

Opinion No. 20-2475

January 26, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

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

Taxation of Foreign Corporations Loaning Money in New Mexico.

OPINION

We have your letter of the 24th instant, making inquiry concerning the authority of the State Tax Commission to tax capital, surplus and undivided profits of foreign corporations who loan money within this state, and in reply wish to advise you as follows:

The money that is loaned by those corporations has its situs at the place of the domicile of its owners, and ordinarily, therefore, would not be subject to taxation in any other state than that of the domicile of such owner, on account of the elementary rule that the situs of personal property is the same as the domicile of the owner and that personal property is subject to taxation only at the domicile of the owner.

In recent years, however, many states have undertaken to abrogate this rule by legislation, and it is conceded that this may be done in the case of corporate stocks and bonds. In some states also there are now laws taxing non-residents in respect to property or capital invested or employed in carrying on business within the state and on credits growing out of the business so conducted within the state.

We are of the opinion, however, that such a tax levy upon the property of the non-resident cannot be made unless there is special legislative authority for so doing. The shares of stock of the company are in all probability taxed at the domicile of the owner of the stock, and unless there is some legislation specifically authorizing the taxing of the part of the capital stock, surplus, or profits invested in this state, there is very grave doubt whether such a tax would be valid.

We assume that most of the loans of the foreign corporations mentioned in your letter are secured by mortgages, and it would be competent for the legislature to provide that the mortgages should be taxable in this state without regard to the domicile of the mortgagee. Regarded, however, as an investment or security, the same rule applies to a mortgage as does to any other personal property, and therefore follows the person of its owner and is taxable only where he resides.