Opinion No. 63-11

March 1, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Emilio Garcia Union County Tax Assessor P. O. Box 457 Clayton, New Mexico

QUESTION

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May a County Assessor assess separately the proportionate or fractional interest of a person owning an undivided interest in property?

CONCLUSION

See analysis.

OPINION

*{*27}* **ANALYSIS**

The problem presented here for determination has been dealt with in part by a number of New Mexico Supreme Court decisions.

In **Sims v. Vosburg** (1939), 43 N.M. 255, 91 P. 2d 434, the Court held that where there is a severance of the mineral rights from the remainder of the fee by virtue of a conveyance to different owners, the mineral estate is to be separately assessed from the remainder of the fee.

The Court in **Kaye v. Cooper Grocery Company** (1957) 63 N.M. 36, 312 P. 2d 798, reaffirmed the holding in the **Sims** case and went one step further declaring that even where there is only a "partial severance" of the mineral estate from the remainder of the fee there must be a separate assessment of the mineral estate as an entire unit. In this case the court concluded however, that although the mineral estate should *{*28}* be separately assessed from the remainder of the fee the undivided fractional interests in each estate could not be separately assessed. The court stated in this case:

"Our statutes, Sec. 76-411, 1941 Compilation, (72-5-11 N.M.S.A., 1953 Compilation) provided that the taxpayer may pay taxes on any part of the land, but we are of the opinion this means all of the tax due on a particular acreage or footage, not on an undivided interest. **If co-tenants in fee lands could pay the taxes due on their proportionate or fractional interests, an intolerable situation would develop and the state would find itself with liens on small fractional interests that could not be sold for the taxes due.** In addition, it is the duty of all co-tenants to pay the entire tax

due on the land in which they have an interest, with the right to recovery against their co-tenants for their proportionate part." (Emphasis supplied)

Under the above quoted portions of the **Kaye** case it is evident that the court found no statutory authority for an assessor to separately assess fractional undivided interests.

In its consideration of an analogous problem the court in **Haden v. Eaves** (1950) 55 N.M. 40, 226 P. 2d 457, searched the New Mexico tax statutes and noted no basis for permitting the separate assessment of undivided interests in property. The court held in part:

"There is a split of authority as to whether a separate assessment can be levied against fractional undivided interests. On the one hand there is the following view expressed in Hager v. Stakes, 116 Tex. 453, 294 S.W. 835, 842:

'Real estate is ordinarily taxed as a unit; yet, where there have been severances by conveyance, exception, or reservation, so that one portion of the realty belongs to one person and other portions to other, each owner should pay taxes under proper assessment against him of the portion owned by him. The fact that a portion may consist of minerals or of a fractional interest therein makes no difference.'

The contrary position was adopted by the Pennsylvania court in Appeal of Baird, 334 Pa. 410, 6 A. 2d 306, 308, where the court stated as follows:

'We are here concerned with the assessment of the oil and gas as a separate estate, but the appellant demands a further division of the assessment based not on a severed estate, but on a separate ownership in a district estate. No sound reason has been suggested nor have we been able to find any statutory or other authority for such a multiplication of assessments as is here demanded by the appellant. Expressed in concrete and simple form the position of the appellant amounts to the assertion that if two or more persons are the owners of a fee simple, each may insist that his undivided interest be separately assessed. It has not been uncommon for an undivided interest in an oil and gas lease to amount to less than 1/300th of the whole.'

The above statement pinpoints the difficulty inherent in separately assessing fractional undivided *{*29}* interests. **An unreasonable burden would be placed upon the taxing authorities. Nor do we find any statutory authority for separately assessing undivided interests.** Section 72-2-22, N.M.S.A., 1953 Comp., provides 'Each tract of land shall be valued and assessed separately.' Section 72-2-24, N.M.S.A., 1953 Comp., provides as follows:

'If any tract of land is claimed by several persons, having or claiming undivided interests therein, and the same is not listed for taxation by any one, the assessor shall make an estimate of the value of such tract and list and assess the same to, Unknown Owners, designating the property by its name as commonly known.'

The above statutory provision confers no authority to separately assess fractional undivided interests. It provides for the assessment of the tract as an entirety." (Emphasis supplied)

The New Mexico decisions quoted above are in conformity with the holdings of a majority of the courts in other jurisdictions declaring that in the absence of a specific statute to the contrary, it is not the policy of the law to require the separate assessment of undivided interests in a single parcel of land. This rule is stated in 51 Am. Jur. "Taxation", Sec. 689, at pages 643-644:

"Assessment of Separate Interests in Single Property. -- Although there is no constitutional objection to separate assessment of the different interests in real estate, it is not in most jurisdictions the policy of the law to require the assessors to tax the different estates and interests which may exist in a single parcel of land to the respective owners thereof, but the assessment is a unit upon the sum of the interests. And this is true whether the taxes are assessed upon the real estate regardless of ownership, or are assessed upon individuals by reason of their ownership. While there is apparent diversity of opinion upon the question of the form of assessment where land is owned by cotenants in undivided interests, arising for most part from the statutes upon which the decisions are based, the general rule seems to be, at least where the law does not authorize the sale of an undivided interest to satisfy a tax, that land owned by a joint tenant or a tenant in common must be assessed as a single piece of property rather than to each of the cotenants for his undivided interest."

The above pronouncement is further supported by authorities cited in 80 A.L.R. 862, "Lump sum assessment for taxes or public improvement against property owned by cotenants in undivided shares." It is there noted in part:

"It has been held in several well-considered cases that property which is held jointly by several owners should be jointly assessed, and that the assessor is not required to ascertain the interests of each one. Meyer v. Dubuque County (1878) 49 Iowa, 193; Corlien v. Inslee (1880) 24 Kan. 154; Toothman v. Courtney (1907) 62 W. Va. 167, 58 S.E. 915."

*{*30}* In **Norfolk v. Stephenson** (1946) 38 S. E. 2d. 570, 185 Va. 305, 171 A.L.R. 1344, the court recognized that whether or not a person may have his undivided interest in property separately assessed is dependent upon statutory authorization.

It has been pointed out that Union County has installed the unit tax system under the provisions of Section 73-3-1 N.M.S.A., 1953 Compilation, et seq. A careful survey of these statutes indicates no statutory enabling legislation which is at variance with the authorities above cited.

A search of the entire tax statutes reveals no authority whereby a person owning a fractional undivided interest in property may separately assess his undivided interest. In the **Vosburg** and **Kaye** decisions, supra, the court noted that after the conveyance of a

severed mineral estate or an undivided interest in minerals the entire mineral estate should be separately assessed and taxed as a unit. But the court in these two cases strongly stated that the undivided fractional interests in property may not in the absence of statutory permission be separately assessed since such would impose an unreasonable burden upon the taxing authorities, Thus, it is clear that in New Mexico where the entire property is owned by two or more individuals the tract or property should be assessed as a unit in the name of all the owners. And where there has been a complete or partial severance of the mineral rights from the remainder of the estate, the entire mineral interests must be separately listed as a unit, noting the names of the various cotenants or owners of the entire unit.

Although you have not indicated whether your inquiry was intended to cover all property, both real and personal, the result here stated is applicable, without distinction, to both real and personal property.

By: Thomas A. Donnelly

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