

ASSESSMENT OF PROPERTY:

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June 15, 1955

: 1) Partially completed buildings or other  
 : structures on real estate are subject to ad  
 : valorem assessment; 2) Partially completed  
 : structures on real estate should be assessed  
 : against and in the name of the owner of land  
 : as real property; 3) Materials purchased by  
 : the owner for construction of a building  
 : which have not been used by the contractor,  
 : and have not yet become a part of the build-  
 : ing, or a part of the realty, should be  
 : taxed in the name of the owner; 4) The  
 : assessment of buildings or other improvements  
 : under construction, as in our answer to  
 : question No. 2, should be assessed in the  
 : name of the owner as real property.

Honorable James M. Robertson  
 Chairman  
 State Tax Commission of Missouri  
 Jefferson Building  
 Jefferson City, Missouri

Dear Chairman Robertson:

This will be in compliance with your request for the opinion of this office on the questions noted in the request relating to the assessment of property in this State by local assessors.

Your request reads as follows:

"The State Tax Commission is frequently called upon by local assessors for advice in connection with the propriety of assessing certain property. Among other such instances our advice is requested with regard to the assessment of buildings and other improvements which are only partially completed on the first day of the calendar year.

"Your official opinion is, therefore, respectfully requested upon the following questions:

"(1) Are such partially completed structures or other improvements subject to ad valorem assessment?

"(2) Assuming that such structures or other improvements are being built under contract with owner of the real property upon which situated, such contract contemplating the delivery of

Honorable James M. Robertson:

such structures or other improvements as a complete unit, should such assessment be in the name of the contractor or the owner of the real property?

"(3) In the event the owner of the real property purchases necessary materials for such structures or other improvements and merely contracts for the labor involved in construction, or hires such construction done through employees, should the assessment be against the owner of the real property?

"(4) Assuming the answer to No. (2) to be that such assessment should be against the contractor, should such structures or other improvements be assessed as real or personal property?"

Your first question states:

"(1) Are such partially completed structures or other improvements subject to ad valorem assessment?"

The last sentence of Section 3 of Article X of the present Constitution of this State, respecting the method of taxation of property in this State provides:

"\* \* \* Except as otherwise provided in this Constitution, the methods of determining the value of property for taxation shall be fixed by law. "

The Constitution of Missouri and appropriately harmonious enactments of general law on this subject connected therewith provide for the classification of taxable property in this State.

Section 4(a) of Article X of our Constitution of 1945, as the basic law providing for such classification, and fixing the classes into which property of various kinds are placed, reads, in part, as follows:

"All taxable property shall be classified for tax purposes as follows: Class 1, real

Honorable James M. Robertson:

property; Class 2, tangible personal property;  
Class 3, intangible personal property. \* \* \*."

Section 137.015, RSMo 1949, following the constitutional provision of said Section 4(a) of Article X, likewise has defined property by classes for purposes of taxation. That section, reads, in part, as follows:

"All property in Missouri shall be classified for tax purposes as follows: Class one, real property; class two, tangible personal property; \* \* \*."

Section 137.010, RSMo 1949, in paragraph (2), defines real property as follows:

"(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; "

Section 4(b) of Article X of the Constitution of 1945, fixing the basis of the assessment of tangible property for tax purposes provides the following:

"Property in Classes 1 and 2 and subclasses of Class 2, shall be assessed for tax purposes at its value or such percentage of its value as may be fixed by law for each class and for each subclass of Class 2. \* \* \*."

Section 137.115, RSMo 1949, providing the period of time, the method to be followed and the value to be placed upon real and tangible personal property in such assessment, reads as follows:

"1. After receiving the necessary forms the assessor or his deputy or deputies shall, except in the city of St. Louis, between the first day of January and the first day of June, 1946, and each year thereafter, proceed to make a list of all real and tangible personal property in his county, town or district, and assess the same at its true value in money in the manner following, to wit: He shall call at the office, place of doing business

Honorable James M. Robertson:

or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable real and tangible personal property in the county owned by such person, except merchandise which may be required to pay a license tax and except all other property which may be exempted by law from taxation.

"2. The person listing the property shall enter a true or correct statement of such property, in a printed blank prepared for that purpose, which statement after being filled out shall be signed and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor."

Section 137.075, RSMo 1949, defining property liable for taxation on January 1 of each year subject to taxation states:

"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."

The provisions in said Section 4(b) of Article X fixing the basis of assessment of property for tax purposes at its value "or such percentage of its value as may be fixed by law" mean and refer to the values of property as fixed by the county assessors of this State under Section 137.115, supra. The basis for levying taxes (the assessment) fixed by the value of property is determined by the county assessor. The Supreme Court of Missouri in *Building Co. vs. The City of St. Joseph, et al.*, 108 Mo. 304, holding that the basis for the levy of taxes was the value fixed by the county assessor on certain lots and all of the improvements thereon, l.c. 309, said:

"The basis for the levy of taxes for state and county purposes on the two lots in question, for the year 1889, as well as for the year 1888, was fixed, by the valuation placed upon them by the county assessor in June, 1887, at the sum of \$21,000. Such valuation by the

Honorable James M. Robertson:

plain terms of the statute included the lots and all the improvements thereon. \* \* \*."

The Supreme Court of Missouri in State ex rel. Thompson, State Auditor, et al. vs. County Clerk, Shelby County, 320 Mo. 1164, defined the meaning of "value" as used in Section 12802, R.S. Mo. 1919, now Section 137.115, to be as fixed by the county assessor in the assessment of real estate and personal property "at its true value in money at the time of the assessment." The Court in ruling said question, l.c. 1168, 1169, said:

"\* \* \* The 'values' mentioned in the statutes are the valuations of the officials whose duty it is to make them. Land is not like commodities which have a fixed market price at a given period. Its value is determined always by the estimate of the party who values it. The requirement of Section 12802, that the assessor assess the property at its true value in money, means nothing more than that such true value is his estimate; his valuation. The law contemplates that, in accordance with that section, he does assess it at its true value as he judges it. \* \* \*."

That case and other decisions by the Appellate Courts of this State hold "values" to mean the value placed on property by an official whose duty it is to make the assessment.

For the purposes of general taxation, land and buildings thereon are treated as a unit. They are all taxable as real property under class one as fixed by the Constitution and the statutes of this State. The Appellate Courts in this State have so held in numerous cases. The St. Louis Court of Appeals in Mound City Constr. Co. vs. Macgurn, 97 Mo. App. Rep. 403, on this question, l.c. 408, 409, held as follows:

"It can not be denied (and it is conceded by the learned counsel for appellants) that the word 'property' often includes buildings thereon, according to the definition of that word by Worcester, Webster and Bouvier (Rawle's Ed.) and that the term 'real property' includes not merely

Honorable James M. Robertson:

land but whatever is permanently affixed thereto. The contention of appellants is that the term 'property' was not intended to possess so wide a meaning in the connection in which it appears in that part of the charter which must now be construed.

"We think, however, that the language of that section can not be properly severed from the terms of the General Revenue Act of 1872, above quoted, which was part of the law of Missouri when the charter of St. Louis of 1876 was adopted. For the purposes of general taxation the land and the buildings thereon are treated by our law as a unit. It matters not that by custom in the city of St. Louis the assessor separately mentions the value of the improvements. \* \* \*."

Recognizing the unit rule applied by the courts in the assessment of land and buildings or improvements thereon, for tax purposes, as real property, the Supreme Court of Missouri in *State ex rel. vs. Mission Free School, et al.*, 162 Mo. 332, l.c. 337, ruled as follows:

"\* \* \* 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

Honorable James M. Robertson:

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. \* \* \*."

61 C.J. 182 under the subject of "Taxation" states:

"Partially constructed buildings have been held taxable."

Footnote 73 to this text cites numerous cases decided by the courts of last resort in other jurisdictions in support of the text quoted. We shall here cite some of such cases so expressly holding:

The Maryland Court of Appeals, reported 68 Atl. 23, in *Hamburger vs. Mayor, et al.*, construing an ordinance of the City of Baltimore requiring the assessment for tax purposes of " \* \* \* all new improvements finished on or before the first day of October of every year; the said improvements to be construed as finished, when plastering and inside woodwork are completed." \* \* \*. In discussing the facts on which the court made its decision that while the plastering and inside woodwork of the building were not entirely completed on October 1st they were substantially completed then. The court holding such structure taxable although only partially completed, *l.c.* 25, said:

"\* \* \* We are of the opinion that the ordinance must be construed to mean that new

Honorable James M. Robertson:

improvements are to be assessed when the plastering and inside woodwork are substantially completed by October 1st, and that this record shows they were in this instance. There was a formal opening of the building on November 1, 1906, two months before the period began for which the taxes were to be paid, and on October 6th the appellants began the installation of the store fixtures, although the building was not then entirely completed. One hundred and fifty thousand dollars (the amount fixed by the court at which the property was to be assessed) had actually been expended by October 1st, and, while there was still some work to be done on the plastering and inside woodwork on and after that date, it was not of a character to justify us in holding that it was not completed within the meaning of the ordinance. \* \* \*."

A like tax case involving an uncompleted apartment house as subject to taxation as real property was decided by the Supreme Court of Louisiana. The partially completed structure was held taxable. The case, *Esto Real Estate Commission vs. Louisiana Tax Commission, et al.*, is reported in 129 So. 117, (170 La. 649). The court in holding the property taxable as real estate, l.c. 117, 118, said:

"\* \* \* There is no reason why the incomplete building should not have been assessed for taxes as a part of the real estate. \* \* \*."

"\* \* \* In the present case the building was under construction on the 1st day of January of the year in which it was assessed for taxes, and it was properly assessed at the value which it was supposed to have had on the 1st day of January of that year. \* \* \*."

*Valdez vs. City of Laredo* was before the Court of Civil Appeals of Texas, reported 29 S.W. (2d) 802, on the



Honorable James M. Robertson:

question of whether an opera house partially completed in November 1917 was liable to assessment for taxes as of January 1st following, as a completed structure, although Valdez asserted the building was not entirely completed by January 1st, 1917. The court holding the property liable to assessment for taxation in 1917, l.c. 802, said:

"\* \* \* The building in question was constructed as an 'opera house.' It was so far completed by the middle of November, 1916, as to constitute such building, for at that time appellant obtained a permit or license for its use as such, and in fact then began operating it as an opera house, and continuously thereafter operated it for that purpose. Therefore, even under appellant's own contention it constituted a completed structure, and was properly taxed."

These last above-noted cases were based upon statutes, and in one case an ordinance, of the same or similar import as are the provisions of Section 137.010, RSMo 1949, supra, to include as real property, among other elements of its tax status, buildings, structures, improvements and fixtures of whatever kind thereon. That section and the authorities we have cited, construing its terms, and terms of similar statutes in other states, bring such partially completed structures, as real estate, definitely, for tax purposes, into class one. We believe the terms of paragraph 2 of Section 137.010, supra, are sufficiently comprehensive in their scope to include partially completed structures as taxable, where the section defines "improvements and fixtures of whatever kind thereon", as items constituting real property.

As we view the constitutional and statutory provisions cited, and the decisions of the courts construing them in fixing classes of property and fixing the basis of assessment for tax purposes, referring to that part of said Section 3 of Article X quoted, we believe they mean and intend to mean that the only method fixed by law for determining the value of property is the valuation fixed by the county assessor in making the list of the property of the owner. Therefore, we believe and hold that, answering your first question, partially completed structures or other improvements on land must be and are subject to ad valorem assessment.

Honorable James M. Robertson:

Your second question is:

"(2) Assuming that such structures or other improvements are being built under contract with owner of the real property upon which situated, such contract contemplating the delivery of such structures or other improvements as a complete unit, should such assessment be in the name of the contractor or the owner of the real property?"

We do not find any case involving this direct question in the decisions of the Appellate Courts of this State. We refer you, however, in answering this question, to the Louisiana case, cited and quoted at page eight supra, where we were discussing the first question in the request. The decision in that case based upon like facts as are assumed to exist in your second question, is persuasive here, and supports our belief on the point, and it is, therefore, the opinion of this office, that partially constructed buildings should be assessed against and in the name of the owner of the land upon which such buildings or improvements are being constructed.

Your third question states:

"(3) In the event the owner of the real property purchases necessary materials for such structures or other improvements and merely contracts for the labor involved in construction, or hires such construction done through employees, should the assessment be against the owner of the real property?"

It is apparent, we believe, that when the owner of real property provides the materials necessary for the construction of a building or for other improvements and contracts for the labor involved in construction, or hires such construction done through employees, such materials as have not been used in the construction of the building and have not yet become a part of the building, and therefore, not a part of the realty, should be taxed against and in the name of the owner as personal property.

Honorable James M. Robertson:

Question No. 4 states:

"(4) Assuming the answer to No. (2) to be that such assessment should be against the contractor, should such structures or other improvements be assessed as real or personal property?"

We do not believe that it may be assumed, as stated in your second question that, as a basis for answering Question 4, the assessment should be against the contractor, as so held in our answer to Question 2. It is the opinion of this office, and we have held in answering your second question, citing the Louisiana case, supra, that partially completed buildings, structures and improvements shall be taxed as a unit with the real estate upon which such structures are being erected, against and in the name of the owner of the real estate. There is, therefore, no question of the taxation of personal property involved in this question.

#### CONCLUSION

Considering the premises, it is the opinion of this office that:

- 1) Partially completed buildings or other structures on real estate are subject to ad valorem assessment;
- 2) The assessment of the structures under Question No. 2 should be in the name of the owner of the land as real property;
- 3) The assessment of the materials under Question No. 3 should be against the owner as personal property, and,
- 4) The assessment of the structures or other improvements under construction under Question No. 4 should be assessed in the name of the owner as real property.

Honorable James M. Robertson:

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON  
Attorney General

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