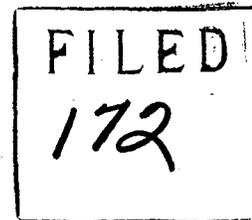


TAXATION (EXEMPTIONS): Where real estate is conveyed to a non-profit organization, and is inhabited as a residence by the grantor by virtue of a retained life estate, or by other persons by virtue of a lease from the non-profit organization, the real estate is not exempt from taxation under Article X, Section 6 of the Constitution of Missouri and Section 137.100, RSMo 1969. Where the entire fee is subject to taxation, the leasehold is included in the value of the fee, and the lessor is liable for the tax. Where a life estate is retained and the entire fee is taxed, the life tenant has the duty of paying the tax.

May 14, 1971

OPINION NO. 172



The Honorable Henry S. Clapper
Prosecuting Attorney
Lawrence County
Mountain View, Missouri 65548

Dear Mr. Clapper:

This opinion is issued in response to your question whether certain property of the Ozarks Methodist Manor at Marionville, Missouri is taxable, and, if so, who is liable for the tax.

It is our understanding that the Ozarks Methodist Manor is a non-profit organization which operates a nursing home in Lawrence County. It has been the practice for older persons to purchase land and build homes adjacent to the nursing home. These older persons then convey the property they have acquired to the Ozarks Methodist Manor by deed, retaining for themselves life estates in the property conveyed. In consideration for the deed, Ozarks Methodist Manor agrees, by contract, to make nursing home services available to the grantors. The grantors continue to use the property they have conveyed to the Ozarks Methodist Manor as residences for the remainder of their lives. Upon the death of the grantors, the Ozarks Methodist Manor leases this property for consideration to other persons, who also use the property as private residences.

On the basis of the facts you have given us, it is clear that the property in question is taxable under Chapter 137, RSMo 1969. Article X, Section 6 of the Constitution of Missouri strictly limits exemptions from property taxes as follows:

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"All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

This constitutional provision is implemented by Section 137.100, RSMo 1969 which provides:

"The following subjects are exempt from taxation for state, county or local purposes:

(1) Lands and other property belonging to this state;

(2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments and on public squares and lots kept open for health, use or ornament;

(3) Nonprofit cemeteries;

(4) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state;

(5) All property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes."

Paragraph (5) of Section 137.100 is the only exemption provision applicable to the facts at hand. A reading of this paragraph indicates that a charitable organization will be exempt from property tax only if the property is "actually and regularly used

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exclusively ... for purposes purely charitable." The property about which you ask is not used exclusively for purely charitable purposes. Instead, it is used for private residence. Therefore, the property cannot be exempt from taxation so long as it is the residence of the life tenant or the residence of a lessee after the life tenant's death. We enclose, for your information, Opinion No. 307 issued to the Honorable John Crow, June 25, 1970, in which we held that real property under construction which, when construction is completed, will be used for purely charitable purposes, is not, during the period of construction, exempt from property taxes.

You next ask who is liable for the payment of taxes assessed pursuant to Chapter 137. Section 137.075 provides:

"Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

Section 137.010(2) defines "real property" for the purposes of Chapter 137 as follows:

"'Real property' includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon, and all rights and privileges belonging or appertaining thereto;..."

The Supreme Court of Missouri has held repeatedly that a leasehold interest may be separately assessed, and the lessee may be taxed where the lessor is exempt from taxation. State ex rel. Ziegenhein v. Mission Free School, 162 Mo. 332, 62 S.W. 998 (1901); State v. Personnel Housing, Inc., 300 S.W.2d 506 (1957); Iron County v. State Tax Commission 437 S.W.2d 665 (En Banc 1968). However, separate taxation of the leasehold has, as a practical matter, only been applied in cases where the lessor, by virtue of being a governmental entity or otherwise, has been exempt from taxation. As we have previously stated, in the fact situation here presented, the Ozarks Methodist Manor is not exempt from taxation. Therefore, there would be no purpose served in separately assessing the lessor's and the lessee's interests in the property. See, Iron County v. State Tax Commission, supra, at 672 in which the Court stated that where neither the lessor nor the lessee is exempt, "leaseholds ordinarily are taxed by being lumped and included in the value of the fee, where the fee itself is taxable." Therefore, we believe that under the facts stated, where the Ozarks Methodist Manor holds fee interest in the property, and leases that property to another party who uses

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it for residential purposes, the interest of the Ozarks Methodist Manor in the entire fee is taxable.

In the case of a retained life estate in the original grantor, we believe that the same reasoning applied in *Iron County v. State Tax Commission* would be applicable. That is, the interests of the life tenant and the remainderman would be lumped together for the purposes of taxation where neither is exempt. While the property itself is assessed, and the property itself may be sold for non-payment of taxes, the rule in Missouri is that as between life tenants and remaindermen, life tenants have the duty of paying property taxes. See *Duffley v. McCaskey*, 345 Mo. 550, 134 S.W.2d 62 (1939).

CONCLUSION

It is the opinion of this office that where real estate is conveyed to a non-profit organization, and is inhabited as a residence by the grantor by virtue of a retained life estate, or by other persons by virtue of a lease from the non-profit organization, the real estate is not exempt from taxation under Article X, Section 6 of the Constitution of Missouri and Section 137.100, RSMo. 1969. Where the entire fee is subject to taxation, the leasehold is included in the value of the fee, and the lessor is liable for the tax. Where a life estate is retained and the entire fee is taxed, the life tenant has the duty of paying the tax.

Very truly yours,



JOHN C. DANFORTH
Attorney General