

## Opinion No. 21-2969

May 14, 1921

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** State Tax Commission, Santa Fe, New Mexico.

### Construction Inheritance Tax Law.

#### OPINION

{\*55} I have before me letter from McCulloch, McCulloch & Dunbar, attorneys at law of Chicago, addressed to the Inheritance Tax Department, submitting two inquiries involving the construction of the inheritance tax law of this state.

The law governing inheritance or succession taxes will appear as Chapter 179, Laws of 1921.

Your correspondent asks,

First, if your department taxes bonds issued by municipalities within our state and owned and held by a non-resident decedent, the bonds being physically located in the domicile of said non-resident decedent; and secondly, if the bonds in question were physically within our state, but owned by a non-resident decedent, would this state then impose the inheritance tax?

Answering the questions in the reverse order in which they are propounded, I call your attention to section 3 of the above mentioned chapter which provides that the tax levied by section 2 of the act shall apply to non-residents of the state, and which further provides that the tax shall be levied upon property as follows:

"All tangible personal property, including bonds, securities, shares of stock and choses in action, the evidence of ownership of which shall be actually within the state; shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this state, the certificates of which stock or which bonds shall be without this state, where the laws of the state or country 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."

{\*56} Answering the second inquiry with this section in mind, I will say that under this law if the bonds are within the state and owned and held by a non-resident that they are subject to taxation. There is no exemption of municipal bonds from the tax imposed by this law.

The answer to the first inquiry is governed by the latter part of the above quotation and would depend whether the bonds are registered and whether the law of the state or country in which the decedent lived at the time of his decease imposed an inheritance tax upon the bonds of municipal corporations organized and existing under the laws of that state or country held under the same conditions by the deceased at the time of his death.

In the absence of any one of the above named conditions the bonds would not be taxable; that is, if the bonds were not registered or if the foreign state of which the deceased was a resident did not impose an inheritance tax upon the bonds of municipal corporations organized under its laws and held under the same conditions by residents of this state at their decease.

I am returning herewith the letter from McCulloch, McCulloch & Dunbar.