

TAXATION: Possessory rights under a lease are to be taxed as "real property" under Missouri tax laws.

September 19, 1953



Honorable Hubert Wheeler
Commissioner of Education
Department of Education
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department wherein you proposed the following inquiry:

"I shall be glad to have your advice and official opinion in answer to the following question:

"Under the laws of this state, where the surface of federal real property is used exclusively for industrial purposes by private parties, are the leasehold or possessory rights of those parties taxable as real property?"

Your attention is directed to the provisions of Section 137.075, RSMo 1949, which read as follows:

"Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year." (Emphasis ours.)

To properly construe the term "real property" as used in the statute quoted we must resort to the definition of the term as found in Section 137.010, Subsection (2), RSMo 1949, which reads as follows:

"The following words, terms and phrases when used in laws governing taxation and revenue in the state of Missouri shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

"(2) 'Real property' includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon, and all rights and privileges belonging or appertaining thereto." (Emphasis ours.)

It thereupon becomes pertinent to determine whether the possessory right conferred under a lease of real property is such a "right" or "privilege" within the meaning of those words, or either of them, as they appear in the statute quoted supra.

That the rights conferred upon the lessee of real property under a lease embody those "rights" and "privileges" as those words are used in the statute quoted supra seem to be so elementary as to not require the citation of authority. Among such "rights" and "privileges" as come most readily to mind is the right to undisurbed possession of the premises during the period of the lessee's term, the right to resort to the courts to protect his possessory rights, the right to sue for damages to his quiet enjoyment of the premises and for damages which have been suffered as a result of trespasses by others, the right to the rents and profits arising from the premises during his term, and the right to use the demised premises in all manners commensurate with the terms of the letting. These "rights" and "privileges" are well recognized in our system of jurisprudence and they may be protected by the lessee in appropriate court proceedings in the proper tribunals.

At this point we desire to call your attention to the general rule with respect to the taxation of leaseholds. The following enunciation of the rule appears in American Jurisprudence, Volume 51, page 452:

"* * * Although by virtue of the common law a leasehold remains a chattel real, it is within the power of the state to declare its nature contrary to the common law for the purpose of taxation. A lease of real estate is undoubtedly property in the hands of the lessee, and is assessable to the lessee if it is a valuable asset to him." (Emphasis ours.)

This rule was applied by the Supreme Court of Missouri in the case of State ex rel. Ziegenhein v. Missouri Free School, reported 62 S.W. 998, 162 Mo. 332. This was an action brought to enforce the lien of the State of Missouri for claimed taxes due upon a building standing upon a lot owned by a concededly tax exempt organization. The building was under lease to one of the defendants who did not occupy a tax exempt status. The contention was advanced in the course of the appeal that the interest of the nontax-exempt defendant in the building and lot under this lease could not be taxed inasmuch as no specific statute subjected such interests to taxation. This contention was overruled by the court in the following language:

"In this view we do not concur. All property except such as is specifically exempted by the Constitution and the statute made in pursuance thereof, is subject to taxation, and we can see no difficulty in assessing the separate and distinct property of Thompson in this building any more than would be encountered in assessing the property of any other individual. Whether it is real or personal property, or whether the State is bound to regard it as personalty, is not now the question. The point is, is it separately liable to taxation as his property? We hold that it is. And it is Thompson's duty to list it just as every other taxpayer is required to list his property or suffer the penalties. The point may be new in this court, but has often been solved in other jurisdictions. (People ex rel. Muller v. Board of Assessors, 93 New York, 308; People ex rel. v. Commrs. of Taxes, 82 N.Y. 459; Russell v. City of New Haven, 51 Conn. 259; Smith v. Mayor, 68 N.Y. 552.)

"In most States the interest of Thompson under a lease like this is real estate, and as our statute provides that the words 'real estate' shall be construed to include all interest and estate in lands, tenements, and hereditaments (sections 4917 and 4916, Revised Statutes 1889), little doubt can exist that Thompson's interest in this realty and building should be assessed as real estate. As it is obvious he has not been

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assessed at all, no judgment can be rendered against him in the present action, but the statute supplies the remedy in such cases."

It seems quite clear from the foregoing that the Supreme Court of Missouri has held that the possessory rights conferred under a lease of real property are subject to taxation.

CONCLUSION

In the premises, we are of the opinion that the possessory rights in real property conferred upon a lessee are "rights and privileges" within the meaning of that phrase as used in Section 137.010, Subparagraph (2), RSMo 1949, and therefore are "real property" and subject to ad valorem taxation under the provisions of Section 137.075, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General