

**Opinion No. 162.**

**State Lands—Sales on Contract—  
Cancellation of Contract—Taxation.**

Held: Taxes assessed and becoming delinquent against state lands sold on contract and the contract having been cancelled the taxes are cancelled also.

January 13, 1944.

Mr. Sam D. Goza, Chairman  
State Board of Equalization  
State Capitol  
Helena, Montana

Dear Mr. Goza:

You have submitted the following:

"Specifically: John Doe enters into a contract with the State Land Department to purchase a tract of land in January, 1926. The contract runs for 33 years. He pays taxes on his equity in the land for the years 1926 and 1927, but fails to pay any subsequent taxes, and the contract is cancelled by the Land Department in January, 1934. At the time of cancellation all delinquent taxes were stricken from the roll by order of the State Land Department under the provisions of Section 1805.94, Revised Codes of Montana, 1935. In July, 1943, John Doe's contract was reinstated under the provisions of Chapter 28, Laws of 1943.

"Will you kindly give us your opinion on the following:

"1. Should the taxes which had been cancelled (taxes for the years 1928 to 1933, inclusive) be reinstated on the roll and collection enforced the same as other taxes?"

"2. Should the assessor assess the land for the years 1934 to 1942, inclusive, and collection of taxes be enforced the same as other taxes?"

Sections 1805.92 and 1805.93, Revised Codes of Montana, 1935, provide that the interest of the purchaser in state lands (based on the ratio between the full value of the land and the amount of the purchaser's payments) is subject to taxation to the full extent of such interest and the land is subject to the lien of such taxes. On cancellation of a purchase contract (upon notice of such cancellation) it becomes "null and void" and the land, including buildings and improvements not removed within ninety days, reverts to and becomes the property of the state (Section 1805.88, Revised Codes of Montana, 1935, as amended by Section 4, Chapter 141, Laws of 1939).

Section 1805.94, Revised Codes of Montana, 1935, provides that upon the reversion of the land to the state, the county assessor, on notice from the

commissioner of state lands, shall cancel any assessment of said land for that year and the county treasurer shall "cancel all taxes remaining unpaid against the land for that and all previous years."

Thus, we find the land cleared of all tax assessments and cleared of all tax liens.

Chapter 28, Laws of 1943, does not make any mention of taxes. Section 1 thereof is as follows:

"From and after the passage and approval of this act, any holder of a certificate of purchase of state lands under which any installments are delinquent shall be permitted to pay such delinquent installment or installments without the payment of any penalty interest thereon. Such payment must be made on or before the thirty-first day of December, 1944, and if not made on or before said date, then payment thereof can be made only by payment of such installment or installments with accrued penalty interest as now provided by law."

Section 2 of the act merely states as follows:

"The provisions of Section 1 hereof shall apply to payments of delinquent **installments** by persons applying under the provisions of Section 1805.89, Revised Codes of Montana, 1935, for reinstatement of a canceled certificate of purchase, and application for such reinstatement of any canceled certificate may be made within twelve (12) years of such cancellation, if made during the period of operation of this act as set forth in Section 1 hereof." (Emphasis mine.)

The taxes for the years 1928 to 1933 having been canceled, they cannot be reinstated so as to be a lien on the premises, but would have to be re-assessed.

The matter of re-assessing taxes was not mentioned in said Chapter 28. Therefore, the right now to go back and assess taxes that were in accordance with Section 1805.94, supra, cancelled, will have to be predicated on some authority existing prior to the passage of said chapter.

There are no provisions in the laws of the State of Montana directly au-

thorizing the levying of taxes for past years. The generally accepted law in this respect is set forth in 61 Corpus Juris at page 565 as follows:

“ . . . in the absence of a constitutional or statutory provision otherwise, the power to levy a tax in any one year is restricted to a levy for that year, or for the ensuing year, and a tax cannot be levied in such year for a past year. . . ”

Our Supreme Court in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 57 Pac. (2nd) 803, stated that all taxes are levied upon the persons and not upon property, and our Supreme Court in *Christofferson v. Chouteau County*, 105 Mont. 577, 74 Pac. (2nd) 427, held in accordance with the *Ford Motor* company case and said that in accordance with that opinion the cancellation of taxes on state land is provided in Section 1805.93, Revised Codes of Montana, 1935, may be very properly construed to mean nothing more than the cancellation of the lien against the land and that the tax would still remain a liability against the individual.

The reasoning of the Court in the *Christofferson* case may be correct, but even so, the state has no right to hold the land as security for the taxes, after the lien is lost. The lien cannot be revived so as to be effective against the land, and as the laws of this state have made provisions for the collection of real estate taxes, such statutory methods are exclusive; such taxes may not be collected in any other manner. (*Calkins v. Smith*, 106 Mont. 453, 78 Pac. (2nd) 74, and *State v. Nicholson*, 74 Mont. 346, 240 Pac. 837.)

The applicant for reinstatement of the certificate of purchase may be personally liable for the taxes formerly assessed and canceled, but there is no way of collecting the tax. Most certainly nothing can be read into Chapter 28, Laws of 1943, which gives the state this power.

The legislature having granted a right to the applicant to reinstate his certificate of purchase, defined with exactness the requirements thereof, all of which are plain and easily understood, and need no interpretation therefor.

It is my opinion the taxes for the years 1928 to 1933, inclusive, may not be reinstated as there is no statute authorizing or requiring the same.

As to the second question pertaining to the assessment of taxes for the years 1934 to 1942, inclusive, I am unable to perceive any sound theory of law under which the purchaser on the reinstatement of his contract, may be required to pay taxes which might be “imposed” or “reassessed” upon the lands in question while they were **wholly or entirely** the property of the state after the cancellation of the purchase contract.

The interest of the state in this land cannot be constitutionally taxed (Constitution of Montana, Article XII, Section 2). Therefore, during the years 1934 to 1942, following the cancellation and previous to the reinstatement of the contract, no tax lien could possibly accrue against the land and no obligation to pay any tax during that period was imposed on the delinquent purchaser since his contract had become “null and void” and his interest in the land had already reverted to the state.

It is therefore my opinion that the second question must be answered also in the negative.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General