs. Maine, 284 U.S. 312, both of which you are undoubtedly familiar with, it appears to us that these securities, being all intangibles and owned by a non-resident decedent and not having acquired a business situs within the State, there would be no Missouri inheritance tax due on them. In the two above mentioned cases the non-resident decedent was domiciled in another state, while in the case presented to us the non-resident decedent was an alien, domiciled without the United States. Under the reasoning of the Court, however, it would appear that that factor was not material.

"We would appreciate it if you would let us know whether it would be in accord with the views of your Department on this subject, if we may advise this client that there is no Missouri inheritance tax due on this intangible personal property, and that the same may be forwarded to the decedent's estate in Germany.

"We were unable to find any precedent in Missouri on this subject."

I

Ordinarily, intangible property is subject to taxation only by the state of the domicile of the owner thereof.

Under the earlier decisions, it was held to be constitutional for a State to subject the intangible property of a non-resident to the succession or inheritance tax imposed by the State--that is, the State wherein the physical presence of the bonds, stocks, etc. was located could impose an inheritance tax on the succession of the property regardless of the domicile of the owner. The Supreme Court of the United States, however, has finally, and, we trust, for all time, settled the various theories with respect to this question, (with the possible exception of intangible property that has acquired a "business situs" in the state where physically located) in the cases recently decided, namely, the cases of

Baldwin v. Missouri, 281 U.S. 586, and First National Bank of Boston v. Maine, 284 U.S. 312. In the Baldwin case, the Court said:

"The bonds and notes, although physically within Missouri, under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living and there this transfer was actually taxed. As they were not within Missouri for taxation purposes the transfer was not subject to her power. Rhode Island Trust Co. v. Doughton, 270 U.S. 69."

And, in the First National Bank Case, the Court, in reviewing its former decisions, held:

"It has long been settled law that real property cannot be taxed, or made the basis of an inheritance tax, except by the state in which it is located. More recently it became settled that the same rule applies with respect to tangible personal property. And it now is established by the three cases last cited that certain specific kinds of intangibles, namely, bonds, notes, and credits, are subject to the imposition of an inheritance tax only by the domiciliary state; and this notwithstanding the bonds are registered in another state, and the notes secured upon lands located in another state, resort to whose laws may be necessary to secure payment."

In view of these decisions, double or multiple taxation by the respective states of intangible personal property transferred at death is prohibited by the Fourteenth Amendment to the Constitution of the United States.

II

Intangible property owned by a non-resident of the United States and physically present in the State of Missouri is subject to the Missouri inheritance tax.

The Fourteenth Amendment to the Constitution of the United States provides:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It must be remembered that the cases of the United States Supreme Court referred to in Section I of this opinion have only to do with the power and relation of a state with every other state in the Federal Union; therefore, it would seem that the constitutional rules laid down by those decisions would not be applicable to non-residents of the United States.

In a very recent decision of the United States Supreme Court (*Burnett v. Brooks*, 288 U.S. 378) that Court considered the taxability of intangible property physically present within the United States and owned by a British subject who was a resident of Cuba. It was argued in that case that the principles of *mobilia sequuntur personam* should be applied, and that since the deceased was a resident of Cuba, the intangible property should be regarded as situated in Cuba. The Court stated, however, that "Congress did not enact a maxim" and that this maxim is a mere fiction which must yield to the facts, and that intangible property may acquire a situs other than the domicile of the owner.

The recent decisions of the Supreme Court referred to in Section I of this opinion were relied upon in that case. In holding these decisions not applicable to the matter under consideration, the Court said:

"The argument is specious but it ignores an established distinction. Due process requires that the limits of jurisdiction shall not be transgressed. That requirement leaves the limits of jurisdiction to be extended in each case with appropriate regard to the distinct spheres of activity of the state and nation. The limitations of state power are defined in the view of the relation of the states to each other in the Federal Union. The bond of the Constitution qualifies their jurisdiction which is the principle which underlies the decisions cited by respondents. These decisions established that proper regard for the relation of the state in our system required that the property under consideration should be taxed in only one state and that jurisdiction to tax was restricted accordingly."

The Court then concluded that the securities in question should be included in the gross estate of the decedent.

If there is no constitutional limitation preventing the Federal Government from exercising its sovereignty in the taxation of intangibles physically located in the United States and owned by non-residents, it would seem that there should not be any constitutional barrier preventing a state in its sovereignty from similarly taxing intangibles having a situs within its borders owned by a citizen of a foreign country or by a non-resident of the United States.

This specific question was recently before the Supreme Court of California in the case of *In Re McCreery's Estate*, 29 Pac. (2d) 186, wherein it was held that the state could impose an inheritance tax on a transfer by Will of stock in a domestic corporation owned by a decedent who was a non-resident of the United States, providing the stock certificates were physically present in the state. Specifically, the Court said (l.c. 187):

"It is not disputed that under subdivision 2 of section 2 of said Inheritance Tax Act, it was the legislative intent to impose a tax upon the transfer here disclosed. This section requires the payment of a succession tax,

'When the transfer is by will or intestate laws of property within this state and the decedent was a nonresident of the state at the time of his death
* * *'

It might be well to note at this point that Section 570, Laws of Missouri, 1931, p. 130 contains a clause substantially similar to that contained in the Inheritance Tax Act of California. Section 570 provides in part as follows:

"When the transfer is by will or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his death."

The Supreme Court of California in discussing the fiction of *mobilia sequuntur personam*, said (l.c. 188):

"But this restriction has as yet been applied only to estates of decedents who were residents within the United States. *Farmers' Loan Co. v. Minnesota*, 280 U.S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A.L.R. 1000; *First National Bank v. Maine*, 284 U.S. 312, 52 S. Ct. 174, 76 L. Ed. 313, 77 A.L.R. 1401. The rule which selects the domicile, as distinguished from the situs of the intangibles, was and is largely one of logic and convenience. But the reasons assigned for this selection all fail where the decedent was domiciled without the United States. It by no means seems certain that a valid rule could not have been promulgated which fixed the constructive situs of the intangibles as the place of taxation instead of the domicile of the owner. Moreover, the above-cited holding does not specifically purport to fix the rule controlling the jurisdiction for taxation where the owner of the intangibles was domiciled without the United States, whether he was a citizen of the

United States or a citizen of a foreign nation. Intangible property in one of the states of a nonresident of the United States receives the protection of our laws. Why may not the privilege of receiving it by transfer or succession be taxed by some state at least of the United States? And if it may be so taxed, why may not such tax be assessed in the state of the actual or constructive situs of such property?"

The Court then referred to the case of *Burnett v. Brooks*, previously referred to in this opinion, and concluded (l.c. 188):

"Applying this reasoning to the case before us (stock in a domestic corporation), why may not the State of California tax the transfer of the property of a nonresident of the United States, which property has its actual or constructive situs within the jurisdiction of this state? To so hold, we encounter no question of the proper distribution of power between the states as the rights of no other state are involved. The question is: Has a state the power to tax the transfer of property within its boundaries, belonging to persons who were domiciled without the United States? The logic of the *Burnett Case*, *supra*, seems to justify the right of the State of California to tax such a transfer."

CONCLUSION

The power to tax is a sovereign function and one of the most jealously guarded of all sovereign powers. Since it is our conclusion that the Fourteenth Amendment to the Constitution of the United States is not applicable (in the problem here before us) to foreign subjects or to non-residents of the United States domiciled in a foreign country, it is the opinion of this department that intangible property physically located in the State of Missouri and owned by a subject of a foreign country or by a non-

resident domiciled in a foreign country is subject to the inheritance tax laws of the State of Missouri.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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