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TAXATION

STATE TAXATION OF LEASEHOLD INTEREST IN PROPERTY OWNED BY FEDERAL GOVERNMENT.

Recent disapproval of property by the federal government, on lease and conditional sales terms, has sharply focused the problems inherent in the broad principle that federally owned property is exempt from state taxation.¹ Included in the question whether a state may tax a leasehold interest possessed by a person, otherwise not tax exempt, when the lessor is the United States. The solution to the above is dependent upon the answer to the following questions:

- a. May a leasehold interest in tax exempt property be separated from the interest of the owner in fee for tax purposes?
- b. Where the federal government owns the reversion, would such a tax be prohibited by the implied immunity of the federal government from state taxation?

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2. 66 N.E.(2d) 134 (Ind. App. 1946).
 3. *State v. Harrison*, 113 Ind. 434, 16 N.E. 384 (1887), 3 Am. St. Rep. 663 (1888).
 4. *State v. Circuit Court*, 214 Ind. 323, 15 N.E.(2d) 624 (1938); *Bunnell v. Board*, 124 Ind. 1, 24 N.E. 370 (1889); *Platter v. Board*, 103 Ind. 360, 2 N.E. 544 (1885); Ind. Stat. Ann. (Burns, 1933) § 65-106.
 5. The proper procedure would be for the claimant to the office to file an information in the nature of quo warranto as set forth in Ind. Stat. Ann. (Burns, 1933) §§ 3-2001 to 3-2014, and described in *McGuirk v. State*, 201 Ind. 650, 169 N.E. 521 (1930).
 6. Illustrative constitutional provisions are: Minn. Const. Art VII, § 2; Nebr. Const. Art. III, § 23; R. I. Const. Art. II, § 4 and Art. IX, § 1. The statutes usually disqualify a general class of persons, and the insane are included in that class by court interpretation: e.g., Ky. Rev. Stat. (1942) § 446.010 (27); Mass. G. L. 1932, c. 211, § 4.
 7. *In re Killeen*, 121 Misc. 482, 201 N.Y. Supp. 209 (Sup. Ct. 1923); *People v. Robb*, 33 N. Y. S. R. 808, 11 N.Y. Supp. 383 (Sup. Ct. 1890).
 1. See Rice, "Problems of Intergovernmental Tax Immunity Arising out of Federal Contract Termination and Property Disposal" (1945) 54 Yale L. J. 665.

Every property owner holds his interest subject to taxation by the state.² Although generally there can be but one assessment on an entire estate in realty, where the reversion is exempt the leasehold may be separately assessed.³ Indiana specifically provides that such leasehold interests shall be taxed as real property.⁴

A state cannot directly tax property or the operations of an instrumentality of the federal government.⁵ Although application of this concept has not been without difficulty, the trend is to restrict the scope of implied immunity.⁶ For example, a state formerly could not tax purchasers, under conditional sales contract with the federal government, until title had been transferred from the federal government.⁷ However, in recent cases it has been held that a state may tax the vendee's equitable or beneficial interest while the legal title was still in the United States.⁸ The fact that public property may be sold for more if exempted from taxation for a time has not been considered sufficient cause to grant immunity.⁹ The tax imposed on the beneficial interest,

2. "Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right." 1 Cooley, "Taxation" (4th ed. 1924) §71. See *Savings and Loan Society v. Multnomah County*, 169 U.S. 421, 427 (1898).
3. *Hammond Lumber Co. v. Los Angeles*, 12 Cal. App. (2d) 277, 55 P. (2d) 891 (1936); *Chicago v. University of Chicago*, 302 Ill. 455, 134 N.E. 723 (1922), 23 A.L.R. 244, 248 (1923); *Trimble v. Seattle*, 64 Wash. 102, 116 Pac. 647 (1911), aff'd, 231 U.S. 683 (1914); accord, *Greene Line Terminal Co. v. Martin*, 122 W.Va. 483, 10 S.E. (2d) 901 (1940).
4. Ind. Acts 1919, c. 59, §33, Ind. Stat. Ann. (Burns, 1933) §64-513; Ops. Att'y Gen., Ind. (1935) 273; Ops. Att'y Gen., Ind. (1938) 150 and 269; Ops. Att'y Gen., Ind. (1941) 171; Ops. Att'y Gen., Ind. (1942) 64. For an application of the same principle to a life estate, see *Mehne v. Dillon*, 203 Ind. 346, 165 N.E. 908 (1932).
5. *McCulloch v. Maryland*, 4 Wheat. 316 (U.S. 1819); *U.S. v. Allegheny County*, 322 U.S. 174 (1944).
6. Compare *Smith v. Davis*, 323 U.S. 111 (1944), *Oklahoma Tax Commission v. U.S.*, 319 U.S. 598 (1943), *Graves v. O'Keefe*, 306 U.S. 466 (1939), *Allen v. Regents*, 304 U.S. 439 (1938), and *James v. Dravo*, 302 U.S. 134 (1937), with *Rogers v. Graves*, 299 U.S. 401 (1937), *Panhandle Oil Co. v. Knox*, 277 U.S. 218 (1928), *Childers v. Beaver*, 270 U.S. 555 (1926). But cf. *U.S. v. Allegheny County*, 322 U.S. 174 (1944); *Mayo v. U.S.*, 319 U.S. 441 (1943). See Powell, "The Waning of Intergovernmental Tax Immunities" (1945) 58 Harv. L. Rev. 631; Powell, "The Remnant of Intergovernmental Tax Immunities" (1945) 58 Harv. L. Rev. 757.
7. *Irwin v. Wright*, 258 U.S. 219 (1922); *Northern Pacific Ry. v. Traill County*, 115 U.S. 600 (1885); *Lincoln County v. Pacific Spruce Corp.*, 26 F.(2d) 435 (C.C.A. 9th, 1928); *U.S. v. Milwaukee*, 100 Fed. 828 (E.D.Wisc., 1893).
8. *S.R.A. Inc. v. Minnesota*, 66 Sup. Ct. 749 (1946); *Ken Realty Corp. v. Johnson*, 138 F.(2d) 809 (C.C.A. 5th, 1943); *Bancroft Investment Corp v. Jacksonville*, 27 So.(2d) 162 (Fla. 1946).
9. "An indirect and remote advantage to government, such as the probability that the services of contractors may be gotten by government for less if their pay is untaxed, or that public property may be sold for more if exempted for a time, will not justify the extension of the immunity to the contractors or purchaser." Ken

under a conditional sales contract, is based on the entire value of such interest.¹⁰ Similarly, where the leasehold is separated from the reversion, assessment is on the entire value of the lessee's interest.¹¹ In neither case does the assessment affect or include any interest of the owner of the fee.¹²

In the absence of specific exemption by federal statute, no greater objection could be raised to state taxation of a leasehold interest in property, held in fee by the federal government, than to state taxation of the equitable interest of a purchaser, under a conditional sales contract with the federal government. Therefore, it is reasonable to assume that a state may tax a leasehold interest in property held in fee by the federal government.

Realty Co. v. Johnson, 138 F.(2d) 809, 810 (C.C.A. 5th, 1943); *S.R.A. Inc. v. Minnesota*, 66 Sup. Ct. 749, 756 (1946); accord, *Alabama v. King and Boozer*, 314 U.S. 1(1941), 140 A.L.R. 615, 621 (1942).

10. "The whole equitable ownership is in the petitioner and the value of that ownership may be ascertained on the basis of the full value of the land." *S.R.A. Inc. v. Minnesota*, 66 Sup. Ct. 749, 756 and 757 (1946); accord, *Bancroft Investment Corp. v. Jacksonville*, 27 So. (2d) 162 (Fla., 1946).
11. *Hammond Lumber Co. v. Los Angeles*, 12 Cal. App. (2d) 473, 55 P.(2d) 891 (1936); *Chicago v. University of Chicago*, 302 Ill. 455, 134 N.E. 723 (1922), 23 A.L.R. 244, 248 (1923); accord, *U.S. v. Erie County*, 31 F. Supp. 57 (W.D.N.Y. 1939).
12. "No deduction need be made for the interest of the government since that interest is for security purposes only and not beneficial in nature." *S.R.A. Inc. v. Minnesota*, 66 Sup. Ct. 749, 756 (1946) (conditional sale); "The unpaid money measures the interest of the United States, which can neither be assessed nor sold." *Ken Realty Corp. v. Johnson*, 138 F.(2d) 809, 812 (C.C.A. 5th, 1943) (conditional sale); "The assessment was against the leasehold estates alone, and not against the reversion, which was exempt, and the assessment was limited to the leasehold and improvements." *Chicago v. University of Chicago*, 302 Ill. 455, 460, 134 N.E. 723, 725 (1922), 23 A.L.R. 244, 248 (1923); *Hammond Lumber Co. v. Los Angeles*, 12 Cal. App. (2d) 473, 55 P.(2d) 891 (1936) (leasehold).