

February 7, 1940.

Mr. Charles L. Ewing
County Attorney
Prescott, Arizona.

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ARIZONA ATTORNEY GENERAL

Dear Sir:

We have your letter of January 17th relative to the question of assessing real estate that is being sold under contract. You ask two questions:

1. Where a widow holds legal title to real property and sells the same under contract, reserving title in herself until the full purchase price shall have been paid, and where during the performance of the contract she files an affidavit claiming widow's exemption, should the property be exempt or should only her interest therein be exempted, or has the property lost its exemption?

2. Where the vendee is a person who is entitled to claim a widow's or ex-service man's exemption and such vendee files affidavit claiming such exemption, is the property exempt from taxation, is it exempt only for the interest of the purchaser, or is the claim of exemption ineffectual for any purpose?

You state in your letter that you have gone into this matter and find the law to be in a very confused state. In this we agree with you and it is almost impossible for us to lay down a rule to be followed in Arizona. However we will set out herein the result of our investigation.

As stated in your letter some jurisdictions hold that the property should be assessed to the vendee and if he is entitled to the exemption it should be allowed. Others hold that the property should be assessed to the vendor and if he is entitled to an exemption it should be allowed. In support of the former theory we cite 24 L. R. A. (N.S.) 1299, and note, and 188 N.E. 680. These cases proceed upon the theory that where land is sold under contract the vendee becomes the beneficial owner thereof and the vendor merely holds the legal title in trust. This rule of equitable conversion seems to be the law in Arizona. See

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Strahan v. Haynes, 262 Pac. 995. It would seem therefore that in Arizona the land should be assessed to the vendee and that he should be the only one entitled to file for exemption. However in the case of Weber Show Case & Fixture Company v. Kaufman, 44 Pac. (2d) 158, which involved the assessment of personal property sold under conditional sales contract, the court held that in this State property being sold under conditional sales contract may be assessed to either the vendor or vendee. The question of exemption, however, did not arise in that case and it therefore cannot be decisive of your questions for the reason that an assessor cannot by assessing property to either the vendor or vendee as he sees fit take away an exemption given to a person by the constitution. The cases we have come across holding that the property should be assessed to the vendor and that if he is entitled to an exemption the property should be exempted, even though it is in the possession of and being used by a vendee who is not entitled to an exemption, are 140 Pac. 1004 and 251 Pac. 1114.

It is our belief that the theory upon which the former class of cases is based is entirely in consonance with the law insofar as a proceeding in equity or probate is concerned but we doubt seriously if it should be extended to include matters of taxation. Yet to allow exemption on the property where the vendor is within the class of persons to whom the constitution grants exemption would be permitting persons holding property in this State to escape taxation because undeniably a vendee under a real estate sales contract is the owner of property.

Perhaps the cases above cited, together with the study you have already put in on this, might aid you in arriving at an opinion as to how the matter should be handled.

Inasmuch as this is a matter of statewide interest and capable of being decided one way with as much reason and logic as the other, we hesitate to send out an opinion. It is a matter that should properly go to the Supreme Court for its decision. If you can have some person file an action involving the question we shall be glad to assist you in every possible way.

Yours very truly,

JOE CONWAY,
Attorney General.

EDWARD P. CLINE,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant
Attorney General.