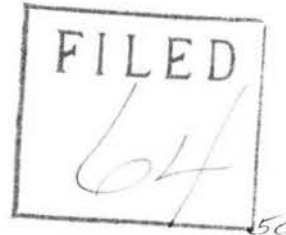


AXATION: Personal property of World War Veteran not exempt from taxation. Cross reference under exemptions.

October 10, 1933



Hon. George A. Moore  
Assessor Jefferson County  
Hillsboro, Missouri

My Dear Mr. Moore:

I acknowledge receipt of your request for an opinion of this office in the matter of taxation of the estates of War Veterans. Your request reads as follows:

"There are in my County Estates belonging to Soldiers under Guardianship W.C.M. amounting in one case at least to \$15,000.00. Generally speaking this is supposed to be exempt.

If the money was necessary for the support of the Soldier it should be exempt, but where only a small portion of the income is used for the support and the principal is growing, when does the exemption cease and should the whole principal remain exempt, just because it comes from the Federal Government.

Your opinion will be appreciated.

I wish also to know if Real Estate purchased with such funds are also exempt."

In considering your inquiry we call your attention to the fact that the general exemption statute of this State, Section 9743 R. S. No. 1929, does not contain any phrase or clause which can be construed as exempting the property of ex-service men or war veterans held by them directly or through their guardians. While you did not state under what law the compensation or funds

have been paid we presume that they accrued under Chapter 11 Title 38 of U. S. Code Annotated entitled "World War Veterans Adjusted Compensation." The two sections providing for compensation and insurance and their exemption from taxation read as follows:

"Section 464-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 property exempt under the first Section quoted is "compensation, insurance and maintenance and support allowance payable", and in the second section, "sum payable under this chapter". In other words, so long as the compensation, insurance and maintenance and support allowance are "payable" the same are not subject to taxation. Whether or not this exemption continues after the same has been received by the guardian is the problem presented by your inquiry. It is the rule of law in this State that the title to property of ward is in the ward and not in the guardian or curator. This is very plainly put in the case of Judson v. Walker, 155 Mo. l.c. 179, wherein it is stated:

"A curator does not stand in the same relation to the estate of which he has charge as does an administrator. In case of an intestate's estate the title to the personal property vests in the administrator for the purpose of administration and he can sue and defend as such in his own name because of that title. But in the case of an infant's estate the title is in the infant alone and not in the curator. In such case the curator has only the custody

care and management of his ward's estate. (Section 5297 R. S. 1889; *Duncan v. Crook* 49 Mo. 116.) It is the duty of the curator to represent his ward in all legal proceedings, to prosecute and defend for him, and is entitled to so represent him in any suit without being especially appointed as guardian ad litem unless in a particular statutory proceeding a different requirement should be made. (Section 5298 R. S. 1889) But in all cases the ward is the party and the curator is the representative; the act either in suing or defending is the act of the ward by his curator.  
\* \* \* \*

The title of the property therefore vesting in the ward and not in the guardian it could hardly be said that after the sum has been received by the guardian that it is still "payable" to the Veteran. The Supreme Court of Alabama, in considering a situation such as we are now discussing, stated in 140 Southern 584, as follows:

"It is a well settled rule of statutory interpretation, that provisions for exemption from taxation must be construed strictissimi juris, and claims of exemption not clearly within the imported language of the statute must be rejected.

When this rule of interpretation is applied to the quoted portions of the statute it is clear that the exemption applies only to "compensation, insurance and maintenance and support allowance," "adjustment certificates", and "sums payable" under the act of Congress, and does not extend to privately owned property purchased with money arising from such sources and which was at the time of its purchase within the jurisdiction of the State and subject to its powers of taxation."

The same reasoning has been applied in the decision of the Kansas City Court of Appeals in the case of *Duzan v. Cantley*, 55 S. W. (2d) 711:

"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 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 can no longer be paid 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 these decisions is equally applicable in interpreting

the portion of the Federal Statutes pertaining to exemption from taxation. Under the rule heretofore announced it is evident that there can be no distinction drawn by reason of the funds being paid to the guardian instead of the ex-soldier. As heretofore shown the title to the property remains in the ward just as surely as though there were no guardianship. Nor can there be any logical distinction drawn between the investment of these funds in personal property and the investment of such funds in real estate. The title to each is in the ex-soldier and the fund is no longer "payable" to him in either case. The property in which it has been invested should under all rules of equity and justice remain taxable by the proper taxing authorities. This construction of the law gives full effect to the statute as it is written. The sums having become invested in property which demands the protection of the state the beneficiary should bear its just share and proportion of the burden of such protection.

We are therefore of the opinion that the funds of the ward whether invested by the guardian in real property or in personal property are proper subjects of taxation.

Respectfully submitted,

HARRY G. WALTNER, JR.  
Assistant Attorney General.

APPROVED:

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Attorney General.

HGW:MM