

Opinion No. 8

**Taxation—State Lands—Taxation of
Purchaser's Interest in
State Lands.**

HELD: 1. The legislature has the power to assess to the purchaser the full value of state lands which are then under contract of purchase.

2. Chapter 107 of the Laws of 1953, does not contravene Section 11, Article III of the Constitution of Montana forbidding the passage of laws which impair the obligation of contracts.

April 25, 1955.

Mr. J. F. Reid, Chairman
State Board of Equalization
State Capitol Building
Helena, Montana

Dear Mr. Reid:

You have asked my opinion upon the following question:

"Where an executory contract for purchase of state land was executed while Section 81-928, R.C.M. 1947, was in full effect and force, under the provisions of which the purchaser was taxable only to the extent of his equity in such land, shall such purchaser continue to be assessed upon his equity only, notwithstanding the provisions of Chapter 107, Laws of 1953, which require the purchaser to be assessed upon the full value of such property?"

In your letter of request, you stated that particular objection to Chapter 107, Laws of 1953, had been made upon the ground that taxation of the full interest would impair the obligation of the purchase contract in contravention of Section 11, Article III of the Montana Constitution.

Before the 1953 amendment, the applicable portion of Section 81-928, R.C.M., 1947, read as follows:

"Land Subject To Taxation. The interest of the purchaser in state lands shall be subject to taxation to the full extent of such interest. The assessor shall assess the purchaser for such percentage of the full and true value of the land as the initial payment on the land and all installments of principal due on the certificate of purchase prior to the first Monday of March of the year for which the land is assessed is of the full purchase price of the land. Provided that the holder of certificate of purchase to lands within irrigation districts shall be liable for the entire tax levied against the land held thereunder on account of such irrigation district."

This portion of the statute was changed by Chapter 107, supra, to read:

"81-928. (1805.92) Land Subject To Taxation. State lands pur-

chased from the State of Montana shall be subject to taxation to the full value thereof. The assessor shall assess the purchaser for the full and true value of the land on the first Monday of March following the date of purchase thereof, and provided that the holder of certificates of purchase to lands within irrigation districts shall be liable for the entire tax levied against the land thereunder on account of such irrigation district."

In answering these questions, it is first necessary to determine whether the legislature has the power to tax the entire value of the land under contract of purchase or whether some portion of the land is within the sovereign immunity of the State of Montana. This question has arisen on many occasions involving transfers of land, both by state and federal governments. It may arise when land is being transferred by the government or to the government. In the case of Calvin vs. Custer County, 111 Mont. 162, 107 Pac. (2d) 134, land was sold by a private individual to the United States. The County attempted to assess the land after the United States had taken possession. The Montana Supreme Court held that the land was not subject to taxation after the United States became the equitable owner, although legal title remained in the vendor. The Court followed the rule previously stated in the case of Town of Cascade vs. County of Cascade, 75 Mont. 304, 243 Pac. 806, 808:

"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 . . ."

These Montana cases are in accord with the general rule in American jurisdictions that the tax follows the beneficial ownership. In the case of Lincoln County vs. Pacific Spruce, 26 Fed. (2d) 435, the Court stated:

"The equitable title of the vendee is subject to taxation, although the sovereign as vendor stood immune from any tax levy."

The question has also been raised in other states whether, when the contract of sale calls for installment payments, a portion of the land equal to the vendor's remaining financial interest in the contract is immune from taxation when the vendor is the sovereign. This question was raised in the Supreme Court of Minnesota in *Petition of S.R.A.*, 219 Minn. 493, 18 N.W. (2d) 442, where the Minnesota Court held that no deduction need be allowed for the remaining interest of the vendor, the United States, in real estate taxed to the purchaser. The result was upheld by the United States Supreme Court (*S.R.A. vs. Minn.* 327 U.S. 558) which said:

"The only other contention of petitioner which we need mention is that the state has included the interest of the United States in the value of the land and has, therefore, subjected that interest to taxation. But no deduction need be made for the interest of the government since that interest is for security purposes only and is not beneficial in nature. The whole equitable ownership is in the petitioner, and the value of that ownership may be ascertained on the basis of the full value of the land."

It is the rule of law, laid down in these and other cases in Montana and elsewhere, that when the state, as vendor, retains legal title in the sale of property, the state's immunity from taxation does not cover the premises or any part of them. Therefore, the legislature may, if it chooses, tax the entire value of the land to the purchaser.

This brings us to the question whether the application of the full assessment rate to land purchased under the preceding law (which taxed only the purchaser's equitable interest) is an impairment of the obligation of a contract. This question was before the Montana Supreme Court in the case of *Byrne vs. Fulton Oil Co.*, 85 Mont. 329, 278 Pac. 514, wherein it was said:

"It is also contended that Chapter 140 is repugnant to Section 11, Article III of our Constitution, as impairing the obligation of a con-

tract. It is contended that, when the contract or lease in question was made, the law authorized but one assessment, and that to the operator, and that the effect of this Act is to impair the obligation of that contract.

'A contract between individuals cannot have the effect of depriving the state or any municipal subdivision of any power of taxation otherwise belonging to it.' (Citing Cases.)

* * *

A complete answer to this contention is found in the case of *Lake Superior Con. Iron Mines v. Lord*, 271 U.S. 577, 70 L. Ed. 1093, 46 Sup. Ct. Rep. 627, where the court, speaking through Mr. Justice McReynolds, said: 'Titles to all the lands and leases were obtained subject to the state's power to tax. If the statute now in controversy is within that power, it cannot impair the obligation of appellant's contracts; if beyond, it is, of course, invalid.'

The Supreme Court of Washington, in the case of *Newman v. Commercial Waterway District*, 125 Wash. 577, 217 Pac. 9, stated the applicable rule as follows: 'The taxpayer has no vested right in the existing mode of collecting taxes. There is no contract between him and the state that the latter will not vary such mode, and so long as no fundamental right to the taxpayer is invaded he cannot complain of a variation in the mode.'

It is therefore my opinion that the legislature has the power to assess to the purchaser the full value of state lands which are then under contract of purchase.

It is also my opinion that Chapter 107 of the Laws of 1953, does not contravene Section 11, Article III of the Constitution of Montana, forbidding the passage of laws which impair the obligation of contracts.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.