Opinion No. 61-31

April 25, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Jack E. Holmes, Chief Tax Commissioner, State Capitol Building, Santa Fe, New Mexico

QUESTION

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1. How should the equity of a purchaser of state lands under contract be valued under Section 72-1-3, N.M.S.A., 1953 Compilation?

CONCLUSION

1. See Analysis.

OPINION

ANALYSIS

Section 72-1-3, N.M.S.A., 1953 Compilation, provides:

"The equitable interest arising under and accruing to the owner of any contract for the purchase of any state lands, entered into between the state and any person, or corporation, shall be assessed and taxed to such owner or contractee at the cash value of such legal or equitable interest . . ."

Several different terms are used in New Mexico statutes to describe the taxable value of property. Thus, we have found "value", "cash value", "full actual value", and "actual market value". We note that the quoted statute uses the term "cash value".

Since Section 72-1-3 is primarily intended to subject the purchaser's equity to taxation, and contains no express indication that such property is to be taxed differently from other real property, we think that section should be read together with other sections on the subject of assessment and taxation of real property.

Section 72-2-3, N.M.S.A., 1953 Compilation, requires the County Assessor to fix the value of real property for taxation purposes, and requires that the value of all taxable property be fixed at the "full actual value" thereof. This section applies to all taxable property, and we feel that it is applicable to the equity of a purchaser of state lands under contract. Therefore, in our opinion, the term "cash value" means no more than "full actual value" in cash.

The value of the purchaser's equity is not to be confused with the sales price of the land, or the part of the sales price already paid by the purchaser under the contract. Value may often differ from price. In our opinion, the value of the purchaser's equity should be fixed at that price in money, or its equivalent, that would be received at a sale of the purchaser's equity in a normal market.

Since it might be difficult to assess the full actual value of the purchaser's equity considered alone, the formula for arriving at the taxable value of that equity can be expressed as follows:

Taxable value of equity equals amount paid on contract, divided by total sales price, and multiplied by the full actual value of the entire tract of land.

To illustrate, suppose a buyer has agreed to pay $ 2,000 for a tract of state land, and has actually paid $ 1,000 under his contract of purchase. Suppose also, that at the time of assessment for taxation the land in question would bring $ 3,000 in a normal market. Taxable value would be computed as follows:

Taxable value = 1,000/2,000 X 3,000

Tax value equals $ 1,500.00

In other words, the purchaser has paid half the sales price, and half of the full actual value of the property should be taxed to him as the value of his equity.