Public Lands Acquired by Use of Scrip, Taxation of. Taxation, of Public Lands Acquired by Use of Scrip. Scrip, Taxation of Lands Acquired by Use of.

Public lands acquired by the use of scrip and for which government patent has not been issued, provided such lands have been surveyed and the survey approved by the federal authorities, are taxabe by the state. In such cases the grantee or purchaser has done everything required of him to be done and nothing remains save the formal issuance of patent.

June 16th, 1913.

Hon. G. M. Houtz,
State Tax Commissioner,
Helena, Montana.

Dear Sir:

I have your letter of the 14th instant, wherein you make the following inquiry:

> "For the information of this department, your opinion is desired as to whether or not land that has been acquired by the use of scrip and for which government patent has not issued, is taxable."

I have carefully examined into this question, and beg leave to advise that the determination of the matter of taxing these lands depends upon whether or not the government has parted with the equitable title thereto. It may be stated as a general proposition that all scrip is issued pursuant to special acts of congress, and is received by the government in payment for public land by surrender

thereof to the government (27 Cyc. 550, Note 99), and it is a rule now well established by the authorities that the power to tax lands for which no patent has issued from the general government depends upon whether or not all precedent conditions have been complied with by one seeking to secure title from the government, and where nothing remains to be done except the form of issuance of the patent. The use of scrip to obtain title to public lands is in effect a purchase from the government of such lands—the price to be paid therefor being the value of the particular scrip which must be surrendered. This in law constitutes an entry upon public lands.

> "The term 'entry,' as used in reference to public lands means in its technical sense the filing with the register of the land office of a claim to a portion of the public lands, for the purpose of acquiring inceptive right thereto." 32 Cyc. 806.

The general rule with respect to the right of the state to tax lands which have been entered is thus stated in Cyc.:

> "Although the naked legal title to land of the United States remains in the government until the issuance of a patent therefor, one who has entered public land, and paid the purchase price or performed the conditions requisite to entitle him to a patent therefor, is vested with the equitable title which cannot, if his entry was legal and valid, be divested without his consent." 32 Cyc. 817.

And it has been held that when land belonging to the United States has been entered at the land office and paid for and a certificate has been given to the purchaser, it is liable to taxation by the state in advance of the issuance of a patent, for in such case the contract of purchase is secured, and the land belongs to the vendee and no longer to the government. Though the conveyance has not been made, the purchaser has the equitable title and the United States merely holds the dry legal title in trust for him. The land is segregated from the public domain, and is thenceforth private property, and subject to taxation. 37 Cyc. 867.

> "The equitable title just spoken of to be subject to taxation must be perfect and complete without anything more to be paid or any further act to be done before the entryman is entitled to receive his patent." 37 Cyc. 868.

It is a matter of common knowledge that certain classes of scrip or bounty land warrants issued by the government may be used upon unsurveyed public domain, whilst other classes may be used only upon lands which have been surveyed. Where scrip is used for the purchase from the government of lands which have not been surveyed, such lands cannot become subject to taxation until after survey, because in such case the vendee or purchaser is without equitable title until the official survey is made and approved by the federal authorities. 32 Cyc. 799; 37 Cyc. 868.

In the recent case of Sargent v. Herrick, 221 U. S. 404; 31 S. Ct. 574; 55 L. Ed. 787, a reading of the syllabus might lead one to the

conclusion that the location of land scrip does not operate as a payment of the purchase price to the government, and hence does not operate to pass the equitable title from the United States, but a careful reading of the opinion shows that the case was decided upon a peculiar state of facts, and that under them equitable title never passed from the government In the course of the opinion, the court say:

> "Confessedly though the formal certificate of location was issued in 1858, there was then in fact no payment for the land, and the government received nothing until 1888. During these intervening years, whatever might have appeared upon the face of the record, the legal and equitable title both remain in the government. The land was therefore not subject to state taxation."

The facts in the foregoing case show that between the years mentioned in the quoted excerpt no valid scrip had attached to the lands in question.

Upon a careful consideration of the various authorities which have come to my notice, I am of the opinion that public lands which have been acquired by the use of scrip and for which government patent has not issued are taxable by the state, provided such lands have been surveyed and the survey thereof approved by the federal authorities, since in such cases the grantee or purchaser has done everything required of him to be done, as much so as though he had paid the full cash consideration, and nothing remains save the formal issuance of patent. Lands, therefore, of the class referred to should be assessed for taxation.

Yours very truly,

D. M. KELLY,
Attorney General.