

TAXATION: Buildings erected on leased land shall be assessed as real estate at the situs of the property.

April 19th, 1939

Mr. Clarence Evans, Chairman,
State Tax Commission of Missouri,
Jefferson City, Missouri.

Dear Mr. Evans:

We wish to acknowledge your request for an opinion under date of April 12th, as follows:

"We are writing you for an opinion concerning the following matter:

Should a building erected on leased land be assessed as real estate at the situs of the property or as personal property at the domicile of the owner of the building?

There are considerable buildings of like nature along various lakes and streams owned by residents of cities and we have several requests concerning same.

As the time is drawing near for our general Assessors' meeting and our visits to township organization counties, we will appreciate a reply at your early convenience."



Section 9742, Revised Statutes of Missouri, 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 9977 of Article 11, Chapter 59, Revised Statutes of Missouri, 1929, which relates to taxes and revenue provides in part 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.* * * * *"

Section 9779, Revised Statutes of Missouri, 1929, provides

"Real estate shall be assessed at the assessment which shall commence on the first day of June, 1893, and shall be required to be assessed every year thereafter."

Section 9780, Revised Statutes of Missouri, 1929, reads in part as follows:

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"In all counties, except in the city of St. Louis, the assessor's books shall be arranged or divided into two parts only, part first to be known and denominated 'the land list,' which shall contain all lands by him assessed, arranged, as nearly as may be, in numerical order of range, township, section and parts of sections, lots or parcels, by the least legal subdivisions, when sections are so divided into parts, lots or parcels; and all lots or parcels of land in cities, towns and villages shall be arranged according to the number of block, lot or parcel; and all lands designated by number, surveys or parts of surveys, and all lands that can be described by numerical orders, shall be placed in the 'land list,' with the owner's name****"

The only Missouri case we have been able to find on the subject is that decided by the Supreme Court in the case of State ex rel. Ziegenhein v. Mission Free School, 162 Mo. 332, 62 S. W. 998, wherein the right to tax as realty a building which was owned by a person other than the one who owned the land was upheld. The court said:

"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 * * * * *"

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."

Although the court pointed out that it was not passing on the question whether the interest of the lessee under the lease was real or personal property, yet it said (l. c. 999):

"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 4907, 4916, Rev. St. 1889), little doubt can exist that Thompson's interest in this realty and building should be assessed as real estate."

61 C. J. page 518, provides that:

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"* * * * * real property and interest therein, including incorporeal hereditaments, usually should be taxed in the taxing district unit where actually situated, and not elsewhere, * * * * *"

Taking the above statute and case into consideration, we find that all real property must be assessed and taxed (sections 9742 and 9779), in the name of the owner (section 9780). Real property is defined as land with all buildings of whatsoever kind thereon (section 9977), and taxable at the situs of the property (61 C. J. 518).

CONCLUSION

From the foregoing we are of the opinion that buildings erected on leased land shall be assessed as real estate at the situs of the property.

Respectfully submitted,

APPROVED:

MAX WASSERMAN,
Assistant Attorney General.

HARRY H. KAY
(Acting) Attorney General

LW:RV