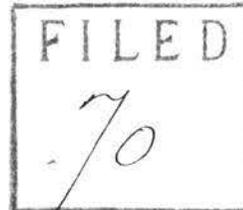


TAXATION:

Real estate in the custody of guardian for an insane war veteran may be taxed for state and local purposes.

7-21
July 14, 1933



Honorable Geo. B. Padgett
Prosecuting Attorney
Gallatin, Missouri

Dear Mr. Padgett:

This office acknowledges receipt of your letter dated June 27, 1933, as follows:

"At Pattonsburg, Mo., in this county lives a man named Albert Blankinship. He has a brother, an ex-service man, now insane in a government hospital, and he also has a mother in the Hospital No. 2. at St. Joseph Mo.

The ex service brother has an income from the U. S. Government, and this Albert Blankinship is his guardian, handling his money as it comes in, loaning it, on real-estate. I rather believe, though not fully informed, that his mother in No. 2. also probably has some kind of income from the U. S. Government; Any way Albert Blankinship, is handling money for the mother and brother both. He takes particular pains to close out every one he gets a chance to, where there is an opportunity to buy it in at a bargain, and he now has taken over several properties in the town of Pattonsburg, renting them, and these estates are fast growing, and at the same time this guardian, Albert Blankinship contends that he is not required to pay any taxes of any kind on either the money on hand, nor on

"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 purposes 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. Crock, 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 identical question submitted by you was passed on in the case of *Stage v. Wright*, 140 So. 584, by the Supreme Court of Alabama. The applicable provisions of the federal law are set out in the opinion, from which we quote the following:

"The guardian rests his contention that the lands are not subject to taxation on the provisions of sections 454 and 618, 38 USCA. The first provides that: "The compensation insurance, and maintenance and support allowance payable under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is

any of the real properties he takes over in the names of his said wards.

If he should go on long enough at the rate he is going it may be possible for him to own every property situate in the city of Pattonsburg, leaving no person to pay any taxes to properties in Pattonsburg.

He has not been paying any city taxes, nor any state, county or township tax. So that he is enjoying all the enjoyment of every convenience the city, county and the State afford him, receiving a percentage for looking after it, with the possibility of inheriting a portion of it, but in no way does he expend any thing out of his brothers or mothers money, nor the profits derived from it to pay their proportionate part of city, township, county or State expense in return for the privileges he enjoys. It occurs to me that ought not to be the law, and I am therefore writing for your opinion as to whether this money, and the properties he buys with it and rents out for profits, is legally immune from taxation. If you do not fully understand this matter I will be glad to answer questions about it."

While you do not state in your letter we assume the title to the real estate purchased by the guardian was taken in the name of the ward. As it is not necessary to discuss the question of the right of the guardian of an insane person to use moneys in his hands for the purpose of investment in and purchase of real estate for the purposes of this case, we assume the legal right of the guardian to make the investments he did make.

It is important in this case to determine the relation existing between the guardian or the curator and his ward so far as the title to property is concerned. We find a very clear statement of the general principle in *Judson v. Walker*, 155 Mo. 155. The court at page 179 of the opinion stated:

made under Parts II, III, or IV; and shall be exempt from all taxation," etc. (Italics supplied) USCA, title 38, Sec.454, page 217.

The other section provides: "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". (Italics supplied) USCA, title 38, page 276, Sec. 618.

(2) 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 import of the language of the statute must be rejected.(citing cases).

(3) When this rule of interpretation is applied to the quoted sections 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. (citing cases) "

The case of State ex rel Smith v. Board of Commissioners, 294 P. 915, involved the right to assess property belonging to minor children of a deceased soldier, the property being purchased with compensation paid by the United States Government. At

page 921 of the opinion the court says:

"The general theory of the law with reference to funds and property intended for minors is that both title and possession are in the ward while under the charge and control of the guardian.

"While the relation between guardian and ward is that of trustee and cestui que trust, the trust is not of such character as to give the guardian the legal title to the ward's estate, but the title remains in the ward, and the possession of the guardian is the possession of the ward". 28 C.J. 1128.

"The legal title, however, is in the ward rather than in the guardian; so that upon the death of the guardian the funds of the ward do not pass to his executor, and on change of guardians no transfer of title takes place. His possession is deemed the possession of the ward." 12 R.C.L. 1123.

"We conclude that the intervention of a guardian does not leave the pension funds still in the hands of the government so that they are still "payable" or "due" the ward as expressed by 38 USCA Section 454 so as to exempt them from assignment, execution, and taxes, but, when paid to the guardian, the title and possession have both passed from the government, and they are no longer "payable", and consequently not entitled to any exemption from taxes under section 454."

Along the same line of reasoning is *Duzan v. Cantley*, 55 S. W. (2nd) 711, a decision of the Kansas City Court of Appeals, where at

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page 712 of the opinion it is said:

"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 can no 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

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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".

See also Martin v. Guilford County, 138 S. E.

847.

Tax exemptions are construed strongly against those claiming such exemptions. We do not believe it was the intention of the Congress to exempt from taxation the property in which the money paid to war veterans was invested particularly where such property was subject to taxation at the time of the investment. The exemption from taxation mentioned in the act of Congress probably referred only to exemptions from inheritance, transfer or estate tax, because it is generally held that such funds are exempt from such taxes.

See Estate of Harris 229 N. W. 781.

Gross v. State of Washington, 278 P. 414.

Tax Commission v. Rife, 162 N. E. 390.

In RE: Wanzell's Estate, 295 Pa. 419.

We therefore are of the opinion that taxes may be properly levied, assessed and collected against the property described in your letter.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC