TAXATION: Leasehold interests, if of any value, assessable.

November 22, 1935. 11-23

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Hon. Andrew J. Murphy
Commissioner
State Tax Commission
Jefferson City, Missouri

Dear Mr. Murphy:

This is to acknowledge your letter as follows:

"Enclosed please find an inquiry from the St. Louis Union Trust Company as to the assessability of certain kinds of leases.

"As the questions asked involved an interpretation of our assessment laws, we respectfully ask for an opinion on these questions.

"This Commission has been unable to find any definite law on the subject of leases; neither have we been able to locate a court decision covering the matter. It is our opinion, however, that some leases are subject to assessment.

"It is also apparent that some leases have a value. As for instance, the third example in this inquiry under question, where a purchaser pays a large sum of money for a lease.

"The payment of the considerable sum of money for a lease definitely establishes the fact that said lease has a value, and if it has a value it is assessable in our opinion.

"If some leases are construed to have a value, then the question will arise as to the proper method of determining such value for assessment.

"It is our opinion that the only value that a lease can have, under example No. 1, is the excess payments provided for in the lease, above a fair rental on the property. Or in example No. 2, the amount the rental, provided for in the lease, is under a fair return on the value of the property leased.

"In example No. 3, the initial value of the lease would be the amount paid for the lease; decreased each year thereafter by the shortening of the unexpired time to run, and further lessened, or increased, by any change in the value of the property.

"In the first two examples the assessable value of the lease would be determined by taking the annual profits under the lease and capitalizing same at a fair rate of return, say 6, 7 or 8%, and valuing the lease at the capitalized value, thus obtained.

"As for example, if property on which a fair return would be $1,000, per year, is leased for $2,000, per year, the value of the lease would be the $1,000, excess earning, capitalized at, say 8%, or $12,500.

"Our answer under all three questions, 1 (a), 2 (a) and 3 (a) would be 'yes'. Our answer to 1(b), 2(b) and 3(b) would be the estimated value or the capitalized earning value."

The sole question presented in your inquiry for our opinion deals with the legal proposition as to whether

or not a leasehold interest may be assessed for taxation purposes. If a leasehold is assessable the mode or manner that the "value of said property" is determined is purely administrative and arrived at by calculation. Therefore, in this opinion, we direct our conclusion to the narrow proposition of whether or not a leasehold is taxable, as the method exmployed in arriving at its value would be determined by the Tax Commission.

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 9746, R. S. Mo. 1929, provides as follows:

> "Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

The court in State ex rel. v. Haphe, 31 S. W. (2d) 788, l. c. 790, said the following concerning Section 9746, supra:

> "From the foregoing it appears that every person owning or holding property on the 1st day of June is liable for the taxes thereon for the ensuing year, that it is the duty of every person to list with the assessor all taxable property owned by him, or under his care, charge, or management, and that personal taxes constitute a debt against the person assessed with such taxes, the person named in the tax bill. If

> the person who holds or has under his care, charge, and management personal property is liable for the taxes thereon, such taxes may be assessed against him or in his name; and, when so assessed, they constitute a personal debt for which a personal judgment against him may be recovered. Whether the care, charge, and management of personal property devolves upon one as trustee, administrator, executor, or curator, or as agent of a nonresident principal, is of no consequence; he is made liable for taxes on the property simply because he has charge and control of it, and not because of the capacity in which he holds it."

Corpus Juris, Vol. 35, page 1141, Paragraph 384, defines "leasehold" as follows:

> "A 'leasehold' has been defined as an estate in realty held under a lease, and as the right to use property upon which a lease is held for the purposes of the lease. It is intangible property, which the law recognizes as having value, but which is incorporeal in its nature. It is not the property upon which the lease is held, nor the property used in its exercise, nor the property produced under the lease. The leasehold is an entity in itself distinguishable from the fee out of which it issues. A leasehold interest is not necessarily included within the meaning of the term 'title.' While a leasehold estate is an interest in or concerning lands, it is generally regarded as a chattel real."

If as stated by Corpus Juris in the paragraph above quoted, that a leasehold "is intangible property, which the law recognizes as having value," then, unless the Constitution of Missouri and statutes exempt said leasehold from

taxation it necessarily follows that a leasehold having value would be assessable for taxation, in view of the court's decision in State ex rel. v. Gehner, 8 S. W. (2d) 1057, l. c. 1065, wherein the Supreme Court of Missouri, en Banc, after reviewing the many tax statutes, said the following:

> "Thus we have statutes assessing every form of property which can be owned by a corporation and which is constitutionally taxable in this state." (Underscoring ours)

Section 9743, R. S. Mo. 1929, provides for the exemptions of property from taxation and nothing therein is found which exempts a leasehold.

We have been unable to find a decision of the Missouri Courts to the effect that a leasehold is or is not assessable. However, in State ex rel. v. Springfield Convention Hall Association, 301 Mo. 663, the court, while specifically stating that it was not passing on the question of whether a leasehold was assessable, took occasion to point out that the assessor did not attempt to assess the leasehold interest, and further remarked that when a case involving the question as to whether a leasehold interest could be assessed was properly placed before it, would be the time for it to decide the issue. We quote from the courts opinion, page 672 et seq.:

> "The tax bill introduced in evidence shows that the assessment (which was for $21,250) was made against the 'building only.' There was no attempt to assess the leasehold estate of the defendant. * * * * * * * * * * * * * * In simple terms the assessment was against the 'building only' as the property of the defendant. It will be time enough for us to pass upon the question as to whether or not the leasehold estate is taxable, under the law, when a case of that kind reaches us.
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> "The defendant says it does not own this building, and that the taxes against it should not be charged to or collected from defendant. The City of Springfield is not sued, and for that reason the question of exemptions from taxation is not in this case. The force of appellant's brief is spent upon questions not in the case at all. In such brief much is said of tax exemptions. This is not in the case. Something is said in both briefs upon the question as to whether or not a leasehold is taxable. This is not in the case. No leasehold has either been assessed or taxed so far as we are advised. * * * * * * * * * * *
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> "* * * The property itself should have been assessed (if subject to assessment and taxation) to the owner, the city of Springfield. The leasehold estate (if subject to assessment and taxation at all) should have been assessed to defendant, unless the terms of the lease precludes this view. The assessment here is not upon the leasehold and hence not upon anything owned by the defendant. This suffices for an affirmance of the judgment."

We can only speculate as to what the court would have said if the leasehold in that case would have been assessed instead of the building. While the court's remarks concerning the leasehold interest in the above case are purely obiter dictum, yet, to our mind, it strongly indicates that the court was suggesting to the tax officials that leasehold interests were proper subjects of assessment when assessed as a leasehold.

From the above and foregoing it is our opinion that a leasehold is intangible property which may have a value and if it has a value such should be assessed to the owner. The assessment against the owner should be on the leasehold. If a leasehold has no value, then, of course, it would not be assessable as assessments only are placed against property having a value. We are of the opinion that the value of a leasehold to a lessee would be the difference between what is paid under the lease to what a fair rental of the property would be.

Having concluded that a leasehold interest, if of value, should be assessed for taxation purposes, it follows that the determining of the value of any lease is a question of fact and purely administrative. Therefore, we do not in this opinion write on the method of arriving at the true value of any lease. It suffices to say, however, that your conclusion concerning the three illustrations given in your letter is correct. In other words, we adopt this paragraph contained in your letter: "Our answer under all three questions, 1(a), 2(a) and 3(a) would be 'yes'. Our answer to 1(b), 2(b) and 3(b) would be the estimated value or the capitalized earning value."

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

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