

MAINE STATE LEGISLATURE

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June 14, 1934

To Hon. Frank H. Holley, State Tax Assessor
Re: Chattel Mortgages

A letter dated April 14, 1934, addressed to the Bureau of Taxation and signed by the Portland Board of Assessors is before me now for an answer. . .

The first five paragraphs of the letter present no serious question and I am quite in accord with the reasoning contained in them. With the first sentence of the sixth paragraph, however, I do not agree. The sentence is as follows:

"The common variety of chattel mortgage, however, we have not taxed in cases where the security for the mortgage is subjected to local taxation, either within or without the state, believing that it amounts virtually to two taxes borne by the same property._

The Board of Assessors in arriving at the above conclusion evidently predicated their reasoning upon the assumption that where a chattel mortgage is taxed, the tax is imposed upon the security. This is not my understanding of the law. The authorities seem to hold that where a chattel mortgage is taxed, the tax is imposed upon the indebtedness and not upon the security. Adopting this view, it is obvious that no double taxation exists. The mortgaged personal property is taxed to the party who has it in possession, under Section 22 of Chapter 13. The indebtedness is taxed to the party who extends the loan, i.e.: the mortgagee. It has been held that the tax is one on the right of the creditor to receive or collect a certain sum of money and that it is immaterial whether or not the amount of the mortgage debt is greater than the value of the mortgage security. . . .

Of course after the mortgage is paid up there is no mortgage in existence or any indebtedness.

Clyde R. Chapman
Attorney General

CRC:MB