TAXATION:
Buildings on Leased
Real estate:

Buildings and improvements on leased lands should be taxed as real estate.

February 4, 1942

2-5

FILE
47

Hon. O. A. Kamp
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Mr. Kamp:

This is in reply to your letter of recent date wherein you submit a question upon the following statement of facts:

"I have a matter up with the County Court of this county relative to delinquent taxes, on buildings which are situated on leased ground belonging to the Wabash Railroad Company.

"The situation is as follows: For many years Blattner Brothers Produce Company of Wellsville, Missouri, owned a large brick building and a large frame building, which they erected as their poultry plant in Wellsville, Mo., which was erected on Wabash Railroad ground, under the provisions of a lease which they had with the railroad company. The buildings have always heretofore, been assessed to the owner of the buildings, as personal property and listed on the personal tax book, and the taxes thereon paid by Blattner Brothers, and the taxes on the lots and ground paid by the railroad company.

"However, the situation changed in 1938, when Blattner Brothers sold the buildings to a party who lived and has always lived in Macon County, Missouri. The property, as I have stated, shows delinquent on the personal tax book of this county for the years, 1938, 1939, 1940 and 1941, and the owner who lives in Macon County, refuses to pay same.

"The question on which I would like to have your opinion, is whether this brick building

> and frame building, for taxation purposes, should be considered as real property, and set up on the real estate tax book and the tax collected from the non-resident owner as real estate tax, or whether this is personal property, and since the owner is a non-resident of this county would not be liable for personal tax in this county.
>
> "My purpose is, that if this is real estate and taxable as such, then we could assess same for the back years, under the provisions of Section 11000, R. S. 1939, and collect the taxes."

From our research on this question, I think that the answer to your question will depend entirely on the definition of the term "real estate". Under some circumstances, the improvements on leased premises may not be considered as real estate. Referring to our tax statute for a definition of the term "real estate", I find that under section 11211 R.S. Mo., 1939, the term "real property" etc., is defined 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 stemmories, 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."

This definition of the term "real property" or "real estate", evidentally was intended to make it all inclusive, in other words all rights and privileges belonging or in anywise pertaining to such real estate are included in the term "real estate" or "real property". The parties who own these buildings, which are situated on the railroad property certainly would come within that class, because they have certain leasehold rights. Your letter does not indicate just what those rights are but we think if they have any leasehold rights, such rights may be taxed as an interest in the real estate.

In our research in this question, we find that it has been before our Supreme Court in the case of State ex rel. v. Mission Free School, 162 Mo. 332, 337. In that case the Mission Free School owned certain lands which were exempt from taxes. It leased a portion of these lands to one Thompson, who erected thereon a building worth forty thousand dollars ($40,000). The taxing authorities assessed this land and the building to the Mission Free School. The court in that case held that the assessment should have been made against Thompson, as his leasehold interest might appear. In that case in discussing the question which is similarily here involved, the court said: l. c. 337.

> "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. As it is obvious he has not been assessed at all, no judgment can be rendered against him in the present action, but the statute supplies the remedy in such cases."

We also find the rule stated in 61 C. J. page 187 paragraph 150:

> "Except where the rule is changed or modified by statute or agreement, buildings or other improvements constructed upon the land

> of another become part of the freehold for purposes of taxation, may not be taxed to the builder either as realty or as personalty, and become taxable to the landowner as realty, unless the land itself is exempt, in which case the improvements share the exemption as part of the land. However, several interests may be owned by different persons in the same premises and be separately taxable to their respective owners. Improvements may be separately taxable to one other than the landowner where constructed pursuant to an agreement creating an ownership in the improvements separate from the fee, as under a lease providing for ultimate purchase of a building by the lessor, or reserving right of removal by the lessee, or where the fee is subject to easements and the structures sought to be assessed are appurtenant to such easements and not to the fee, or where applicable statutes provide for taxation of specified improvements irrespective of the fee ownership; or under statutes providing for assessment of realty to the person in possession thereof."

The Mission Free School case supra, is the only case which we find in this State, which is in point.

CONCLUSION.

Therefore, it is the opinion of this department that the interest of a lessee in real estate should be taxed as real estate against the lessee.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

VANE C. THURLO
(Acting) Attorney General

TWB:AW