Reclamation Projects—Taxation of Units Prior to Issuance of Final Certificate.

Units in a reclamation project, where the entryman has not received his final certificate, are not taxable by the State.

W. J. Tighe, Esq.,
County Attorney,
Great Falls, Montana.

My dear Mr. Tighe:

You have requested an opinion of this office as to whether or not settlers, who have filed on land subject to the Reclamation Act of 1902 in the Sun River Reclamation Project, should be compelled to pay taxes on the land covered by their entry prior to the issuance of final certificate, and if the land is subject to taxation, upon what basis should the taxes be levied?

The question of the right of the State to tax land situated on the Crow Reservation, and held under a contract of purchase from the United States, was presented to former Attorney General Galen and the opinions thereon are found in Volume 4 of Opinions of Attorney General, at pages 123, 444 and 466.

It was there held that the State could not tax such lands until the contract of purchase had been fully complied with and the purchaser had a complete equitable title and only the legal title remained in the Government. (Citing case of Graff v. Ackerman, 38 Neb. 720.)

See, also, Johnson v. County of Lincoln, 50 Mont. 253.

Later the case of U. S. v. Canyon County, Idaho, reported in 232 Fed. Rep., at page 985, was decided.

In that case the question presented was whether taxes could be levied for county and local purposes on lands included within the Boise Reclamation Project, as well as land where patent had issued subject to a lien of the United States, superior to all others, for future installments of water rents. The lands under this project fall into two classes. The first class comprises entries in which the entrymen have made proof before the Land Office in conformity with the provisions of the general homestead law, but have not yet fully complied

with the additional provisions of the Reclamation Act, requiring that at least one-half of the irrigable acreage of the entry shall be irrigated and reclaimed, and that payment be made for the water rights. The other class embraces entries where the entrymen have made proof, not only of compliance with the General Homestead Law, but also of the cultivation of one-half of the irrigable acreage, as required by the Reclamation Act, and to whom therefore, patent has issued under Act Aug. 9, 1912, c. 278, Secs. 1, 2, 37 Stat. 265 (Comp. St. 1913, Secs. 4728, 4729).

The court concluded that the interest of the settler in both classes of land was subject to taxation.

See also: Volume 8 Opinions of Attorney General 414.

In the recent case of Irwin v. Webb, U. S. Supreme Court Advanced Opinions, April 15, 1922, page 333, it was held:

> "A homestead entryman on land within the Salt river reclamation project in Maricopa county, Arizona, did not, upon fulfilling all the requirements of the original Homestead Act of May 20, 1862, acquire an equitable title from the United States, taxable by the territory of Arizona and its successor, the state, where a number of important steps remained to be taken by such entryman in perfecting his claim under the Reclamation Act of June 17, 1902. Such interest was not taxable until final certificate had issued."

Judge Taft in this opinion, in referring to the case of U. S. v. Canyon County, Idaho, said:

> "The case involved two classes of lands. The first was of lands in which a patent has issued, conveying a fee in the land, subject to a lien of the United States, superior to all others, for future instalments of water rents. The second was of lands in which the conditions of the original Homestead Law had been complied with, but the entrymen had not paid in full for their water rights, and they had not brought the requisite acreage under cultivation and irrigation. The court held that the interests of the patentees in the first, and of the entrymen in the second, class of land, were taxable by the state. In the first ruling, we concur. * * *
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> "With the second ruling, in which the district court was sustained by a decision of the supreme court of Idaho (Cheney v. Minidoka County, 26 Idaho, 471, 144 Pac. 343), we cannot agree. * * *
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> "The government incurs heavy liability in providing water for these lands. It relies on the entrymen to reclaim them, thus finally achieving its sole object of adding arid tracts to the productive area of the country. In pursuit of this purpose, it has found the requirement that the entryman shall pay all his apportioned cost of the irrigation work before he gets title too burdensome; and, as we have seen, the sum has been

spread in instalments over twenty years, and his title is given him after he has reclaimed the land and paid the few early instalments due at that time. The Act of 1910 does not purport to subject these lands to taxation while the title is as yet unearned, and its terms show that it is not intended to permit anything beyond what fairly falls within its express provisions. Its evident and sole purpose was to enable entrymen whose entries were cut down in area by the Secretary of the Interior, in prescribing farm units, to dispose of their surplus to others, who would be able to hold it, fulfil conditions, and secure a patent, and avoid a relinquishment or cancellation of the surplus, which had been the consequence before the act. * * * To construe this remedial legislation, including the Act of 1910, which is only intended to lighten the task of the entrymen in reclaiming the land and acquiring title, so as to impose on him the new burden of state taxation, is contrary to its plain policy. We think, therefore, that the reason for the rule, making the acquisition of the equitable title the line between nontaxability and taxability, is stronger in case of reclamation homestead entrymen than in the instances where, before the Reclamation Act, it always applied. * * *

"It is argued that it is not government property which is sought to be taxed here before final certificate, but only the interest of the entryman. In the case at bar, the taxes were, in the first instance, assessed against the land, but later the board of supervisors changed the form of the assessment so as to insert the word 'equity' in the record. * * * It is enough to say that the entrymen did not have the equitable title until they received the final certificate, and their interest in the government's land, until that issued, was, for the reasons given, not taxable."

I am, therefore, of the opinion that, where the entryman has received his final certificate, the lands are subject to assessment and taxation by the State, but that the interest of the entryman is not taxable until final receipt has been issued.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.