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TAXATION: MINISTERIAL OR SCHOOL LANDS—§5709.06 RC —SUCH LANDS HELD UNDER PERPETUAL LEASE SUBJECT TO REVALUATION—APPRAISAL OF TRUE VALUE IN MONEY ANY CAPITALIZATION AT 6% OF RENT RESERVED —§5713.01, RC, TIMES FOR SUCH APPRAISAL—VALUE FOR SUCH RENTAL PURPOSES; §§5709.06, 501.22 AND 501.23 RC-- 15 O. L. 202.

SYLLABUS:

1. Where school or ministerial lands are held under a perpetual lease subject to revaluation, the computation of the taxable value of such leasehold interest, as provided in Section 5709.06, Revised Code, involves consideration of (1) an appraisal by the county auditor, under the provisions of Section 5713.01, *et seq.*, Revised Code, of the true value in money of such lands and improvements thereon for *taxation purposes*, and (2) the valuation of such land for rental purposes by capitalizing at 6% on the amount of the annual rent reserved in such lease.

2. The appraisal of school and ministerial lands, and improvements thereon, for *taxation purposes* is made by the county auditor, as provided in Section 5713.01, *et seq.*, Revised Code, "at any time" where he finds that they are not on the tax list and duplicate at their true value in money.

3. The value, for *rental purposes*, of school and ministerial lands held under perpetual lease subject to revaluation is determined by capitalizing at 6% the annual rent reserved in such lease, as provided in Section 5709.06, Revised Code; and where such annual rent is fixed by the terms of the lease, or by the terms of the statutes in effect at the time of the original execution of such lease, in whole or in part with reference to a fixed percentage of a valuation for rental purposes made at the direction of the state supervisor of school and ministerial lands, as provided in Sections 501.22 and 501.23, Revised Code, or made only at 33 year intervals as provided in the act of January 27, 1817, 15 Ohio Laws, 202, a variance may result between (1) the appraisal of such land and improvements thereon for tax purposes and (2) such valuation of the land for rental purposes. Where such appraisal for tax purposes exceeds that of such valuation for rental purposes, the leasehold interest involved will have a taxable value under the formula provided in Section 5709.06, Revised Code; but where such appraisal and such valuation are equal, such leasehold interest is without taxable value under the provisions of that section.

Columbus, Ohio, December 5, 1957

Hon. Edward D. Mosser, Prosecuting Attorney
Harrison County, Cadiz, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have in Harrison County certain school lands (Section 16). A question has arisen with regard to the valuation of such lands for tax purposes. Your opinion is therefore respectfully requested as to the following:

“1. Where a lease of school or ministerial lands for a term of 99 years and renewable forever, subject to revaluation, calls for yearly rental of six per cent on the appraised value, and the rent has been charged and collected at six per cent of the Auditor's appraisal for many years, and there are no improvements on the land, what is the taxable value of the leasehold interest under the provisions of Section 5709.06 of the Ohio Revised Code?

“For Example: Assume land held under a 99 year lease renewable forever, subject to revaluation, with no improvements thereon, and appraised at \$1,000.00. Assume further that the lease calls for rent of six per cent of the appraised value of the leasehold interest under Sec. 5709.06.

“2. Where a lease of school or ministerial lands for a term of 99 years and renewable forever, subject to revaluation, calls for a specified amount in money per year as rent with the provision that the lessee is to pay such rent in money 'over and above

all taxes, charges, assessments, impositions or payments whatsoever which may hereafter be taxed, charged, assessed or imposed on the premises according to law,' and in practice over a long period of time the lessee has been charged, and has paid, rent based on six per cent of the Auditor's appraised value, and there are no improvements on the land, what is the taxable value of the leasehold interest under the provisions of Section 5709.06 of the Ohio Revised Code?

"For Example: Assume land held under a 99 year lease renewable forever, subject to revaluation and appraised at \$1,000.00. Assume further that the lease in question called for yearly rental of \$33.00; however, for a long period of time the lessee has been charged, and has paid, rent based on six per cent of the Auditor's appraisal, or \$60.00 per year. What is the taxable appraised value of the leasehold interest under Sec. 5709.06?"

Section 16 of the original surveyed township, here in question, was vested in the Legislature of Ohio in trust for the use of schools by the Congress of the United States. 1 Chase St. 72. Both the constitutionality of this statute, as well as the right to assess such lands for public improvements, have been upheld by the courts of this state. State *ex rel.* v. Tracy, Auditor, 125 Ohio St., 399 and 126 Ohio St., 277. See also Opinions of the Attorney General for 1928, page 1516; 1929, page 1346; and 1935, page 310. However, the question of the valuation of these lands for tax purposes has apparently not heretofore been the subject of detailed judicial consideration.

Pertinent to your query are the following provisions of Section 5709.06, Revised Code:

"* * * Whenever school and ministerial lands are held under a perpetual *lease subject to revaluation*, the interest of such lessees in such lands shall be subject to taxation. In determining the value for taxation purposes of such leasehold interest, the true value in money of the land shall be ascertained, the annual rent reserved in the lease shall be capitalized on a six per cent basis and the resulting sum deducted from the true value of the land in money; the result so obtained plus the value of all the improvements upon such land shall be the appraised taxable value of such leasehold interest." (Emphasis added)

The provision in the above statute as to revaluation is not readily clear without reference to other applicable statutory provisions. The "revaluation" required in the above statute is invoked primarily to de-

termine the amount of rent that should be paid under the terms of the lease, and not to provide for a revaluation of the lands for general property tax purposes. This is plainly indicated by the provisions of Section 501.22, Revised Code, which reads, in part, as follows :

“The state supervisor of school and ministerial land *shall*, on the first day of February of each year, or at such other time as the leases or the law pursuant to which such leases have been executed *require revaluations to be made*, file with the county auditor or other authority charged with the duty of appraising the lands of such county for purpose of taxation, a list of all school and ministerial lands that are required to be appraised *for purposes of determining the sum of annual rents*, or of valuation for purposes of leasing or sale. Such county auditor, in addition to his other duties, shall make an appraisal of all such lands, as required to be made by him in other cases of valuation of lands. * * *” (Emphasis added)

The above phraseology indicates that separate and distinct appraisal is made for determining the rent required in contrast to the usual appraisals that are “required to be made * * * in other cases of valuation of lands.” Further, this section provides that the revaluation will be made yearly on February first, or at such times as the terms of the lease provide or as provided in the law under which such lease was executed.

An examination of 15 Ohio Laws, 202 (1817), pursuant to which almost all 99 year leases of school lands subject to revaluation and renewable forever were issued, reveals the following provisions :

“Sec. 3. Be it further enacted, That the trustees of any such original surveyed township * * * are hereby empowered, authorized and required to grant a permanent lease or leases for such lot or lots of their respective reserved school section or sections * * * for the term of ninety nine years renewable forever, conditioned that the lessee or lessees shall pay an annual rent at the rate of six per centum on the appraised value, and that *at the end of every thirty-three years* from the execution thereof, *there shall be a revaluation of the premises* * * *; Provided, that on each revaluation made as is pointed out in the foregoing provisions of this act, the lessee or lessees, his, her or their heirs or assigns, shall be bound to pay annually for the thirty-three years next succeeding, into the treasury of such original surveyed township, if the same is organized, and if not into the county treasury of such county at the rate of six per centum on every such valuation of his, her or their lot or lots as aforesaid * * *.” (Emphasis added.)

The above enactment clearly sets forth the amount of rent to be reserved in the lease, the process under which such rent is to be computed, and the frequency that a basis upon which such computation is made *i.e.*, the last appraisal value of the land for rental purposes, can be altered. When the Ohio legislature repealed these provisions in 1831, 29 Ohio Laws, 492, they expressly provided that all such leases previously issued were to remain in full force, thereby indicating that it was the intent that the rental terms provided in such leases were to govern the computation of *all* rents thereunder as long as such leases remained in effect.

In the event that the lease in question was executed prior to 1817, it would be necessary to compare its terms with the several earlier acts which governed the leasing of section sixteen lands in any original township.

To determine the value of such a leasehold interest "for taxation purposes" it is necessary to consider Section 5709.06, *supra*, in *pari materia* with the provisions of Section 5713.01, *et seq.*, Revised Code, which reads in part as follows:

"* * * The County auditor shall be the assessor of all the real estate in his county for purposes of taxation * * *

"The auditor shall assess all the real estate situated in the county at its true value in money. The auditor shall view and appraise each lot or parcel of real estate * * * at least once in each six-year period beginning with the year 1943. * * * The auditor shall *revalue and assess at any time* all or any part of the real estate in such county at its *true value in money* where he finds that the same has changed in value or is not on the tax list at its true value * * *." (Emphasis added.)

It is apparent from the above statute that the county auditor has the duty of assessing "all" property subject to taxation at least once every six years, and at any or all other times when the valuation listed in the tax duplicate is different from its *true value*. See Opinion No. 1522, Opinions of the Attorney General for 1950, p. 116.

Accordingly, under the terms of Sections 5709.06 and 5713.01, *supra*, a determination of the taxable value of a leasehold interest must take into account both the last appraisal for rent determination purposes and the last appraisal made for solely "taxation purposes." It thus becomes apparent that where ninety-nine year leases subject to revaluation are involved, there may be a variation between the valuation for rental purposes and the valuation for taxation purposes.

Referring then to the first hypothetical example described in your inquiry, I note your statement that "the lease calls for rent of 6% of the appraised value per year." You do not indicate whether the lease required an *annual* reappraisal for rent purposes, but if that be the case it is obvious that (1) the true value in money for *taxation purposes* as appraised by the county auditor, pursuant to Section 5713.01, Revised Code, would probably be identical with (2) the appraisal for rental purposes made by the auditor under the direction of the state supervisor of school and ministerial lands pursuant to Section 501.22, Revised Code. Of course, if such appraisals are in fact identical, then the leasehold would have no taxable value since, as provided in Section 5709.06, Revised Code, it is clear that (1) the true value for *taxation purposes* exactly equals the annual rent capitalized at 6% of the rental value appraisal, and (2) when this resulting sum is deducted from the true value in money of the land, the result so obtained is zero.

It should perhaps be pointed out that if there is any variation between (1) the county auditor's appraisal for taxation purposes under provisions of Section 5713.01, Revised Code, and (2) his appraisal made under the direction of the state supervisor of school and ministerial lands, pursuant to Section 501.22, Revised Code, then there might well be a different result.

An instance of this kind would be that situation in which the county auditor's appraisal for tax purposes is \$1,000.00 and the most recent appraisal for the purpose of rent determination is \$500.00. In such case, the annual rent, 6% of \$500.00, would be \$30.00 per year. This annual rent, capitalized at 6%, of course equals \$500.00; and it is this sum which is to be deducted from the true value in money of the land for *taxation purposes* in order to obtain the taxable value of the leasehold interest, in this case, \$500.00.

It thus becomes apparent that in each individual lease it is necessary to examine the terms of the lease, and the law in effect at the time the lease was originally executed, in order to determine the frequency of revaluation for purposes of determination of the amount of the *rent*, as distinguished from the annual appraisal by the county auditor for *taxation purposes*.

In a case where the Act of 1817, *supra*, is applicable, it may frequently happen, with appraisals for rent determination purposes made only once

in each 33 year period, and that there will result a substantial variation, in any particular year, between (1) such rent determination value made some years earlier, and (2) the current appraisal of the county auditor for tax purposes.

In the second hypothetical situation that you describe, I note your statement that the lease calls for a specified amount of money per year, i.e., \$33.00. If this was the rental initially prescribed, and a periodic revaluation is to be made, then the rules stated above would apply. If, however, this is the permanently fixed rental figure, it would seem that the provision in such lease to the effect that it is to be "subject to revaluation" could scarcely be given any meaning since there would be no necessity for revaluation if the permanently fixed yearly rental is to be a stated sum in dollars. It is suggested that the terms of this lease, and of the pertinent statutes in effect at the date of the execution of the lease, be re-examined on this point, for the revaluation provision clearly suggests that this rental figure is not static.

In thus re-examining this lease, and the statute pursuant to which it was executed, it should be borne in mind that in isolated instances the early statutes provided for permanent fixing of rentals in dollar amounts, without provision for adjustment by revaluation. An example of this is seen in the Act of February 21, 1805, Ohio Laws, 200.

While not strictly within the scope of your query, it is perhaps appropriate to invite your attention to Section 501.31, Revised Code, which reads as follows:

"The rent reserved in leases of school or ministerial lands shall, in all cases, be such bonus as is bid therefor together with five per cent per annum on the appraisal value."

This provision is evidently intended to apply to the execution of leases by the state supervisor of school and ministerial lands, auditor of state, pursuant to the general leasing provision of Section 501.26, Revised Code, and it appears to have no application to those 99 year leases, renewable forever, which are covered by the provisions of Sections 501.19 to 501.25, inclusive, Revised Code.

Accordingly, and in specific answer to your inquiry, it is my opinion that:

1. Where school or ministerial lands are held under a perpetual lease subject to revaluation, the computation of the taxable value of such leasehold interest, as provided in Section 5709.06, Revised Code, involves consideration of (1) an appraisal by the county auditor, under the provisions of Section 5713.01, *et seq.*, Revised Code, of the true value in money of such lands and improvements thereon for *taxation purposes*, and (2) the valuation of such land for rental purposes by capitalizing at 6% the amount of the annual rent reserved in such lease.

2. The appraisal of school and ministerial lands, and improvements thereon, for *taxation purposes* is made by the county auditor, as provided in Section 5713.01, *et seq.*, Revised Code, "at any time" where he finds that they are not on the tax list and duplicate at their true value in money.

3. The value, for *rental purposes*, of school and ministerial lands held under perpetual lease subject to revaluation is determined by capitalizing at 6% the annual rent reserved in such lease, as provided in Section 5709.06, Revised Code; and where such annual rent is fixed by the terms of the lease, or by the terms of the statutes in effect at the time of the original execution of such lease, in whole or in part with reference to a fixed percentage of a valuation for rental purposes made at the direction of the state supervisor of school and ministerial lands, as provided in Sections 501.22 and 501.23, Revised Code, or made only at 33 year intervals as provided in the act of January 27, 1817, 15 Ohio Laws, 202, a variance may result between (1) the appraisal of such land and improvements thereon for tax purposes and (2) such valuation of the land for rental purposes. Where such appraisal for tax purposes exceeds that of such valuation for rental purposes, the leasehold interest involved will have a taxable value under the formula provided in Section 5709.06, Revised Code; but where such appraisal and such valuation are equal, such leasehold interest is without taxable value under the provisions of that section.

Respectfully,

WILLIAM SAXBE

Attorney General