

**OPINION
49-181**

April 2, 1949 (OPINION)

TAXATION

RE: Inheritance

Re: Inheritance Tax on Local Bank Deposit of Nonresidents

At a conference in your office yesterday, we were asked for an opinion on the question of the taxability of a checking account in a local bank owned by a nonresident.

Your specific question is: "A nonresident deceased had a checking account in a North Dakota bank. Is this account taxable under the provisions of section 57-3703 N.D.R.C. 1943?"

This section provides that: "All tangible personal property having an actual situs within this state" shall be included in the taxable estate of a nonresident. This statute makes no provision for the taxation of "intangible" personal property. Therefore, such property is not subject to taxation here as part of the taxable estate of the nonresident. The question, therefore, resolves itself into this: Is a bank account subject to check "tangible" personal property?

Upon search of the authorities, we find that practically all courts passing upon the question have held that bank accounts or deposits in banks are "intangible personal property."

In the case of Hashbrouck v. Martin, 120 N.J. Eq. 96, 183 A. 735, the New Jersey court held that bank accounts are "intangible personal property."

In the case of In re Klose's Estate, 147 Or. 512, 34 P. 2d, 636, 638, the Oregon court held that generally domiciliary state has the exclusive right to impose inheritance tax on an "intangible personality" such as a bank account.

In the case of Crane Co. v. City Council of Des Moines, 208 Ia. 164, 225 N.W. 344, 345, the Iowa court included "deposits in banks" in properties held to be "intangible."

To the same effect is the holding of the New York court in the case of People ex rel. Hanover Nat. Bank of City of N.Y. v. Goldfogle, 234 N.Y. 345, 137 N.E. 611-612.

Other cases to the same effect are cited in 21 Words and Phrases, at page 773 et seq. We find no case holding to the contrary. Therefore, it is our opinion that a bank deposit subject to check in a local bank owned by a nonresident deceased is not taxable in this state under the above cited section of our statutes.

WALLACE E. WARNER

Attorney General