

TAXATION: When a landowner gives a license to a person to search and segregate minerals, the property right is taxable against the landowner.

May 28, 1937.

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Honorable J. H. Mosby,
Prosecuting Attorney,
Linn, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion which reads as follows:

"Enclosed herewith you will please find a question, which I would like to submit for an opinion.

This matter arises on May 29th, and I would like to have the opinion by that date."

"A Landowner, by a written lease, grants to another the right to enter upon the premises of the Landowner and prospect for, mine, remove and ship fire-clays. In consideration therefor the Lessee agrees to pay an annual rental of \$200.00 per year; which sum shall be an advance payment on any sums that may due for fire clays subsequently mined, removed and shipped therefrom. The lease is subject to renewal upon payment of said annual rental. The Landowner retains possession of all the premises, subject to the right of the Lessee to enter for the purposes aforesaid. The Lessee agrees to pay the sum of \$1.00 per ton for the fire clay mined, removed and shipped.

"Is the right granted to the Lessee, taxable, under the laws of Missouri?"

The facts, as presented in your request, seem to be that the landowner has given the right to a certain person or corporation to go upon his land and search and prospect for fire clay, and if such is found, to separate and remove said clay. In consideration for this right, the landowner is paid \$200.00. After the fire clay is extracted, the landowner sells the clay removed for \$1.00 per ton.

This opinion is restricted to the facts presented in your letter.

In an opinion rendered by this department to Honorable Richard Chamier, Prosecuting Attorney of Randolph County, this department held that when coal or other minerals in place are owned separately from the surface estate such coal and minerals must be separately assessed. A copy of this opinion is herewith enclosed. However, it must be noted that this opinion dealt with separate fee simple estates and does not refer to any lesser estates.

Section 9742, R. S. Mo. 1929, provides as follows:

"For the support of the government of the state, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section."

Section 9977 of Article II, Chapter 59, R. S. Mo. 1929, which relates to taxation and revenue, provides as follows:

"The term 'real property,' 'real estate,' 'land' or 'lot', wherever used in this chapter, shall be held to mean and include not only the land itself, whether laid out in town or city lots or otherwise, with all things contained therein, but also all buildings, structures and improvements and other permanent fixtures, of whatsoever kind thereon, all shot towers and all machinery therewith connected, all smelting furnaces and all machinery therewith connected, all grist mills, sawmills (except portable mills of every description), oil mills, tobacco, hemp and cotton factories, tobacco stemmeries, rope walks, manufactories of iron, nails, glass, clocks, and all other property belonging to manufactories of whatever kind, all wool carding machines, all distilleries, breweries, all tanneries, all iron, copper, brass and other foundries, and all rights and privileges belonging or in anywise pertaining thereto, except where the same may be otherwise denominated by this chapter."

The rule, as given in 61 C.J. 180, is:

"Still less does a mere license or privilege to search for and extract minerals affect such a severance of the title as to make the interests of the lessee taxable as realty."

Cooley on Taxation, Vol. II, para. 566, states:

"It is clear that a mere license to search for and extract minerals is not separately taxable."

Hughes v. Vail, 57 Vermont, 41, aptly states the relationship existing under this set of facts:

"It is apparent from this instrument, that Clayton retained the control and dominion of the land for all purposes except as required for the slate business; he parted with no title to the slate, as it lies in the rock constituting a part of the land. No title passes until the slate has been transformed into personal property, and payment made as stipulated; the ownership of the land remains in Clayton. The party of the second part took and hired certain rights and privileges only,* * *."

In Kansas National Gas Company v. The Board of County Commissioners of Neosho County, 75 Kas. 335, 89 Pac. 750, the Supreme Court of Kansas held:

"The lease grants no estate in the land or in the oil or gas which it may contain. It creates an incorporeal hereditament only - a license to enter and explore for oil and gas, and if they are discovered, to produce and sever them. Until discovered and brought to the surface, no severance of title occurs. The minerals not only remain a constituent part of the land, but they belong to the owner of the surface soil beneath which they lie."

CONCLUSION.

It is, therefore, the opinion of this department that where a landowner grants a license to a person or corporation to search for and extract minerals, the title to remain in the landowner, and then such minerals are sold to the person or corporation, that such minerals in place should be assessed and taxed against the landowner and not the licensee.

Respectfully submitted,

APPROVED:

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