

Homestead in Reclamation Project—Whether Taxable Before Issuance of Final Certificate.

Homesteads within a reclamation project are not taxable until the final certificate has been issued.

B. P. Sandlie, Esq.,
County Attorney,
Malta, Montana.

My dear Mr. Sandlie:

This office is in receipt of your letter regarding the assessment of homesteads within a reclamation project.

You have submitted in connection with your letter a certificate by the Assistant Commissioner of the General Land Office showing that the applicant has sufficiently complied with the homestead law in regard to residence, cultivation and improvements, and that final certificate and patent will issue upon proof that, at least one-half of the irrigable area in the entry, as finally adjusted, has been reclaimed and that all charges, fees and commissions due on account thereof have been paid.

This office has formerly held that land situated within the Crow Reservation, and held under a contract of purchase from the United States, was not assessable until the final certificate had been issued. (See Vol. 4, Attorney General's Opinions, pp. 123, 444 and 466).

However, this ruling was later changed and the decision in the case of *United States v. Canyon County*, reported in 232 Federal, page 985, was followed by Attorney General Ford in Vol. 8, Opinions of Attorney General p. 414. In the recent case of *Irwin v. Webb* decided by the Supreme Court of the United States, reported in advance opinions, April 15, 1922, Chief Justice Taft overruled the case of the *United States v. Canyon County*. In this opinion he used the following language:

"We think, therefore, that the reason for the rule, making the acquisition of the equitable title the line between non-taxability 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."

From the foregoing, it is apparent that the certificate of the Assistant Commissioner is not sufficient upon which to base the assessment. As indicated by Judge Taft, the final certificate must first be issued.

I shall answer your question as to whether the county may be compelled to refund taxes collected for previous years, in a separate communication.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.