

April 26, 1950

Carl D. Hammond  
County Attorney  
Mohave County  
Kingman, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Hammond:

We have received a letter from Mr. O. Ellis Everett, Attorney at Law, Kingman, Arizona, requesting an opinion from this office. We feel that this opinion is vital and are writing it to you and sending Mr. Everett a copy for his information. I am also enclosing a copy of an opinion written to the County Attorney of Yuma County on a similar question. Mr. Everett's question is:

"A Veteran purchases real property under a contract for the purchase of real property which provides that he shall pay the taxes thereon during the life of the contract: Isn't he exempt under those conditions?"

You are advised as follows:

We are assuming at all times that the veteran is otherwise qualified for the exemption benefit. Also we desire to state our position on the construction to be placed on "exemptions", referring to the case of Weller v. Phoenix, 39 Ariz. 148, 4 Pac. 2d 665.

"Laws exempting property from taxation are to be strictly construed, presumption is against the exemption, and every ambiguity in the statute will be construed against it."

There are many statutes bearing on this subject, and an endless number of decisions of both the U. S. Supreme Court and from every state in the Union. In order to clarify our position, we quote some of each, but will, as far as we can, confine our case citations to Arizona decisions, feeling that they have fairly well covered the field. The Arizona Constitution, as amended, Paragraph 2 of Article 9, provides that a veteran's property shall be exempt from taxation, which is an absolute right, but the Legislature may establish a reasonable procedure for voluntary assertion or waiver of the right.

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In State v. Allred, 67 Ariz. 320, 195 P. 2d 163, the Supreme Court overruled several other cases respecting the necessity of filing of claims for exemption, and made it necessary for the veteran or widow to comply with Section 73-303 and Section 73-304 in order to obtain the exemption. These two sections not only require that the person claiming the exemption must file for the same, but the Assessor may, in his discretion, require additional proof of the facts stated in the affidavit or application for exemption. It appears reasonable to us that among other proofs required is the veteran's or widow's ownership of the property he desires to have assessed to him. Your specific question then is: Does a contract for the purchase of real property create such an ownership in the property that will permit it to be taxed to the veteran or widow? In this connection let us cite Section 73-402 ACA 1939 which provides that the Assessor:

"\* \* \* shall ascertain, by diligent inquiry and examination, all property in his county subject to taxation, the names of all persons owning, claiming, or having the possession or control thereof, determine the full cash value of all such property, and then list and assess the same to the person owning, claiming, or having the possession, charge, or control, thereof. \* \* \* Property under mortgage, contract, or lease shall be listed by and taxed to the mortgagor or lessor, unless it be listed by and taxed to the mortgagee or lessee. \* \* \* If any person shall neglect or refuse on demand, or fail without demand of the assessor or his deputy, to give, under oath or affirmation, the list required, or if the owner of any property not listed by another person, shall be absent or unknown, the assessor shall fill out a list for such person, putting therein all taxable property which he has reason to believe is owned by, or in the possession or control of said person, liable to taxation. \* \* \* If the assessor believes that any person has not returned a full and complete list of all the property under his control, he may make such investigation as he may deem necessary to ascertain the full amount and extent of such property." (Emphasis supplied.)

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Page three  
April 26, 1950

The case of Weber Showcase & Fixture Co. v. Kaufman, 45 Ariz. 397, 44 P. 2d 158, dealing with taxation of personal property, might be somewhat different than real estate, yet there is a principle involved in the statement of the court as follows:

"Property sold under a conditional sales agreement is subject to taxation as much as any other personal property. \* \* \* Both the vendor and the vendee are bound to know that the tax must be paid, and it is their duty to make a return of the property which they claim for taxation, and if such return is not made, the assessment is valid notwithstanding."

We fail to find an Arizona case directly in point, but you are cited to the cases under Paragraph 8, p. 1092, of 95 ALR, referring in particular to the case of Boone v. Porter (1915) 45 Okla. 615, 146 Pac. 584, wherein the court said:

"A purchaser of state school lands, in possession, at the time an assessment is made, under an executory contract of sale executed by the Commissioner of the state land office, is the owner thereof for the purpose of taxation."

We believe the principle referred to in the personal property case and the Oklahoma case just cited applies to realty purchased under contract for taxation purposes as contemplated by Section 73-402 and Section 73-304. We think that the sufficiency of the ownership of the property for taxation purposes is left largely to the discretion of the assessor. In Maricopa County, where a great many exemptions are handled it is necessary to process them on a cold, strict interpretation of the statutes. The assessor here usually allows the exemption when he is satisfied the veteran or widow has a bona fide contract of purchase and usually requires that the contract of purchase be placed of record. It appears to us that a veteran or widow who has a bona fide contract of purchase whereby the seller or vendor cannot retake possession of the property or ownership of it unless by default of the purchasing veteran or widow, and the veteran or widow satisfies the assessor of the facts as provided by Section 73-303 and 73-304, such veteran or widow is entitled to the exemption as provided by the Constitution. The answer to your question, subject to all the provisions cited, is that the veteran is entitled to the exemption.

Very truly yours,

FRED O. WILSON  
Attorney General

CHAS. ROGERS  
Assistant Attorney General

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