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FILE NO. 92-001

REVENUE:
Assessment of Realty
with Subsurface Minerals
Other Than Coal

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Honorable Thomas F. Baker
State's Attorney, McHenry County
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Baker:

I have your letter wherein you raise several questions regarding the assessment of subsurface minerals, in particular gravel, for taxes, pursuant to subsection 20(6) of the Revenue Act of 1939. (Ill. Rev. Stat. 1989, ch. 120, par. 501(6).) Specifically, you inquire regarding the proper assessment of property containing subsurface mineral deposits: (1) when the surface is used in its entirety as cropland; (2) when the surface is used partially as cropland, and partially for the

extraction of minerals; and (3) when the surface is subject to a non-farm use. For the reasons hereinafter stated, it is my opinion that an interest in unexploited subsurface minerals may be separately assessed only when that interest has been severed from the surface estate. With respect to land containing unsevered mineral interests, the property should ordinarily be assessed based upon its fair cash value with mineral deposits attached, unless a special valuation rule applies. Whether mineral bearing property which is also used, in part, for farming, should be assessed as farmland raises a question of fact which must be determined from the circumstances pertinent to each parcel.

Your question requires construction of the provisions of subsection 20(6) of the Revenue Act of 1939. The primary object of statutory construction is to ascertain and give effect to the intent of the General Assembly in enacting the statute. (Fumarolo v. Chicago Board of Education (1990), 142 Ill. 2d 54, 96.) In ascertaining legislative intent, it is appropriate to examine the history of legislation and the course it has taken. (People v. Easley (1988), 119 Ill. 2d 535.) A review of the legislative history of subsection 20(6) of the Revenue Act of 1939 is particularly helpful in responding to your questions.

Subsection 20(6) was added by Public Act 83-397, effective January 1, 1984. As originally enacted, that subsection provided:

> " * * *
>
> Oil, gas, coal or other mineral rights, regardless of whether the right to remove such oil, gas, coal or other mineral rights has been conveyed to a person other than the person holding all other rights to such property, shall be assessed separately at 33 1/3% of the fair cash value of such oil, gas, coal or other mineral rights and at 33 1/3% of the fair cash value of all remaining rights in such property, except for property assessed pursuant to Section 20e of this Act." (Emphasis added.)

The purpose of Public Act 83-397 (House Bill 1831) was explained by its chief sponsor immediately prior to its passage as follows:

> " * * *
>
> This Bill addresses a matter that was brought to the attention of Representative Dwight Friedrich and myself dealing with the assessment separately of oil and gas interest. I suppose it was brought to our attention because we were primarily in the oil and gas geographic area of the state, although there are certain other areas of the state as well. Does one item, very simply. It allows the separate assessment and separate billing of mineral interest from the surface, even if those are owned by the same person. That has been the practice for many years. There was apparently a circuit Court decision, I think, in Washington County that indicated that that was not proper under existing law. This Bill will legitimize that practice. It does not change the amount of the assessment of either farmland or oil and gas. It simply allows the creation of two separate bills with regard to those and I would ask for a favorable vote.
>
> * * * "
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> (Remarks of Representative Brummer, May 25, 1983, House Debate on House Bill 1831, 246-47.)

It may be inferred from Representative Brummer's remarks that this legislation was introduced to address an unreported judicial determination that, absent severance of the mineral estate from that of the surface estate, oil and gas reserves could not be separately assessed and taxed. Public Act 83-397 was intended to require separate assessment and taxation of such interests even though the subsurface estate had not been severed from the surface estate.

Subsection 20(6) has been twice amended since its original adoption. Because the first such amendment was recognized in the second, and is referred to in the debates thereon, it need not be discussed separately. The second amendment to subsection 20(6), Public Act 84-1343, effective January 1, 1987, rewrote the subsection to reflect its current wording:

" * * *

> (6) For assessments made on or after January 1, 1987, oil, gas and other minerals, except coal, shall have value and be assessed separately at 33 1/3% of the fair cash value of such oil, gas and other minerals except coal. However, no assessment made or corrected before the effective date of this amendatory Act of 1986 shall be considered incorrect for having failed to have been in compliance with this paragraph (6).
>
> * * * "

(Ill. Rev. Stat. 1989, ch. 120, par. 501 (6).)

Public Act 84-1343 also amended section 7 of the Mining Act of 1874 (Ill. Rev. Stat. 1989, ch. 96 1/2, par. 157), which now provides:

> "When the owner of any land shall convey, by deed or lease, any gas, oil, coal or other minerals therein, such conveyance shall be considered as so separating such gas, oil, coal or other minerals from the land that the same shall be taxable separately, and any sale of the land for any tax or assessment shall not include or affect such conveyance of the gas, oil, coal or other minerals." (Emphasis added.)

That Act further added detailed rules for the assessment of coal interests.

The purpose of Public Act 84-1343 (House Bill 3309) was explained by its sponsors as follows:

> "* * * There developed a situation where it was impossible for the Supervisor of Assessments to accurately and fairly assess coal, either being mined or just coal in the ground. We've been working, last year we passed a Bill which actually delayed any positive action 'till January of this next year. And, now something has to be done or we'll have a real crisis. This Bill. . . This Amendment has been worked out carefully between the Farm Bureau and Supervisor[s] of Assessments and the coal companies and I think everybody is in accord now, except possibly one of the companies. This provides that formula for assessing newly mined coal for undeveloped coal reserves and provides that farmers will not be taxed for minerals on their land unless they've leased their coal rights. And this Department of Revenue cannot apply the state multiplier to coal assessments but review assessments to make certain there [sic] being made according to the provisions of this Act. * * *

* * *

If the coal is undeveloped and unsevered, there would be no tax. If a farmer still has the unsevered coal rights on his ground there would be no tax as far as he's concerned. * * *

* * * "

(Remarks of Representative Friedrich, House Debate on House Bill 3309, May 20, 1986 at 201, May 22, 1986 at 205.)

"* * * Current law requires for the assessment of all coal under land whether or not it's developed or not. This puts in place a new sophisticated formula to assess that coal that is developed coal and also would prohibit the assessment of coal under land owned by an individual as long as * * * there is no lease to any other company by that landowner. There are a number of counties where there is . . . substantial amount of coal and where there will never be any intention of mining that coal and, therefore, that absolutely should not be assessed * * * for tax purposes. If on the other hand, there is an attempt to lease this coal, then that's quite another thing and it will fall subject to the formula. * * *

* * * "

(Remarks of Senator Maitland, June 23, 1986, Senate Debate on House Bill 3309, at 88.)

Upon moving for House concurrence with a Senate amendment which had been added to the bill (without debate in the Senate), the House sponsor noted:

" * * *

* * * In the Senate, they added an Amendment at the request of Tom Hines, who is the Supervisor of Assessments in Cook County, which

> also includes quarries, which was a problem in that area. * * *
>
> * * * "
>
> (Remarks of Representative Friedrich, June 25, 1986, House Debate on House Bill 3309, at 83.)

The debates, as well as the amended language of the statutes, indicate that Public Act 84-1343 was intended to reverse the effect of Public Act 83-397. Language requiring the separate assessment of unsevered mineral interests was deleted from subsection 20(6) of the Revenue Act of 1939, and section 7 of the Mining Act of 1874, which requires separate assessment upon conveyance of mineral interests, was made more specific. The sponsors also understood the final version of the bill to apply to gravel interests, as well as to coal. Therefore, the Act was applicable to all mineral interests, providing a uniform rule for separate assessment only when the mineral estate has been severed.

The policy requiring separate assessment only when a mineral interest is severed was also apparently intended to address the practical difficulties of assessing unsevered mineral interests. Although not explicitly stated, there are occasional references in the debates, portions of which are quoted above, to the great difficulty that assessors had in applying the law prior to the adoption of Public Act 84-1343, and their participation in drafting and support for the changes embodied in that Act. When a mineral estate is conveyed by

deed or lease, and the document evidencing the conveyance is made of record, assessing officers have a basis for making a separate assessment, since the consideration paid should reflect the value of the interest. Assessment officers are not required to guess at the quality, quantity or existence of reserves which have not been the subject of market transactions. Where mineral interests have not been severed, the property should be assessed based upon its value with mineral rights attached.

Your questions (1) and (2) relate to the assessment of land beneath which there are known mineral reserves and permits for the exploitation of which have been granted, when the surface is used as cropland. As you have noted, the final sentence of section 20 of the Revenue Act of 1939 provides that the provisions of that section are subject to those of section 20e of the Act (Ill. Rev. Stat. 1989, ch. 120, par. 501e), which set forth special rules for the assessment of farmland. "Farm" is defined in subsection 1(21) of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 482(21)) to include:

> "* * * any tract of land used solely for the growing and harvesting of crops; * * * The ongoing removal of oil, gas, coal or any other mineral from land used for farming shall not cause such land not to be considered as used solely for farming."

If the surface and mineral estates have been severed in property used for farming, the two interests will be separately assessed to their separate owners, in accordance

with the requirements set out above, and the clear intent of the General Assembly in adopting Public Act 84-1343. I assume, from the context of your inquiry, however, that you are concerned with property in which the surface and subsurface interests have not been severed by sale or lease of the mineral estate, and where the owner, who has acquired or is attempting to acquire mining permits, is farming the land until such time as it becomes proper and convenient to mine it.

Because there has been no severence of mineral interests in the tracts in question, the mineral interest cannot be separately assessed and taxed. Therefore, a determination must be made, based upon all available facts, whether the tracts are "farms", to be assessed pursuant to section 20e of the Revenue Act of 1939, or property on which there is located a mine or quarry, to be assessed pursuant to subsections 20(1) or (4) of the Act. (Ill. Rev. Stat. 1989, ch. 120, par. 501(1),(4).) If the property is used solely for growing and harvesting crops, and has been so used for the previous two years, then, in my opinion, it should be assessed as a "farm" despite the fact that mining permits have been issued.

Once mining or quarrying activity begins, the factual determination becomes more difficult. Because the mere fact that minerals are being extracted from one part of the tract is not, standing alone, a sufficient basis for not assessing the

tract as farmland, other factors must be considered, such as the proportion still actually being farmed and whether the extraction of minerals is consistent with farm use. It would be absurd, even under the language of subsection 1(21) of the Revenue Act of 1939, to assess as a "farm" a tract of which only a small portion is devoted to agriculture because quarrying activities have not yet been extended into the entire area. It would be equally absurd to refuse to assess as farmland a tract which has been used as such for many years merely because quarrying activity has extended into a small portion thereof. It is not to be presumed that the General Assembly intended absurd consequences to result from its enactments (Illinois Chiropractic Society v. Giello (1960), 18 Ill. 2d 306, 312). Therefore, in circumstances between the two extremes, a factual determination will have to be made, within the sound discretion of the assessment officer, as to whether the use of the property for the extraction of minerals predominates the land's total use so that it may no longer rationally be considered farm land.

Your third question relates to the assessment of property containing known mineral reserves, when the surface is devoted to a commercial, non-farm use. I will assume, for these purposes, that the unspecified surface use does not qualify the property for any special valuation rule.

Subsection 20(1) of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 501(1) provides that property is to be valued generally, for tax purposes, at 33 1/3% of its "fair cash value". "Fair cash value", also sometimes referred to as "fair market value" (see People ex rel. Frantz v. M.D.B.K.W., Inc. (1966), 36 Ill. 2d 209, 211), means that amount which the property would bring at a voluntary sale between a willing buyer and a willing seller, neither of whom is under compulsion to buy or sell, respectively. (People ex rel. McGaughey v. Wilson (1937), 367 Ill. 494, 496.) The fair market value of property should reflect the value of the property as a whole, with all of its resources; thus, the existence and extent of mineral deposits which enhance the value of the land is properly considered in determining the fair cash value of property. (See, Department of Transportation ex rel. People v. Central Stone Company (1990), 200 Ill. App. 3d 841, 849, citing Department of Public Works and Buildings v. Oberlaender (1969), 42 Ill. 2d 410, 415-16, condemnation cases in which analogous issues were presented and decided.) With respect to income generating property, it is the capacity to earn income, rather than the income, if any, actually derived, which constitutes to the fair cash value of property for tax purposes. Springfield Marine Bank v. Property Tax Appeal Board (1970), 44 Ill. 2d 428, 431.

In determining the fair cash value of property which is not subject to a special valuation rule, an assessing officer therefore may properly consider the nature and extent of subsurface mineral deposits present in the property, regardless of the use to which the surface is devoted. If the presence of unsevered mineral deposits enhances the value of the land, the property may be assessed for taxation at a rate which reflects its attributes. In valuing property which contains unsevered subsurface minerals, it would not be proper to assess the surface value and the subsurface value separately, and then to combine those values to yield a total value, since the actual fair cash market value of property containing deposits is not necessarily the sum of the values which might be placed separately on the land and its deposits. (Department of Transportation ex rel. People v. Central Stone Company (1990), 200 Ill. App. 3d 841, 849-50.) Rather, the property is to be assessed on the basis of its value as a unit, including its mineral wealth, a value which is ordinarily determined by comparison to the sales prices of other, similar properties in the area in which the subject property is located.

You have also inquired whether the statutes authorizing the separate assessment of mineral interests constitute either special legislation or a prohibited tax on personal property. Special legislation is prohibited by article IV, section 13 of the Illinois Constitution of 1970. Revenue

legislation, however, is not invalid under that provision of the Constitution section if the classifications contained in the statute are reasonable. (Thorpe v. Mahin (1969), 43 Ill. 2d 36, 46; Mlade v. Finley (1983), 112 Ill. App. 3d 914, 919.) Given the importance of both agriculture and mining to the economy of the State, it is not unreasonable that they should be separately classified, for purposes of taxation, and different rules of assessment applied. Further, the distinction in the treatment of severed mineral interests from those which are not severed appears to be reasonable because of the practical problems relating to valuation discussed above. Therefore, I find no basis upon which to conclude that these provisions violate the constitutional prohibition against special legislation.

Moreover, the sections do not constitute a tax on personal property. The legislation discussed above changed the language of both section 7 of the Mining Act of 1874 and section 20 of the Revenue Act of 1939 to refer specifically to gas, oil, coal or other minerals. Previously, those sections had referred to mining or mineral rights in the land. The amended language does not, in my opinion, change the character of the property right involved from realty to personalty. The statutory reference is still to the ownership of minerals which are a part of the realty, and the consequent right to remove those minerals from the soil. The tax on those rights is

therefore a tax on real property, not a tax on personal property.

This conclusion is supported by section 18.1 of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 499.1), which was enacted pursuant to article IX, section 5 of the Illinois Constitution of 1970 and which abolished personal property taxes after January 1, 1979. That section provides, in part:

" * * *

> * * * No property lawfully assessed and taxed as real property under this Act prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property subject to assessment and taxation under this Act after January 1, 1979.

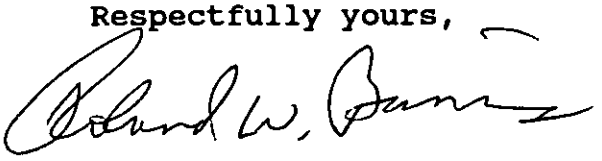
* * * "

Mineral rights were classified as real property prior to 1979. In accordance with section 18.1 of the Revenue Act of 1939, they should continue to be so classified.

In summary, it is my opinion that subsurface mineral rights in land may be separately assessed and taxed only when the ownership thereof has been severed from the surface rights. With respect to property containing unsevered but developable mineral rights, the property should ordinarily be assessed based upon its fair cash value with mineral deposits attached, unless a special valuation rule applies. Whether property which is used for farming, but is also used for the

active extraction of mineral deposits, should be assessed as farmland presents a question of fact which must be determined based upon the circumstances unique to each parcel.

Respectfully yours,



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