

Opinion No. 294.

Taxation—United States Lands—Options—Submarginal Lands—Equitable Ownership.

HELD: Submarginal land offered for sale to the United States ceases to be subject to assessment and taxation when the United States acquires the equitable title to the land. The United States becomes the equitable owner of such lands when it exercises its option to purchase by accepting the offer of the optionor.

May 28, 1936.

Mr. Fred C. Gabriel
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You have asked us when, in our opinion, does submarginal land offered for sale to the United States by the owner cease to be subject to taxation. The form which the contract between the owner and the United States usually takes is as follows:

“S. L. No. 4 A Option No.—
Submarginal Land Program
Agricultural Demonstration Projects
OFFER TO SELL LANDS TO THE
UNITED STATES
(Lump Sum)

Proposal No. Tract No.
Project Name
.....
(Date)

“To assist in the program of the United States to conserve natural resources and to rehabilitate people living on submarginal lands, the undersigned owners of the following-described lands:

.....
hereby offer to sell and convey to the United States of America the said lands in fee simple with all buildings and improvements thereon. This offer is for acceptance by the United States through the Federal Emergency Relief Administrator or by any representative of the United States.

“In consideration of the examination and appraisal by the United States government of the lands herein described and for other good and valuable considerations which are

hereby acknowledged as received, the undersigned grant to the United States of America the option and right to purchase said lands at and for the sum of \$..... for the tract as a whole, including all improvements and appurtenant rights.

“The undersigned agree that the procedure and terms shall be as required by the United States Attorney General. The conveyance is to be by warranty deed in the form, manner, and at the time desired by the Attorney General; payment is to be made after the deed has been recorded and after the Attorney General has declared the title to be vested in the United States; all taxes, liens, and encumbrances are to be paid by the undersigned, including the stamp tax and other expenses incidental to the execution of the deed, and the undersigned will obtain and record such evidence of title as may be requested by the Attorney General.

“To accept this offer the United States must, within six (6) months from the date hereof, mail a notice of acceptance to, at, in the city of, State of, and the undersigned will then convey these lands to the United States within thirty (30) days after the date of mailing said notice of acceptance.

“It is understood and agreed that, if the Attorney General determines that the title should be acquired by the United States by judicial procedure, either to procure a safe title or to obtain title more quickly or for any other reason, then the compensation to be claimed by the owners, and the award to be made for such lands, in said proceedings shall be upon the basis of the purchase price herein provided.

“No member of or delegate to congress shall be admitted to any share or part in this offer or option, nor to any benefit to arise thereupon.

Witnesses: Signed:
.....
.....”

Section 2 of Article XII of the Constitution declares among other things that the property of the United States shall be exempt from taxation. Section 1998, Revised Codes 1921, as amended, is a reiteration in that respect of the constitutional provision.

Section 2002, as amended, requires the assessor, between the first Monday of March and the second Monday of July in each year, to assess all property in his county subject to taxation, except such as must be assessed by the State Board of Equalization, to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock noon, of the first Monday of March next preceding.

It has been uniformly held that a valid assessment is an indispensable prerequisite to a valid tax. (61 C. J. 619; *Clark v. Maher*, 34 Mont. 391.) Since the assessor must assess property to the person by whom it is owned and since the property of the United States may neither be assessed nor taxed, it is important, therefore, to determine when, if at all, does the United States, in contemplation of law, become the equitable owner of the land, title to which is still held by the optionor. It will be noted that under his contract the optionor agrees to convey the land to the United States within thirty days after the date of mailing the notice of acceptance and that payment for the land is to be made after the deed has been recorded. In view of the language of the contract and the holding of the courts we think the United States becomes the equitable owner of the land when it exercises its option to purchase by accepting the offer of the optionor. In equity, upon an agreement for the sale of lands, the contract is regarded, for most purposes, as if specifically executed. The purchaser becomes the equitable owner of the lands; and the vendor, of the purchase money. After the contract the vendor is the trustee of the legal estate for the vendee. (*James on Option Contracts*, Sections 507, 514; 66 C. J. 702-708; *Kern v. Robertson*, 92 Mont. 283; *Waters v. Bew*, 29 Atl. 590; *Ritchie v. City of Green Bay*, 254 N. W. 113, 95 A. L. R. 1081; *White Chapel Memorial Ass'n v. Willson*, 244 N. W. 460; *Baldwin v. McDonald*, 156 Pac. 27.) And when the United States acquires the equitable title to the land it is no longer subject to assessment and taxation at the hands of the public authorities (*Town of Cascade v. County of Cascade*, 75 Mont. 304; *Ritchie v. City of Green Bay*, above;

People v. City of Toulon, 133 N. E. 707; 2 *Cooley on Taxation*, Sections 625, 629), and cannot be sold for taxes. (61 C. J. 1132, 1133.) Furthermore, by virtue of Section 2 of Article XII of the Constitution, the property in question is freed from further liability for taxes, if any, previously assessed against it and from the lien of such taxes the moment the United States becomes the equitable owner thereof. (61 C. J. 418, Section 450; 65 C. J. 1306; *State v. Locke*, 219 Pac. 790; *State v. Reed*, 272 Pac. 1008; *State v. Minidoka County*, 298 Pac. 366; *State v. Galyon*, 7 Pac. (2d) 484; *City of Harlan v. Blair*, 64 S. W. (2d) 434; *United States v. Mayse*, 299 Fed. 860.)

In order to avoid any misunderstanding, however, it may be well to add that what we have said in the preceding paragraph is subject to the following qualification: If the United States was not the equitable owner of the land on the first Monday of March, 1936, but has since become such, it is the duty of the county assessor, under the provisions of Section 2002, to assess the land to the private owner as of that day and of the county treasurer to later collect from him the taxes levied upon the same. (*United States v. Mayor*, 29 Fed. (2d) 932; *Hale v. County Treasurer*, 82 Mont. 98.) Indeed, under his contract with the government, he agrees to pay all taxes, liens and incumbrances that are a charge against the land.