

TAXATION: Personal property of World War Veteran not exempt from taxation. Cross reference under exemptions.

9743 RS Mo 1929

7-4

June 22nd, 1933

FILED  
19

Hon. Edward Cusick,  
Prosecuting Attorney,  
Waynesville, Missouri.

My dear Mr. Cusick:

Acknowledgment is herewith made of your request of June 5th, for an opinion from this Office, which request reads as follows:

" Our County Assessor Mr. Moneymaker, has requested me to obtain your opinion as to the legality of assessing personal property on the ex-service men who served in the world war, who are drawing compensation from the Federal Government.

Will you kindly let us have your opinion at your earliest convenience and oblige."

The general exemption statute is Section 9743, Revised Statutes of Missouri 1929. Upon reading this Section it is very clear that an "ex-service man" would not be entitled to any exemption under this Section. Although some of the other States enacted blanket exemption laws in favor of World War Veterans, the General Assembly in this State has passed no such Act. The only relief to be found for ex-service men is under the Act which provides for the compensation. The pertinent parts of these Sections are as follows, 38 U. S. C. A. 454:

"Section 454-Assignability and exempt status of compensation, insurance, and maintenance and support allowances. The compensation, insurance, and maintenance and support allowances payable under Parts 2, 3 and 4, respectively, \* \* \* shall be exempt from all taxation. \* \* \*"

"Section 618. Benefits exempt from seizure under process and taxation. No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under Part V of this chapter, no adjusted service certificate, and no proceeds of any loan made on such certificate, shall be subject to attachment, levy, or seizure under any legal or equitable process, or to National or State taxation."

The chapter referred to in the last mentioned Section is Chapter 11 of Title 38 of United States Code Annotated and is entitled "World War Veterans' Adjusted Compensation."

An examination of these two Sections reveals that the property exempt is in the first Section "compensation, insurance and maintenance and support allowance payable" and in the second Section "no sum payable under this chapter \* \* \*". In other words so long as the sum, compensation, insurance, and maintenance and support allowance are payable, the same are not subject to taxation. Whether or not this exemption continues after this money has been used in purchasing property is determinative of the subject of your inquiry.

The Supreme Court of the State of North Carolina has construed these two Sections in the Federal Statute in the case of Martin v. Guilford County reported in 158 S. E. 847. In that case the plaintiff, an ex-service man paid his state and county taxes on his real estate and automobile which had been purchased by money received from the Government as compensation under protest and instituted this action to recover those taxes, alleging that under the two above quoted Federal Statutes, his property was not subject to state and county taxation. The Supreme Court stated as follows:

" In the instant case, the sum of money which was payable to plaintiff as a veteran of the World War, under the Act of Congress, as compensation, insurance, and maintenance and support allowance, has been paid to him; he has acquired full and unrestricted title to the money, free from any control over the same by the government of the United States; he has invested it, as he had a right to do, in the purchase of a lot of land and an automobile, which are subject to taxation by Guilford county, under the laws of this state. We think it clear that by the enactment of sections 454 and 618 of Title, 38 USCA, Congress has not undertaken to exercise any control over the property, real or personal, now owned by the plaintiff, and that said property is not exempt from taxation by Guilford County, under the laws of this state, applicable to said property as well as to all other property in said county."

While the Supreme Court of our State has not passed on this issue, I find the following statement from the Kansas City Court of Appeals in the case of Duzan v. Cantley, Commissioner of Finance, reported in 55 S. W. (2d) p. 711, l.c. 712:

"It is argued that the money shall not be subject to the claims of creditors, and since there can be no assignment or garnishment or other proceeding against the beneficiary, therefore the relationship of debtor and creditor cannot exist, especially where the bank takes the fund with knowledge of the source thereof.

This contention is on the theory that the purpose and intent of the legislation in behalf of veterans is to protect the money from all claims, except the United States Government, not only until it comes into the hands of the beneficiary, but also until the latter has himself spent it. We think this is not the correct construction or interpretation to be placed thereon. In our view, funds thus arising are not thus protected after they have once come into the hands of the beneficiary. They have then become his absolute property, and having once come into his hands are no longer an object of solicitude or care on the part of the Government. The latter is careful to protect the fund until the beneficiary receives it, but no further. This seems to be clear from the use and subsequent reiteration of the word 'payable'. So long as a fund is 'payable' to a person it has not yet reached his hands, but when it has, it cannot longer be said to be payable to him. This is borne out by the plain intent of section 54, p. 81, of the above-mentioned USCA, where, in protecting money due pensioners, attachment, levy, or seizure of such funds is prohibited, it speaks of money 'due, or to become due' to any pensioner, 'whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner.' It is not exempt after it is paid to the pensioner."

While it is true that in the Duzan case, the Court was not considering an effort to tax the property of the veteran, still the logic of the decision is equally applicable in interpreting the portion of the Federal Statute pertaining to the exemption from taxation.

Hon. Edward Cusick

-4-

June 22nd, 1933

It is therefore the opinion of this Office that the personal property of ex-service men is subject to taxation once it has come into his possession and becomes his absolute property.

Respectfully submitted,

HARRY G. WALTNER, Jr.,  
Assistant Attorney-General

APPROVED:

---

ROY McKITTRICK  
Attorney-General

HGW/mh