

MAINE STATE LEGISLATURE

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August 4, 1972

George West, Deputy Attorney General

Attorney General

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Bureau of Taxation

Response to request for opinion dated July 26, 1972 regarding taxability of privately-owned building constructed on state land.

You have asked whether or not a building, with regards to which the state had entered into a long-term "lease-purchase" or "installment-sale" agreement with the private owners and which had been constructed by a private developer on state-owned land leased to him, would be subject to local property taxes. The answer is yes, it would.

Title 36 M.R.S.A. §551 defines what is considered real estate for the purpose of taxation. "Real estate, for the purposes of taxation, shall include ...; interests and improvements in land, the fee of which is in the State; interests by contract or otherwise in real estate exempt from taxation Buildings on leased land or on land not owned by the owner of the buildings shall be considered real estate for purposes of taxation and shall be taxed in the place where said land is located."

An opinion on whether an interest in a building which is less than a fee interest is nevertheless subject to taxation as real estate has been expressed by this office in 1963-64 Report of the Attorney General 184 regarding a situation whereby the grantor of land and buildings to the State retained for himself a life interest in the buildings. Citing what is now 36 M.R.S.A. §551, then Assistant Attorney General Richard Cohen concluded that the interest retained by the grantor was subject to property taxation.

The Supreme Judicial Court in Maine has also clearly indicated that for purposes of taxation, land and the buildings thereon are two separate and distinct entities. "For the purposes of taxation each is separate and distinct from the other. The exemption of the land from taxation does not imply the exemption of the building erected thereon, any more than the exemption of the building implies the exemption of the land." Portland, Saco & Portsmouth R. R. Co. v. City of Saco, 60 Me. 196, 198, 199 (1872).

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In another case, land owned by a company was leased to the owner of the buildings situated thereon. One of the leases specified that the building was to become the property of the lessor at the end of the lease, a situation presumably similar to the arrangement contemplated by this question. Some of the land owned by the company was exempt from taxation. Taxes for the buildings were assessed against the company, the lessor, and on appeal the Supreme Court decided that the buildings were to be taxed to their owners, the lessees.

In the case, Portland Terminal Co. v. Hinds, 141 Me. 68 39 A2d 5, 154 ALR 1302 (1944), the Court discussed various "rules" followed by different states. The Massachusetts "rule", followed by Pennsylvania, is that even an agreement between the owner of buildings and the owner of the land would make no difference as to how the two should be taxed; the buildings and the land are taxable as a unit to the landowner. The Maine Court, however, decided to follow the New York "rule" that several interests may be owned by different persons and are to be taxed to the respective owners. "We believe that the buildings such as are under consideration constitute a property right distinct from that of the landowner." Portland, op. cit., p. 77.

The Court made it clear that under the Maine law the buildings were to be taxed as real estate and assessed against their owners. "The building was still a property right and must be taxed to the owner in the absence of legislative enactment otherwise There is nothing ... to indicate any intention upon the part of the Legislature to affect the nature of the building owner's interest other than to make certain that, for the purposes of taxation, it be considered real estate." Portland, op. cit., pp. 77-78.

The Court stated that it made no difference whether the buildings were located on land exempt from taxation or not. "We make no distinction between the buildings located within the railroad right of way of the appellant and those located outside thereof. In either case, the building owner has a property right taxable to him as owner." Portland, op. cit., p. 78

The Court further made it clear that the fact that one of the buildings was to become the property of the lessor of the land at the end of the lease made no difference as to its taxability. "Nor do we make a distinction in regard to that building located on the land, the lease of which provided that, at the termination of the lease, the building should become the property of the lessor. During the term of the lease, the lessee was the owner of the building and to him it was taxable." Ibid.

Thus, Maine decisions have indicated that the owner of land and the owner of buildings thereon may each be assessed for real estate taxes as the owner of their respective interests. It makes

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no difference as to the taxability of the buildings that they may rest on land that is tax exempt, and it makes no difference as to an assessment against the owner of the buildings that the buildings are to be turned over to the owner of the land at the end of the lease. It would appear, then, that a building constructed by a private developer on state-owned land leased to him, with regards to which the state had entered into a long-term "lease-purchase" or "installment-sale" agreement with the private owners, would be subject to local property taxes.

Assistant Attorney General

JBS:gr