Assessment, Units Of Flathead Indian Reservation.

Rule prescribed for determining whether units on Flathead Indian reservation are assessable.

April 30, 1920.

Mr. A. A. Alvord,
County Attorney,
Thompson Falls, Montana.

Dear Sir:

I have received a letter from Mary Smith, Treasurer of Sanders County, asking that I advise her whether units on the Flathead Indian reservation are assessable, and if so, whether they should be assessed as personal or real property.

As it is the practice of this office to render opinions only on the request of the county attorney, I do not desire to go over your head and give the county treasurer an opinion direct from this office, but as this is a question of considerable importance, and as the county assessors are now busily engaged in listing and assessing property, I have concluded to render the opinion requested, but to transmit the same to you instead of directly to the county treasurer.

If these units are assessable at all they are assessable as real property and not as personal property, and whether they are assessable, and the manner in which they must be assessed depends entirely on the class in which they fall.

These units are situated within reclamation projects and are entered and acquired under the homestead law, but an entryman, in addition to complying with the requirements of the homestead law with reference to residence, cultivation, etc., must also comply with certain requirements of the reclamation acts as to additional cultivation, payment for constructing the irrigation system, etc., and these units may be properly divided ino three classes.

First, class. An entryman who has complied with the requirements of the homestead law, but not with the additional requirements of the reclamation law, may make final proofs of his compliance with the requirements of the homestead law when he receives a certificate to the effect that he has made such final proofs, but this certificate does not entitle him to receive a patent, but merely recites that when furher proofs have been made of a compliance with the requirements of the reclamation act, the entrymen will then be entitled to receive a patent. When the homestead final proofs only have been made there remains something more to be done other than the mere ministerial

act of issuing the patent, and these acts must be performed by the entryman before his right to a patent accrues. He, therefore, has no interest in the land, either legal or equitable, and the land is therefore, not subject to taxation, and he has no right or interest therein which may be taxed.

Second class. Here the entryman has not only made final proofs under the homestead act, but has also made proofs of his compliance with the additional requirements of the reclamation act as to cultivation, but has not made payment of any part of the cost of constructing the irrigation system for the reason that the cost thereof has not been ascertained and it is not known the amount which will be chargeable against his land. He receives a receipt, in the nature of a final receipt, which recites that he has made full proofs of residence and improvements and cultivation under both acts, and that when the cost of the irrigation system has been ascertained and the amount thereof which will be chargeable against his land, he will, upon payment of all sums due up to the date of his application, be entitled to receive a patent for said land. Here everything that he is required to do in order to enable him to obtain title to the land itself has been done, and there remains nothing further for him to do, except make payment for the water when the amount has been ascertained, but as a failure to make such a payment will work a forfeiture of the land, he has obtained no legal title thereto, but has an equitable interest therein until he forfeits the same by failing to pay for the water, or until it ripens into a legal title by the issuance of patent. Here while the legal title to the land is still in the government so that the land itself is not taxable, the entryman has an equitable interest in the land and this equitable interest is taxable as real estate.

Third class. Here the cost of constructing the irrigation system has been ascertained and the amount chargeable against each unitl has been determined. The entryman makes final proofs of compliance with the requirements of both laws as to improvement, residence and cultivation and pays all of the cost of construction due from him up to the date of making application for patent, and receives a final certificate reciting such facts and stating that the entryman is entitled to receive a patent from the government which will vest him with the legal title to the lands but subject to a lien for that portion of the cost of constructing the irrigation system which is not yet due. Here the entryman is vested with the legal title, subject only to a lien, and the land is taxable in exactly the same manner as other land is taxable.

I understand that none of the irrigation systems on the Flathead reservation have been fully completed, the cost ascertained, and the amount chargeable against each unit determined(so that on this reservation there are no units falling within the third class, but all fall within the first or second classes. As I have said those units faling within the second call are not taxable, but the entryman is taxable on his equitable interest therein at whatever the value thereof may be.

There is, of course, still another class to which I have not referred, viz., those units which have been entered but on which the entrymen have offered no proofs whatever. These, of course are not taxable, and

the entrymen have no interest therein which can be taxed, as they are in exactly the same position as entrymen under the homestead law on public lands who have not yet made final proof and received a final certificate.

Truly yours,

S. C. FORD,

Attorney General.