Opinion No. 14-1355

October 5, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Kenneth K. Scott, Carlsbad, New Mexico.

TAXATION.

As to the taxation of notes, mortgages and deeds of trust and property held by building and loan associations.

OPINION

*{*217}* I have received your letter of the 3rd inst. in which you say that the assessors in your district have requested an opinion from you as to the assessment of mortgages or credits for money loaned, which they have been directed to ascertain and assess by the State Board of Equalization, as shown on page 33 of the proceedings of that Board at its July session, 1914, and you ask a series of twelve questions, upon which you desire an opinion from this office. As there are several of those questions to which one general answer would be sufficient, I will not attempt to answer them seriatim, but as briefly as possible indicate my opinion upon the matters covered by them.

The first, and perhaps principal matter covered by your questions, is as to the assessibility of mortgages or credits for money loaned, which are on record in New Mexico, but held by corporations or individuals whose domicile is not within the state. No better statement can be found of the general law on this subject than that which is set out in 1 Cooley on Taxation (third edition), beginning on page 84, where it is stated that "Persons and property not within the Territorial limits of a state, cannot be taxed by it." Such mortgages as you speak of as taxable anywhere, must be taxable at the domicile of their owners.

It was the intention of the Board that this assessment should be made in accordance with the adjudication by our Supreme Court in the case of Territory vs. Building and Loan Association, 10 N.M. 337, and any attempt to distinguish between the mortgages and the notes which the mortgages secure, is an unimportant technicality. In that decision of the Supreme Court, at page 339, the court says that the mortgages are undoubtedly personal property and subject to taxation, and at another place, that the question was whether or not the mortgages and notes held and owned by the corporation, were subject to taxation. The court further says "that such securities as notes, mortgages and deeds of trust, are subject to taxation." It appears to me that, taken altogether, the decision considers the mortgages and the notes which they secure, as constituting a piece of property which is taxable.

As to whether at this time the taxpayer should be allowed, by the assessor, to offset his debts against these credits as provided in Section 7 of Chapter 84 of the Laws of 1913, it appears to me that he is in no position to insist upon this where he has failed to include in his list of property "all money, notes and credits," with *{*218}* which he is allowed to furnish a statement of the amount of his bona fide debts owing by him, to be deducted from the valuation of his money, notes and credits. Having failed to comply with the law at the proper time, I do not see that he can now ask the assessor to make any such deduction.

As to mortgages and credits for money loaned, held by banks, it is quite clear that they are not taxable under the provisions of Chapter 103 of the Laws of 1907, as Section 3 of that act provides that no bank shall be assessed upon any property owned by it, but that the taxes to be levied upon the shares of stock shall be in lieu of taxes, which otherwise might be assessed upon its property.

I am of opinion that the assessors are authorized by Section 10 of Chapter 84 of the Laws of 1913, to add the penalty of 25% on account of the failure of the taxpayers to render true and complete lists of their property. In saying this, I do not overlook the fact that there has been a general omission to assess this kind of property, but I am unable to see how the assessor can take that into consideration in the discharge of his statutory duty. If the matter were brought into court, I will not predict what the court might hold, as there is a sort of equitable consideration which the court might show to taxpayers who had merely followed the general custom.

As to such property held by Building and Loan Associations, as to which another law applies relating to the assessment of such Associations, it appears to me that the assessor should follow the special law as to the assessment of such associations, even though the effect of such law, as I now recollect, is practically to relieve them from any assessment at all. Still, I think it might be justifiable for the assessor to assess such property to such associations so that the validity of the statute, framed as it was for the purpose of enabling those Associations to escape, might be tested in the courts.

As to the rate of taxation which this property should take, I believe depends upon the domicile of the owner. If he lives in a city, he would be taxable for city purposes, and would certainly be taxable for school purposes in the city or district where he resides.

As to whether assessment should be made upon the full face of the mortgage, or not, depends upon whether the assessor receives any information as to partial payments having been made, which would reduce the value. If such information comes to him, it is his duty to assess at the true value, but if he does not receive any such information, it does not seem practicable for him to do otherwise than to make the assessment at the face value.

I believe that the foregoing covers everything included in your questions.