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1. LAND—TITLE TO FEE OF SOIL—TITLE TO COAL—SEPARATELY OWNED—TITLE TO COAL SHALL BE LISTED AND TAXED EVEN THOUGH NOW, NO PROSPECT OF ANY MARKET FOR COAL—SECTION 5560 G. C.

2. TITLE TO COAL SHALL BE VALUED AT ITS TRUE VALUE—NOT IN ANY GIVEN RATIO TO VALUE OF FEE OF SOIL.

SYLLABUS:

1. Where the title to the fee of the soil of a tract of land and the title to the coal therein are separately owned, the title to the coal shall be listed and taxed according to Section 5560, General Code, even though there is now no prospect of any market for the coal.

2. The title to the coal shall be valued at its true value and not in any given ratio to the value of the fee of the soil.

Columbus, Ohio, July 22, 1946

Hon. G. O. McGonagle, Prosecuting Attorney
McConnelsville, Ohio

Dear Sir:

This is in answer to your letter in which you ask the following questions:

> "1. Where land has been sold, reserving coal to the grantor and there is no prospect of any market for such coal, may the coal be lawfully taxed?
>
> 2. If such coal is taxed, how is it to be valued in proportion to the taxable value of the surface?"

Your first question raises an issue of valuation rather than taxability. Section 5560, General Code, provides:

> "Each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops, deciduous and evergreen trees, plants and shrubs growing thereon. The price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of the true value, and where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively."

The direction is clear that coal rights separate from the fee of the soil are to be listed and taxed. The valuation at which they are listed is a question of fact to be determined by the county auditor under Section 5554, General Code, which provides:

> "The county auditor, in all cases, from the best sources of information within his reach, shall determine, as near as practicable, the true value of each separate tract and lot of real property in each and every district, according to the rules prescribed by this chapter for valuing real property. He shall note in his plat-book, separately, the value of all dwelling houses, mills and other buildings, which exceed one hundred dollars in value, on any tract or plat of land not incorporated, or on any land or lot of land included in a municipal corporation, which shall be carried out as a part of the value of such tract. He shall also enter therein the number of acres of arable or plow land, meadow and pasture land, and wood and uncultivated land, in each tract, as near as possible."

The fact that there is no present prospect of a market for the coal is certainly one of the items for the auditor to consider in making his valuation; but small valuation does not alter the direction of the code that such interests shall be listed and taxed.

The second question apparently refers to the procedure set out in Section 5563, General Code. Said section reads as follows:

> "Where the fee of the soil and the minerals, or part of either, of a lot or parcel of land has been previously assessed for taxation in the name of the same person, but the title to the fee of the soil is in one or more persons, and the title to such minerals, or any of them, or any right to the minerals therein, or any of them, is in another person, the county auditor shall ascertain the aggregate value of such lot or parcel of land and the minerals or rights thereto, and shall equitably divide and apportion such aggregate valuation between the owner or owners of the fee of the soil and the owner or owners of such minerals and rights thereto so held separately from the fee of the soil, according to the relative value of the interests so held by such owners of the fee of the soil and such minerals or rights thereto, respectively."

This section does not contemplate that mineral rights should be given a definite value in relation to the value of the fee of the soil. It merely provides that the auditor shall equitably assign to each of the components its part of the value of property which has previously been taxed as a unit. In the case which you have presented the value of the coal will probably be a small fraction of the total value.

In light of the above I answer your questions as follows:

1. Where the title to the fee of the soil of a tract of land and the title to the coal therein are separately owned, the title to the coal shall be listed and taxed according to Section 5560, General Code, even though there is now no prospect of any market for the coal.

2. The title to the coal shall be valued at its true value and not in any given ratio to the value of the fee of the soil.

Respectfully,

HUGH S. JENKINS,
Attorney General