

No. 445

**TAXATION—ABEYANCE OF TAXES—PENALTY AND INTEREST, no addition of under certain circumstances—SUSPENSION OF TAXES—PROPERTY—TREASURER—COUNTY TREASURER—AFFIDAVIT OF MILITARY SERVICE—ARMY—NAVY—MARINES**

**Held:** Where real property is held by a citizen of Montana as vendee, under a binding, enforceable, executory contract of sale, and when said vendee is in the active military or naval service of the United States, all taxes on such property shall be held in abeyance, no proceedings shall be taken for the collection thereof, and no penalty or interest shall be added thereto, until the expiration of the period one year from and after the cessation of hostilities or discharge from military or naval service, provided always the person to be benefited or some one in his behalf shall comply with the provisions of Section 2237, Revised Codes of Montana, 1935.

July 14, 1942.

Mr. R. F. Hibbs  
County Attorney  
Yellowstone County  
Billings, Montana

Dear Mr. Hibbs:

You have submitted for my opinion the following question:

“In a situation where real property in this county is held by a citizen of Montana, as vendee, under an executory contract of sale, shall the taxes on the property be held in abeyance under the provisions of Section 2236, Revised Codes of Montana, 1935, when the provisions of Section 2237, Revised Codes of Montana, 1935, have been complied with, and when said vendee is in the active military or naval service of the United States?”

In answering your inquiry, it is well to quote—first—the pertinent sections of the Revised Codes of Montana, 1935, as follows:

“2236. Suspension of taxes on property owned by persons in military or naval service. All taxes whether on real or personal property, now due or hereafter to become due on property owned by any citizen of the State of Montana in the active military or naval service of the United States, shall be held in abeyance, and no proceedings

taken for the collection thereof, and no penalties or interests shall be added thereto, until the expiration of the period of one year from and after the cessation of hostilities or discharge from military or naval service."

"2237. Affidavit to be filed with the county treasurer. To obtain the benefits of this act it shall be necessary for some person, on behalf of such person in the military or naval service, to file with the treasurer of the proper county an affidavit to the effect that the person against whom such taxes are charged is in such active military or naval service, which affidavit must be filed at or before the time when such taxes would become delinquent, and upon the filing thereof the treasurer shall make a notation upon his records to the effect that the collection of such taxes is suspended on account of the military or naval service of such taxpayer. But nothing in this act shall be so construed as to prevent such county treasurer from receiving payment of any such taxes whenever offered."

The two foregoing sections were enacted as Chapter 14, Extraordinary Laws of 1918. The title of said act is:

An act providing that taxes upon property owned by persons in the active military or naval services of the United States shall be held in abeyance until the expiration of one year after the cessation of hostilities or discharge from military or naval service.

There can be no question the legislature conferred the benefit contained in Section 2236, Revised Codes of Montana, 1935, upon any citizen of the State of Montana during the time such citizen is in the active military or naval service of the United States and until the expiration of the period of one year from and after the cessation of hostilities or discharge from military or naval service. The assembly granted to such citizen the benefit of having all real estate or personal property taxes, now due or hereafter to become due on the property **owned** by such citizen, held in abeyance without penalty or interest, and declared no proceedings be taken for the collection thereof, provided the provisions of Section 2237, Revised Codes of Montana, 1935, are complied with.

The further question is whether such citizen is the "owner" as contemplated by the act, where such citizen is the vendee under an executory contract of sale, ordinarily referred to as a "Contract for Deed," or a "Contract of Purchase."

Section 17 of Article XII of the Constitution of Montana is broad enough to cover all things and interests capable of ownership and the pertinent part is as follows:

"The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchise and **all matters and things (real, personal and mixed) capable of private ownership. . . .**" (Emphasis mine.)

Section 6663, Revised Codes of Montana, 1935, defines ownership as follows:

"The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property."

It should also be pointed out Section 2002, Revised Codes of Montana, 1935, as amended by Chapter 72, Laws of 1937, provides property must be assessed to the persons by whom it is owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday in March. In effect, the law contemplates the property shall be taxed in the name of the owner.

It appears from common practice most land contracts of purchase are mutually enforceable and binding against the purchaser and seller, and—

being so—the general rule of equitable conversion applies, which is stated in 18 Corpus Juris Secundum, Section 9, page 48, as follows:

“A contract for the sale of land works a conversion, equity treating the vendor as holding the land in trust for the purchaser, and the purchaser as a trustee of the purchase price for the vendor. The vendor’s interest thereafter in equity is in the unpaid purchase price, and is treated as personalty; while the purchaser’s interest is in the land and is treated as realty.”

Our Supreme Court has held:

“The authorities are in accord that an enforceable contract for the purchase and sale of real property passes to the purchaser the equitable and beneficial ownership thereof, leaving only the naked legal title in the seller as trustee for the purchaser, and as security for the unpaid purchase price.”

Kern, et al., v. Robertson, 92 Mont. 283, 288, 12 Pac. (2nd) 565.

The Supreme Court had under consideration a similar question in regard to exemption of property from taxation and held:

“It is the situation or character of the beneficial owner, the holder of the equitable title or estate, and not that of the holder of the legal title, which determines the question of exemption from taxation under our constitutional provisions and those of like import.”

Town of Cascade v. County of Cascade, 75 Mont. 304, 311, 243 Pac. 806.

In the case of Calvin v. Custer County, 111 Mont. 162, 107 Pac. (2nd) 134, the question arose where a person gave an option and contract to purchase certain lands to the United States, the legal title remaining in the vendee. Custer County contended that, because the deed had not been executed, the land was taxable. Our Supreme Court held:

“It is conceded, of course, that the legal title was in plaintiff. The trial court, however, found that the equitable title or estate was in the United States and, that being the case, found that the property was exempt from taxation. The court was correct in its conclusion.

“In order for the principal of equitable conversion to apply, however, there must be a binding contract (66 C. J. 703) and such as a court of equity will specifically enforce against an unwilling purchaser. (13 C. J. 855, 3 Pom. Eq. Jur. 4th Ed. Sec. 1161.)

“When the title is given, it relates back to the date of the contract, the vendor and his heirs or devisees holding the legal title meanwhile as trustees for the purchaser. This result rests upon the familiar principle that equity regards that as done which is agreed to be done.”

Calvin v. Custer County, 111 Mont. 162, 166, 167, 107 Pac. (2nd) 134.

I therefore agree with you that, where real property is held by a citizen of Montana as vendee, under a binding enforceable, executory contract of sale, and when said vendee is in the active military or naval service of the United States, all taxes on such property shall be held in abeyance, no proceedings shall be taken for the collection thereof, and no penalty or interest shall be added thereto, until the expiration of the period of one year from and after the cessation of hostilities or discharge from military or naval service, provided always the person to be benefited or some one in his behalf shall comply with the provisions of Section 2237, Revised Codes of Montana, 1935.

Sincerely yours,

HOWARD M. GULLICKSON  
Attorney General