

1354.

INHERITANCE TAX LAW—STOCK IN FOREIGN CORPORATION BELONGING TO ESTATE OF DECEASED RESIDENT OF THIS STATE SUBJECT TO SAID TAX—WHEN SET-OFF ALLOWED.

Stock in a foreign corporation belonging to the estate of a deceased resident of this state is, with respect to its succession, subject to the inheritance tax of this state; but if the succession to such shares is also subject to taxation in the state where the corporation is organized, then the tax paid or secured to be paid in accordance with the law of that state is, as it were, a set-off against the tax which would otherwise be chargeable under the laws of this state, so that if the amount of such foreign tax is equal to or in excess of the Ohio tax which would be assessed with respect to the succession to such stock as an independent succession, no Ohio tax is payable at all; and if such tax is less in amount than the Ohio tax which would be so chargeable and has been paid or guaranteed to be paid in accordance with the laws of such state, the difference only between the respective amounts constitutes the Ohio tax.

COLUMBUS, OHIO, June 22, 1920.

HON. W. R. WHITE, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date requesting the opinion of this department upon the following question:

“Is stock in a foreign corporation subject to the inheritance tax?”

The answer to this question is clearly in the affirmative, if the decedent was a resident of this state. If the decedent was not a resident of this state but the certificates of stock were found in this state, a close question arises, which is at present pending in the courts. Though this department has advised the tax commission to take such administrative action as to raise this question, it would of course be inappropriate for this department at this time to express an opinion thereon.

Upon the assumption, then, that the decedent was a resident of this state, the reason for holding the succession to the shares taxable under the inheritance tax law are as follows:

Section 5331 G. C., defining terms used in the inheritance tax law, provides in part as follows:

“‘Within this state,’ * * * when predicated of intangible property (means) that the succession thereto is, for any purpose, subject to, or governed by the law of this state.”

Indisputably, the law of this state determines the succession to the shares of stock in question, if they were assets of the estate of a person who died domiciled in this state. The familiar principle is that a succession to intangibles is determined by the law of the domicile of the decedent. The ultimate principle here involved is that intangible things take their situs from the place of residence or domicile of their owner—“*mobilia sequuntur personam.*” If authority is needed the following cases may be cited:

Bulen vs. Wisconsin, 240 U. S. 625,
 Frothingham vs. Shaw, 175 Mass. 59,
 Hopkins' Appeal, 77 Conn. 744,
 Greaves vs Shaw, 175 Mass. 205,
 Blackstone vs. Miller, 188 U. S. 189.

In your letter you mention the fact that in the particular case the law of the

state where the corporation was organized also imposes an inheritance tax, so that, as you say, "if required to pay in Ohio will make a double inheritance tax to pay on the same stock."

It is true that the taxing jurisdiction of the state may extend to successions to shares of stock in corporations of its own creation, because the law of that state gives to these shares the attribute of perpetual succession, so that in reality both laws contribute to the ultimate result by which the successor becomes fully entitled to his succession. It is, of course, illogical and possibly unjust for any state so to mould its inheritance tax laws as to employ the principle *mobilia sequuntur personam*, on the one hand, and also to exercise its jurisdiction based on its power over the corporation, on the other hand. In an academic sense, this is, as you say, double taxation. Nevertheless, it is constitutional. (Blackstone vs. Miller, supra).

However, Ohio's inheritance tax law avoids the injustice which is possible by the provision of section 5333 of the General Code (part of the inheritance tax law), which is as follows:

"If the succession to any property from a resident of this state is locally subject in another state or country to a tax of like character and amount to that hereby levied, and if such tax be actually paid or guaranteed or secured in accordance with law in such other state or country, such succession shall not be subject to the tax hereby levied, if locally subject in any state or country to a tax of like character but of less amount than that hereby levied and such tax be actually paid or guaranteed or secured, as aforesaid, such succession shall be taxable under this subdivision of this chapter to the extent of the difference between the taxes actually paid, guaranteed or secured, and the amount for which such succession would otherwise be taxable hereunder."

This section, as will be observed, applies only to the case supposed for the purposes of this discussion, viz., that the decedent was a resident of this state. By this section Ohio renounces the power which under the decisions above cited she would have, to the extent that its exercise would result in actual double taxation. Its provisions lead to the following answer to your question:

Stock in a foreign corporation belonging to the estate of a deceased resident of this state is, with respect to its succession, subject to the inheritance tax of this state, but if the succession to such shares is also subject to taxation in the state where the corporation is organized, then the tax paid or secured to be paid in accordance with the law of that state is, as it were, a set-off against the tax which would otherwise be chargeable under the laws of this state, so that if the amount of such foreign tax is equal to or in excess of the Ohio tax which would be assessed with respect to the succession to such stock as an independent succession, no Ohio tax is payable at all, and if such tax is less in amount than the Ohio tax which would be so chargeable and has been paid or secured to be paid in accordance with the laws of such state, the difference only between the respective amounts constitutes the Ohio tax.

Respectfully,

JOHN G. PRICE,

Attorney-General.