

TAXATION: Federal employees in Veterans' Hospital on reservation at Excelsior Springs are liable for personal property tax on their motor cars.

June 19, 1941

6-21



Honorable Conn Withers
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

We have received your letter of May 24, 1941, in which you request an opinion regarding the collection of taxes from employees of the Veterans' Hospital in Excelsior Springs.

The facts you set out for this opinion are as follows:

"In the process of the collection of both current and delinquent personal taxes, I am often advised by persons employed at the Veterans Facility and living on the Government Reservation in Excelsior Springs, that they are not subject to any state and county taxes.

"In most cases the assessment that we have against these people is for a motor car on which they hold Missouri title and pay Missouri state license.

"I can not understand why motor cars should be exempt from taxation and I would appreciate your securing for me an official opinion relative to this matter."

Section 6 of Article X of the Constitution of Missouri reads as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or

town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable, also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, that such exemptions shall be only by general law."

Section 7 of Article X of the Constitution of Missouri reads as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

Section 10936, R. S. Missouri 1939, reads as follows:

"For the support of the government of the state, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section."

Section 10937, R. S. Missouri 1939, partially reads as follows:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; * * * * *"

It will be noticed in the above partial section that the person belonging to the army of the United States is exempted from paying taxes but does not exempt the payment of property tax by such person. The tax exempt being the personal tax, such as poll tax or

practicing of his profession while a member of the army.

The construing of provisions for exemptions from taxation must be a strict construction. In the above Section 10937 the only exemption set out is the person and not as to his property. If this section were applicable to property of any person belonging to the army or in federal employment such as a position at the Veterans' Hospital in Excelsior Springs, property owners would assign their property to some member of the army or federal officer and in that way avoid payment of taxes due the state and county which taxes are for the preservation of not only the property of the person above described but also the property of others who are not residents or employees of the reservation. That such exemption must be strictly construed was held in the case of Young Women's Christian Ass'n. v. Baumann, 130 S. W. (2d) 499, par. 1, where the court said:

"The principles to be followed in construing provisions for exemption from taxation, have been announced in many cases. They are well stated by Judge Lamm in State ex rel. Spillers v. Johnston, 214 Mo. 656, 113 S. W. 1083, 21 L. R. A., N. S., 171. Suffice it to say they call for a strict construction against the right of exemption. Taxation is the rule, exemption is the exception; yet strict construction must be a reasonable construction."

The question of voting does not enter into the taxation problem in this matter, but it is possible for employees living on the reservation to vote notwithstanding the opinion of the Honorable Denton Dunn, Assistant Attorney General under the Honorable Stratton Shartel, in which he held that under the Constitution of Missouri they were not sufficiently residents of Clay County to vote in county and state elections. The question of whether they are entitled to vote is a matter of intention, and our Supreme Court in Chomeau v. Roth, 72 S. W. (2d) 997, pars. 3, 4, the court said:

"The two cited cases, and particularly the former, control this case in all essential respects. As they announce the law, it is entirely possible for a student to gain a residence at the place where he is attending school,

although he may have gone there for no other purpose than to attend school; the question of whether a change of residence is effected depending upon the intention with which the removal from the former residence was made. A temporary removal for the sole purpose of attending school, without any intention of abandoning his usual residence, and with the fixed intention of returning thereto when his purpose has been accomplished, will not constitute such a change of residence as to entitle the student to vote at his temporary abode. But conversely, an actual residence, coupled with the intention to remain either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of abode, is sufficient to work a change of domicile. *Nolker v. Nolker* (Mo. Sup.) 257 S. W. 798; *Finley v. Finley* (Mo. App.) 6 S. W. (2d) 1006."

Our State Supreme Court has not passed directly on the question of exemption of persons in the army as set out in Section 10937, but in the case of *Finley v. The City of Philadelphia*, 32 Pa. State Reports, 1. c. 382, the State of Pennsylvania, in passing on a very similar statute and a very similar statement of facts as set out in your request, said:

"Dr. Finley has his residence in the city of Philadelphia, and has had for several years, and is charged with a city tax on his household furniture, used by himself and his family; and he claims that this property ought to be exempt, because he is a surgeon in the United States army, stationed here on duty, and with no intention of acquiring a domicile in this state, or of remaining in it after he shall be relieved from duty.

"Is this a valid ground of exemption? We think not. There is nothing very poetic about tax laws. Wherever they find property, except what is devoted

to public and charitable uses, they claim a contribution for its protection, without any special respect to the owner or his occupation, and without reflecting much on questions of generosity or courtesy. They leave no discretion to the taxing officers by which any exemption can be allowed; for if they did, favouritism and corruption would soon publicly abound.

"Clearly the liability to taxation does not depend upon the intention of any one relative to his domiciliation, for this would make the state's power of taxation dependent, in numberless cases, on the pleasure of the persons proposed to be taxed. Residence is a definite and obvious fact, and is of itself a sufficient ground of liability.

"Here is no tax on the official salary, for that stands in no need of protection from the state, and such taxation might lead to great abuses, and would be in effect a taxation of the federal government. But the officer's household furniture, not within army quarters, stands as much in need of state protection as any other kind of property, or as the property of any other person. What is official about the plaintiff here is his surgical and medical function, and that is not taxed. As an owner of household furniture or other property (not being special instruments of his office), he stands on common ground with other residents and citizens, and is subjected to corresponding burdens and duties."

The above authorities have been quoted in reference to members of the army and I am presuming that the doctor under your statement of facts was not an army officer but merely a federal employee.

CONCLUSION

Since we can find no property exemption for a federal

June 19, 1941

employee or no property exemption for a member of the army in either the Constitution of the State of Missouri or the laws of the State of Missouri, we are of the opinion that the employee of the Veterans' Hospital in Excelsior Springs, Clay County, must pay property tax but not a tax on his person, such as poll tax or taxes for his profession.

Section 10937, R. S. Missouri 1939, is not ambiguous and merely states that the person of a member of the army is subject to exemption from taxation but does not state that his property is exempt from taxation.

Respectfully submitted

W. J. BURKE
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APPROVED:

VANE C. THURLO
(Acting) Attorney General

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