

ASSESSMENT OF TAXATION: Improvements on leased land normally to  
PROPERTY: be assessed against the owner thereof.  
LANDLORD: Lessee's leasehold interest may be assessed  
TENANT: separately as realty.

August 14, 1961



Honorable Clarence H. Overbay, Jr.  
Prosecuting Attorney  
Dunklin County  
Kennett, Missouri

Dear Sir:

This is in answer to your request for an opinion, which request reads as follows:

"The Dunklin County Court has asked me to write you and ask the following question: To whom are the improvements upon leased land assessed? In other words is the lessor or lessee assessed for any improvements placed upon the land? They would also like to know whether the improvements are to be classified as real or personal property.

"The County Court was following the assessor's manual 1958 on page 28, however they are not quite sure this is the correct interpretation."

The general statutory rule to be followed in the assessment of property for taxation is set out in Section 137.075, RSMo 1959, 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."

Under this section, the tax liability for improvements on leased land attaches to the owner of such improvements. If title to improvements is held by the lessee, he should be assessed.

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This principle was recognized by the Supreme Court in State ex rel. Ziegenhein v. Mission Free School, 62 SW 998. There, one Thompson had constructed a building on land leased from a charitable corporation. The lease clearly stated that the building should be the property of Thompson. A judgment against Thompson for taxes on the building was reversed for a failure to make a proper assessment, but the court defined the tax liability as follows (l.c. 999):

" \* \* \* It is thus evident that, as between the said Mission School and said Thompson, Thompson is the owner of the leasehold and building, and is liable for the taxes thereon, whether it is real estate or personal property; but as said in State v. Thompson, 149 Mo. 445, 51 S.W. 98, before he can be compelled to respond for said taxes his estate in said leasehold and building must first be assessed against him, as the owner thereof.  
\* \* \*"

Thompson contended that his building and leasehold interest could not be assessed separately from the land, which was tax-exempt. The court answered, saying (l.c. 999):

" \* \* \* 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 v. Board, 93 N.Y. 308; People v. Commissioners, 82 N.Y. 459; Russell v. City of New Haven, 51 Conn. 259; Smith v. Mayor, etc. of City of New York, 68 N.Y. 552.  
\* \* \*"

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This case points up another proposition to be considered in assessing leased property, that is, that a lessee's interest in leased improvements is also subject to taxation, even though title to the property is in the lessor. Section 137.010(2), RSMo 1959, states 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."

The rule is stated in 51 American Jurisprudence, Section 435, page 452, that:

" \* \* \* 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."

This principle has been recognized in Missouri in State ex rel. Ziegenhein v. Mission Free School, supra, and, more recently, with respect to leased buildings, in State ex rel. Benson v. Personnel Housing, 300 SW2d 506.

In the latter case the defendant, a private housing corporation, had leased land from the federal government for the construction of a housing development. The lease, as amended, provided for a 75 year term with title to the buildings constructed to be held by the lessor, the government. It also provided that the defendant was to pay all taxes. The Supreme Court first held

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that the buildings were not exempt because title was held by the government. The court then went on to answer defendant's contention that there is no statutory authorization for the assessment against defendant of its leasehold interest in the buildings, as follows (300 SW2d 1.c. 508-509):

"Under our Constitution of 1945, all property in this State must be taxed unless expressly exempt therefrom. See Art. 10, Sec. 6, V.A.M.S. Note the concluding provision of this section which reads that 'All laws exempting from taxation property other than the property enumerated in this article, shall be void.' See State ex rel. Ziegenhein v. Mission Free School, 162 Mo. 332, 62 S.W. 998, loc. cit. 999(1). Note also the provisions of Art. 10, Sec. 3, which states that 'Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.' Section 137.010 RSMo 1949, V.A.M.S., classifies property for the purposes of taxation as follows:

'(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;

'(3) "Tangible personal property" includes every tangible thing being the subject of ownership or part ownership whether animate or inanimate, other than money, and not forming part or parcel of real property as herein defined.'

"Plaintiff and defendant in their briefs have cited and reviewed many cases in support of their positions. Many of these are of little

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value in deciding this case because the Housing Projects, such as we are dealing with in this case, were designed in recent years and the manner of taxation of such property is new. Let us consider this case from a common sense and practical viewpoint. There are 120 housing units for which the cost of construction was \$1,134,472. The gross yearly rent amounts to over \$118,000. The U. S. Government owns the land upon which the buildings are located. The defendant corporation, under a lease with the Army, constructed the buildings. As stated by the U. S. Supreme Court, 351 U.S. loc. cit. 261, 76 S. Ct. loc. cit. 819, 100 L. Ed. loc. cit. 1160, 'The lease is for 75 years; the buildings and improvements have an estimated useful life of 35 years. The enjoyment of the entire worth of the buildings and improvements will therefore be petitioner's.' In the case before us, the defendant is in the same position as the petitioner mentioned in that case. The Congress has given its consent that the interest of the lessee may be taxed by the local authorities. The defendant-lessee has agreed, in its contract with the Army, to pay all the taxes that may be assessed. Would it not be absurd to say that the buildings and improvements in question should not or cannot be taxed? We hold that under the constitutional and statutory provisions, supra, the interest of the defendant in the property is subject to taxation."

While the court in that case held that the defendant, though having but a leasehold interest, should be assessed for the full value of the buildings, it appears that this result was reached due to the fact that the term of the lease was twice as long as the estimated useful life of the buildings. To this extent, the Personnel Housing case should be limited to its facts. It does, however, stand for the proposition that a lessee's interest in leased improvements is subject to taxation separately from the reversionary interest of the lessor. As a practical matter, this situation most commonly arises when exempt property is leased to a non-exempt party.

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With respect to your question as to the manner in which such improvements are to be assessed, Section 137.010(2), supra, includes improvements in the definition of "real property" for purposes of taxation. Also, in State ex rel. Benson v. Personnel Housing, supra, the Supreme Court held that a leasehold interest was properly assessed as real estate, saying (300 SW2d 1.c. 510-511):

"We hold that defendant's interest in the property in question is in fact valuable property and that it not only may be but should be taxed. We also hold that the assessment of the defendant's interest as real estate was a legal assessment. It was so classified by Section 137.010(2), supra. \* \* \*"

#### CONCLUSION

From the foregoing it can be concluded that, generally, improvements on leased land are to be assessed against the owner of such improvements, be he lessor or lessee. However, the principle is well established that the lessee's interest may be assessed separately from the lessor's reversionary interest. In either case, the property shall be assessed as realty.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

JJM:ml