



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

MAY 19 1947

B-65104

Mr. M. R. Scott, Authorized Certifying Officer,  
Forest Service, United States Department of Agriculture,  
Bankers Securities Building,  
Walnut and Juniper Streets,  
Philadelphia 7, Pennsylvania.

Dear Mr. Scott:

Reference is made to your letter of March 26, 1947 (your file,  
A DISBURSEMENT, R-7 Vouchers General), as follows:

"There has been presented to me for certification for payment the attached voucher in favor of O. O. Lugar, Treasurer of Craig County, New Castle, Virginia, covering taxes, interest and penalties on mineral rights for the years 1944 and 1945 in the amount of \$110.43.

"On June 22, 1940 the lands in question were acquired by the Government through condemnation proceedings and subject to a 25-year mineral reservation running from March 1, 1938. The grantor subsequently was willing to relinquish the mineral rights and donated them to the Government (under Act of June 7, 1924, 16 USC 569) by deed recorded December 12, 1945. Subsequently it was learned that taxes on mineral rights for the years 1944 and 1945 had not been paid, and while the grantor was willing to donate the mineral rights without compensation, he is not willing to pay the taxes and the interest or other amounts due by reason of their nonpayment.

"The land was acquired under the Act of March 1, 1911 (36 Stat. 961). Costs of acquisition were paid from 1291111.001 Acquisition of Lands for Protection of Watersheds of Navigable Streams, Acquisition of Forest Lands, 1939. The act permits the purchase of land with or without reservations and presumably would permit the later purchase of reservation rights where their acquisition is in the interest of the Government. The act provides also that the Secretary of Agriculture may do all things necessary to secure

safe title in the United States (16 USC 517). The acquisition of the reserved rights in this case is very desirable in the interest of simplified administration and to minimize possible damage to the land through exercise of these rights.

"The approval of the National Forest Reservation Commission was obtained February 7, 1947 for acquisition of the mineral rights and payment of the taxes, etc. It is proposed to make this payment from the current appropriation for land acquisition, 1271114.001 Acquisition of Lands for National Forests, Department of Agriculture, All Other Expenditures, 1947.

"Decision is desired as to whether I may certify the voucher covering cost of acquiring the reservations for payment from the stated fiscal year 1947 appropriation.

"If it is not permissible to expend the funds cited for this purpose, may the account, if otherwise correct, be certified for payment from 1271100.020 S&E, Forest Service, National Forest Protection and Management, 1947, in view of C. G. Decision A-47693 (March 31, 1933) since this fund is normally charged with expenses of recording deeds, etc., in connection with donation of lands under Act of June 7, 1924 (16 USC 569), and if so, should payment be made from the appropriation for the fiscal year 1946, when the donation deed was recorded, or for the fiscal year 1947 when the National Forest Reservation Commission approved acquisition of the reserved rights?"

Under section 7 of the act of March 1, 1911, as amended, 16 U.S.C. 516, the Secretary of Agriculture is authorized to purchase, with the approval of the National Forest Reservation Commission, such lands as may be necessary for the regulation of the flow of navigable streams or for the production of timber. Section 9, as amended, 16 U.S.C. 518, provides that such acquisition may be subject to reservations in favor of the owner from whom the United States receives title.

Section 7 of the act of June 7, 1924, 16 U.S.C. 569, authorizes the Secretary of Agriculture, in his discretion, to accept on behalf

of the United States, donations of lands chiefly valuable for the growing of timber crops in order to assure future timber supplies for the agricultural and other industries of the State or for other national forests purposes, with the further authority to accept title to such lands subject to reservations by the donor of stands of merchantable timber thereon at the time of the donation or of mineral or other rights for a period not exceeding twenty years. The section provides further that the Secretary of Agriculture may pay out of any monies appropriated for the general expenses of the Forest Service the cost of recording deeds or other expenses incident to the examination and acceptance of title.

It is, of course, well established that property of the United States and its activities cannot be taxed by a State or any of its political subdivisions. McCulloch v. Maryland, 4 Wheat. 316; Van Brocklin v. Tennessee, 117 U.S. 151; Panhandle Oil Company v. Mississippi, 277 U. S. 218. Thus, the mineral rights were not subject to taxes after the title thereto had passed to the United States. However, they were subject to taxes prior to that time and, since it appears that the taxes covered by the voucher were levied against the mineral rights before the conveyance of the latter to the United States by the deed of November 20, 1945, recorded December 12, 1945, they became a lien upon the mineral rights prior to the acquisition of the latter by the Government. See § 2454 Virginia Code, and §§ 251 and 275 Virginia Tax Code.

Hence, the United States acquired title to the mineral rights subject to such lien. See 6 Comp. Gen. 587. However, § 277, Virginia Tax Code, provides that a taxpayer whose lands are acquired by the United States shall be relieved from the payment of taxes and levies on such lands for that portion of the year in which the property was acquired and after the date upon which the title shall vest in the United States. Thus, it appears that the taxes for that part of the year 1945 from the date of acquisition of the mineral rights by the United States to the end of the year are subject to cancellation.

The appropriation for Salary and Expenses, Forest Service, National Forest Protection and Management, 1946 (59 Stat. 136, 150), provides in part:

"\* \* \* investigation and establishment of water rights, including the purchase thereof or of lands or interests in lands or rights-of-way for use and protection of water rights necessary or beneficial in connection with the administration and public use of the national forests; and all expenses necessary for the use, maintenance, improvement, protection, and general administration of the national forests \* \* \*."

The taxes here involved were, and are, the obligation of the former owner of the mineral rights, and, accordingly, their payment is tantamount to the payment of consideration to the grantor for the mineral rights. Under such circumstances, the applicability of section 7 of the act of June 7, 1924, to the matter is open to some question. But, at any rate, payment of the taxes involved would not appear to be an expense incident to the examination and acceptance of title within the meaning of said section 7 of the

1924 act. Rather, there would seem to be involved a purchase of mineral rights deemed beneficial in the administration of the national forests and, as such, an expenditure authorized by the above-quoted provision of the appropriation for salary and expenses. Further, while it appears that the National Forest Reservation Commission did not approve the acquisition of the mineral rights and the payment of the taxes until February 7, 1947, yet, the title was conveyed to the United States in the fiscal year 1946, and it is understood that the approval related to the time of delivery of the conveyance to the United States. Thus, since the title was acquired in the fiscal year 1946, the payment should be made under the appropriation for that year.

Accordingly, if otherwise free from objection, the voucher may be certified for payment in the amount of the 1944 taxes and for that part of the 1945 taxes from the beginning of the year to the date of the acquisition of the mineral rights by the United States, payment to be made under the appropriation for Salaries and Expenses, Forest Service, National Forest Protection and Management, 1946.

The voucher is returned herewith.

Respectfully,

(Signed) Lindsey C. Warren

Comptroller General  
of the United States

Enclosure.