payment of the principal and interest. Of course, such interest must be paid from the public treasury.

In view of the plain provisions of the statute which inhibit borrowing at a rate of interest in excess of six per cent, together with the established rules of the courts relative to the expenditure of public funds, heretofore referred to, it follows that the commissioners are without authority to enter into a contract for interest at a higher rate than authorized by the statute.

Your inquiry, therefore, must be answered in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2031.

INHERITANCE TAX LAW—WHERE SOLE PROPERTY OF NON-RESIDENT DECEDENT IN OHIO CONSISTS OF BONDS WORTH $60,000.00 PLEDGED TO SECURE PAYMENT OF AN OHIO DEBT IN AMOUNT OF $50,000.00—WHOLE OHIO DEBT SHOULD BE DEDUCTED FROM GROSS VALUE OF BONDS FOR PURPOSE OF DETERMINING NET OHIO ASSETS—DETERMINATION OF PERMISSIBLE DEDUCTIONS AGAINST GROSS VALUE OF ESTATE.

Where the sole property of a non-resident decedent in Ohio consists of bonds worth $60,000, pledged to secure the payment of an Ohio debt in the amount of $50,000, the whole Ohio debt should be deducted from the gross value of the bonds for the purpose of determining the net Ohio assets. Other permissible deductions against such gross value for the purpose of arriving at such net assets are Ohio administration expenses, etc.

Other debts and expenses are chargeable against the net Ohio assets in the proportion which the net value of the Ohio assets bears to the gross value of the entire estate.

These principles apply though prior to adjudication the local debt is paid out of foreign assets, instead of applying the pledged bonds to the payment thereof.

COLUMBUS, OHIO, April 28, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Some time ago the commission submitted to this department the following question:

> "A died intestate a resident of New York state owning property there and having certain outstanding obligations there. At the time of death he was indebted to a bank in Ohio in the sum of $50,000. As collateral security for the payment of this loan he had deposited with the bank bonds worth $60,000, which it is agreed are subject to inheritance tax in Ohio.
>
> In determining such tax it is claimed on behalf of the estate that the full debt to the Ohio bank should be deducted from the value of the bonds, that for tax purposes in this state the court should consider only the excess of the value of the local assets after the local debt and that even as against this excess balance there should be prorated such a share of the general

indebtedness of the decedent as the entire value of the bonds ($60,000) bears to the whole estate.

Please advise us as to this.

Would it make any difference in your conclusions if prior to the adjudication the debt of the bank had been paid out of funds derived from property situated in New York?"

The courts of New York, whose rule in the case of marshaling of assets to pay *legacies* was followed in a recent opinion of this department to the commission, make a sharp distinction between intestacy and testacy, on the one hand, and debts and legacies, on the other hand. Compare *Matter of James,* 144 N. Y. 6, with *Matter of Ramsdill,* 190 N. Y. 492; 18 L. R. A. (N. S.) 946. Therefore, the previous opinion of this department is not controlling in the consideration of the present questions.

The first question encountered is as to whether the bonds deposited as collateral security for the payment of the debt of $50,000, and which constitute the only property of the non-resident decedent the succession to which is taxable in Ohio, should be charged with the entire debt which they were deposited to secure. There is authority, perhaps controlling, to the effect that local assets of a non-resident decedent are, for inheritance tax purposes, fully chargeable with local debts. Quite apart from this principle, however, it is believed that where the property, the succession to which is taxable, is pledged to secure specific local debts, such debts should be charged against such property. A case directly in point is *In re Pullman's Estate,* 62 N. Y. Supp. 395; 46 App. Div. 574. In that case the appellate division of the supreme court modified the tax determination of the surrogate court of New York county, which had held subject to New York succession taxation certain bonds, etc., "actually located within the state" to the extent of $58,430, which was the indebtedness these bonds and other like property were specifically pledged to secure. The court in the opinion say:

> "As to the $58,430 of bonds and stocks of domestic corporations held in pledge, we think the order is incorrect. Those securities are liable to be resorted to by the creditors. In pledge, the title to them is in the pledgee, and they are not in a situation to be taxed now as property of the estate of Mr. Pullman. All of their amount may be required to pay the debts to which these bonds and stocks are collateral, and the creditors' security should not be diminished at this time."

Applying this principle to the facts stated in the commission's letter, it is apparent that only to the extent of $10,000, the difference between the gross value of the bonds and the amount of the debt, should the question of taxability and the prorating of other debts be raised at all. While on this point, the commission's second general question may be considered and answered by the statement that, in the opinion of this department, it makes no difference that prior to the adjudication the debt of the bank had been paid out of funds derived from property situated in New York. Here again the difference between testacy and intestacy becomes material. At the instant of death the rights of all parties under the laws of this state and of New York vested. What happens thereafter is immaterial. It is not a question of marshaling the assets to pay debts, but a question as to what assets are charged with debts at the instant of intestate's death.

Matter of Ramsdill, supra;
Matter of Grosvenor, 124 App. Div. 331;
108 N. Y. Supp. 926; affirmed 193 N. Y. 652.

The intimation to the contrary in *Memphis Trust Co.* vs. *Speed,* 114 Tenn. 677, 691; 88 S. W. 321, is not to be followed in view of the express decision under the New York law, which is so similar to that of Ohio, and in view also of what is believed to be the correct principle, as above stated.

These conclusions make it necessary to consider only the further contention mentioned in the commission's letter, to the effect that having regard now to the $10,000, which should be considered as net Ohio assets, there should be pro-rated against said amount "such a share of the general indebtedness of the decedent as the entire value of the bonds ($60,000) bears to the whole estate." This claim is believed to be erroneous. The true principle is stated in *Matter of Porter,* 67 Misc. 19; 124 N. Y. Supp. 676; see also 132 N. Y. Supp. 1143, as follows:

> "The deduction to be made for debts owing to non-resident creditors, mortuary expenses, commissions on property without the state, and other administration expenses in respect to such property, should be in the proportion which the net New York estate (after all deductions are made for debts owing to resident creditors, New York commissions, and New York administration expenses) bears to the entire gross estate wherever situated.'
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> See also:
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> Matter of Browne, 127 App. Div. 941; 111 N. Y. Supp. 1111;
>
> Matter of Kirtland, 94 Misc. 58; 157 N. Y. Supp. 378;
>
> Matter of Raimbouville, N. Y. L. J., July 27, 1916.

That is to say, the amount to be compared to the gross value of the whole estate for the purpose of determining the proportion in which debts should be charged against the local assets is the net amount of local assets, and not the gross amount; for in arriving at the net amount of local assets the local charges have already been deducted. In this instance the $50,000 local debt for which the assets were specifically pledged has been deducted once, and in addition thereto local administration expenses, if any, may fairly be deducted; but after these deductions are made the net balance which constitutes the Ohio assets is the amount which is to be compared to the gross value of the whole estate for the purpose of determining what proportion of debts due to foreign creditors should be charged against the Ohio assets.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2032.

WEIGHTS AND MEASURES—STATE INSPECTOR WITHOUT AUTHORITY TO CONFISCATE UNDER-WEIGHT ARTICLES.

A state inspector of weights and measures is without authority to confiscate under-weight articles.

COLUMBUS, OHIO, April 28, 1921.

HON. N. E. SHAW, *Secretary of Agriculture, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading thus:

"In a certain store the proprietor has a quantity of coffee which is put up in packages marked one pound.