

## Opinion No. 21-2911

April 12, 1921

**BY:** A. M. EDWARDS, Assistant Attorney General

**TO:** Mr. J. E. Saint, Chief Tax Commissioner, Santa Fe, New Mexico.

### Imposition and Collection of Inheritance Tax.

#### OPINION

{\*46} This office has your inquiry as to the imposition and collection of a succession tax, accompanied by the letters of the Trenton Trust Company of Trenton, New Jersey, and Messrs. Whitlock & Simonds, Attorneys, of New York City.

Senate Bill No. 62 as amended provides in Section 3 that:

"Shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this state, the certificate of which stock or which bonds shall be without this state, where the laws of the state or county in which such decedent resided, shall, at the time of his decease, impose a succession, inheritance, transfer or similar tax upon the shares of the capital stock or registered bonds of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state, shall be subject to an inheritance tax."

Section 1 of the bill provides an exemption of ten thousand dollars from the value of the estate when the estate passes to the parents and the lineal descendents, legally adopted child, lineal descendents of any legally adopted child, the wife or widow of a son, whether such son was born in wedlock or adopted, the husband of a daughter, whether such daughter was born in wedlock or adopted, or the brother or sister of the decedent. When the estate passes to other kindred or strangers to the blood or to a corporation, voluntary association or society, only five hundred dollars of the appraised value is exempted.

Section 1 provides that:

"The amount of the property of the estates of non-resident decedents which shall be exempted from the payment of a succession tax shall be only that proportion of the whole exempted amount which is provided for the estates of resident decedents, which the amount of the estate of the non-resident which is actually or constructively in this state bears to the total value of the non-resident decedent's estate wherever situated."

Section 7 of the bill provides that:

"No executor, administrator or trustee appointed under the laws of any other jurisdiction shall assign, transfer or take possession of any such property standing in the name or belonging to the estate of, or held in trust for, such decedent,"

until the prescribed tax is paid.

It is further provided that no corporation in this state may transfer any shares of its capital stock which may be subject to said tax to any foreign executor, administrator or trustee or to the legal representative of the decedent unless notice of the time and place of such intended delivery or transfer be mailed to the State Tax Commission at least ten days prior thereto; nor shall such corporation make such transfer without retaining a sufficient amount of property to pay the tax, unless the State Tax Commission consents thereto in writing.

It is further provided that the Tax Commission may examine and appraise said property, from which appraisal an appeal is allowed to the foreign administrator or executor if he feels aggrieved. After such appraisal the Tax Commission should file a statement of the valuation of such property with the State Treasurer.

Upon the estate's passing to direct descendants and relatives by blood or marriage as above set out, a tax of one per centum upon the <sup>{\*47}</sup> appraised value of the estate over and above ten thousand dollars shall be assessed and collected.

Upon other estates a tax of five per centum of the value of the estate above five hundred dollars shall be assessed and collected.

Under the provisions of the succession law where the shares of stock of a New Mexico corporation belong to the estate of a nonresident decedent, you should know the following facts before you can either authorize or waive collection of the succession tax:

First. Do the laws of the state in which decedent resided impose a succession tax upon shares of stock of corporations organized under the laws of such state held by decedent in New Mexico?

Second. If there is a will, who are the legatees; this in order that you can determine the amount of the exemption.

Third. The appraised value of the estate.

Fourth. The name of the executor and administrator or trustee and the number and value of the shares of stock of the New Mexico corporation affected.

After you have obtained the foregoing information, you can then determine whether such property is subject to the succession tax, and if so, in what amount.

The State Tax Commission should not sign waiver or release until it has the information above set out.