

**Taxation, of Government Land Sold to Individuals Prior to Passing of Title. Lands, Taxation of Government. Government Lands, Taxation Of.**

The State of Montana cannot tax land under contract of purchase from the United States Government until such time as the purchaser has obtained a patent therefor or has fully complied with his contract of purchase and has a complete equitable title thereto, and nothing remains to be done except to make the transfer from the government to him

March 22, 1911.

Mr. T. P. Squier,  
Chairman, Board of County Commissioners,  
Forsyth, Montana.

Dear Sir:

Your letter of March 13th has been received, wherein you state

that at an auction sale held by the Federal Government certain lands of the Crow Indian Reservation were sold to individuals on the basis of a certain percentage down and the balance to be paid in equal annual instalments, and requesting my official opinion as to whether or not; first:

“The State of Montana has a right to tax the land or the interest which the purchaser has in it by reason of his contract of purchase, or the amount which he has paid upon the purchase price; and

Second:

“If so, will the tax, when computed, be a proper charge against the land?”

By the provisions of Subdivision 2 of Section 4 of the Enabling Act, under which Act the State of Montana was admitted to the Union, it was agreed that no tax should be imposed by the state on land or property situated therein belonging to or which may thereafter be purchased by the United States or reserved for its use; and under the provisions of Section 2, Article XII. of the Constitution of the State of Montana, the property of the United States is exempted from taxation.

Sec. 2498 of the Revised Codes provides that all property in this state is subject to taxation except as provided in the next section; and the following section exempts, among other property, that of the United States.

Sec. 2501 of the Revised Codes, which defines “Real Estate” for the purpose of taxation, declares that it shall include “the possession of, claim to, ownership of, or right to the possession of land.”

The question which presents itself is whether or not the interest which the purchaser has in the land by reason of his contract of purchase with and the payments made by him to the government of the United States is such an interest in the land as may be taxable by the State under the sections of the constitution and statutes above referred to.

The identical question was presented to and decided by the Supreme Court of Nebraska in the case of *Graff v. Ackerman*, reported in 38 Neb. p. 720, under a similar statement of facts, and that court in deciding the question used the following language:

“It is obvious from the foregoing statement that the title to the property above described was, at the time of the levy of the taxes in controversy, in the United States, and that the plaintiff has at most an equitable interest therein. It is true that the payment in full of the purchase price will invest him with the entire equitable title to the premises; but at present he is in effect a tenant in possession under a contract of purchase in which time is made the essence of the contract. His title, whether equitable or legal, depends upon the payment for the land, and until the performance of that condition the title remains in the United States. The settled rule in the state and federal courts is that where land has been fully

earned or paid for, so that the clerical act of issuing the patent only is required in order to invest the purchaser or donee with the full legal title thereto, the jurisdiction of the state attaches and it is taxable like other property; but where the conditions of the donation or purchase have not been complied with, and the general government continues to have such a beneficial interest therein as will justify it in withholding a patent, it is not taxable by the state."

From a careful examination of the law upon the subject I find that this language is supported by the great weight of authority.

Vol. 27, Am. & Eng. Enc. of law, 2d Ed. 644, and numerous cases cited in the notes.

Cooley on Taxation, Vol. 1, 3d Ed. pp. 135-140.

R. R. Co. v. Howard, 52 Cal. 230.

You are therefore advised in answer to your first question that the State of Montana cannot tax land under contract of purchase from the United States Government until such time as the purchaser has obtained patent therefor, or has fully complied with his contract of purchase and has a complete equitable title thereto and nothing remains to be done except to make the transfer from the government to him.

In answer to your second question it necessarily follows that as the state has no right to levy the tax, the land cannot be charged with it.

Very truly yours,

ALBERT J. GALEN,

Attorney General.