

Taxation, Indemnity Lands When Subject To. Indemnity Lands, When Subject to Taxation. Lands, Lieu When Taxable. Lieu Lands, When Taxable. Railroad Indemnity Lands, Taxation of.

Indemnity or Lieu Lands taken by Railroad Company are not subject to taxation until passed on by the officer of the government designated for that purpose.

December 5, 1916.

Hon. R. G. Wiggernhorn,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I am in receipt of your letter submitting the question as to the liability of a railroad company for taxes on certain indemnity lands. It appears that the railroad company, prior to March 1915, made selection of certain indemnity or lieu lands which was passed upon by the local land office, but was not approved by the Department at Washington until sometime subsequent to March. This Department has heretofore had occasion to investigate these matters relative to when lands become liable to taxation.

Opinions Attorney General 1910-12, 444.

Opinions Attorney General 1914-16, 82.

The general rule is:

Where one qualified to enter public land has fully complied with the federal statute, and the rules and regulations of the Interior Department, promulgated to carry its provisions into effect, and his application has been fully approved but he has not yet received patent, he is vested with an equitable interest in the land which is subject to taxation.

The rule as laid down by the Supreme Court of Montana, in

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

is to the effect that where the officer designated by the Government to pass upon the application and proof has discharged that duty, and nothing remains for the applicant to do, then the full equitable title passes to him, and the land is subject to taxation. In case of homestead entries, this equitable interest attaches when the Register and Receiver have issued the final receipt, for they are the officers designated by law to pass upon the proof submitted. The Act of Congress of July 2nd, 1864 (13 Stat. 365), making the grant of land to the Northern Pacific, provides that the road may take indemnity or lieu land under the rules and regulations of the Secretary of the Interior. I am not informed as to just what rules he has promulgated for this purpose, but I am informed by the local land office here in Helena that they perform no other function or duty relative to the application for the selection of indemnity or lieu lands than to receive the application and forward the same to the Commissioner at Washington, and that the Commissioner passes upon the application and the proof submitted therewith. If this is the rule followed, then it would

seem under the decision *supra*, that the Commissioner is the one designated to pass upon the proof, and that no title passes to the railroad company until after the Commissioner has rendered his decision. If that is correct, then the land is not subject to taxation until the Commissioner has affirmed the title in the company.

In the case referred to by you, I understand that the taxes have already been levied, possibly paid under protest. If any substantial doubt exists as to the legality, then a judgment of a court should be obtained for the protection of the county authorities. On the other hand, there is not any doubt of the power of the Commissioners to cancel a tax that has been unlawfully levied, but they must first be certain that the tax is unlawfully levied, or illegally collected. The tax department of the railway, or the local register and receiver will be able to supply you with a copy of the rule promulgated by the Secretary of the Interior for the approval of indemnity selections, and if it appears that the local authorities do nothing more than to receive the selection and forward the same, and the first ruling upon the application is made by a Commissioner at Washington, then the land is not subject to taxation. I cannot be more specific than to call your attention to these facts, and to the decision of the Supreme Court, *supra*.

Yours very truly,

J. B. POINDEXTER,

Attorney General.