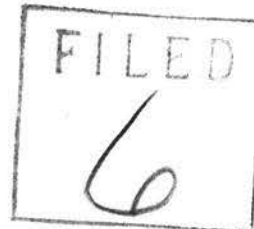


TAXATION: Procedure for sale of mineral rights for delinquent taxes.

9-18

September 9, 1935.



Hon. C. C. Beckham,
Prosecuting Attorney,
Crawford County,
Steelville, Missouri.

Dear Sir:

We wish to acknowledge your recent request for an opinion wherein you state as follows:

"Kindly inform me as to what procedure is to be taken in case of default in the payment of taxes on mineral rights on real estate. Should the County Collector proceed to sell the mineral right in the same way that he sells land for delinquent taxes?"

Senate Bill No. 94, found in the Laws of Missouri, 1933, pp. 425 to 449, sets out the procedure for the collection of delinquent and back taxes and the foreclosure, sale and redemption of delinquent property. Section 9252a of said bill, found on p. 430, provides as follows:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale; provided, however, delinquent taxes, with penalty, interest and costs, may be paid

to the county collector at any time before the property is sold therefor. The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

61 C. J. 179 discusses the taxation of minerals and mineral rights and states in part as follows:

"Ores or minerals 'in place,' that is, unsevered, are taxable to their owner as realty; but minerals extracted and brought to the surface are taxable as personalty."

You state in your letter that the default in the payment of taxes is on "mineral rights" on real estate; hence we assume that you refer only to minerals "in place" and not minerals that have been extracted and brought to the surface.

The court in the case of *In re Colby*, 169 N. W. (Iowa) 1. c. 444, in discussing the subject of mineral rights, said:

"Minerals beneath the surface may be made the subject of separate ownership, either by a grant of the minerals by the owner of the land, or of a grant of the land excepting the minerals, and thereby an estate in fee simple is created in the minerals, as corporeal things real. 1 Tiffany on Real Property, sec. 219; Snoddy v. Bolen, 122 Mo. 479, 24 S. W. 142, 25 S. W. 932, 24 L. R. A. 507; Marvin v. Brewster Iron Min. Co., 55 N. Y. 538, 14 Am. Rep. 322; Sloan v. Lawrence Furnace Co., 29 Ohio St. 568; Manning v. Frazier, 96 Ill. 279.

"It is equally well settled that, when the fee in the mineral has been separated from the fee in the surface, the fee or interest in the former is assessable and taxable to the owner thereof as real estate. This much is settled by the statutes heretofore referred to, for surely

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the title to minerals in situ constitutes an interest in land. See In re Major, 134 Ill. 19, 24 N. E. 973; Kansas Natural Gas Co. v. Board of Commissioners, 75 Kan. 335, 89 Pac. 750; Wolfe County v. Beckett, 127 Ky. 252, 105 S. W. 447, 32 Ky. Law Rep. 167, 17 L. R. A. (N.S.) 688, and note collecting the cases."

The Supreme Court of Missouri in the case of Young v. Young, 307 Mo. 1. c. 225, in holding that minerals "in place" are land, said:

"That coal and other minerals in place are land and may be conveyed as such, and, when thus conveyed, constitute a separate and distinct estate and inheritance was decided by this court in Wardell v. Watson, 93 Mo. 107, * * *."

From the foregoing we are of the opinion that minerals in place are "land" and that the county collector, upon default in the payment of taxes, may sell the mineral rights in the manner provided for by Senate Bill No. 94, supra, for the sale of lands for delinquent taxes.

Respectfully submitted,

Wm. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

MW:HR