

Opinion No. 19-2455

December 23, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. Juan C. Sanchez, County Treasurer, Estancia, New Mexico.

Lands Upon Which Final Certificates Issued Subject to Taxation.

OPINION

In answer to your letter of the 4th instant, I beg to advise that it is our opinion that under sections 4018 and 4019 of the Compiled Laws of 1897, lands upon which final proofs were made and final certificates issued were subject to assessment the same as if they had been an estate in fee.

It may be said, generally speaking, that all property of the United States, including the public domain, is exempt from state taxation, but this exemption no longer exists when the right to conveyance is acquired, even though no patent has issued, where a state has made provision to tax said lands.

This view is supported by the following cases:

Witherspoon vs. Duncan, 4 Wall. 210; Carroll vs. Safford, 3 Howard 441; Railway Company vs. Prescott, 16 Wall. 603.

In Railway Company vs. Prescott, above cited, the court said:

"While we recognize the doctrine heretofore laid down by this court that lands sold by the United States may be taxed before they have parted with the legal title by issuing a patent, it is understood as applicable to cases where the right to the patent is complete, and the equitable title is fully vested in the party without anything more to be paid, or any act to be done going to the foundation of his right."

This condition obtained in New Mexico only until March 18, 1913, when the law which appears as section 5427 of the 1915 Code was enacted, and which specifically states that land entered under any act of congress, shall not be subject to taxation until patent therefor has been issued.

It is my opinion that if all taxes which have accrued since the issuance of patent have been paid that the title insofar as taxes are concerned is clear, as it is fundamental that the basis of title to land which was once part of the public domain lies in the patent and not in the final certificate.

This question has no doubt been passed upon by courts, and it might be possible that my off-hand views are not correct. However, since the question is one which does not come within the scope of the duties of this office, we would suggest that those interested secure the information from private counsel.

I think it would be best for the treasurer not to undertake at this late time to go back and assess lands for which final certificate was issued prior to 1913, and which was not at that time put on the assessment rolls.