

TAXATION:

Standing timber conveyed by a timber deed is real estate and may be separately assessed to the grantee, but such separate assessment is not mandatory.

REAL PROPERTY:

TIMBER INTERESTS:

July 7, 1961



Honorable Roy G. Cooper
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Mr. Cooper:

We have your request for an opinion concerning the assessment of standing timber as follows:

"In Madison County, Missouri, we have a great number of instances where the owner of land sells by deed or contract all the standing timber on his property and gives the purchaser usually one to five years to cut and remove the timber. The County Assessor desires to know whether or not he should assess the value of the timber sold by deed or contract to the purchaser as personal property, or whether the value thereof should remain with the owner of the land as real property assessment.

"For example: Last year Mine La Motte Corporation conveyed to Potosi Tie and Lumber Co., a corporation, by an instrument entitled, 'Timber Deed', all the standing timber on 700 acres of land for \$8,000.00. The purchaser is permitted five years to cut and remove this timber. Let us assume that as of January 1, 1961, that although part of the timber had been cut and severed from the real estate, that none owned by the Potosi Tie and Lumber Co., was physically within the boundaries of Madison County, and that the majority of this timber

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is still growing and has not been severed from the real estate. The only severance that could be argued to exist would be a severance by virtue of the delivery of a timber deed.

"My question is: Can the standing timber which has not been physically severed from the real estate be assessed as personal property to the purchaser of the timber under a timber deed or contract?"

By letter dated May 23, 1961, enclosing photostatic copies of the timber deed to Potosi Tie and Lumber Company, grantee, your request was limited to an opinion upon the assessment of the standing timber described in said instrument. The timber deed dated January 8, 1960, in consideration of \$19,000, grants, bargains, sells, conveys, and confirms to Potosi Tie and Lumber Company, its successors and assigns, all the standing timber 12 inches in diameter and larger measured one foot from the ground on the high side, then growing on the land described therein. The grantee was granted a period of five years in which to cut, make, saw, and remove said timber from said land. The deed was duly recorded.

Section 137.075, RSMo 1959, provides 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."

Section 137.010, RSMo 1959, contains the following definitions of real property and tangible personal property as such terms are used in the tax statutes:

"(1) 'Intangible personal property', for the purpose of taxation, shall include all property other than real property and tangible personal property, as defined by this section;

"(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;"

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A number of cases in Missouri have considered the question of whether standing timber is real or personal property, although none of such cases involved the assessment of taxes. In *Gibson v. St. Joseph Lead Company*, 232 Mo. App. 234, 102 SW2d 152, 1.c. 156, the court stated:

"The general holding of the courts in all jurisdictions is to the effect that standing trees are a part of the real estate as much so as the soil itself, and being a part of the real estate the title to same may be conveyed only in accord with the statute providing for the conveyance of real estate which is ordinarily by deed."

In *Mine LaMotte Lead & Smelting Co. v. White*, 106 Mo. App. 222, 80 SW 356, the rule was stated in this manner:

"The law in this state is that growing trees are part of the realty, and that the title to them lies in grant, and must be transferred by the formalities essential to a conveyance of land."

In *Potter v. Everett*, 40 Mo. App. 152, 1.c. 161, the court stated:

"But whatever may be the law elsewhere, it seems to be held in this state that growing trees standing on land are a part of the realty, and that title to them, while so standing, can be passed and acquired only by a statutory deed."

In *Cooley v. Kansas City P. & G.R.Co.*, 149 Mo. 487, 51 SW 101, 1.c. 103, it was said:

"The trees, while standing on the land are a part of it and the title to them could neither be sold nor reserved, except by statutory deed. (citing cases). The reservation was an interest in the land."

To the same effect is *Starks v. Garver Lumber Mfg. Co.*, 182 Mo. App. 241, 167 SW 1198.

In Deland v. Vanstone, 20 Mo. App. 297, the court made the following pertinent observation:

"We have not been able to find any case where timber standing upon land has been treated or considered as personal property."

It is therefore the opinion of this office that the standing timber conveyed by the deed in question is real estate, and may not be assessed as personal property.

The further question as to whether standing timber must be separately assessed is inherently involved in the question you have asked of this office.

The recent decision of our Supreme Court en banc in Dorman v. Minnich, 336 S.W. 2d 500, is relevant. That case involved mineral rights (which the court held came within the statutory definition of real estate), but in our view the ruling is equally applicable to the ownership of standing timber. There had been a severance of the ownership of the surface fee from the mineral estate, but neither the surface fee nor the mineral estate had been returned for assessment and collection of taxes, and the county assessor simply assessed the tract by legal description.

The pertinent rule of law as stated by the court at l.c. 506 is as follows:

"Further, we find no statute of this state that requires the separate assessment of the surface fee from the mineral estate where there has been a severance, nor should such separate assessment be required by the court where no such severed estates or interests have been returned by anyone for assessment. * * *"

The court did not rule the question of whether the two estates could have been separately taxed, stating, l.c. 506:

"* * *But whether the mineral estate may be separately taxed as real estate is not our problem since there was no separate assessment of either of the severed estates. The assessment here was by the legal description of the 20-acre tract and prima facie covered both estates. * * *"

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The court ruled that in the circumstances of the case, a tax deed conveyed both the surface and mineral rights in the property, stating that a review of the statutes with reference to the assessment and levy of taxes on real estate "clearly shows that the legislative plan for the assessment and collection of taxes is based upon surface descriptions of real estate."

It should be noted further that Section 137.170, RSMo 1959, expressly provides that each tract of land shall be chargeable with its own taxes, no matter who is the owner, or in whose name it is or was assessed. Nevertheless, although the Dorman case holds that there is no mandatory requirement that the respective estates be separately assessed, particularly where they have not been returned by the respective owners for assessment, it is our view that when the assessor is fully aware of the separate estates, it would be proper to make separate assessments. It is to be noted in this connection that on several occasions our Supreme Court has sustained the validity of separate assessments of leasehold interests in real estate. See State ex rel. Ziegenhein v. Mission Free School, 162 Mo. 332, 62 S.W. 998 and State ex rel. Benson v. Personnel Housing, Inc., 300 S.W. 2d 506.

CONCLUSION

It is therefore the opinion of this office:

1. Standing timber conveyed by a timber deed is real estate prior to its severance and may not be assessed as personal property.
2. Separate assessment of the timber interest to the grantee of the timber deed is proper.
3. Where the separate interests in the land have not been returned by the respective owners, separate assessments are not required.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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